



Hungarian Helsinki Committee

# HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

## BRIEFING PAPER ON THE LÁSZLÓ MAGYAR V. HUNGARY GROUP OF CASES CONCERNING LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

28 May 2018

This briefing paper concerns the execution of the judgment reached by the European Court of Human Rights (ECtHR) in the *László Magyar v. Hungary*<sup>1</sup> case, establishing that life imprisonment without the possibility of parole (whole/actual life sentence) imposed upon the applicant violated Article 3 of the European Convention on Human Rights; and the judgment of the ECtHR in the *T.P. and A.T. v. Hungary*<sup>2</sup> case, establishing that, irrespective of the new "mandatory pardon procedure" introduced for whole lifers, the Hungarian rules on life imprisonment without parole still violate Article 3 of the ECHR. The Hungarian Helsinki Committee (HHC) submits that

- **Hungary has not taken any general measures to execute** the judgment of the ECtHR in the *T.P. and A.T. v. Hungary* case and continues failing to comply with the judgment handed down in the *László Magyar v. Hungary* case;
- **the Government states** in its Group Action Plan of 27 March 2018 **without any ground that the outcome of pending constitutional complaints "needs to be awaited"** or that judgments in currently pending cases before the ECtHR would have any effect on the execution of judgments in the *László Magyar v. Hungary* group of cases; and that
- **Hungary has not fully remedied the rights violation of individual applicants** affected.

### 1. LACK OF GENERAL MEASURES

After the judgment in the *László Magyar v. Hungary* case, **Hungary introduced a new "mandatory pardon procedure"** for detainees serving a life sentence without the possibility of parole, which is to be conducted ex officio after 40 years of detention. In the course of the procedure, a judicial board adopts a recommendation on the granting of clemency/pardon, but the procedure concludes with the fully discretionary clemency/pardon decision of the President of the Republic.<sup>3</sup> The ECtHR examined the **conformity of these new rules with Article 3 of the Convention** in the *T.P. and A.T. v. Hungary* case, with the ECtHR concluding that it was not persuaded "that, at the present time, the applicants' life sentences can be regarded as reducible for the purposes of Article 3 of the Convention", and **established the violation** of Article 3 of the Convention, e.g. due to the following concerns:

- "48. [...] Such a long waiting period [40 years] unduly delays the domestic authorities' review of 'whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been

<sup>1</sup> Application no. 73593/10, Judgment of 20 May 2014

<sup>2</sup> Applications nos. 37871/14 and 73986/14, Judgment of 4 October 2016

<sup>3</sup> The procedure is presented in detail by the judgment reached in the *T.P. and A.T. v. Hungary* case under § 17, and in the HHC's Rule 9(2) communication submitted with regard to the *László Magyar v Hungary* case in May 2016, available here: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E), pp. 3-4.



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds' (see *Vinter and Others*, cited above, § 119)."

- "49. [...] the new legislation does not oblige the President of the Republic to assess whether continued imprisonment is justified on legitimate penological grounds. What is more, the new Act failed to set a time-frame in which the President must decide on the clemency application or to oblige him or the Minister of Justice – who needs to countersign any clemency decision – to give reasons for the decision, even if it deviates from the recommendation of the [judicial] Clemency Board. Indeed, the Court has already expressed its reservation concerning the pre-existing clemency system where neither the Minister of Justice nor the President of the Republic were bound to give reasons for the decisions concerning such requests (see *László Magyar*, cited above, § 57)."

Thus, as opposed to what is suggested by the Group Action Plan, the amendments introducing the mandatory pardon procedure did not address the concern expressed in the *László Magyar v. Hungary* case that the domestic legislation does not oblige the President of the Republic "to assess, whenever a prisoner requests pardon, whether his or her continued imprisonment is justified on legitimate penological grounds" (§ 57). Furthermore, the Government of Hungary **has not taken any general measures to date** to address the rights violations as pointed out by the *T.P. and A.T. v. Hungary* judgment, **and has not amended the respective legal provisions.**

In addition, **the Group Action Plan's statement that the judgment** in the *T.P. and A.T. v. Hungary* case established "new requirements" which **raised or left open a series of questions in respect of the consistency of the Court's jurisprudence" is without any ground.** The Chamber **judgment** in the *T.P. and A.T. v. Hungary* case **was based and relied on earlier Grand Chamber judgments** reached in the *Vinter and Others v. the United Kingdom*<sup>4</sup> and *Murray v. the Netherlands*<sup>5</sup> cases. Therefore, it is hard to fathom what are the "issues" referred to by the Group Action Plan which "will have to be clarified by the Court" in the pending cases<sup>6</sup> of other prisoners serving life sentence without parole in Hungary, subject to the exact same legal provisions as the applicants in the *T.P. and A.T. v. Hungary* case.

## 2. NON-RELEVANCE OF PENDING CONSTITUTIONAL COMPLAINTS

The Group Action Plan states that **the outcome of pending constitutional complaint proceedings** initiated by László Magyar and an applicant in one of the pending cases before the ECtHR<sup>7</sup> "needs to be awaited before adequate legislative measures can be taken". However, in fact these proceedings and their outcome **have no relevance in terms of the execution of the judgments** in the *László Magyar v. Hungary* group of cases, for the following reasons.

- The Government failed to provide any information on the nature of these constitutional complaint proceedings, i.e. whether the complainants solely request the constitutional review of individual court decisions or also debate the constitutionality of the underlying legal provisions. According to the respective complaint available on the website of the Constitutional Court,<sup>8</sup> László Magyar submitted a constitutional complaint requesting the constitutional review of the *decision* setting out parole for him

<sup>4</sup> Application nos. 66069/09, 130/10 and 3896/10, Judgment of 9 July 2013

<sup>5</sup> Application no. 10511/10, Judgment of 26 April 2016

<sup>6</sup> *Sándor Varga v. Hungary* (Application no. 39734/15) and *Kruchió v. Hungary* (Application no. 43444/15)

<sup>7</sup> *Sándor Varga v. Hungary* (Application no. 39734/15)

<sup>8</sup> See: <http://public.mkab.hu/dev/dontesek.nsf/0/FACC5A90E395454CC1257EE000582849?OpenDocument>.



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

after 40 years. Thus, even if this constitutional complaint would be successful, it would not necessarily result e.g. in repealing the respective domestic legal rules (even though the Constitutional Court may decide to examine also the law in such a procedure). In addition, the constitutional complaint was submitted in 2015, and no decision has been reached by the Constitutional Court yet, and there is no time limit for the Constitutional Court to decide on these complaints, raising serious questions as to the effectiveness of the procedure.

- It has to be recalled that the Fundamental Law (the constitution of Hungary in force since 1 January 2012) explicitly provides for the possibility of life imprisonment without parole,<sup>9</sup> while also providing for the right to human dignity and the prohibition on torture, inhuman or degrading treatment or punishment.<sup>10</sup> Therefore, even if any of the pending constitutional complaint procedures target the underlying legal provisions (or the Constitutional Court chooses to do so), **the outcome of any constitutional review procedure is dubious** at best, and could end with establishing that the rules are constitutional, despite the obvious violation of Article 3 of the Convention.
- Finally, **a ruling of the Constitutional Court establishing that the respective domestic court decisions or the domestic laws are constitutional would not affect in any way the fact that the current domestic legal provisions and decisions imposing life imprisonment without parole violate Article 3 of the Convention** as established by the ECtHR in the *T.P. and A.T. v. Hungary* case.

### 3. LACK OF ADEQUATE INDIVIDUAL MEASURES

As also presented by the Group Action Plan, the Curia (the Supreme Court) ruled in 2015 that László Magyar **will be first eligible for parole** (on the basis of a judicial decision) **only after 40 years of imprisonment served**. The HHC reiterates that **this is a much longer period than what was deemed acceptable by the ECtHR** e.g. in *Vinter and Others v. the United Kingdom* (§ 120) or in *T.P. and A.T. v. Hungary* (§ 48). Also, the Group Action Plan itself says that **T.P. and A.T. remain in life imprisonment without parole, in direct contrast with the ECtHR's decision**.

In addition, the HHC wishes to stress and reiterate that the "decision of uniformity of law"<sup>11</sup> no. 3/2015 BJE,<sup>12</sup> which is also referred to in the Group Action Plan, sets out *inter alia* that the exclusion of the possibility of parole with regard to life imprisonment "is not prohibited by any international treaty" and that the e.g. the ECtHR's case law provides "no ground for departure from the established jurisprudence developed on the imposition of life imprisonment without eligibility for parole".<sup>13</sup> This uniformity decision and the review decisions reached in cases of T.P. and A.T. clearly show that Hungary insists on imposing whole life sentences even if that violates the Convention in its current form, and whole lifers have no chance of being granted the possibility of parole even if the violation of Article 3 of the Convention is established in their very case.

<sup>9</sup> Article IV (2) of the Fundamental Law includes the following: "Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences."

<sup>10</sup> Fundamental Law of Hungary, Articles II and III

<sup>11</sup> 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.

<sup>12</sup> This uniformity decision was issued by the Curia on 1 July 2015, after it was ruled that László Magyar is not excluded from parole any more, and will be eligible for parole after 40 years.

<sup>13</sup> The operative part of the decision is available here in English: <http://www.lb.hu/en/uniformity-decisions/operative-part-uniformity-decision-no-32015-bje>.



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

### RECOMMENDATIONS

Based on the above, the HHC respectfully recommends the Committee of Ministers to call on the Government of Hungary to:

1. **Abolish the institution of life imprisonment without the possibility of parole** from both the respective laws and the Fundamental Law of Hungary, also because the legitimate penological aims may be achieved through the application of life imprisonment with the possibility of parole.
2. **Establish a review system for those already sentenced to whole life imprisonment** which complies with the standards set by the ECtHR 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 ECtHR **takes place no later than 25 years** after the imposition of every life sentence, with further periodic reviews thereafter.
4. **Ensure that the rights violations suffered by the applicants** in the *László Magyar v. Hungary* group of cases **are fully remedied** and that they are eligible for parole no later than 25 years after the imposition of their sentence.