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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Communication from a NGO (Hungarian Helsinki Committee) (03/05/2016) in the case of László Magyar against Hungary (Application No. 73593/10) and reply from the authorities (18/05/2016)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Communication d'une ONG (Hungarian Helsinki Committee) (03/05/2016) dans l'affaire László Magyar contre Hongrie (Requête n° 73593/10) et réponse des autorités (18/05/2016) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Hungarian Helsinki Committee

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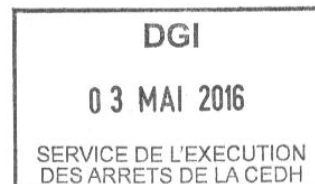
Budapest, 3 May 2016

**Council of Europe
Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments
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Subject: NGO communication with regard to the execution of the judgment of the European Court of Human Rights reached in the case *László Magyar v. Hungary*

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9 (2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgment of the European Court of Human Rights handed down in the *László Magyar v. Hungary* case (Application no. 73593/10, Judgment of 20 May 2014), and the Hungarian Government's related action report of 27 April 2015 (hereafter: "Action Report").

The HHC is a leading human rights organisation in Hungary, founded in 1989. It monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC's main areas of activities are centred on monitoring the human rights performance of law enforcement agencies and the judicial system, as well as on protecting the rights of asylum seekers and foreigners in need of international protection. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence.

The HHC has been advocating for years for abolishing life imprisonment without the possibility of a parole (actual life sentence) in Hungary, related efforts including a submission to the Constitutional Court of Hungary, commenting on related draft laws (including the new constitution of Hungary which expressly allows for actual life imprisonment¹), and reporting to international organisations (such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the United Nations Human Rights Committee, and the Working Group on Arbitrary Detention – UN Commission of Human Rights). Furthermore, the HHC submitted third party interventions to the European Court of Human Rights in the *László Magyar v. Hungary* case, and the cases *A.T. v. Hungary* (Application no. 73986/14) and *T.P. v. Hungary* (Application no. 37871/14), both communicated to the Government of Hungary on 25 March 2015

¹ The new constitution of Hungary, i.e. the Fundamental Law came into force on 1 January 2012, and sets out the following under Article IV (2): "No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences." In its opinion on the Fundamental Law the Venice Commission stated that by "admitting life imprisonment without parole [...] Article IV of the new Hungarian Constitution fails to comply with the European human rights standards if it is understood as excluding the possibility to reduce, *de facto* and *de jure*, a life sentence". (See: *Opinion on the new constitution of Hungary*. Adopted by the Venice Commission at its 87th Plenary Session, Venice, 17-18 June 2011, CDL-AD(2011)016., § 69.)



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and concerning actual life sentence in Hungary under the new domestic rules introduced after the judgment reached in the *László Magyar v. Hungary* case, as also referred to in the Action Report.

The present submission is based on the HHC's third party intervention submitted in the *A.T. v. Hungary* and *T.P. v. Hungary* cases, and it is motivated by the HHC's conviction that **the new "review" mechanism introduced by the Hungarian legislator for actual lifers** subsequent to the judgment in the *László Magyar v. Hungary* case (as presented by the Action Report under the general measures taken) **does not comply with the standards set by the European Court of Human Rights**, and especially the standards put forth in the *Vinter and Others v. the United Kingdom* judgment (Applications nos. 66069/09, 130/10 and 3896/10, Judgment of 9 July 2013). Thus, the HHC is on the view that **those sentenced to actual life imprisonment under the new rules** – such as Mr. A.T. and Mr. T.P. – **are still subjected to inhuman punishment in breach of Article 3** of the European Convention on Human Rights, and actual life sentence as currently regulated in Hungary cannot be regarded as reducible for the purposes of Article 3.

The analysis of the legal provisions currently in force and the clemency practice shows that **the new pardon mechanism** introduced for actual lifers by Hungary **does not provide a real prospect of release**. The HHC stresses that the new mandatory pardon procedure concludes with a pardon decision, which is a fully discretionary favour granted by the President of the Republic (cf. *Bodein v. France*, Application no. 40014/10, Judgment of 13 November 2014).

Thus, Hungary **has failed to comply with the judgment handed down** by the European Court of Human Rights **in the *László Magyar v. Hungary* case**, which, among others, sets out the following:

"The present case discloses a systemic problem which may give rise to similar applications. The nature of the violation found under Article 3 of the Convention suggests that for the proper execution of the present judgment the respondent State would be required to put in place a reform, preferably by means of legislation, of the system of review of whole life sentences. The mechanism of such a review should guarantee the examination in every particular case of whether continued detention is justified on legitimate penological grounds and should enable whole life prisoners to foresee, with some degree of precision, what they must do to be considered for release and under what conditions." (§ 71.)

In addition, the HHC is of the view that, in contradiction with the statements of the Action Report, **the individual measures adopted by Hungary have not fully remedied the consequences for the applicant of the violation** found by the European Court of Human Rights in the *László Magyar v. Hungary* case.

I. INDIVIDUAL MEASURES

After the respective judgment of the European Court of Human Rights, the Curia (the Supreme Court of Hungary) reviewed the criminal case of Mr László Magyar, and concluded in its decision² reached on 11 June 2015 that he was no longer excluded from parole. However, the Curia established that **he would be first eligible for parole** (on the basis of a judicial decision) **only after 40 years of imprisonment served**.

It has to be stressed that **this is a much longer period than what was deemed acceptable by the European Court of Human Rights** e.g. in the *Vinter and Others v. the United Kingdom* case, stating the following: "the Court would also observe that the comparative and international law materials before it show

² Reference number: Bfv.II.1812/2014/18.



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clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter" (§ 120.). In practical terms, as a result of the Curia's decision, Mr László Magyar will be first eligible for parole in 2042, when he will be 76 years old, so it is questionable whether he will have the chance to make use of the possibility of parole.

According to information at HHC's disposal, Mr Magyar submitted a new application to the European Court of Human Rights against the above domestic review decision, claiming a violation of his rights under Article 3 of the European Convention on Human Rights.

In addition, the above review decision led to a so-called "uniformity decision" (such decisions are issued by the Curia to ensure the uniformity of the application of the law by the courts and are binding on them).³ The respective uniformity decision no. 3/2015 BJE,⁴ which was issued by the Curia on 1 July 2015, set out the following:

1. The exclusion of the possibility of conditional release from life imprisonment is part of the constitutional order [of Hungary] and the judicial application of such an exclusion is not prohibited by any international treaty, provided that the statutory requirements for applying the exclusion are met. The laws in force, the ECHR case law, the Constitutional Court's decision and the 11 June 2015 review decision of the Curia of Hungary (no. Bfv.II.1812/2014/7) provide no ground for departure from the established jurisprudence developed on the imposition of life imprisonment without eligibility for parole (actual life sentence).

*2. The courts' obligation to deliver – on the basis of the judgment of a human rights body set up under an international treaty – a judgment that is in conformity with an international instrument promulgated in an Act of Parliament, does not stem directly from the European Convention on Human Rights (Convention) viewed as a substantive and procedural norm, but from the review procedure regulated in the Act on Criminal Procedure, in the course of which the Curia incorporates the international human rights body's decision into the Hungarian legal system and applies those laws that are unaffected by the violation of the Convention.*⁵

The essence of the uniformity decision is that Hungarian courts shall only put aside the pertaining Hungarian legislation if the individual defendant sentenced to actual life imprisonment has applied to the European Court of Human Rights and the violation of his/her Convention rights has been established by a judgment. In all other cases, the Hungarian courts are free to apply the Criminal Code's provisions in force (irrespective of potential non-compliance with the Convention), and shall not be bound by the general standards set by the European Convention on Human Rights (such as the indication that there seems to be a consensus regarding the necessity of a review after no more than 25 years).

II.

OUTLINE OF THE NEW PARDON MECHANISM

The new pardon mechanism for actual lifers, introduced by the Hungarian legislator after the judgment delivered by the European Court of Human Rights in the *László Magyar v. Hungary* case, is regulated by Articles 46/A–46/H of Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive

³ Fundamental Law of Hungary, Article 25 (3)

⁴ The law uniformity decision is available here in Hungarian: <http://www.lb.hu/hu/joghat/32015-szamu-bje-hatarozat>.

⁵ The translation presented here is not a word-by-word one for the sake of comprehensibility. The official English translation is available at the website of the Curia at: <http://www.lb.hu/en/uniformity-decisions/operative-part-uniformity-decision-no-32015-bje>.



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Measures and Petty Offence Confinement. The new procedure designed for actual lifers is called "**mandatory pardon procedure**", which is to be conducted ex officio after 40 years of detention, and does not exclude that actual lifers submit a pardon request under the general rules. The new procedure includes the following steps:

- The penitentiary institution where the actual lifer is detained shall inform the Minister of Justice when the convict has served 40 years of his/her sentence, after taking a statement from the detainee that he/she gives his/her consent to carrying out the mandatory pardon procedure.
- Subsequently, the Minister of Justice shall gather a range of data and documents on the convict and shall notify the President of the Curia about the commencement of the mandatory pardon procedure, who shall appoint a so-called Pardon Committee, consisting of five judges. The judges shall consent to the appointment, and certain incompatibility rules apply.
- The Pardon Committee shall examine on the basis of the data and documentation submitted to it by the Minister of Justice whether it may be presumed that the aim of the punishment may be achieved without further depriving the convict of his/her liberty, taking into consideration (i) the convict's irreproachable behaviour in the course of the execution of his/her punishment and his/her willingness to lead a law-abiding life, and/or (ii) the convict's personal or family circumstances and his/her state of health.
- In the course of its procedure the Pardon Committee may obtain further necessary data and documents, may involve an expert in the procedure or may obtain an expert opinion, and may also hear the convict in person.
- The Pardon Committee shall prepare a reasoned opinion in the case, which shall include a recommendation on whether the detainee should be released or not. The Pardon Committee shall reach a majority decision.
- The above opinion shall be submitted to the Minister of Justice with the accompanying documentation. The Minister of Justice shall prepare another submission for the President of the Republic with the content in line with the Pardon Committee's opinion, which also includes the reasoning of that opinion.
- The President of the Republic shall decide on the issue on the basis of the general rules regarding pardon decisions, i.e. in a fully discretionary manner, without any deadline. **The new legal provisions do not regulate the decision-making of the President of the Republic in any way.**
- If the President of the Republic grants or refuses a pardon, his/her decision still has to be countersigned by a member of the Government, i.e. the respective Minister (the Minister of Justice) to become valid, according to the general rules on presidential pardons as included in Article 9 (4) g) and (5) of the Fundamental Law of Hungary. Similar to the proceeding to be followed by the President of the Republic, the decision-making of the Minister at this point is not regulated in any way by the law. Thus, there is no provision which would oblige the Minister to decide in line with the decision of President of the Republic or, for that matter, the Pardon Committee. In addition, the Minister is not obliged to provide reasons for granting or refusing the countersignature.
- If the detainee is not granted pardon as a result of the procedure above, a new mandatory pardon procedure shall be conducted two years after the previous procedure terminated.



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III.

DATA AND ARGUMENTS AS TO WHY THE NEW PARDON MECHANISM DOES NOT COMPLY WITH THE STANDARDS OF THE EUROPEAN COURT OF HUMAN RIGHTS

1. THE DISCRETIONAL NATURE OF THE PRESIDENTIAL CLEMENCY/PARDON DECISION BY LAW

It is already telling that the law does not call the new mechanism a “review” mechanism, but calls it a “mandatory pardon procedure”. **Since the final decision in the new mandatory pardon procedure is still made by the President of the Republic, similar concerns may be raised in relation to the present situation and the cases of Mr. A.T. and Mr. T.P. as the ones raised by the European Court of Human Rights in the *László Magyar v. Hungary* case (§§ 57-58.) in relation to presidential pardons:**

- Even though the Pardon Committee shall provide a reasoned opinion on whether a pardon should be granted or not, **the President of the Republic is not bound to give reasons** for his/her pardon decisions (even if his decision is not in line with the opinion of the Committee).
- Domestic **legislation does not oblige the President of the Republic to assess whether the detainee’s continued imprisonment is justified on legitimate penological grounds.**
- Also, the law **does not provide for any specific guidance as to what kind of criteria or conditions are to be taken into account by the President of the Republic** in the assessment of the case.
- **The President** is not obliged in any way to reach a decision complying with the opinion of the Pardon Committee, and **does not have to provide any reasoning if deviating from the opinion of the Pardon Committee.**

Therefore, even though the new rules set out the aspects the Pardon Committee has to take into account when compiling its opinion, no such considerations or aspects are set out regarding the person actually deciding on the release of the detainee. Thus, the new mechanism does not “allow any prisoner to know what he or she must do to be considered for release and under what conditions” and “does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might be” (*László Magyar v. Hungary*, § 58.).

In addition, as already referred to above, under the Fundamental Law of Hungary **the President’s pardon decision is only valid if it is countersigned by the respective Minister**, and the new **mechanism does not determine any aspect or consideration the Minister of Justice shall take into account** when deciding on whether to countersign the pardon decision of the President, **nor does the Minister of Justice have to provide reasons** for his/her decision, which is also in contradiction with the case law of the European Court of Human Rights. The countersignature is not a mere formality: since by countersigning the decision the Minister takes over political responsibility, it may very well happen that the Minister refuses to countersign a pardon decision, as it happened e.g. in the politically sensitive case of Mr. Péter Kunos (see below). This means that the actual granting of a pardon is dependent not only on the President of the Republic, but also on the holder of a position that is much more closely linked to politics, which further reduces the likelihood of actual lifers being granted a presidential pardon. To substantiate this, we refer to a recent press conference from July 2015, held on actual life sentence by **one of the state secretaries of the Ministry of Justice**, who **said that the Government has trust in the independent institutions**, in the President of the Republic and the judiciary, and trusts that although they would have the possibility to do so, **“they will never release murderers who killed children, old and helpless persons, innocent victims”**.⁶

⁶ See: http://hvg.hu/itthon/20150719_Repassy_a_kormany_kitart_a_tenyleges_elet.



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Based on the above, it shall be concluded that the new Hungarian "review" mechanism does not comply with the standards of the European Court of Human Rights, which were recently summarized by the Grand Chamber in the case *Murray v. the Netherlands* (Application no. 10511/10, Judgment of 26 April 2016, § 110.) as follows:

"The prisoner's right to a review entails an actual assessment of the relevant information (see László Magyar, cited above, § 57), and the review must also be surrounded by sufficient procedural guarantees (see Kafkaris, cited above, § 105, and Harakchiev and Tolumov, cited above, § 262). To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review (see László Magyar, cited above, § 57, and Harakchiev and Tolumov, cited above, §§ 258 and 262)."

It has to be added at this point that **the review decision of the Curia** reached on 11 June 2015, reviewing the case of László Magyar subsequent to the judgment of the European Court of Human Rights, **also came to the conclusion that discretionary decisions**, such as the pardon decisions taken by the President of Hungary and the respective Minister **"do not comply with the requirement of *de jure* review** as prescribed in the judgment of the European Court of Human Rights", and such decisions do not eliminate the violation of the European Convention on Human Rights (p. 60, Section 8.).

2. AVAILABLE GENERAL STATISTICAL DATA SHOW LOW NUMBER OF PARDONS GRANTED

As already referred to above, the actual pardon decisions of the President of the Republic are made in the new mechanism in basically the same way as "ordinary" pardon decisions. Therefore, in order to get a full picture of the situation of actual lifers awaiting the mandatory pardon procedure, the presidential practice of clemency has to be also examined, especially in light of the *Murray v. the Netherlands* decision according to which "in assessing whether the life sentence is reducible *de facto* it may be of relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon" (§ 100.).

Firstly, it has to be highlighted that according to the publicly available official statistics, **the number of pardons granted in criminal cases in general has been very low** in the past years, strengthening the view that the presidential pardon is not likely to be an available avenue for actual lifers (see the table below).

Table 1 – Pardon decisions aimed at the reduction or the waiver of a sentence, 1 January 2002 – 31 December 2015⁷

Year	Pardons granted	Rejection	Number of all decisions	Percentage of pardons granted as compared to all decisions on pardon
2002	24	1,126	1,150	2.09%
2003	36	1,187	1,223	2.94%
2004	41	1,225	1,266	3.24%
2005	23	1,316	1,339	1.72%
2006	23	1,146	1,169	1.97%
2007	23	1,355	1,378	1.67%
2008	27	772	799	3.38%
2009	17	894	911	1.87%
2010	5	866	871	0.57%

⁷ Source: <http://igazsagugyiinformaciok.kormany.hu/admin/download/8/14/41000/Statiztika%20kegyelmi%20C3%BCgyek.pdf>.



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2011	5	372	377	1.33%
2012	8	548	556	1.44%
2013	12	976	988	1.21%
2014	4	749	753	0.53%
2015	24	792	816	2.94%
<i>Total</i>	<i>283</i>	<i>13,887</i>	<i>14,170</i>	<i>2.00%</i>

3. DETAILED DATA ON PARDON DECISIONS ARE NOT AVAILABLE FOR THE PUBLIC

In addition to the fact there is no obligation to provide reasons for presidential pardon decisions, **the data on the nature of cases in which a pardon was granted have proven to be unavailable for the public in any format**, leaving detainees (thus, potential petitioners) even more in the dark as to the considerations of decision-makers.

In order to support its arguments that actual lifers will not stand a chance to get a presidential pardon, in December 2011 **the HHC requested data from the Office of the President of the Republic on pardon decisions reducing or waiving sentences between 1999 and 2011, broken down as to sentences imposed and criminal offences committed, with special regard to defendants sentenced to imprisonment for homicide, voluntary manslaughter and bodily harm**. The Office of the President of the Republic **refused** to provide an answer within the deadline set out by the respective legal provisions, claiming that they will decide on the data request of the HHC after an ongoing court procedure concerning the public availability of related data, conducted between the Office of the President and the news portal origo.hu, has been terminated (see below).

In February 2012, the Office of the President of the Republic informed the HHC officially that they do not consider the data on pardon decisions as data of public interest, thus they will not provide the HHC with the data requested. The Office of the President of the Republic also turned to the newly set up National Authority for Data Protection and Freedom of Information, whose president did not support the HHC's data request either.

Subsequently, the HHC has filed a lawsuit against the Office of the President of the Republic, but its claim was rejected by both the first instance and the second instance court in June and November 2012, respectively. In the course of the procedure nor the Office of the President of the Republic, neither the first and second instance courts debated that the data requested by the HHC was public interest data, but argued that the Office of the President of the Republic did not process or group the respective data in the "form" required by the HHC, i.e. as quantitative, statistical data, and the courts held that the Office of the President of the Republic may not be obliged under the law to "produce" such data. The above judgments were upheld also by the Curia (the highest judicial forum in Hungary) in a decision reached in the case in July 2013.⁸

While the HHC did not succeed in obtaining aggregated, statistical data on the breakdown of the pardon decisions, the origo.hu news portal referred to above was **rejected access to the individual anonymized pardon decisions**. In 2011, the news portal requested two times the positive pardon decisions reached by President Pál Schmitt in an anonymized format in order make the considerations of the President of the Republic in these cases public, including the types of criminal offences committed by the defendants who were granted pardon. After the requests were rejected, the news portal launched a lawsuit against the office of the President of the Republic with the help of the Hungarian Civil Liberties Union, a human rights watchdog NGO. The claim was approved by the first instance court in January 2012, but was rejected by the second instance court in April 2012, referring to the protection of the personal data of those who received pardon.

⁸ See e.g.: http://index.hu/belfold/2013/07/04/a_koztarsasagi_elnok_nem_szamolja_hany_embernek_ad_kegyelmet/.



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The second instance court stated that anonymizing the pardon decisions would mean that they should delete all such data which would enable third persons to connect the decision and the data subject, i.e. from which conclusions could be drawn to the person concerned by the decision, which in the court's view would have also included e.g. the criminal offence committed by the defendant. Thus, as also referred to by the first instance court deciding in the HHC's above lawsuit, only the information pertaining as to whether a pardon decision was granted or not could have been made accessible.⁹

4. MEDIA SOURCES SHOWING INCONSISTENT DECISION-MAKING

Scanning media appearances and news in the Hungarian media related to individual presidential pardon decisions resulted in the following tables, **showing that there is no clear pattern** as far as the success of pardon requests is concerned, and the respective **Presidents decide on these cases in an inconsistent manner**. Thus, detainees' chance to receive a pardon is not predictable on this basis either. Furthermore, **there was no news indicating pardons granted to detainees sentenced to actual or "ordinary" lifelong imprisonment**, and the sentence of violent offenders was not reduced or waived, but "only" suspended. (Please note that requests aimed at the termination of the criminal procedure, being also possible under Hungarian legal provisions on the basis of a presidential pardon, are also included in the lists, along with suspensions.)

Table 2 – Pardon requests rejected – Based on media appearances

Case	Year of the decision
István Pásztor, a well-known former professional handball player ran over an 80-year old pedestrian with his motorbike, who died in the accident. In 2011, István Pásztor was sentenced to 8 months of imprisonment. Subsequently, he submitted a pardon request twice, but both were rejected. ¹⁰	2013 and 2014
Ágnes Geréb, an obstetrician and a home birth mid-wife and three of her associates were charged after two babies in the case of whom she assisted home-birth had died due to complications (e.g. oxygen-deprived condition). ¹¹ Her first pardon request, aimed at the termination of the criminal procedure, was rejected, and she was finally convicted to 2 years of prison. A year later, the next President of the Republic also rejected her request aimed at the termination of another similar criminal procedure against her. ¹²	2011 and 2012
György Budaházy was charged with organizing a group intending to attack Members of Parliament. In 2011, the President of the Republic rejected his pardon request aimed at the termination of the criminal procedure against him. ¹³	2011
Dénes Varga, a Roma man from Sajókaza was sentenced to five months of imprisonment for stealing electricity in the value of 162 178 HUF (he also had a suspended imprisonment sentence from a previous case). Dénes Varga claimed that he had to steal electricity because he did not have a job, and had no chance to pay for electricity while taking care of his six children. However, his request was rejected. ¹⁴	2009

⁹ See e.g.: http://hvg.hu/itthon/20120424_allamfo_kegyelem, <http://www.origo.hu/itthon/20120423-eldol-titkose-kiknek-adott-kegyelmet-schmitt-pal.html>.

¹⁰ See e.g.: <http://nol.hu/belfold/ader-masodsor-is-elutasitotta-pasztor-kegyelmi-kervenyet-1503301>.

¹¹ http://index.hu/belfold/2011/06/20/az_allamfo_elutasitotta_gereb_agnes_kegyelmi_kerelmet/

¹² See: http://www.keh.hu/sajtokozlemenyek/1670-A_koztarsasagi_elnok_kozlemenye_Gereb_Agnes_kegyelmi_kervenveireol&pnr=1.

¹³ See e.g.: http://index.hu/belfold/2011/05/18/nincs_kegyelem_budahazynak/.

¹⁴ See e.g.: <http://www.community.hu/rsk/2011/03/17/aramlopas-ossznenpi-szokasok/>, <http://index.hu/belfold/aram8153/>.



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Sarolta Zalotnay was sentenced to 3 years of imprisonment because of fraud, and asked for a pardon referring to her medical condition. The President of the Republic deemed it necessary to acquire a medical expert opinion, on the basis of which her request for pardon was rejected. ¹⁵	2005
Kinga Kurunczi was sentenced to 3 years and 2 months of imprisonment for smoking one cigarette filled with marihuana. Her first pardon request was rejected by the President of the Republic, but later on she was granted pardon. She was detained altogether for 15 months. ¹⁶	2002 and 2003
In 2003, a woman from Kaposvár murdered her husband, who was regularly ill-treating her. She was sentenced to 2 years of imprisonment. Her first three requests for pardon were rejected, but she was granted pardon upon her fourth request. ¹⁷	N/A
Péter Kunos, former head of a bank was sentenced to 2 years of imprisonment because of bribery of 11 instances. The President of the Republic granted him pardon, taking into consideration the medical state of Péter Kunos, but the Minister of Justice did not countersign the decision, claiming e.g. that the medical reports did not support the arguments concerning the medical state of the defendant. ¹⁸	1998
Zoltán Székely was convicted for bribery committed as an official in 2002, had to serve 6 years of imprisonment and was fined for 9 million HUF. His pardon request was rejected. ¹⁹	N/A
Mónika Kalmár killed his own father, who was ill-treating her and her mother. She was sentenced to 7 years of imprisonment in 2002. Mónika Kalmár requested pardon at least 4 times, but it was never granted, despite the fact that meanwhile it turned out that her child suffered from a fatal disease. ²⁰	N/A

Table 3 – Pardons granted – Based on media appearances

Case	Year of the decision
A couple from Sajókaza, having six children, was sentenced to 10 months of imprisonment in a medium security prison, respectively, on the account of "endangering a minor", because in the case of two of their children they failed to ensure that the children attend school on a regular basis. They were both granted pardon. ²¹	2009
The head of the hospital in Szentes, Ágnes Kovács, was sentenced to 1.5 years (or, according to other sources, to 2 years) of imprisonment on the account of fraud and forging documents. Tibor Geönczeöl, head of a division at the same hospital was sentenced to 2.5 years (according to other sources, to 3 years) of imprisonment on the same charges. Both of them were granted pardon.	2006
The 15-year old Kitti Simek was sentenced to 2 years and 2 months of imprisonment on the account of killing her stepfather, who had been regularly and seriously ill-treating her and her mother. ²² The President of the Republic suspended the execution of her sentence, submitting that after the court decision, new circumstances of special importance have emerged in the case of Kitti Simek, and her personal and family circumstances have also been altered. (It has been presumably taken into consideration that she gave birth to a child and she had to take care of her sick mother.)	2005

¹⁵ <http://velvet.hu/celeb/cini1010/>, <http://www.origo.hu/itthon/20050411madlhoz.html>

¹⁶ See e.g.: <http://index.hu/belfold/kegyvel0506/>.

¹⁷ See e.g.: <http://www.origo.hu/itthon/20050411madlhoz.html>.

¹⁸ See e.g.: <http://www.origo.hu/itthon/20040128madlhoz.html?pidx=3>.

¹⁹ See e.g.: http://m.hvg.hu/itthon/20110721_tiz_koztarsasagi_elnoki_kegyelem_masfel_e.

²⁰ See e.g.: http://www.femina.hu/hirhatter/ki_es_miert_kapott_koztarsasagi_elnoki_kegyelmet.

²¹ See e.g.: <http://tasz.hu/romaprogram/sikerkes-kegyelmi-kerveney>.

²² See e.g.: <http://www.origo.hu/itthon/20040128madlhoz.html>, <http://hvg.hu/itthon/20050119simek>.



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In 2003 a woman from Kaposvár murdered her husband, who was regularly ill-treating her. She was sentenced to 2 years of imprisonment. Her first three requests for pardon were rejected, but she was granted pardon upon her fourth request. ²³	N/A
Róbert Jakubinyi was sentenced to imprisonment on the account of a fraud involving more than hundred million HUF, but he was granted pardon. ²⁴	1999
The criminal procedure against Flórián Farkas, chair of the National Self-government of the Roma Minority, which was initiated on a count of embezzlement and other crimes, was terminated by a presidential pardon. ²⁵	1998
A railway officer, being responsible for a train accident resulting in the death of 31 persons was granted pardon after serving part of his 5.5 years long imprisonment.	1997 (?)
Györgyi Binder was sentenced to 2 years of imprisonment after she killed her daughter suffering from a fatal disease. The President of the Republic suspended the execution of her sentence. ²⁶	1995
Zsolt Gáspár ran over a 60-year old man, who died as a result of the accident. He was granted pardon. ²⁷	1995

The characteristics of the rules and practice of presidential pardon as outlined above warrant the same conclusion as reached by the European Court of Human Rights in the case *Harakchiev and Tolumov v. Bulgaria* (Applications nos. 15018/11 and 61199/12, Judgment of 8 July 2014) with regard to a certain period of the applicant's life imprisonment, which goes as follows:

"[In that period] the way in which the presidential power of clemency was being exercised was quite opaque, with no policy statements made publicly available and no reasons whatsoever provided for individual clemency decisions [...]. Nor were there any concrete examples showing that persons in Mr Harakchiev's situation could hope to benefit from the exercise of that power (contrast Kafkaris, cited above, § 103). It is true that the lack of such examples could be explained by the fact that the penalty of whole life imprisonment had been introduced into Bulgarian law not long before that, in December 1998, and that it was therefore unlikely that a large number of persons serving such a sentence had spent a sufficiently long period of time in prison by then to qualify for clemency (see Iorgov (no. 2), cited above, §§ 56-57). However, the combination of a complete lack of formal or even informal safeguards surrounding the exercise of the presidential power of clemency, coupled with the absence of any examples tending to suggest that a person serving a whole life sentence would be able to obtain an adjustment of that sentence and under what circumstances, leads the Court to conclude that between November 2004 and the beginning of 2012 Mr Harakchiev's sentence could not be regarded as de facto reducible." (§ 262.)

5. THE TIMING OF THE MANDATORY PARDON PROCEDURE

In addition to the above concerns, the mandatory pardon procedure **shall first take place after 40 years of imprisonment served, which is a much longer period than what was deemed acceptable by the European Court of Human Rights** e.g. in the *Vinter and Others v. the United Kingdom* case, stating the following: "the Court would also observe that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter" (§ 120.). (See also the comments related to the individual measures taken in the *László Magyar v. Hungary* case.)

²³ See e.g.: <http://www.origo.hu/itthon/20050411madlhoz.html>.

²⁴ See e.g.: http://hvg.hu/itthon/20090603_egymasert_alapitvany_targyalas.

²⁵ See e.g.: <http://www.origo.hu/itthon/20040128madlhoz.html?pIdx=3>.

²⁶ See e.g.: <http://www.origo.hu/itthon/20040128madlhoz.html?pIdx=3>.

²⁷ See e.g.: <http://nepszava.hu/articles/article.php?id=543318>.



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It has to be added that under Article 43 (1) of Act C of 2012 on the Criminal Code, in the case of life imprisonment the earliest date of parole shall be after the defendant has served 25 years, but maximum after serving 40 years. (The previous Criminal Code of Hungary, which was also applied by the Curia when reviewing Mr László Magyar's sentence, set out that the earliest date of release on parole from a life imprisonment shall be after serving a term of 20 years, or at least a term of 30 years if the life imprisonment was imposed for a criminal act that is punishable without any period of limitation. In the case of the applicant, the latter rule applied.²⁸) Thus, **in terms of timing, the rules pertaining to those sentenced to life imprisonment with the possibility of parole do not comply with the case law of the European Court of Human Rights either.**

IV. RECOMMENDATIONS

For the reasons above the HHC respectfully recommends the Committee of Ministers to call on the Government of Hungary to:

1. Abolish the institution of actual life imprisonment from both the respective laws and the Fundamental Law of Hungary.
2. Establish a review system for those already convicted to actual life imprisonment which complies with the standards set by the European Court of Human Rights with respect to the decision-making process and its timing, and which provides a real prospect of release.
3. Ensure that a review complying with the standards set by the European Court of Human Right takes place no later than 25 years after the imposition of every life sentence, with further periodic reviews thereafter.
4. Ensure that the rights violation suffered by the applicant in the *László Magyar v. Hungary* case is fully remedied and that he is eligible for parole no later than 25 years after the imposition of his sentence.

Sincerely yours,

András Kádár
co-chair
Hungarian Helsinki Committee

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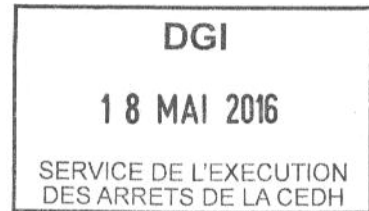
²⁸ Act IV of 1978 on the Criminal Code, Article 47/A (2)

DH-DD(2016)646 : Rule 9.2 NGO in Laszlo Magyar v. Hungary and reply from the authorities.

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MINISTRY OF JUSTICE
AGENT FOR THE HUNGARIAN
GOVERNMENT



Mr Özgür Derman,
Department for the execution of judgments of the ECHR

Directorate General of Human Rights and Rule of Law
DGI Council of Europe

Our Ref.: XX-NBEJFO/ - /2016.

Budapest
18 May 2016

Telephone
(36-1) 795-63-94

Reference
DGI/ÖD/PS

Subject: Case László Magyar v. Hungary (73593/10) Judgment of 20 May 2014

Dear Mr Derman,

Referring to your letter of 12 May 2016 I have the honour to inform you that since proceedings in the cases of A.T and T.P. v. Hungary (referred to both in the Action Report of the Government and the NGO submissions) are pending before the Court concerning the issue whether the new legislation on whole life imprisonment is in conformity with Article 3 of the Convention, the Committee of Ministers could refrain from conducting parallel proceedings on the same issue and from interfering with the Court's jurisdiction.

I have the honour to be,
Sir,
Your obedient servant,

Zoltán Tallódi
Agent of the Government of Hungary