"An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU"
JLS/D3/2007/01

Hungary[1]

1. Introduction

The Hungarian criminal justice system is characterised by the inquisitorial as well as the adversarial system. The stage of investigation is predominantly based on the inquisitorial principle, while the trial stage and the stage of appeal are based on the adversarial principle. However, we cannot say that the trial stage is based on the adversarial principle only, as e.g. the collecting of evidence is primarily the responsibility of the judge. The court proceeds on the basis of an accusation and may only establish criminal liability of a person charged with a criminal offence.[2] The criminal justice system is therefore a mixed system.

The Constitution of the Republic of Hungary, established by Act XX of 1949, rules that "any individual suspected of having committed a criminal offence and held in detention shall either be released or shall be brought before a judge within the shortest possible period of time. The judge is required to grant the detained individual a hearing and shall immediately prepare a written ruling with a justification for either releasing the detainee or having the individual placed under arrest."[3] Act XIX of 1998 on Criminal Proceedings,[4] which includes reform ideas and institutions, came into force on 1 July 2003.[5] Sec. 5 of this Act rules that everyone has the right to defend him- or herself[6] at liberty. This right may only be restricted if a person is deprived of his liberty for reasons and in compliance with the procedure set forth in the Act on Criminal Proceedings. Moreover, a defence counsel may defend the person suspected of having committed a criminal offence at any phase of the criminal proceedings. Sec. 7 rules that everyone is presumed innocent until convicted in a final court verdict.

The coercive measures of custody and pre-trial detention are laid down in Chapter VIII of the Criminal Proceedings Act. Custody is described as temporary deprivation of the defendant's liberty. The court, prosecutor or investigating authority may only order custody upon a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment. According to the CCP, Sec. 43(1), "the defendant is called suspect in the course of the investigation, accused in the course of the court procedure and convict after the final imposition of the sentence, or the definitive imposition of the reprimand, probation or corrective education". When ordering custody, there must be reason to believe that the defendant will most probably be placed in pre-trial detention afterwards (126(1-2)). Custody includes any period spent by the defendant in lawful

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[2] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[3] Art. 55(2) of the Constitution of the Republic of Hungary, obtained through the website of the International Constitutional Law (ICL) project, available at http://www.servat.unibe.ch/icl/hu_indx.html. The ICL edition of the Hungarian Constitution was originally based on an unofficial translation by Kendall Logan, kindly provided by him on 29 September 1997. The edition has been consolidated with all amendments up to and including Act LIX of 1997 on the Amendment of the Constitution of the Republic of Hungary. The new articles added by amendments until 2003 have been inserted by Emöd Veress.

[4] The Parliament adopted this Act on 10 March 1998 (promulgated in issue No. 23/1998 of the Official Gazette); hereafter also Code on Criminal Procedure (CCP).

[5] C. Fenyvesi, "The Characteristic Features of Investigation under the Act on Criminal Procedure in Hungary", *Acta Juridica Hungarica* 200, p. 199-220.

[6] "He" or "him" may also mean "she" or "her".

detention prior to the issuing of the custody order (126(5)). Pre-trial detention is described as the judicial deprivation of the defendant's liberty prior to the delivery of a final decision. Instead of pre-trial detention, the court may order home curfew, house arrest or the measure of "keeping away" (Sec. 130(2)). Title III of Chapter VIII of the Criminal Proceedings Act captures the rules on these substitutes for pre-trial detention. Before custody, a person may be detained for a maximum of 8+4 hours in a police station. Further, he or she may be held in custody for up to 72 hours in a police station without being charged. Subsequently, pre-trial detention may be ordered and executed at the police station for a maximum period of sixty days, after which the person must be taken to a penal institution. The longest possible term of pre-trial detention is three years; it needs to be prolonged and reviewed at intervals defined by the law.[7]

Furthermore, Chapter VIII contains rules on "temporary involuntary treatment in a mental institution". The court may order temporary involuntary treatment if there is reasonable cause to assume that an order for involuntary treatment of the defendant is required (Sec. 140(1)). Sec. 130(1) on the ordering of pre-trial detention also applies here. If temporary involuntary treatment in a mental institution has been ordered for a pre-trial detainee, pre-trial detention shall be terminated (Sec. 141(1)). If there is no ground for such an order, but the pre-trial detainee needs psychiatric treatment, the court may send the pre-trial detainee to a forensic diagnostic and mental institution (Sec. 141(2)) for treatment. Chapter VIII also entails rules on the "measure to warrant the prohibition to travel abroad". If custody, pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest are ordered, the suspect shall be obliged to hand over his travel document (Sec. 146(1-2)). Title VI of Chapter VIII entails rules on "bail". The court may terminate the pre-trial detention of the defendant if – considering the criminal offence and his or her personal circumstances – there is probable cause to believe that the presence of the defendant in the criminal proceedings will be ensured by the deposit of a lump sum of money (Sec. 147(2)). Finally, Chapter VIII contains rules on "search, body search and seizure" (Title VII), "order to reserve data recorded by a computing technical system" (Title VIII), "sequestration and precautionary measure" (Title IX), and "securing the order of proceedings" (Title X).

2. Empirical background information

2.1 General

The first set of data is based on the resources of Statistics SPACE I, the annual penal statistics on the prison population, provided by the Council of Europe. These numbers are put together in clear figures that are shown after this explanation of resources. The second set of data has its foundations in the research of the International Centre for Prison Studies (hereafter: ICPS), which publishes its World Pre-trial / Remand Imprisonment List[8] every year.

Hungary and its prisoners in general

Population 2006, annual estimate	10.058.400
Total number of prisoners (including pre-trial detainees)	15.591
Prison population rate per 100,000 inhabitants	155.0
Total capacity of penal institutions/prisons	11.378
Prison density per 100 places	137.0

[7] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[8] International Centre for Prison Studies (ICPS), London (World Prison Population List and World Pre-trial/Remand Detention List as well as the Prison Brief for the respective countries.

Special groups of prisoners

Number of prisoners under 18 years old, including pre-trial detainees	487
Number of prisoners under 18 years old in pre-trial detention	-
Number of prisoners from 18 to less than 21 years old, including pre-trial detainees	1.155
Number of female prisoners, including pre-trial detainees	1.050
Number of female prisoners in pre-trial detention	-
Number of foreign prisoners, including pre-trial detainees	583
Percentage of foreign pre-trial detainees	18.7%
Percentage of European prisoners among the foreign prisoners	-

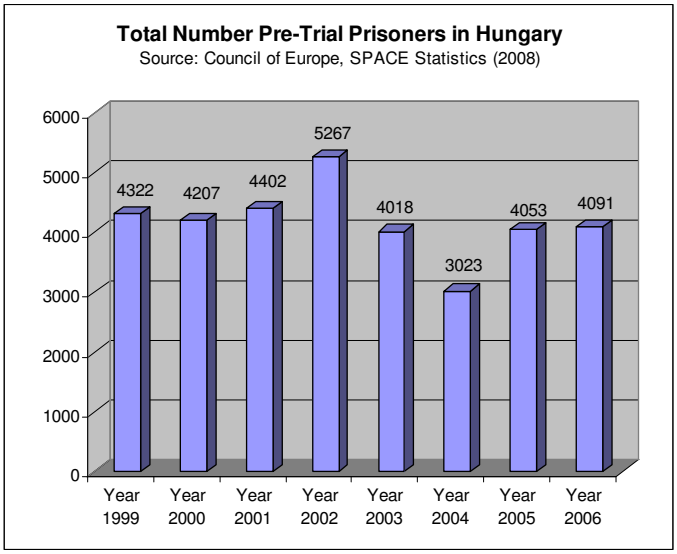
Legal status of prison population I

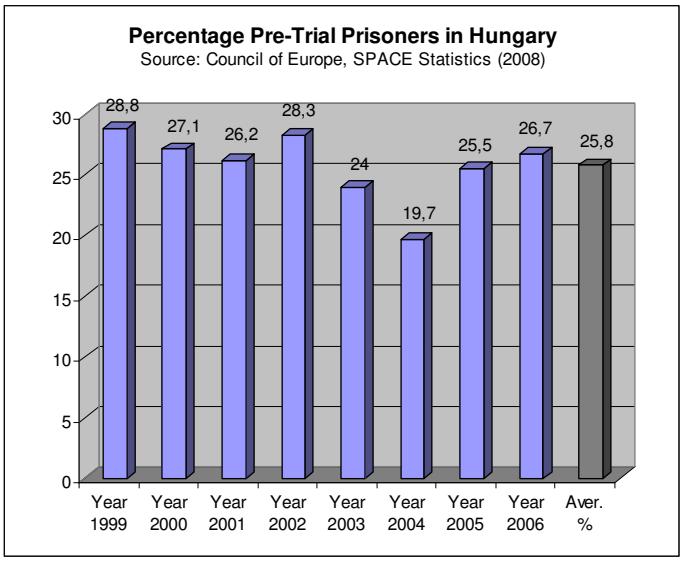
Untried prisoners (no court decision yet reached)	3.380
Convicted prisoners, but not yet sentenced	711
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	The question is irrelevant; the item refers to a concept not found in the penal system of the country concerned.
Sentenced prisoners (final sentence)	11.224
Other cases include forced medical treatment (190 detainees); administrative custody (78 detainees); illegal aliens (8 detainees)	276
Total	15.591

Legal status of prison population II

Percentage of prisoners not serving a final sentence	28%
Rate of prisoners not serving a final sentence per 100,000 inhabitants	43.4
Percentage of untried prisoners (no court decision yet reached)	21.7%
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	33.6

Table 1, Number and percentage of pre-trial prisoners in Hungary





Data according to the International Centre for Prison Studies (ICPS); World Remand Prison List[9]

Prison population according to legal status:	
Total number in pre-trial/remand imprisonment	3,786
Date	31.12.2006
Percentage of the total prison population	25.5%
Estimated national population (at date shown)	10.06m
Pre-trial/remand population rate (per 100,000 of the national population)	38

Finally, different European and international sources providing statistical information have been brought together in one table. It shows us that there is not a lot of data available with regard to pre-trial detention and, above all, that it is very difficult to compare the available data.

Source	Date	Total prison population (including pre-trial detainees/remand prisoners)	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Prison population rate per 100,000 of national population	Pre-trial detention rate per 100,000
International Centre for Prison Studies[10]	2 September 2008	14,911	4,309	28.9%	149 (based on estimated national population of 10.04 million in September 2008; via Eurostat)	-
SPACE I (Council of Europe)[11]	1 September 2006	15,591	No court decision yet	No court decision yet reached: 21.7% Convicted but not	155	Rate of untried prisoners –

[9] R. Walmsley, World Pre-trial / Remand Imprisonment List, Pre-trial detainees and other remand prisoners in all five continents 2007, available at http://www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf.
[10] R. Walmsley, International Centre for Prison Studies, World Prison Brief, Prison Brief for Hungary, available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=143 (last retrieved 4 March 2009).

			reached: 3,380 Convicted but not yet sentenced: 711 Total: 4,091	yet sentenced: 4.6% Total: 26.3%		no court decision yet reached – per 100,000: 33.6
European Sourcebook[12]	2003	17,141	3,085	18%	169 (based on national population of 10,142,362; via Eurostat)	30.4
Eurostat[13]	2006	14,740	-	-	-	-

[11] M.F. Aebi, N. Delgrande, University of Lausanne, Switzerland, Council of Europe Annual Penal Statistics – SPACE I – Survey 2006, pc-cp\space\documents\pc-cp (2007) 09 rev3.

[12] European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition STOCK data (www.europeansourcebook.org, table 4.2, covering the years 2000-2003).

[13] www.epp.eurostat.ec.europa.eu (available e. g. under "Population and social conditions" (Crime and Criminal Justice, see e. g. the publication "Statistics in Focus" ed. 19/2008, table 8 with data for 1995 and 2001-2006).

Source	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
	Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
International Centre for Prison Studies	-	-	-	-	-	-
SPACE I (Council of Europe)	-	109	-	18.7%	-	-
European Sourcebook	-	-	-	-	-	-
Eurostat	-	-	-	-	-	-

Source	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
International Centre for Prison Studies	-	-	-	-
SPACE I (Council of Europe)	-	-	-	-
European Sourcebook	-	-	-	-
Eurostat	-	-	-	-

In 2005, the size of the prison population fluctuated between 16,000 and 17,000 detainees. Of these, 4,000 were pre-trial detainees.[14]

2.2 National statistics

According to the National Police Headquarters and the Unified Police and Prosecutors Criminal Statistics, in 2007, the number of short-term arrests (for a maximum of eight hours by the police) on suspicion of a criminal offence was 62,328 (of which 33,737 related to persons caught in the act, and 28,591 to persons not caught in the act). In 2006 and 2007, the number of 72-hour detentions ordered by the police or the prosecutor after the commencement of criminal proceedings was 7,784 and 6,748 respectively. The number of persons taken into pre-trial detention was 4,102 (2006) and 3,505 (2007).[15] Subsequently, in 2007, 2.2% of all suspects were taken into pre-trial detention; the average time spent in pre-trial detention was 124.8 days.[16] There is no data indicating how many of the 62,328 persons taken into short-term arrest were proceeded against. But what we can say is that, in general, persons taken into a 72-hour detention are necessarily proceeded against, as this coercive measure can only be applied if there is a reasonable suspicion

[14] Szabó, Tímea/Tóth, Balázs/Gyözö, Gábor/Kádár András in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons, Volume 1,* Nijmegen: WLP 2007, p. 430.

[15] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective Defence Rights in the EU and access to justice*, Desk Review, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[16] Ibid.

that the person arrested has committed a crime and there are well-grounded reasons to believe that detaining the person concerned is necessary.[17]

According to the Hungarian Penitentiary Headquarters, the number of remand prisoners (pre-trial detainees and detainees awaiting an appeal decision) was on the increase throughout the year 2007, causing serious overcrowding in some institutions.

Breakdown of remand prison population on 31 December 2007[18]

	Total	Adults	Juveniles
Pre-trial detainees	3,224	3,074	150
Detainees awaiting an appeal decision	598	584	14
Total	3,822	3,658	164

In their Yearbook 2007, the Hungarian Penitentiary Headquarters report that the average period of remand custody was 8.4 months (8.1 months in 2006). These periods probably include both pre-trial detention and detention awaiting an appeal decision. Of the 3,822 remand prisoners, 113 had been in custody for more than two years. In 2006, this number was 81.[19]
If we look at the trend in the total number of convicted persons and the pre-trial detainees, we can see that there were 11,469 persons convicted on 31 December 2005, 10,782 on 31 December 2006, and 10,259 on 31 December 2007. The number has been on the increase in recent years, while the number of pre-trial detainees decreased and increased again in recent years (3,981 on 31 December 2005, 3,786 on 31 December 2006 and 3,822 on 31 December 2007).[20]

3. Legal basis: scope and notion of pre-trial detention

3.1 General

The most important regulations on detention are

- Act XIX of 1998 on the penal procedure;
- Law-decree no. 11 of 1979 on the enforcement of punishments and measures;
- Decree no. 11/1996. (X. 15.) of the Minister of Justice on the disciplinary responsibilities of detainees held in a penitentiary institution;
- Decree no. 19/1995. (XII. 13.) of the Minister of Interior on the regulation of police jails;
- Decree no. 6/1996. (VII. 12.) of the Minister of Justice on the rules relating to the enforcement of imprisonment and pre-trial detention;
- Decree no. 3/1995. (III.1.) of the Minister of Interior on the Police Service Regulations;
- Act CVII of 1995 on the prison service.[21]

Here, we will focus on the Act XIX of 1998 on the penal procedure, as we obtained an English translation of that document with all recent amendments. From other documents, literature, case law, etc. we were able to learn about the rights and obligation which pre-trial detainees have, e.g. from the documents available at the website of the Hungarian Helsinki Committee or the conference paper on Effective Criminal Defence Rights discussed in Maastricht, the Netherlands, on 27-28 November 2008.

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[17] Ibid.
[18] Hungarian prison service, Yearbook 2007 available at http://www.bvop.hu/download/yearbook_2007.pdf/yearbook_2007.pdf
[19] Ibid.
[20] Data from Yearbook of the Hungarian Penitentiary Headquarters provided by Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, Effective Defence Rights in the EU and access to justice, Desk Review, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en
[21] Hungarian Helsinki Committee, *The Rules of Short-Term Arrest, Custody and Pre-Trial Detention, Informational Leaflet*, available via the website of the Hungarian Helsinki Committee: http://www.helsinki.hu/eng/indexm.html

In particular with regard to severe offence, criminal proceedings often start with the arrest of a person. Such a deprivation of liberty is not seen in the Hungarian system as a stage of the procedure. Short-term arrest is a police measure and in some cases, the police have to apply arrest (i.e. for instance when an arrest warrant was issued against a person or when a person escaped from a place of detention), while in others it is an option in the interest of the public security (i.e. for instance when a person is suspected of having committed a criminal offence). Short-term arrest may not last longer than 8 hours, which may be extended with an extra 4 hours in justified cases. The police are allowed to use physical force during short-term arrest. A person under short-term arrest has to be informed of the length and the reasons for the measure. The police are obliged to inform a family member or other person about the whereabouts of the person under arrest. But the police do not have to do so when this would jeopardize the measure's purpose. The police may detain a person in public security detention for a maximum of 24 hours in the interest of establishing the person's identity when this is necessary in the case of drunken behavior or when the person is a danger to others or him- or herself. The person has the right to have a defence lawyer be present at the interrogation and – the following is noteworthy to mention since the European Court's case law Salduz v. Turkey and Panovits v. Cyprus – the Hungarian investigating authority has to appoint a defence lawyer to the person before the first interrogation, *but* the absence of the appointed defence lawyer will not prevent the commencement of the interrogation. It is within this respect that the Hungarian Helsinki Committee advises the person concerned to always write down the name of the defence lawyer who is appointed to him/her.[22]

When there is a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment, provided that a probable cause exists to believe that the defendant's pre-trial detention will be ordered, the investigating authority or prosecutor may order the so called "72-hour detention"; the longest deprivation of liberty possible without a judicial decision.[23]

A suspect may therefore be held in custody for 72 hours without a judicial decision.[24] Taking the defendant into custody means temporarily depriving him of his liberty (Sec. 126(1) Act XIX of 1998 on Criminal Proceedings (in consolidated structure[25])). This period of custody includes any form of detention preceding the custody (Sec. 126(5)). After the lapse of this period, the defendant must be released, unless the court orders his or her pre-trial detention. The police, the prosecutor or the court can order the custody of a person (Sec. 127(1)) in the event that there is a well-founded suspicion that he or she has committed a criminal offence punishable with imprisonment and it is likely that pre-trial detention will be ordered.[26]

In the case of an offence punishable with imprisonment, the defendant may be subjected to pre-trial detention. Pre-trial detention may be ordered if:

- the defendant escapes or remains hidden from the court, the prosecutor or the investigative authority (Sec. 129(2a));
- there is reasonable cause to believe that the presence of the defendant cannot be ensured (Sec. 129(2b));
- there is reasonable cause to believe that the defendant would frustrate, obstruct or jeopardise criminal proceedings if not in pre-trial detention (Sec. 129(2c)); or
- there is reasonable cause to believe that the defendant would accomplish the attempted or planned criminal offence or commit another offence punishable by imprisonment (Sec. 129(2d)).

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[22] Ibid.

[23] Data from Yearbook of the Hungarian Penitentiary Headquarters provided by Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, Effective Defence Rights in the EU and access to justice, Desk Review, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[24] European Criminal Bar Association, *European Arrest Warrant*, http://www.ecba-eaw.org/cms/index.php?option=com_content&task=view&id=972&Itemid=73#limitation

[25] Publication of the text of Act XIX of 1998 on Criminal Proceedings, consolidated with the amendments, in the Official Gazette was ordered by Sec. 308(5) of Act I of 2002, Sec. 88(5) of Act II of 2003, and then Sec. 285(4) of Act LI of 2006.

[26] By Szabó, Tímea/Tóth, Balázs/Gyözö, Gábor/Kádár András in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons. Volume 1,* Nijmegen: WLP 2007, p. 427, and Sec. 126(2).

If ordered prior to indictment, pre-trial detention may last for one month, but the investigating judge may extend pre-trial detention by separate three-month periods. The overall period, however, may never exceed one year from the order of pre-trial detention (Sec. 131(1)). Thereafter, the County Court, acting as a single-judge court, can extend pre-trial detention by separate two-month periods (Sec. 131(1)). After filing the indictment, pre-trial detention should be reviewed at different intervals (Sec. 132(1-2).

In principle, pre-trial detainees are kept in penal institutions (Sec. 135(1)). However, the prosecutor may prescribe that a person is to be held in a police station for a maximum of thirty days. Moreover, following a motion of the prosecutor, the court may decide that this period is to be extended by another thirty days. Pre-trial detainees cannot appeal this decision. In principle we can say that pre-trial detention is to be executed in a penitentiary institution, however, since a court decision may allow 30 days of pre-trial detention in a police jail before submission of the indictment. Additionally, the prosecutor may decide that pre-trial detention is executed for 15-day long intervals in a police jail if he/she finds that it is necessary in the interest of the investigation. In Hungarian criminal proceedings, pre-trial detention in a police jail may not last longer than 60 days. The place where the person is in pre-trial detention is decisive for his/her legal position (his/her legal rights and obligations). With regard to pre-trial detainees in penitentiary institutions, we can say that in principle – unless the law states otherwise – that the rights and obligations of pre-trial detainees are the sane as the rights and obligations of inmates serving a sentence of imprisonment. The rules governing the legal position of persons detained in a police jail are somewhat different from the rules, which apply to detention in a penitentiary institution. For instance, a person in jail has the right to permanent hot water supply and to take a shower every day, while person in a penitentiary institutions will be given the opportunity at least once a week to shower with hot water. But there are no such rules on work and education for persons in jails as there are for persons in penitentiary institutions.

A pre-trial detainee may not be restricted in exercising his procedural rights and may only be subjected to restrictions following from the nature of the criminal proceedings or required by the rules of the institution executing the detention (Sec. 135(3)). He or she shall be granted the opportunity to have contact with his or her defence counsel. Foreign citizens will be granted the opportunity to contact a representative of the consulate of his or her country of origin (Sec. 135(3)).

Time	**Procedural action or event**	**Legal basis**	**Who?**	**Where?**
-	Caught *in flagrante delicto*/apprehension	Sec. 127(3)	Anyone	
8+4 hours	Detention prior to custody	33(3) Act XXXIV of 1994 on the Police and Sec. 126(5)		Police station
72 hours	Taking into custody	Sec. 126(1)	Custody may be ordered and terminated by: - Court - Prosecutor - Investigating authority (Sec. 127(1)) If custody is ordered by the investigating authority, this authority shall advise the prosecutor within 24	Police station: the suspect may be held in custody for 72 hours, without charge/without a judicial decision

			hours (Sec. 127(2))	
	The defendant must be released if the court has not made a decision concerning pre-trial detention within 72 hours	Sec. 126(3)		Police station
30 days *	Pre-trial detention	Sec. 135(2)	Investigative judge	Police station
+30 days *	Pre-trial detention	Sec. 135(2)	Court, following a motion of the prosecutor	Police station
One month	Pre-trial detention **before** filing of the indictment	Sec. 131(1)	Investigative judge	Penal institution
Extension by separate 3-month periods, with a maximum of one year counting from the first decision	Pre-trial detention **before** filing of the indictment	Sec. 131(1)	Investigative judge	Penal institution
From one year on: the County Court has the right to prolong detention by separate 2-month periods	Pre-trial detention **before** filing of the indictment	Sec. 131(1)	County Court	Penal institution
6 months	Pre-trial detention **after** filing of the indictment; the court of first instance has not yet delivered a conclusive decision	Sec. 132(1a)	Review by the court of first instance	
One year	Pre-trial detention, **after** filing of the indictment; the court of first instance has not yet delivered a conclusive decision	Sec. 132(1b)	Review by the court of second instance	
After one year	Pre-trial detention **after** filing of the indictment	Sec. 132(2)	Review by the court of second instance or, if the procedure is held before the court of third instance, by the court of third instance	
Three years	Termination of pre-trial detention, unless it was ordered or	Sec. 132(3)		

	maintained after the announcement of the conclusive decision, or a repeated procedure is in progress before the court in third instance owing to a repeal in the case			

* According to Sec. 135(2), the prosecutor may only order that pre-trial detention ordered by the investigative judge is executed in a police cell for a maximum of thirty days. The court can decide to extend this period by another thirty days.

Before the filing of the indictment/accusation, the prosecutor shall make a motion to the court for the extension of pre-trial detention five days before the expiry of the detention deadline (Sec. 131(2)). After the filing of the indictment, pre-trial detention ordered or maintained by the court of first instance may last up to the announcement the conclusive decision. However, the court of first instance may also order or maintain pre-trial detention after its conclusive decision. Pre-trial detention ordered or maintained by the court of first instance after the announcement of its conclusive decision, or ordered by the court of second instance may continue up to the conclusive decision of the court of second instance. Moreover, pre-trial detention maintained or ordered by the court of second instance after the announcement of its conclusive decision, or ordered by the court of third instance may last up to the conclusive decision of the court of third instance. However, in no case may pre-trial detention last longer than the period of imprisonment imposed by the appealable decision (Sec. 131(4)).

Sec. 131(5) deals with the situation that there is a repealed conclusive decision of the court of first or second instance. If the conclusive decision of the court of first or second instance is appealed against and the court is asked to conduct a new procedure, pre-trial detention ordered or maintained by the court of second or third instance may last up to the decision passed by the court that had to conduct a new procedure.

3.2 Procedural rights

According to the CCP, the defendant is entitled to:

- "receive information on the suspicion, on the charge and any changes therein,
- – unless provided otherwise by this Act – be present at the procedural actions and inspect the documents affecting him in the course of the process,
- be granted sufficient time and opportunity for preparing his defence,
- present facts to his defence at any stage of the procedure, and to make motions and objections,
- file for legal remedy,
- receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings."

In the investigative stage, the suspect and his lawyer have limited access to documents. The suspect and his defence counsel are only guaranteed access to expert opinions and to the minutes of those investigative acts where they can be present. They may only inspect other documents if this does not injure the interests of the investigation (Sec. 186(2)). Consequently, until the closing of the investigation, the defence is harshly restricted in knowing what the basis for the accusation is. According to the CCP, the defence counsel may attend the questioning by the prosecutor of the suspect, as well as the questioning of witnesses, if this was motioned by himself or by the suspect (Sec. 184(2)). This provision restricts the defence lawyer's presence during interrogations and limits

his rights to inspect documents – practice proves that investigating authorities tend to reject all requests for inspection without considering the individual circumstances.[27]

A comprehensive study on the "Injurious Treatment and the Activity of Defense Counsels in Criminal Proceedings against Pre-trial Detainees" shows that only 3.4% of the interviewed defendants had been summoned to appear before the authorities as a suspect in a proceeding in which later they were placed into pre-trial detention. 3.6% were summoned as witnesses first, while most of them (35%) were taken to the police station from their homes, offices etc.[28]

4. Grounds for pre-trial detention

The 72-hour custody period may be ordered by the investigating authority or the prosecutor upon a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment, provided that a probable cause exists to believe that the defendant's pre-trial detention will be ordered. Pre-trial detention may be ordered if, *inter alia*, the defendant has escaped or remains hidden from the court, the prosecutor or the investigative authority (Sec. 129(2a)); if there is reasonable cause to believe that the presence of the defendant cannot be ensured (Sec. 129(2b)); if there is reasonable cause to believe that he or she would frustrate, obstruct or jeopardise criminal proceedings if not in pre-trial detention (Sec. 129(2c)); or if there is reasonable cause to believe that the defendant would accomplish the attempted or planned criminal offence, or commit another offence punishable by imprisonment (Sec. 129(2d)).

5. Grounds for review of pre-trial detention

After the filing of the indictment, the court of first instance will review the justification of pre-trial detention only if the period of pre-trial detention exceeds six months and the court of first instance has not delivered a conclusive decision yet (Sec. 132(1)). Moreover, the court of second instance shall review this justification if pre-trial detention exceeds one year after the filing of the indictment. After the expiration of one year, the court of second or third instance will review pre-trial detention biannually (Sec. 132(2)). The period of pre-trial detention shall terminate when it reaches three years, unless it was ordered or maintained after the announcement of the conclusive decision, or unless the case is in progress before the court of third instance or a repeated procedure is in progress due to appeal (Sec. 132(3)). In addition, Sec. 136(2) rules that pre-trial detention shall terminate if its term has expired and has not been extended or maintained, the procedure has come to a final conclusion, the investigation has been terminated, its term has expired and the court has failed to extend the detention with regard to Sec. 136(3), and filing the charges has been postponed. Finally, pre-trial detention shall be terminated if the cause for ordering it no longer exists. Sec. 136(3) rules that the court may extend pre-trial detention by a maximum of two months following a motion of the prosecutor only if the investigation has been concluded and the indictment is expected to be filed after the term of the investigation set out in Sec. 176(2)[29] has expired. However, if an indictment has not been filed, the court may extend pre-trial detention by another 2-month period. Here, pre-trial detention shall last until the court of first instance has

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[27] See for very detailed information on defence rights in Hungary the work established in the framework of the project "Effective Criminal Defence Rights in Europe", a joint initiative of JUSTICE, the University of the West of England, Open Society Justice Initiative and Maastricht University, funded by the European Community and the Open Society Institute, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[28] András Kádár, *Presumption of Guilt: Injurious Treatment and the Activity of Defence Counsels in Criminal Proceedings against Pre-trial Detainees*, Budapest: Hungarian Helsinki Committee 2004, p. 123-124.

[29] Sec. 176(2), second sentence: "If the investigation is conducted against a specific person, the extension may not be longer than two years following the questioning of the suspect under section 179(1), unless the Prosecutor General has extended the duration of the investigation until the deadline stipulated in the permission, based on section 193(3)." See also: UN Committee Against Torture (CAT), *Consideration of reports submitted by States parties under article 19 of the Convention : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : comments to the conclusions and recommendations of the Committee against Torture (CAT/C/HUN/CO/4) / by the Government of Hungary*, 6 December 2007. CAT/C/HUN/CO/4/Add.1. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/476292c82.html (accessed 28 December 2008).

passed a decision in the course of the preparation for the trial. Nevertheless, if this period reaches three years, pre-trial detention shall be terminated (Sec. 136(3)).

In the course of the investigative stage, a number of legal remedies are available. Anyone who is affected by the measure or the omitted measure of the prosecutor or the investigating authority may lodge a complaint against it within eight days following the communication of the decision. Before the filing of the indictment, the responsibilities of the court of first instance are performed by the judge designated by the president of the County Court, the investigating judge.[30] Detention shall also terminate if its length reaches the period of the imprisonment imposed by the appealable decision (Sec. 131(4)).

6. Length of pre-trial detention

The law on Criminal Proceedings (which was adopted in 1998 and entered into force on 1 January 2003) sets out – under certain conditions – a time limit for pre-trial detention. Sec. 132(2) rules that detention is to be limited to three years.

The table in this paragraph shows us data from the National Prison Administration and is provided by András Kádár (in: *Presumption of Guilt: Injurious Treatment and the Activity of Defence Counsels in Criminal Proceedings against Pre-trial Detainees*, Budapest: Hungarian Helsinki Committee 2004).

	31.12.2001	31.12.2002	31.12.2003
Length	%	%	%
Less than 6 months	42	39	44
6-12 months	29	30	27
1-1.5 years	14	15	13
1.5-2 years	8	8	7
More than 2 years	7	8	9
Total	100	100	100

In the years 2001-2003, there was no significant decrease in the number of long-term pre-trial detainees, but on 31 December 2007, out of the 3,882 remand prisoners, 3% (113 persons) had been in custody for more than 2 years.

Art. 5(3) of the European Convention rules: "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be (...) entitled to trial within a reasonable time or to be released pending trial. Release may be conditioned by guarantees to appear for trial." In the case of Imre vs. Hungary, the suspect was detained on remand from 14 June 1997 until 6 December 2000, when he started serving his prison sentence.[31] The ECtHR decided that the risk that the defendant might abscond was not supported by any specific evidence. Therefore, the Court concluded that "the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in detention for the period in question".[32]

The period that had to be taken into consideration in the case of Maglódi vs. Hungary "lasted at least from 12 June 1999 until 11 June 2003 and from 5 May 2004 onwards, i.e. for altogether four years and five months to date".[33] The Court mentioned that the extension of the remand on custody solely relied on the risk of absconding. However, like in Imre vs. Hungary, this risk was not supported by any specific evidence. Therefore, the Court concluded that "the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in detention

[30] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[31] Imre vs. Hungary, Application No. 53129/99, 2 December 2003.

[32] Imre vs. Hungary, Application No. 53129/99, 2 December 2003, §47.

[33] Maglódi vs. Hungary, Application No. 30103/02, 9 November 2004.

for the period in question".[34] According to case-law of the ECtHR, continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest, which – notwithstanding the presumption of innocence – outweighs the rule of respect for individual liberty laid down in Art. 5 of the Convention. In the case of Csáky vs. Hungary,[35] the defendant was detained from 27 February 2002 until 19 October 2004, i.e. for over two years and seven months. This defendant suffered from psychosis. Initially, the main reason for the extended detention on remand was the risk of absconding and, to a lesser extent, the risk of collusion. However, this latter ground for remand detention was no longer valid after the closure of the investigation on 24 September 2003.

The ECtHR has ruled against Hungary in cases related to pre-trial detention several times. In most cases, the Court found that the grounds for detention (usually the risk of absconding) had ceased to exist, while the defendant was still in pre-trial detention.

Violation of	**In the case of**
Art. 5(3) ECHR	Imre vs. Hungary (2003), Maglódi vs. Hungary (2004), Csáky vs. Hungary (2006)
Art. 5(4) ECHR	Osváth vs. Hungary (2005)
Art. 5(5) ECHR	-

Three-fourth of the pre-trial detentions are terminated within four months from the date when they were ordered.[36]

7. Other relevant aspects

7.1 Deduction of pre-trial detention from the final sentence

The time spent in pre-trial detention must be taken into account.[37]

7.2 Compensation of unlawful or unnecessary pre-trial detention

According to Art. 55(3) of the Constitution, any individual subject to illegal arrest or detainment is entitled to compensation. Sec. 580-585 of the Act on Criminal Proceedings entails rules with regard to "compensation and reimbursement". Pre-trial detention, but also house arrest and temporary involuntary treatment in a mental institution shall be subjected to compensation under the provisions laid down by the rules in Sec. 580 et seq.. The law makes a distinction between three situations in which compensation is possible. In the first one, pre-trial detention shall be subjected to compensation if the investigation was terminated, because, *inter alia,* the action does not constitute a criminal offence. Pre-trial detention shall also be subjected to compensation if the court has e.g. acquitted the defendant or terminated the procedure due to statutory limitation of punishability. Finally, if the court has established guilt of the defendant in a final decision but it did not impose any sentence of imprisonment, compulsory labour service, penalty or expulsion, pre-trial detention shall be subjected to compensation.

If the court has established guilt in a certain case in a final decision, pre-trial detention shall be subjected to compensation if its duration has exceeded the duration of the finally imposed sentence of imprisonment, of the finally imposed sentence of compulsory labour service, the daily number of items of the finally imposed penalty, or the duration of the finally imposed coercive education (Sec. 580.2). He/she shall however not be entitled to receive any compensation if *inter alia* he/she has

[34] Maglódi vs. Hungary, Application No. 30103/02, 9 November 2004, §39.
[35] Csáky vs. Hungary, Application No. 32768/03, 28 March 2006.
[36] UN Committee Against Torture (CAT), *Consideration of reports submitted by States parties under article 19 of the Convention: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: comments to the conclusions and recommendations of the Committee against Torture (CAT/C/HUN/CO/4) / by the Government of Hungary*, 6 December 2007. CAT/C/HUN/CO/4/Add.1. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/476292c82.html (accessed 28 December 2008)
[37] *House arrest in Hungary, an evaluation of national legislation & law enforcement*, by Multumesc Frumos, Pentru Consideratia and Dumnavoastrea.

escaped or has attempted to escape from court, the prosecutor or the investigating authority (Sec. 580.3).

7.3 Alternatives to pre-trial detention

According to Sec. 130(2) of the Act on Criminal Proceedings, instead of pre-trial detention, the court may order home curfew, house arrest, or "keeping away". Home curfew (or "geographical ban") (Sec. 137) restricts the right of the defendant to free movement and free choice of dwelling. Moreover, a person subjected to a home curfew may not leave the specified area or district, nor may he change his place of residence or stay without permission. The court may order home curfew if this is deemed appropriate considering the nature of the criminal offence, the personal circumstances of the defendant and his or her family conditions, or his conduct during proceedings.

The court may also order house arrest if the goals of pre-trial detention may be achieved in a reasonable way without total or further deprivation of the offender's liberty.[38] House arrest (Sec. 138) also restricts the right of the defendant to free movement and free choice of stay. The court selects the dwelling and the enclosed area attached to the place of stay. The court's decision rules when the defendant may leave the dwelling and within what distance. As a substitute for pre-trial detention, house arrest may be ordered if this coercive measure can also guarantee the goals intended to be achieved by pre-trial detention. Moreover, it may be ordered if it is deemed appropriate considering the features of the criminal offence, the duration of the criminal process, and the behaviour of the offender. Contrary to home curfew, house arrest has the same principles, legal grounds, procedural rules and duration as pre-trial detention.[39] Moreover, time served on house arrest shall also be deducted from the duration of the final sentence. The final sentence can be either a non-custodial sentence or a term of imprisonment.[40] From 2000 to 2006, courts ordered house arrest 705 times and the prosecutor proposed it 158 times. Although the numbers increased every year (from 2000 until 2006), this alternative to pre-trial detention remains unpopular, especially compared to the number of pre-trial detainees.[41] A reason for choosing pre-trial detention instead of an alternative measure could be that, in the case of detention, the presence of the defendant in the criminal proceedings is more or less guaranteed. The fragile issue with regard to house arrest is the dwelling, as most offenders do not have one.[42] If the defendant violates the rules with regard to home curfew or house arrest, the court can order custody. A house arrest order may be changed into a pre-trial detention order, and a home curfew order into a house arrest order or a pre-trial detention order; a disciplinary penalty can also be applied (Sec. 139(1)).

"Keeping away" is the alternative to pre-trial detention described in Sec. 138/A and 138/B. This measure also restricts the right of the offender to free movement and free choice of dwelling. Moreover, the decision of the court will specify what from, where or from whom the offender has to keep away. E.g. in conformity with the rules provided in the relevant decision of the court, the defendant subjected to the scope of keeping away shall be obliged to keep away from a specific person, this person's place of work etc. Keeping away may be ordered if there is a reasonable suspicion of a criminal offence punishable with imprisonment. However, the court should bear in mind that the aims intended to be achieved by this measure must be ensured in a reasonable way. In such case, pre-trial detention does not need to be ordered, but according to the court, it is necessary to restrict the offender, as he or she would otherwise frustrate proceedings, commit the attempted or prepared criminal offence etc. (Sec. 138/A(2a-b)). If a defendant violates the rules with regard to keeping away, pre-trial detention may be ordered or a disciplinary penalty may be imposed (Sec. 139(2)). The measure of keeping away was originally designed to protect victims of domestic violence.

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[38] See Sec. 137(2) and analogue house arrest section 138(2), as well as *House arrest in Hungary, an evaluation of national legislation & law enforcement*, by Multumesc Frumos, Pentru Consideratia and Dumnavoastrea.

[39] *House arrest in Hungary, an evaluation of national legislation & law enforcement*, by Multumesc Frumos, Pentru Consideratia and Dumnavoastrea, and Sec. 138(3).

[40] Ibid.

[41] Ibid.

[42] Ibid.

According to data of the Hungarian Chief prosecutor's Office, alternative measures are not frequently used.[43]

	Pre-trial detention	Home curfew	House arrest	Total
2007	4,882	125	70	5,077
2006	4,896	127	45	5,068
2005	5,166	129	38	5,333

7.4 Overcrowding

On 11 May 2005, there were a total of 16,521 prisoners in Hungary (male, female, juvenile and foreign prisoners). On the same date, the prison system's total capacity was 11,253. This means that the occupancy rate was around 150% (in some penitentiary institutions, the rate was as high as 220%), pointing at serious overcrowding.[44] On 2 September 2008, the prison system's official capacity was 12,585, while the total number of prisoners was 14,911. Therefore, the occupancy rate based on the official capacity was 118.5%.[45]

The Hungarian Penitentiary Headquarters report extreme overcrowding in some regional (county) institutions housing persons in pre-trial detention or in appeals procedures.[46]

One of the conclusions of the conference paper on Hungary that was discussed at the conference "Towards Effective Criminal Defence Rights: An Opening Debate" on 27 and 28 November 2008 in Maastricht, the Netherlands, is that "to reduce overcrowding in prisons by reducing the number of pre-trial detainees as well as by introducing alternative sanctions and making sure their proper application" may be listed as one of the challenges faced by the Hungarian criminal justice system in the following years.[47] Moreover, it should be added here that one of the challenges is also "to change the Hungarian judicial practice in relation to pre-trial detentions and make sure that in each case an individualised assessment of the necessity of the strictest deprivation of liberty is preformed before this measure is ordered or prolonged".[48]

7.5 Supervision mechanism(s)

In Hungary, there are three main types of mechanisms controlling detention conditions. First, there is a designated department at the regional prosecutor's office. The people working there regularly supervise the lawfulness of detention in all possible places of detention, including penitentiaries and police jails. Secondly, there is the Ombudsman. Although there is no Ombudsman dealing exclusively with detention issues, detainees can lodge complaints to the General Ombudsman if they are of the opinion that their fundamental rights have been violated during detention. Finally, there is civil monitoring carried out by NGOs acting as a control mechanism for the detention situation. On the international level, it is, *inter alia*, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that examines (by means of unannounced visits to penal institutions in the member states of the Council of Europe) the treatment of persons deprived of their liberty.

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[43] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Country report Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[44] By Szabó, Tímea/Tóth, Balázs/Gyözö, Gábor/Kádár András in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons. Volume 1,* Nijmegen: WLP 2007, p. 430.

[45] ICPS, World Prison Brief, Hungary http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=143

[46] Hungarian prison service, Yearbook 2007, available at http://www.bvop.hu/download/yearbook_2007.pdf/yearbook_2007.pdf

[47] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Country report Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[48] Ibid.

In short, the maximum period of police custody is 72 hours. Upon expiry of this period, the defendant should be released or his or her pre-trial detention should be ordered. On the basis of Art. 33(3) of Act XXXIV of 1994 on the Police, the police are entitled to hold a person in a police cell for 8+4 hours in order to bring him or her before the competent authorities. This maximum of twelve hours shall be counted towards the overall period of police custody. Sec. 135 of the Act on Criminal Proceedings governs the situation of pre-trial detainees in police cells. In principle, pre-trial detention shall be executed in a penitentiary setting, but it is possible to execute pre-trial detention in police establishments for a maximum of sixty days. The CPT notes that, since Sec. 135 came into force, "the number of persons held on remand in police detention facilities and the average length of their detention had fallen significantly".[49] The CPT welcomes this positive development, but rejects the situation that remand prisoners are held in police institutions and notes that this has to change. There are e.g. no activities for remand prisoners in police establishments, except for one hour of exercise in the open air per day, which is not sufficient.[50] According to the Hungarian government, the police authority cannot agree with the CPT's remark that the police forces should, as a rule, offer prisoners some sort of activities.[51] For as long as the present practice of holding remand prisoners in police premises will continue, the judicial control of the treatment of persons remanded in custody and held on police premises should be reinforced. More specifically, such persons should be physically brought before a judge at regular intervals.

Files from the Central Police Holding Facility in Budapest revealed that persons presenting injuries upon admission had signed statements to the effect that the injuries had been sustained before apprehension or were self-inflicted. In the CPT's opinion, this is another practice that could clearly restrain the person concerned from making a truthful statement about what has happened to him. Only in one case, a detained person had lodged a complaint, alleging that his injuries had been caused by the police. However, a senior police officer concluded that the injuries were self-sustained. This appeared to be the end of the investigation into this complaint.[52]

The CPT has noted that, pursuant to Sec. 128(1) of the Act on Criminal Proceedings, relatives (or other persons designated by the defendant) should be notified of the arrest and of the place of detention within 24 hours. As already indicated, the Committee is of the view that a detained person's right to inform a relative or a third party of his choice of his situation, should apply from the very outset of his deprivation of liberty by the police. The CPT would like to receive clarification as to why it was considered necessary to include the above-mentioned margin of 24 hours in the new CCP.[53] The Hungarian authorities do not have a clear answer with regard to this issue. They only state that the inmates interviewed did not indicate infringement of rights or interest.[54]

Sec. 5(3) of the Act on Criminal Proceedings stipulates that a person subject to criminal proceedings has the right to legal defence at every stage of the proceedings. During the 2005 visit, the CPT's delegation once again sought clarification as to the precise moment at which the right of access to a lawyer becomes effective. Senior police officers, both at the Ministry of the Interior and at police establishments visited, affirmed that this right applied from the moment a person was declared a suspect; consequently, information on it was provided before the first formal questioning. Thus, a period of up to twelve hours, during which a person has the status of apprehended, might elapse before contact with a lawyer is permitted. It became clear during the visit that, in practice, it was rare for persons to benefit from the presence of a lawyer at any stage of police custody. Similar to what had been observed at the time of the 1999 visit, it was alleged that in many cases lawyers appointed *ex officio* had had no contact with detained persons until the first court hearing or did not even appear in court.

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[49] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)20, §11.

[50] Ibid, §33.

[51] Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)21.

[52] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)20, §18.

[53] Ibid, §22.

[54] Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)21.

As a result, persons in police custody who were not in a position to pay for legal services were effectively deprived of the right of access to a lawyer. The CPT calls upon the Hungarian authorities to take steps to ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty.[55] For as long as there is no effective system of free legal assistance for poor persons at the stage of police custody, any right of access to a lawyer will remain, in most cases, purely theoretical. The CPT recommends that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency, and be applicable from the very outset of police custody. If necessary, the relevant legislation should be amended.[56]

Conditions in police premises could generally be considered acceptable for the duration of police custody (i.e. a maximum of 72 hours). However, they were not suitable for prolonged stays (i.e. up to sixty days for remand prisoners). In particular, there were no activities, except for one hour of outdoor exercise per day.

While the CPT examines the treatment of persons deprived of their liberty at a European level, the UN Committee against Torture (CAT) more or less does the same at a global level. In their report on Hungary, CAT representatives note that Hungary should take measures in order to ensure that pre-trial detention is in line with international standards. The CAT recommends reducing the number of pre-trial detentions on police premises as well as their duration. Moreover, alternatives should be used more frequently in cases where the accused person does not pose a treat to society. Finally, the CAT recommends that juveniles held in pre-trial detention be separated from adults.[57]

Besides the CCP, there are other regulation dealing with detention, such as Decree no. 6/1996. (VII. 12.) of the Minister of Justice on the rules relating to the enforcement of imprisonment and pre-trial detention. The laws on detention govern *inter alia* the legal position (the rights and obligations) of the convicted and the unconvicted person, but also that in the course of detention separate placement should be provided to *inter alia* men and women, pre-trial detainees and convicted persons, juveniles and adults, smokers and non-smokers.[58]

8. Special groups

8.1 Juveniles

Generally, "proceedings against a juvenile offender shall be conducted by taking into account the characteristics of his age and in a way that promotes the respect of the juvenile offender for the laws" (Sec. 447 CCP). In proceedings against a juvenile offender, the participation of a defence lawyer is statutory (Sec. 450 CCP).

Pre-trial detention may *only* be applied to a juvenile if this is necessary in the light of the exceptional gravity of the criminal offence (Sec. 454(1)), even in the case the reasons/grounds laid down in Sec. 129.2 CCP suffice. The court shall decide on the place where the pre-trial detention shall be executed. This can be a detention home or a penal institution (Sec. 454(2(a-b) jo 3)). When deciding on pre-trial detention in a juvenile case, the court shall take into consideration the nature of the criminal offence with which the juvenile is charged, as well as his or her personal circumstances. Juvenile offenders in pre-trial detention will be separated from adult offenders (Sec. 454(6)). A court's session on imposing pre-trial detention on a juvenile may not be held in absence of a defence lawyer, which is different for adults. A lie detector may not be applied on a juvenile defendant.

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[55] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)20, §23.

[56] Ibid.

[57] UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture: Hungary*, 6 February 2007. CAT/C/HUN/CO/4. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/45f6baaa2.html (accessed 28 December 2008)

[58] Hungarian Helsinki Committee, The Rules of Short-Term Arrest, Custody and Pre-Trial Detention, Informational Leaflet, available via the website of the Hungarian Helsinki Committee: http://www.helsinki.hu/eng/indexm.html (last retrieved 4 March 2009)

Juvenile offenders may not spend more than two years in pre-trial detention. Although pre-trial detention ordered against a juvenile shall end after the lapse of two years from the beginning of the execution of pre-trial detention, an extension is possible if the pre-trial detention was ordered or maintained after the announcement of the conclusive decision or in the case that a repeated procedure is in progress because of a procedure of the court of third instance or a appeal (Sec. 455 CCP).

8.2 Women

The CCP contains a number of specific provisions for women. If a female offender is in the fourth month of her pregnancy or later, the execution of a sentence of imprisonment shall be postponed *ex officio* until six months, at the latest, from the expected date of giving birth. A sentence of imprisonment shall also be postponed if the female offender takes care of her baby younger than six months old.

Female detainees in penitentiary institutions have to have access to hot water in between regular showering opportunities, whereas men hot water should be provided between regular showers with hot water if possible.[59]

8.3 Foreigners

There are no official data on the ethnic composition of the prison population of the prison population. This is due to stringent Hungarian data protection regulations.[60]

According to Art. 223 of Decree 6/1996 (III.6.) of the Minister of Justice on the Implementation of the Rules of Imprisonment and Pre-trial Detention, it should be assured that, if possible, a foreign prisoner who is to be detained, will be placed in a cell with detainees who speak both Hungarian and a language the foreigner speaks and understands.[61] Consequently, people from the same region or country are placed in one cell.

The share of foreigners among the total prison population is 4%.[62] There is no special department responsible for foreign prisoners and prison staff is not trained in dealing with foreigners. Foreign prisoners can have access to the consular authorities of their home countries on an unrestricted basis.

The CCP contains a number of specific provisions for foreign suspects, such as the rules laid down in Sec. 184(5), which state that the questioning of a foreign citizen as a suspect or a witness may be attended by a consulate official.

8.4 Alleged terrorists

The CCP does not contain any specific provisions concerning alleged terrorists.

BIBLIOGRAPHY

1. Aebi, Marcelo/Delgrande, Natalia (2007): Council of Europe Annual Penal Statistics (SPACE I). Survey 2006. Strasbourg. This and earlier surveys can be obtained from: http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/
2. Constitution of the Republic of Hungary, available at http://www.servat.unibe.ch/icl/hu__indx.html (last retrieved 4 March 2009)
3. Effective Criminal Defence Rights in Europe, Conference 27-28 November 2008 Maastricht, Conference Paper on Hungary (draft version Country report Hungary, critical account of the criminal justice Hungary and desk review Hungary), available at

[59] Hungarian Helsinki Committee, The Rules of Short-Term Arrest, Custody and Pre-Trial Detention, Informational Leaflet, available via the website of the Hungarian Helsinki Committee: http://www.helsinki.hu/eng/indexm.html (last retrieved 4 March 2009)

[60] Júlia Iván, András Kádár, Zsófia Moldova, Nóra Novoszádek, Balázs Tóth, *Effective defence rights in the EU and access to justice,* Critical account of the criminal justice system, Hungary draft version to be discussed at the conference Towards Effective Criminal Defence Rights: An Opening Debate, 27-28 November 2008 Maastricht, the Netherlands, available at http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en

[61] Ibid.

[62] By Szabó, Tímea/Tóth, Balázs/Gyözö, Gábor/Kádár András in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, Foreigners in European Prisons. Volume 1, Nijmegen: WLP 2007, p. 431.

http://www.unimaas.nl/default.asp?template=werkveld.htm&id=J67Q4514K4D3230S1SVB&taal=en (last retrieved 4 March 2009)
4. European Criminal Bar Association, *European Arrest Warrant*, available at http://www.ecba-eaw.org/cms/index.php?option=com_content&task=view&id=972&Itemid=73#limitation
5. European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition STOCK data (available at www.europeansourcebook.org, table 4.2, covering the years 2000-2003)
6. C. Fenyvesi, "The Characteristic Features of Investigation under the Act on Criminal Procedure in Hungary", *Acta Juridica Hungarica* 200, p. 199-220
7. Hungarian Central Statistical Office, Justice, Number of persons in law enforcement institutions by type of punishment and sex (1990–), available at http://portal.ksh.hu/pls/ksh/docs/eng/xstadat/xstadat_annual/tabl2_08_04ie.html (last retrieved 4 March 2009)
8. Hungarian Helsinki Committee, The Rules of Short-Term Arrest, Custody and Pre-Trial Detention, Informational Leaflet, available via the website of the Hungarian Helsinki Committee: http://www.helsinki.hu/eng/indexm.html (last retrieved 4 March 2009)
9. International Centre for Prison Studies (ICPS), London (World Prison Population List and World Pre-trial/Remand Detention List as well as the Prison Brief for the respective countries)
10. András Kádár, Presumption of Guilt: Injurious Treatment and the Activity of Defence Counsels in Criminal Proceedings against Pre-trial Detainees, Budapest: Hungarian Helsinki Committee 2004
11. Kauko Aromaa and Markku Heiskanen (eds.), 55. *Crime and Criminal Justice in Europe and North America 1995-2004*, Helsinki 2008, p. 158, available at http://www.heuni.fi/43087.htm (last retrieved 3 January 2009)
12. Kerezsi, Klára/Hatvani, Erzsébet/Kóta, Tünde/Bogschütz, Zoltán in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008
13. C. Morgenstern, Pre-trial detention in Europe: Facts and Figures and the need for common minimum standards, to be published in Trier: Europäische Rechtsakademie (ERA)/Forum 4/2008, available at www.era.int
14. Multumesc Frumos, Pentru Consideratia and Dumnavoastrea, *House arrest in Hungary, an evaluation of national legislation & law enforcement*
15. A. Mowbray, *Cases and Materials on the European Convention on Human Rights*, Oxford: University Press 2007
16. J. Murdoch, *The treatment of prisoners European standards*, Strasbourg: Council of Europe 2006.
17. Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)20
18. Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 30 March to 8 April 2005, Strasbourg 29 June 2006, CPT/Inf (2006)21
19. Szabó, Tímea/Tóth, Balázs/Gyözö, Gábor/Kádár András in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisoners. Volume 1,* Nijmegen: WLP 2007
20. S. Trechsel, *Human Rights in Criminal Proceedings*, Oxford: University Press 2005
21. UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture: Hungary*, 6 February 2007. CAT/C/HUN/CO/4. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/45f6baaa2.html (last retrieved 28 December 2008)
22. UN Committee Against Torture (CAT), *Consideration of reports submitted by States parties under article 19 of the Convention: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: comments to the conclusions and recommendations of the Committee against Torture (CAT/C/HUN/CO/4) / by the Government of Hungary*, 6 December

2007. CAT/C/HUN/CO/4/Add.1. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/476292c82.html (last retrieved 28 December 2008)
23. R. Walmsley, *Further developments in the prison systems of central and eastern Europe, Achievements. Problems and objectives*, Helsinki: HEUNI 2003.