



Hungarian Helsinki Committee

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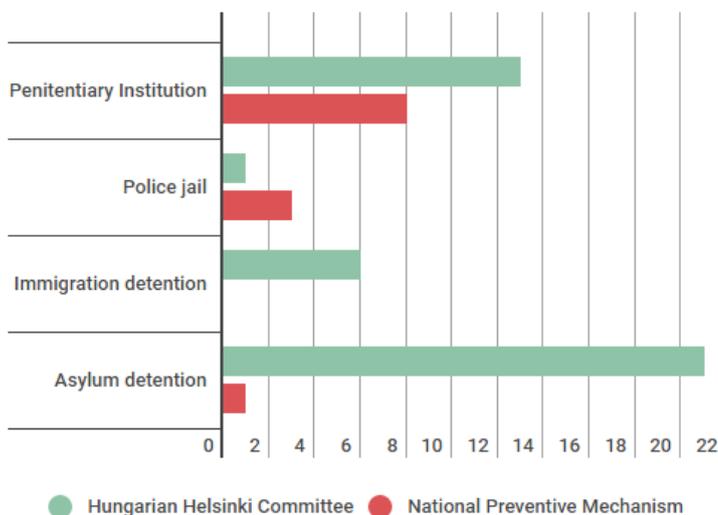
### National authorities terminated cooperation agreements with the Hungarian Helsinki Committee

The Hungarian Helsinki Committee (HHC) is a civil human rights organization established in 1989, which has paid particular attention to the protection of fundamental rights of detainees and asylum seekers. The HHC concluded cooperation agreements with a number of national authorities and documented the enforcement of human rights in detention facilities systematically. The agreements ensured direct contact with potential clients. The cooperation agreements served the interests of both the national authorities and the detainees or asylum seekers. Most of the agreements were concluded for an indeterminate term. The HHC deems it incomprehensible that in the matter of the past four months, national authorities have terminated unilaterally four significant agreements which were the basis of effective cooperation for a long period of time.

#### What are the consequences of the termination of cooperation?

As a consequence of the unilateral termination of the agreements, the Hungarian Helsinki Committee ceases to be entitled to conduct systematic monitoring visits to police detention facilities, penitentiary institutions, immigration jails, asylum jails, reception centres for asylum seekers and the Border Guards' immigration detention facilities. Consequently, the civilian, independent legal control and the possibility of wide ranging counselling were annihilated in these detention facilities. The National Preventive Mechanism at the Office of the Commissioner for Fundamental Rights (NPM, established based on the Optional Protocol to the Convention against Torture) cannot replace the work of civil human rights defenders, since the NPM does not provide regular and free legal counselling. The NPM is mandated with the monitoring of hundreds of institutions, yet, capacity and resources needed for regular control prescribed by law are lacking, therefore, it would take decades for the Department to pay monitoring visits to all detention facilities. The systematic monitoring activity of the Hungarian Helsinki Committee supplemented the operation of the NPM.

The lack of independent civil monitoring undermines the efficiency of the prevention of torture and inhumane or degrading treatment



### Monitoring visits in closed institutions\* (2015-2017\*\*)

\*Only those closed institutions which were monitored by the Hungarian Helsinki Committee

\*\*Until 15 October 2017

#### Which agreements were terminated?

##### 1. Agreement concluded with the Immigration and Asylum Office

- **Conclusion:** re-concluded on a number of occasions from 1998 on (latest agreement on 16 July 2013)
- **Termination:** unilaterally on 2 June 2017 (termination entered into force on 10 June 2017). Reasoning of termination: severe and multiple violations of the agreement, the "lack of cooperation".
- **Provisions:** The agreement entitled the HHC (1) to enter and conduct monitoring visits to reception centres for asylum seekers and to asylum jails, (2) to provide free legal counselling and (3) to request statistical data. The HHC conducted 21 monitoring visits (and prepared reports on these visits) since January 2015.

- **Our standpoint:** The HHC has never committed any severe violation of the cooperation agreement. One sole draft report was submitted with significant delay, but this did not result in any disadvantages to the Office. Views and comments of the Immigration and Asylum Office and her predecessors have appeared in each of our reports. The Office did not react on our findings on five occasions hence we could not and did not publish the affected reports.

## 2. Agreement concluded with the National Police Headquarters

- **Conclusion:** concluded on 11 August 1997 with regard to police detention facilities and on 6 September 2002 with regard to immigration jails (latest amendment on 9 December 2005)
- **Termination:** unilaterally on 16 June 2017 (termination entered into force immediately). **Reasoning of termination:** The normative framework has changed, the new institutions are sufficient for the enforcement of the rights of detainees
- **Provisions:** The agreement entitled the HHC (1) to enter and conduct monitoring visits to police detention facilities and immigration jails for the review of the enforcement of the rights of detainees, and (2) to provide free legal counselling. The HHC conducted 1239 monitoring visits to police detention facilities since the agreement was signed in 1997, and provided legal counselling to 655 foreign detainees held in asylum jails between 1 January 2015 and 30 June 2016. The HHC published both reports focusing on specific institutions and thematic summaries. As a result of our findings and reports, pre-trial detention is currently rarely enforced in police detention facilities. Notification of the authority about violations of the agreement: In 21 years, the HHC did not receive any official notification from the National Police Headquarters about the violation of the agreement.
- **Our standpoint:** The Optional Protocol does not only imply the possibility of the monitoring visits conducted by the Office of the Commissioner for Fundamental Rights but also the control of civil society organizations. Different review mechanisms do not replace but complement each other. Due to the termination of the agreement, the number of tools serving the protection of the rights of detainees and the chances of the revelation of systematic problems decrease. Due to the shortage of capacity and other reasons, staff members of the Office of the Commissioner for Fundamental Rights have not conducted any visit to immigration jails, and they have carried out visits to police detention facilities on 3 occasions since 2015 up until now. During the same period of time, the HHC carried out visits to 6 immigration jails and 1 police detention facility.

## 3. Agreement concluded with the National Penitentiary Headquarters

- **Conclusion:** re-concluded on a number of occasions since 1999 (latest on 7 October 2016)
- **Termination:** unilaterally on 24 August 2017 (effective of 1 October 2017). **Reasoning of termination:** The enforcement of the right of detainees is ensured "also without keeping the present agreement in force".
- **Provisions:** The agreement entitled the HHC (1) to enter penitentiary institutions upon prior notification, (2) to monitor conditions systematically, (3) to talk to detainees without the presence of the, and (4) to manage individual cases upon complaints received from the detainees. The HHC conducted 77 monitoring visits to penitentiary institutions. The HHC addressed recommendations to the affected institutions and the National Penitentiary Headquarters, revealed systematic problems, and provided assistance in cases of individual complaints. The HHC published the reports with findings of the monitoring visits. The reports were submitted to the heads of the penitentiary institutions and the National Penitentiary Headquarters who could communicate their comments to the HHC. For all the 18 years of the agreement, cooperation between the parties was smooth and effective.
- **Our standpoint:** The Optional Protocol does not only imply the possibility of the monitoring visits conducted by the Office of the Commissioner for Fundamental Rights but also the control of civil society organizations. Different review mechanisms do not replace but complement each other. Due to the termination of the agreement, tools of the protection of the rights of detainees and the chances of the revelation of systematic problems decrease. Due to the shortage of capacity and other reasons, staff members of the Office have conducted visits to penitentiary institutions on 8 occasions while the HHC carried out 13 visits.

## 4. Tripartite agreement concluded by the National Police Headquarters, the Central European Regional Office of the UNHCR and the Hungarian Helsinki Committee

- **Conclusion:** The agreement was concluded on 28 December 2006 by the three parties (including the National Headquarters of the Border Guard, predecessor of the National Police Headquarters)
- **Termination:** The agreement was terminated unilaterally by the National Police Headquarters on 21 September 2017 (termination entered into force on 5 October 2017). **Reasoning of termination:** Due to the changes in legislation, asylum seekers cannot be held in police detention facilities anymore.
- **Provisions:** The agreement entitled the HHC (1) to enter Border Guards' immigration detention facilities, (2) to contact foreign detainees, (3) to provide legal assistance to detainees, and (4) to access anonymized documents. The HHC conducted visits to Border Guards' detention facilities at the Serbian border on 14 occasions in 2017. During the 10 years of the agreement, the total number of visits was 445. Annual summary reports were composed about the common work until 2014, from that year on, separate reports have been published on an *ad hoc* basis. The cooperation between the three parties given in Hungary was handled as a good practice, and was followed by similar agreements in other countries of the region.
- **Our standpoint:** The changes of the legislative framework do not affect the agreement, since it includes provisions about the possibility of asylum request not after the asylum procedure but before the procedure is triggered, when key role is played still by the police instead of the Immigration and Asylum Office. In practice, potential asylum seekers are still held in Border Guards' immigration detention facilities.