

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 37TH SESSION HUNGARY, 4TH REPORT

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Information submitted to the Committee

On 16 June 2004, Hungary submitted its 4th periodic report to the Committee Against Torture (the Committee).¹ It also submitted written replies² to the list of issues provided by the Committee³ but these were made available only on the day of the examination. General country information was provided in a separate “core” document⁴, and the periodic report addressed changes in legislation and legal and administrative practice relating to Hungary’s obligations under the Convention.

The report was short and was visibly lacking in statistics. There was also no mention of the involvement of national human rights institutions, non-governmental organisations (NGOs) or other civil society actors in the writing of the report.

Two NGOs submitted parallel reports. The Hungarian Helsinki Committee (HHC) submitted a detailed report⁵ that followed the same structure as the State report in covering the specific articles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). Particular emphasis was placed on the treatment of foreigners and immigrants. The HHC was also able to

¹ CAT/C/55/Add.10, 14 February 2005, available at <http://www.ohchr.org/english/bodies/cat/cats37.htm>

² CAT/C/HUN/Q/4/Add.1, available at

<http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.HUN.Q.4.Add.1.pdf> (unedited version, September 2006).

³ CAT/C/HUN/Q/4, 4 July 2006 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/HUN/Q/4&Lang=E>.

⁴ HRI/CORE/1/Add.11, 4 September 1992, available at <http://www.ohchr.org/english/bodies/cat/cats37.htm>

⁵ Available at <http://www.ohchr.org/english/bodies/cat/docs/ngos/AHHC.pdf>.

present its report to the Committee during a public briefing on 14 November 2006. The European Roma Rights Centre also submitted a report⁶, which explored a number of alleged cases of violations against Roma individuals. It cited a number of cases of police shootings, beatings, and other violations that allegedly took place against Roma people. The European Roma Rights Centre did not have a representative present during the NGO briefing.

Hungary has not made any declarations or reservations to the Convention, and has not signed the Optional Protocol to the Convention. However, in its opening remarks, the delegation made it clear that Hungary was moving towards signing the Optional Protocol.

Themes and issues

The delegation was headed by Mr László Horváth, the Permanent Representative of Hungary to the United Nations Office in Geneva.⁷ Since the written replies were provided so late, the delegation had to summarise the replies orally in their opening statement. The Committee was very pleased with the summary of the replies, which left enough time for two rounds of questions. The dialogue was also very fluid, with the delegation providing clear answers. Having answered all questions, the delegation themselves asked for further questions. However, the Committee decided to end the examination after the second round of questions. The majority of topics discussed related to the treatment of foreigners and immigrants, and there was a lot of overlap in the discussions.

Implementation / definition of torture

The Committee expressed concern that torture was not clearly defined in Hungarian criminal law. The delegation responded that the law concerning assault covered issues of torture. However, several Committee members wanted to know whether the law on assault adequately incorporated the definition of torture as provided by the Convention. The delegation read out the law, explaining that it met the requirements of the Convention. The Committee appeared satisfied with the answer, but Committee member Claudio Grossman, acting as the Committee's country rapporteur on Hungary, insisted that it was important that torture is expressly provided as a criminal offence. In its concluding observations, the Committee recommended that Hungary ensure the definition of torture in the domestic criminal law was in accordance with Article 1 of the Convention.⁸

Prosecutions

In its presentation to the Committee, the delegation gave the impression that cases of torture were treated differently depending on whether there was 'intent' to torture. They stated that a police officer could not be punished for carrying out an act of torture if he was not aware that it was an act of torture. The Committee requested additional information on this issue and could not see a clear reason for the distinction. It stressed that torture was a crime irrespective of whether an element of intent was established. The delegation informed the Committee that it would respond to this, among other queries, at a later time in writing. Nevertheless, the Committee stated that it was essential that all law enforcement officials be informed of the law. The delegation replied that there was no need for an amendment to the criminal code because soldiers and policemen were already trained and knew what was illegal. In its concluding observations, the Committee asked Hungary to strengthen investigation mechanisms to involve independent parties in order to end impunity. It also asked for a form of compensation in the cases where violations were found to have taken place.

⁶ Available at <http://www.ohchr.org/english/bodies/cat/docs/ngos/ERRC.pdf>.

⁷ The delegation also included representatives from the Office of the Prosecutor General, the Ministry of Justice & Law Enforcement, the Hungarian Prison Authority and the Ministry of Foreign Affairs.

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Detention and pre-trial detention

The Committee expressed concern that illegal immigrants may be detained for 10-12 months pending a review of their case and asked for additional information. The delegation explained that this period had been reduced to 6 months. The Committee asked if NGOs or independent groups were allowed to visit the detention facilities and also whether illegal immigrants received appropriate legal aid. The delegation responded that the Hungarian Helsinki Committee helped in providing basic legal aid and that they, as well as the United Nations High Commissioner for Human Rights (UNHCR), the Red Cross, the Hungarian Human Rights Centre and NGOs could all visit the detention facilities. The Committee recognised these efforts, but noted that it was still possible under the *Criminal Procedure Act* for any adult to be held in pre-trial detention for up to three years. The Committee recommended that this period be reduced, especially in cases where the individual does not pose a threat to society.

Given that most acts of torture occur during the detention of individuals, the Committee asked many questions relating to the status of persons in pre-trial detention. The Committee asked for figures regarding individuals in detention, and asked how many cases had led to investigations and prosecutions. The delegation stated that it had not received information regarding cases of torture, but did give figures on the time spent by individuals in pre-trial detention, which showed a steady decrease over time.

The Committee noted that figures showed that imprisoned youths were more likely to offend while in prison than imprisoned adults. The Committee expressed concern that this might be due to the living conditions in prison facilities and asked for more information. The delegation did not respond to this question. The Committee did not comment on this, but, in its concluding observations, reminded Hungary of the need to keep children separate from adults during detention. Regarding detention conditions in general, the Committee recommended that Hungary make all efforts necessary to alleviate overcrowding and ensure that ill treatment is not tolerated.

The Committee expressed particular concern about the conditions and treatment of illegal immigrants while in detention. The delegation explained that if illegal immigrants had children, or if they were minors, they were transferred to community shelters, where they were provided with basic services pending a review of their case. Responding to allegations of overcrowding in community shelters, the delegation stated that the migration routes had changed since the end of the Balkan conflict in the former Yugoslavia, and that it now had sufficient space in shelters.

The Committee also asked if migrants were provided with the relevant legal help. The delegation responded that borders and airports had information from the International Migration Organization and that legal counsel was provided.

In its concluding observations, the Committee requested Hungary to ensure “fundamental safeguards” during detention, ensuring legal access as well as adequate medical evaluation. It recommended that Hungary implement new training programs, paying particular attention to the Istanbul Protocol on the investigation of torture and other cruel, inhuman or degrading treatment or punishment.⁹

Medical examinations

Responding to NGO complaints that doctors had tried to convince detainees not to submit complaints about torture, the Committee asked the delegation to clarify the procedures involved in detaining individuals at the border. The delegation responded that it had not received any reports of intimidation by doctors. It added

⁹ Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <http://www.ohchr.org/english/about/publications/docs/8rev1.pdf>

that several measures had been implemented to ensure that detained aliens receive proper health care. Notably, police officials were now required to stay at a significant distance in order to let the individual and the doctor have a private conversation. In addition to this, the delegation attested that it is compulsory for individuals to undergo a medical check-up before they are taken into custody. The Committee also asked if it was true that it was not possible for an independent doctor to assess an individual at the individual's request. The delegation stated that this allegation was untrue.

Border guards & border detention

The Committee drew the attention of the delegation to numerous allegations of brutality from border guards. In this regard, the Committee felt it was crucial to provide adequate training and asked the delegation whether this was taking place. It also wanted to know if this training was ongoing or whether it took place only once, at the beginning of the officers' service. The delegation responded that NGOs were involved in the training of border guards, but did not go into further detail. However, it did state that disciplinary measures were in place to ensure there was no ill-treatment of individuals. The delegation also stated that there had been complaints against border guards and that these had been investigated.

The Committee noted in its concluding observations that there was a lack of information regarding the training of border guards.

Renditions / Expulsions

The Committee expressed concern that a foreign person could be subject to torture upon expulsion to another country in the absence of 'good guarantees'. The Committee paid special attention to the case of 140 non-Ukrainian migrants that were sent back to the Ukraine, and wished to know if Hungary had received guarantees that those individuals would not be sent to countries where they risked torture. The delegation stated that there were no specific requirements to deal with such a situation and that it followed regular extradition procedures. However, it did state that it had initiated a joint project with the UNHCR to explore such situations. Any individual facing extradition could appeal against the extradition decision. The Committee then inquired whether there had ever been a rejection of the right to expel someone. The delegation simply responded that it had readmission agreements with neighboring countries that comply with European Union standards.

On a general note, the delegation stated that renditions were decided on a case-by-case basis. For instance, refugees escaping religious or cultural persecution during the Balkan conflict were not sent back, even though such actions would have been lawful.

In its concluding observations the Committee expressed concern that 'the right of non-citizens seeking protection to have access to the asylum procedure is not fully guaranteed at the border' and 'at reports of unlawful expulsions of asylum seekers and other non-citizens to third countries implemented by the Border Guard'. Accordingly, it recommended full implementation of Article 3 of the Convention, the updating of Hungary's country of origin information (COI) database and ensuring that the obligatory use of the COI is respected.

Other issues

There was a general call for more **statistics** in the report. The delegation stated that they did not have statistics on the prison situation for this year. However, they gave information regarding previous years, which all showed a reduction of time spent in prison. In its concluding observations, the Committee requested more statistical information.

The Committee briefly inquired about the regulations in place regarding the immigration of those found to be the victims of **human trafficking**. The delegation responded that it had set up special shelters for trafficking victims and that it offered humanitarian residence visas for those that cooperated into the investigation. In its concluding observations, the Committee requested that Hungary take effective measures to combat human traffic and to prosecute those responsible.

The Committee inquired about the alleged involvement of Hungary in flights of **terrorism** suspects in Europe. Particularly, the Committee wanted to know if laws had been violated in dealing with terrorism suspects. The delegation did not reply. However, during the NGO briefing that took place the day before the examination, the Hungarian Helsinki Committee stated that a European investigation into the case was still ongoing, but that they had not uncovered any cases of wrongdoing on the part of the Hungarian authorities.

The Committee expressed concern at the disproportionately high number of Roma in Hungarian prisons. In its concluding observations, it urged Hungary to intensify its efforts to combat discrimination.

Conclusions and next steps

The Committee praised the delegation for well-drafted answers and for clear and detailed responses. The Committee was particularly pleased to read the European Commission for the Prevention of Torture and other Inhuman and Degrading Punishment's (CPT) report, which stated that Hungary had made several progressive changes.¹⁰ In its concluding observations, the Committee reiterated its appreciation for the dialogue and expressed satisfactions at Hungary's law reforms concerning the protection of human rights.

The examination ended ahead of schedule, with the Committee deciding not to ask further questions although there was still time. In his concluding statement, Claudio Grossman, the country rapporteur said that the report was very transparent and that he "had a lot of nice things to say" that would be reflected in the concluding observations. The concluding observations were indeed quite mild. There were no specific requests to curtail recognised acts of non-compliance with the Convention, and the Committee remained rather vague in recommending improvements or strengthened efforts. The discussion maintained its focus on the issue of illegal aliens and migrants, with very little time devoted to the treatment of the Roma people, despite the submission of a parallel report detailing their treatment and conditions.

The Committee's concluding observations¹¹ finally requested Hungary to make the result of this examination public and to submit information on its follow-up to the Committee's recommendations within one year.

¹⁰ This includes a decrease in the number of persons held on remand in police detention facilities and the average length of their detention; available at http://www.cpt.coe.int/documents/hun/2006-20-inf-eng.htm#_Toc110393860

¹¹ CAT/C/HUN/CO/4, 23 November 2006 (unedited)

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