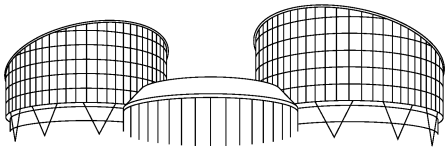

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VARGA AND OTHERS v. HUNGARY

(Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13)

JUDGMENT

STRASBOURG

10 March 2015

FINAL

10/06/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Varga and Others v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Işıl Karakaş, *President,*
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 10 February 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in six applications (nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Hungarian nationals, Messrs Lajos Varga, Tamás Zsolt Lakatos, Gábor Tóth, László Pesti, Attila Fakó and Gábor Kapczár ("the applicants"), on 1 March, 10 July and 14 November 2012, and 14 May, 2 July, and 1 October 2013, respectively.

2. The applicants were represented respectively by Messrs T. Fazekas, D. Karsai, A. Cech, A. Nemesszeghy and G. Magyar, lawyers practising in Budapest, and Mr A. Kovács, a lawyer practising in Szeged. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicants complained about their detention in overcrowded prison cells and the absence of an effective domestic remedy in this regard. They relied on Article 3 read alone and in conjunction with Article 13 of the Convention.

4. On 9 January 2014 the applications were communicated to the Government.

On 23 September 2014 the Chamber decided to inform the parties that it was considering the suitability of applying a pilot judgment procedure in the case pursuant to Article 46 § 1 of the Convention.

The applicants and the Government each filed observations on the applicability of the pilot judgment procedure.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1975, 1987, 1961, 1968, 1973 and 1984, respectively. When introducing the applications, they were detained in prisons in Baracska, Szolnok, Budapest, Sopronkőhida, Pálhalma and Szeged, respectively.

6. On 31 December 2013 the Hungarian prisons accommodated altogether 18,042 inmates (that is, an overcrowding rate of 144 %), out of which 5,053 people were in pre-trial detention.

A. Mr Varga

7. Mr Varga was held at Baracska Prison which, he claimed, was severely overcrowded at the time of his detention lasting from 17 January to 3 September 2011. In particular, the cell in which he was detained measured 30 square metres and accommodated seventeen prisoners (that is, 1.76 square metres gross living space per inmate). The quality and quantity of the food provided were poor, as a result of which he claimed to have lost 20 kilograms.

From 4 July 2011 he was kept in solitary confinement for eleven days as a disciplinary measure. He submitted that he was kept in a cell of some eight square metres and in poor sanitary conditions, without adequate running water. This led to problems of hygiene and a skin infection, for which he did not receive adequate treatment. Throughout this confinement he had outdoor stays of only 30 minutes a day.

B. Mr Lakatos

8. Mr Lakatos was held from 20 January 2011 until an unspecified date in the spring of 2012 at Hajdú-Bihar County Prison in a cell that measured nine square metres and accommodated three inmates including him (that is, three square metres gross living space per inmate). As of spring 2012, he was transferred to Jász-Nagykun-Szolnok County Prison where he has been held in a cell measuring nine square metres and housing four inmates including him (that is, 2.25 square metres gross living space per inmate). He claimed that at the latter facility there was no ventilation and the toilet was only separated from the living area by a curtain, offering insufficient privacy.

C. Mr Tóth

9. Mr Tóth was placed in pre-trial detention on 7 April 2010. On 10 April 2010 he was transferred to Hajdú-Bihar County Prison where he was held until 18 January 2012 in a cell of about ten square metres together with three other detainees (that is, 2.5 square metres gross living space per inmate). Only a curtain was used as a partition between the toilet and the living area.

He was subsequently transferred to Budapest Prison (*Budapesti Fegyház és Börtön*) where the cell in which he was held between 18 January 2012 and 18 January 2014 was about ten square metres in size; he shared it with two other inmates (that is, 3.33 square metres gross living space per inmate).

Since 18 January 2014 he has been detained with seven other detainees in a cell measuring 25 square metres (that is, 3.13 square metres gross living space per inmate). He claimed that the toilet is separated only by a curtain from the living area. The bed linen is changed only once every five or six weeks.

D. Mr Pesti

10. The applicant started to serve his prison sentence in 2009 at Márianosztra Prison. He shared his cell with eight to ten inmates and the surface available was 25.7 square metres (that is, a maximum of 2.86 square metres gross living space per inmate).

On 6 December 2012 he was transferred to Sopronkőhida Prison where his cell measures 6.2 square metres and is occupied by him and another man (that is, 3.1 square metres gross living space per inmate).

E. Mr Fakó

11. On 27 October 2011 Mr Fakó was placed in pre-trial detention at Budapest Correctional Facility (*Fővárosi Büntetés-végrehajtási Intézet*). On 29 April 2013 he was transferred to Pálhalma Prison, where he shared a cell with thirteen other inmates. Without specifying the size of the cell, he submitted that the gross living space per person varied between 1.5 and 2.2 square metres.

He had a daily one-hour-long outdoor exercise and spent the remainder of his time in the cell. He submitted that in 2013 the summer temperature in the cell rose to 40˚C because of poor ventilation. He asserted that he was allowed to take a shower once a week for no longer than five minutes each time. Furthermore, the cell was infected with bed bugs, lice and cockroaches, but the prison administration did not address this issue.

F. Mr Kapczár

12. From 12 December 2006 Mr Kapczár has served his sentence at Szeged Prison. Throughout his detention he has been held in fourteen different cells. The size of those cells was 8, 12 and 24 square metres, respectively. The occupancy rate in the cells measuring 8 square metres was often up to three persons (that is, 2.67 square metres gross living space per inmate). In the cells of 12 square metres the occupancy rate was four persons (that is, 3 square metres gross living space per inmate). In the cells measuring 24 square metres it was often up to ten persons (that is, 2.4 square metres gross living space per inmate).

The applicant claimed that the toilets in those cells had been separated from the living space only some eighteen months ago, and their ventilation remained unresolved. Furthermore, some of the bunk beds had been welded together, so detainees were obliged to sleep right next to each other.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Decree no. 6/1996. (VII.12.) of the Minister of Justice on the Rules Governing the Enforcement of Imprisonment and Pre-trial Detention as in force until 31 December 2014

13. The Decree regulates complaints to be addressed to the governor of the penitentiary institution or the public prosecutor as follows:

Section 6

"(1) Unless provided otherwise by the law, matters relating to an inmate's detention shall be decided on – upon request or *ex officio* – by the head of the designated unit of the penitentiary institution in which the inmate is residing for the purpose of serving the punishment or measure imposed on him. In matters relating to his detention, the inmate may, without indicating the subject matter of his request ... request the head of the unit or the governor of the penitentiary to hear him in person, or may submit a written request.

(2) Inmates may file a complaint to the governor against a ruling, measure, decision or omission occurring in the context of subsection (1). Where the decision has been taken by the governor ... the complaint shall be examined by the commander of the national penitentiary department.

(3) Where, in cases specified under the law, the inmate's case was decided on ... by the national commander, the complaint shall be examined by the Minister ..."

Section 7

"In addition to the remedies specified under section 6, inmates ...

a) may directly turn to the public prosecutor in charge of the supervision of the execution of sentences and may request a hearing by the public prosecutor;"

Before the amendment of 24 October 2010, entering into force on 24 November 2010, section 137 of Decree no. 6/1996. provided that the allocation of prison cells should ensure that each inmate dispose of 6 cubic metres air space and 3 square metres (in case of male detainees) or 3.5 square metres (in case of juvenile and female detainees) living space. Nonetheless, as in force at the material time, section 137 did not provide for a legally binding obligation concerning this issue and regulated conditions of detention as follows:

> "(1) The number of persons allocated to a cell ... should be determined in a manner that each detainee should have, in so far as possible, 6 cubic metres air space and, in case of male detainees, 3 square metres living space, in case of juvenile and female detainees, 3.5 square metres living space.
>
> (2) The living space is to be calculated by taking into account the floor space of the cell reduced by the area occupied by furniture and other equipment.
>
> (3) The size of individual cells ... should reach 6 square metres, if possible."

B. Act no. CLXIII of 2011 on the Public Prosecution Service

14. This Act regulated the public prosecutors' role in supervising detention as follows:

> **Monitoring the legality of criminal sanctions**
>
> **Section 22**
>
> "(1) [... P]ublic prosecutors may at any time and place control the legality of enforcing punishments ..., the lawful treatment of prisoners and the enforcement of provisions protecting the rights of inmates. ....
>
> (2) The head of an institution ... executing [detention] must, if monitored under subsection (1), abide by the instructions given by the public prosecutor concerning ... the conditions of imprisonment. Against such instructions, the head of the institution may file an objection ... with the senior public prosecutor within 15 days, which has however no suspensive effect.
>
> ...
>
> (4) Public prosecutors shall call upon the responsible senior officer to put an end to any unlawful practices or omissions, with which the latter shall comply. He may nevertheless file an objection ... with the senior public prosecutor within 15 days, which has suspensive effect."

C. The [Old] Civil Code as in force at the material time

15. Act no. IV of 1959 on the [Old] Civil Code, in force until 15 March 2014, provided for compensation for actions impairing an individual's personality rights if they caused him damage under the following terms:

Section 84

"(1) A person whose personality rights have been infringed may bring the following civil-law claims, depending on the circumstances of the case:

a) a claim that the court establish that an infringement has taken place;

b) a claim that the infringement be discontinued and the perpetrator be forbidden from further infringements;

c) a claim that the perpetrator be ordered to give satisfaction by making a declaration or in any other appropriate manner and, if necessary, this be made adequately public by, or at the expense of, the perpetrator;

d) a claim that the prejudicial situation be terminated, and that the situation prior to the infringement be restored by, or at the expense of, the perpetrator ...;

e) a claim for damages under the rules of civil law liability..."

Section 339

"(1) Anyone who unlawfully causes damage to another person shall be obliged to pay compensation. He shall be exculpated if he proves that he proceeded in such manner as can generally be expected in the given situation."

Section 349

"(1) Liability for damage caused by the State administration shall only be established if damage could not be prevented by means of ordinary legal remedies or if the person concerned has resorted to ordinary legal remedies appropriate for preventing damage."

D. Jurisprudence submitted by the parties

1. Budapest Surroundings High Court's judgment of 26 March 2013

16. The Government referred to a judgment (see paragraphs 40 and 51 below) in which the Budapest Surroundings High Court examined claims for compensation brought by a former detainee on account of the alleged infringement of his personality rights. That case originated in a civil action brought by a Mr A.B. who argued that he had not received adequate medical care in detention, that he had been detained in overcrowded cells without the necessary personal space, that his freedom of religion had been restricted and that he had not received dietary nutrition prescribed for him.

In its decision, the court recognised the right of a detainee under section 84(1), read in conjunction with section 339 of the [Old] Civil Code, to lodge a civil claim against the detention facility for damage resulting from overcrowding and inadequate health conditions in a detention establishment. It held that the detention facility had acted unlawfully when it infringed section 137 of Decree no. 6/1996. by failing to secure 3 square metres space per inmate. The court concluded that the plaintiff had suffered, during his detention, a disadvantage not inherent in

a sentence of imprisonment, on account of the aggregation of overcrowded prison conditions and the lack of medical care, and awarded him 250,000 Hungarian forints (HUF) (approximately 750 euros (EUR)) as non-pecuniary damage for the violation of his personality rights.

2. Judgments of the Kúria (Supreme Court)

17. In further cases cited by the applicants, the domestic courts dismissed the plaintiffs' actions and refused compensation essentially on the ground that the domestic authorities, in particular the detention facilities, had not been liable for damages arising out of conditions of detention.

(a) Case no. 1

18. On 17 October 2012 the *Kúria* held, relying on the case-law of the Court, that detention as such could not deprive detainees of other fundamental rights, including the right to dignity. It sustained the claim of the plaintiff alleging a violation of his personality rights on account of the overcrowded prison conditions. It found that the breach of the legal provisions on detention, in particular of those concerning living space, constituted an infringement of the plaintiff's personality rights. Nonetheless, the *Kúria* dismissed the plaintiff's claim of non-pecuniary damages.

(b) Case no. 2

19. In a case where the plaintiff was held in detention for ten days in conditions incompatible with section 137 of Decree no. 6/1996, the *Kúria* held, in a judgment delivered on 21 November 2012, that prison authorities had no discretion to decide on the admission of inmates and could not refuse any new admission on the ground of overcrowding. In the view of the *Kúria*, the sole fact that the plaintiff had been accommodated in a cell where the minimum living space could not be ensured did not establish the authorities' liability.

(c) Case no. 3

20. In another case brought against Vác Prison, the National Penitentiary Department and the State by a detainee who complained about cramped living space, summer heat in the cell and the refusal to grant leave to use his own television, the *Kúria* found in its judgment of 16 January 2013 that the inadequate living space and sanitary conditions were in breach of the plaintiff's personality rights. The court emphasised that one of the criteria as to whether or not to award compensation for a breach of personality rights was the damage actually caused by the respondent's unlawful conduct. The infringement of the plaintiff's

personality rights did not in itself establish the prison facility's liability for compensation. According to the *Kúria*, the prejudice suffered by the plaintiff had been caused by the deprivation of liberty itself and no such additional damage had arisen from the conditions of detention as to require the payment of non-pecuniary damages.

(d) Case no. 4

21. On 8 April 2013 the *Kúria* found for a plaintiff who alleged a violation of his personality rights on the ground that the prison had not ensured him the requisite living space and that the door of his cell had always been locked, although he had been in low-security detention, which had deprived him of free movement within the block during the day. The *Kúria* upheld the lower courts' finding that the overcrowding did not entail compensation liability. Nonetheless, it awarded the plaintiff partial compensation on account of the fact that the door of his prison cell had always been locked.

3. Leading cases BDT2011.2404 and BDT2013.2969

22. In two leading cases, the Pécs Court of Appeal and the Szeged Court of Appeal dismissed the plaintiffs' actions in damages on account of overcrowding. In the case before the Pécs Court of Appeal, it was established that the plaintiff, a non-smoker, had been held, during the period between 11 November 2004 and February 2005, in a prison cell measuring 21.66 square metres. He had shared the cell with up to 14 other inmates, some of whom had smoked despite a smoking ban.

The Court of Appeal overturned the first-instance judgment ordering the respondent detention facility to pay the plaintiff HUF 200,000 (approximately EUR 650) in non-pecuniary damages for a violation of his personality rights on account of overcrowding. It held that the respondent was not liable for the alleged illegal conduct, since the latter had occurred for objective reasons, and the respondent had no discretionary power to decide on the admission of new inmates.

The same conclusion was reached in the case before the Szeged Court of Appeal, where the plaintiff lodged an action in damages for his placement first in a cell measuring 25 square metres and accommodating 12 inmates and then in two other cells measuring 8 square metres and accommodating 4 inmates.

4. Judgments of other civil courts

(a) Case no. 1

23. In a judgment of 20 September 2011 the Szeged Court of Appeal dismissed a claim for non-pecuniary damages brought against the National Headquarters of Penitentiary Institutions, the State, the Attorney

General and Szeged Prison by an inmate held in the special security department for those sentenced to life. The court reiterated that one of the main criteria in assessing whether to award compensation for a breach of personality rights was the degree of culpability on the part of a respondent, which, in the given case, could not be established. It further argued that the term "in so far as possible" concerning the three square metre living space in section 137 of Decree no. 6/1996. (VII.12.) (see paragraph 13 above) referred only to what was desirable, rather than mandatory, in terms of the conditions of detention. It noted that given the lack of financial resources the capacities of the detention facility could not be improved and the management was not in a position to refuse new admissions on the ground that the facility was overcrowded.

As to the liability of the State, the court found that the State was to ensure the functioning of a number of sectors with limited financial resources, thus no fault could be attributed to it. Similarly, the court excluded the liability of the Attorney General on the ground that it had no jurisdiction over the material conditions of detention. As regards the remainder of the claim directed against Szeged Prison, the court dismissed it as unsubstantiated.

(b) Case no. 2

24. In a judgment of 4 November 2011 the Debrecen Court of Appeal established that although the plaintiff had been detained in overcrowded cells without adequate sanitary facilities, Hajdú-Bihar County Prison was not liable for the alleged damages since the overcrowding had been caused by objective reasons outside its scope of liability. The court held that no fault could be attributed to the prison administration since it was not in a position to refuse new admissions even when the average capacity of a detention facility had been exceeded. It also noted that the plaintiff had failed to substantiate any non-pecuniary damage requiring compensation.

(c) Case no. 3

25. In a case against Baracska Prison and the State, the Budapest Court of Appeal endorsed, in a judgment of 22 May 2012, the first-instance court's finding that although the respondent prison could not ensure the requisite conditions of detention as prescribed by Decree no. 6/1996. (VII.12.), this had not been in violation of the plaintiff's personality rights. According to the court, the respondent had proved that it had acted in a manner that could generally be expected in the given situation, since it had no leeway to decide on the admission of detainees. Furthermore, even though the plaintiff had been held in the period 13 to 18 January 2010 in a cell the door of which had been locked all the time, the impugned conditions were not of a gravity or length that would have

resulted in the deterioration of the plaintiff's physical or mental health, thus the infringement of his personality rights did not entail the payment of compensation. As to the liability of the State for damages, the court noted that there was neither a civil law contract between the State and the plaintiff nor any other special legal basis that would have entailed the State's liability.

These conclusions were confirmed in the court's judgment of 7 November 2013 concerning the claims of another detainee held in overcrowded prison cells between 8 March 2007 and 13 September 2010 at the same prison.

(d) Case no. 4

26. In a further case against Baracska Prison, the Budapest Court of Appeal held, in a judgment of 2 July 2013, that the placement of the plaintiff in overcrowded prison cells did not in itself entail the infringement of his right to physical integrity, health or dignity, and that overcrowding was an inevitable inconvenience of several people being accommodated together. According to the court, the cumulative effect of other alleged grievances, that is poor sanitary conditions, lack of baths and adequate diet did not result in any injury to the plaintiff's personality rights either.

(e) Case no. 5

27. In a judgment of 11 April 2013 the Budapest Court of Appeal held that the plaintiff had been detained in conditions in breach of Decree no. 6/1996. (VII.12.) as regards the living space and sanitary conditions in prison. Nonetheless, it stated that it was not up to the prison facilities to decide on the admission of detainees and found that they could not be held liable for any breach of the relevant provisions on conditions of detention.

(f) Case no. 6

28. On 24 October 2013 the Szeged Court of Appeal upheld a detainee's claim against a detention facility in relation to the failure of the prison administration to enforce the smoking ban in prison cells, to provide him with clothing and shoes, and in relation to the humiliating nature of body searches. The court dismissed the remaining claims, in particular the one concerning overcrowding, reiterating the same reasoning as in its judgment of 20 September 2011 (see above in paragraph 23).

(g) Case no. 7

29. In its judgment of 7 November 2013, the Debrecen Court of Appeal established that the respondent prison had infringed the plaintiff's personality rights by holding him for the periods 21 April to 2 June 2008 and 23 June to 19 December 2009 in a cell not offering 3 square metres living space. It dismissed the plaintiff's claim for non-pecuniary damage since the prison facility's culpability could not be established in that it was not the fault of the facility that it could meet its statutory obligation to admit detainees only in violation of the regulations on the conditions of detention. In the court's view, it was up the State to adopt the necessary legislation and provide adequate financial means to ensure the legality of the conditions of detention. The State's failure to do so would entail its liability.

E. The Constitutional Court

30. In three separate proceedings pending before the Budapest High Court, the judge requested the Constitutional Court to establish that section 137 of Decree no. 6/1996. (VII.12.), as amended with effect from 24 November 2010, was unconstitutional and in breach of international law.

On 27 October 2014 the Constitutional Court held, in decision no. 32/2014. (XI. 3.), that the prohibition of inhuman and degrading treatment, as enshrined in Article 3 of the Convention and Article III (1) of the Constitution, entailed an obligation to guarantee to detainees held in multi-occupancy cells a minimum living space and space for activities that would ensure the respect of their rights to human dignity. Thus, in the Constitutional Court's view, it was the duty of the State, in particularly that of the legislature, to regulate, in an obligatory manner, the minimum living space to be ensured to detainees. Given that Decree no. 6/1996. (VII.12.), following its amendment of 2010, did not contain any cogent requirements, it was found unconstitutional and to be contrary to international obligations.

The Constitutional Court declared the impugned legislation null and void with effect from 31 March 2015.

F. Reports of the Hungarian Commissioner for Fundamental Rights

1. Márianosztra Prison

31. On 21 June 2012 the Commissioner inspected Márianosztra Prison in the framework of a project to enforce detainees' fundamental rights. His visit focused on the conditions of detention, in particular the

size of prison cells, health and psychological care, education, nutrition, reintegration, sport facilities and the rights of national minorities.

At the time of the Commissioner's visit, the facility had a capacity of 444 people and accommodated 645 detainees, a situation resulting in 160 per cent overcrowding. Inmates were placed in cells measuring 9-10 square metres and accommodating up to three persons or in cells including two communicating rooms of 10-11 square metres each and accommodating eight persons. According to the report, these circumstances, aggravated by the fact that inmates in strict regime wards had very limited possibilities to move around within the building, were detrimental to the detainees' right to human dignity and their physical and mental health. The report further noted that in the strict regime wards toilets were separated from the living area only with a curtain and the sanitary conditions were poor.

2. Sopronkőhida Prison

32. On 4 April 2013 the Commissioner inspected Sopronkőhida Prison. At the relevant time the prison facility had an overall capacity of 500, but accommodated about 800 inmates. According to the report, overcrowding reached the average level of 150 per cent. If holding more than 750 men, the prison made use of triple bunk beds and up to three inmates were held in single occupancy cells. Detainees were allowed to have showers once a week and hung their laundry to dry within their cells. In the Commissioner's view, these elements infringed the inmates' right to dignity.

3. Budapest Prison

33. On 17 May 2011 the Commissioner inspected Budapest Prison. In his report, he noted that the overcrowding reached 130 per cent, but was nonetheless below the national average. The capacity of the facility was 953 persons and at the time of the visit 1,248 detainees were accommodated. Detainees held in the "A" building were entitled to one hour outdoor exercises, while those held in the "B" building could use the outdoor facilities at all times during the day. Inmates took their meals within their cells. In the "A" building, not all the toilets were separated from the living space.

III. RELEVANT INTERNATIONAL MATERIAL

34. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of

31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

> "10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...
>
> 11. In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
>
> 12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
>
> 13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
>
> 14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.
>
> 15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
>
> ...
>
> 19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.
>
> 20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
>
> (2) Drinking water shall be available to every prisoner whenever he needs it.
>
> 21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
>
> ...
>
> 45... (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited ..."

35. Relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of

detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis...”

36. On 30 September 1999 the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, which provides in particular as follows:

“Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment...

Recommends that governments of member states:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the appendix to this recommendation...

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity...

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.

8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made...

III. Measures relating to the pre-trial stage

Avoiding criminal proceedings - Reducing recourse to pre-trial detention

10. Appropriate measures should be taken with a view to fully implementing the principles laid down in Recommendation No R (87) 18 concerning the simplification of criminal justice, this would involve in particular that member states, while taking into account their own constitutional principles or legal tradition, resort to the principle of discretionary prosecution (or measures having the same purpose) and make use of simplified procedures and out-of-court settlements as alternatives to prosecution in suitable cases, in order to avoid full criminal proceedings.

11. The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation No R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

13. In order to assist the efficient and humane use of pre-trial detention, adequate financial and human resources should be made available and appropriate procedural means and managerial techniques be developed, as necessary."

37. On 11 January 2006 the Committee of Ministers adopted Recommendation Rec(2006)2 to Member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules, accounting for the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The amended European Prison Rules lay down the following guidelines:

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction."

Allocation and accommodation

"18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

...

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

...

22.1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

...

22.4. There shall be three meals a day with reasonable intervals between them.

22.5. Clean drinking water shall be available to prisoners at all times.

...

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise."

38. From 3 until 12 April 2013 the CPT visited, amongst other detention facilities, Sopronkőhida Prison, Szeged Prison and Somogy County Prison (Kaposvár). In its ensuing report (CPT/Inf (2014) 13), published on 30 April 2014, the CPT noted the following:

"37. The Hungarian prison authorities indicated that action to combat prison overcrowding has continued to be a major issue. Indeed, the prison population has followed an upward trend over recent years: it stood at 18,120 inmates for the available accommodation of 12,573 places at the time of the 2013 visit, as compared with 15,367 prisoners for 12,566 places during the previous visit in 2009. In other words, the overpopulation rate doubled in four years (i.e. from 22 % to 44 %).

Several interlocutors explained such a situation by, among other things, stricter criminal policies, the underuse of alternatives to imprisonment and the failure to increase substantially the number of places in prison to meet the demand.

The delegation also learned with concern that, following a 2010 amendment to the rules on enforcement of prison sentences and pre-trial detention, the observance of 3 m² of living space per male prisoners and of 3.5 m² of living space per juvenile or women in cells (not counting floor space taken up by cell equipment) was no longer a strict legal requirement but more an objective[1].

Most of the delegation's interlocutors, including senior prison officials, indicated that the situation was likely to worsen with the entry into force, in July 2013, of a number of new criminal provisions which may well result in an even higher

[1] It was explained to the delegation that this amendment had been made because most Prison Service establishments were affected by overcrowding, with the notable exceptions of both prisons involving private contractors in Szombathely and Tiszalök (for contractual reasons) and the Central Prison Hospital.

number of persons being sent to prison and/or being imprisoned for far longer terms...

79. Not surprisingly, overcrowding was evident in the cells seen by the delegation (e.g. ten inmates sharing a cell of some 27 m², including the space taken up by the toilet, at Somogy County Prison; three inmates in a cell of about 8 m² at Sopronkőhida Prison).

At Sopronkőhida Prison, a large number of cells were already substandard for single occupancy (i.e. as small as 5 m², including the in-cell toilet, and with no more than 1.5 m between the walls) and were in fact accommodating two inmates ... It should be added that many inmates were accommodated in such conditions for up to 23 hours a day and for years on end.

In both establishments, the situation could be particularly bad in the transit cells where each inmate could have as little as 1.6 m² of living space for days on end, including at weekends (e.g. while awaiting departure on the following Monday).

80. **The CPT recommends that the Hungarian authorities strive to combat overcrowding and ensure that cells are of an appropriate size for their intended occupancy at Somogy County and Sopronkőhida Prisons, in the light of the recommendations made in paragraphs 40 and 77. As regards transit cells at Sopronkőhida Prison, organisational steps should be taken to ensure that they are not used at weekends.**"

In their response, the Government made the following observations concerning overcrowding:

"The CPT delegation's position is that since their last visit in 2009, prison overcrowding has doubled – they made this observation based on the fact that the overpopulation rate (the rate exceeding the 100%) has grown double (from 122% to 144% in a national average). Such a presentation of accommodation can be misleading because – though mathematically correct –in superficial interpretation it could suggest that the overcrowding (that is, the number of the prisoners) has doubled. To avoid this, but still properly emphasizing the magnitude and the gravity of the accommodation problem it is recommended to specify that in the course of the last 4 years the overcrowding of the prisons has increased by a further 22%, to 144% .

The Report also notes that during the visits the CPT received adequate information about the causes of overcrowding, and about the method of handling it. It should be emphasized that the Prison Service is under the general obligation of providing accommodation, and it cannot significantly affect either the number or the temporal and geographical distribution of the admissions. The Government has worked out a new standpoint about subsequent adjustments with a view to long-term planning; by starting a new, comprehensive, multi-year programme for capacity expansion, and by placing the execution of the tasks of the Prison Service on new footing.

The aim of the programme is the uniform distribution of the additional responsibilities among the institutions. While agreeing with the fact that the programme is neither the sole nor the long-term solution, it should be emphasized that the work invested in it is not in vain, because it prevents much more serious – with the wording of the Report – problems than those caused.

The overcrowding "balancing" programme gives high priority to the principles of regionalism and individuality, the transfer of each prisoner is dealt with

individually with the aim of not to weaken contacts with relatives, but the number of transfers should not increase significantly because of ensuring possibility to maintain contacts.

The CPT's proposal, in which it recommends to increase the minimum size of the inmates' living space, is currently controlled by suitable legal standards, which include regulations with specific figures concerning the airspace and sufficient room to be provided. Following the 2010 amendment to the Act, the Government clearly stated that they intend to take decisive actions to eliminate overcrowding, because accommodation cannot be provided according to the previous regulations with the present number of inmates.

At this moment the standards for minimum size of the inmates' living space are regulated in paragraph 137 of the Decree of the Ministry of Justice no. 6/1996 (VII. 12.) on the execution of imprisonment and pre-trial detention as it follows:

Number of convicted persons in a cell or living space should be determined in a way that ensures at least 6 m3 airspace and if it is possible in case of men 3 m3 and in case of juvenile or women 3, 5 m2 space per person.

In case of determination of place for movement floor space occupied by objects that reducing fitting area should be ignored In case of single placement; floor of the cell (living space) should be at least 6 m2.

The concrete extent of the minimum size of movement area and also the minimum size of airspace should be determined in decree level in the future as well. However, the basic rules for placement is included in the CEP as follows:

Prisoners can be placed together but if it is possible, the prisoner shall be placed alone. The prisoners should be provided with sheets in a single bed and, this can be otherwise only in exceptional cases in the absence of other options."

THE LAW

I. JOINDER OF THE APPLICATIONS

39. The Court notes at the outset that all the applicants complained about the allegedly inhuman conditions of their detention in Hungarian detention facilities and also about the absence of an effective domestic remedy in that connection. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interest of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY

40. The Government submitted that there was an effective remedy to address the applicants' grievances under Article 3, which they had not availed themselves of. For that reason, their complaints under Article 3

should be rejected for non-exhaustion of domestic remedies, whereas the complaints under Article 13 read in conjunction with Article 3 were manifestly ill-founded.

They submitted in particular that the applicants had not applied to the domestic courts with claims for compensation in respect of non-pecuniary damage for violation of their personality rights on account of the allegedly inhuman conditions of their detention, under section 84 of the [Old] Civil Code. To prove the effectiveness of that remedy, they referred to the judgment of the Budapest High Court of 26 March 2013, awarding HUF 250,000 as compensation for the inadequate conditions of Mr A.B.'s detention. That court had held that the detention facility had acted in breach of the national rules on minimum living space, which caused the plaintiff more suffering than was inherent in detention (see paragraph 16 above).

The applicants contested these views, arguing in essence that the remedy suggested was not effective, since on all but one occasion the claims were dismissed and even in the one successful case it was unclear to what extent the award corresponded to the very grievance of cramped prison conditions. Therefore, their complaints about the inhuman physical circumstances of their detention should be declared admissible, since there was no effective remedy available for them to exhaust.

41. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicants' Article 13 complaint. Therefore it is necessary to join the Government's objection to the merits of that question.

42. As to the complaints concerning the conditions of detention and the existence of effective domestic remedies, the Court considers that they raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

III. EXHAUSTION OF DOMESTIC REMEDIES AND ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

43. The applicants complained that, in breach of Article 13, there was no effective domestic remedy available to them, so as to provide redress for the alleged violations of their rights under Article 3 of the Convention.

Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 35 § 1 of the Convention provides as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

A. General principles

44. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity –, that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 33-34, Series A no. 40; *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-X; *Vučković and Others v. Serbia* [GC], no. 17153/11, § 75, 25 March 2014).

45. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, amongst

other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65 and 68, *Reports of Judgments and Decisions* 1996-IV).

46. The application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Selmouni v. France* [GC], no. 25803/94, § 77, ECHR 1999-V). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Zornić v. Bosnia and Herzegovina*, no. 3681/06, § 20, 15 July 2014).

47. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII). Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Mohammed v. Austria*, no. 2283/12, § 70, 6 June 2013).

48. In the area of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007; and *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010). If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment, is of the greatest value. Once, however, the applicant has left the facility in which he or she endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred (see *Sergey Babushkin v. Russia*, no. 5993/08, § 40, 28 November 2013).

49. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012; and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, §§ 50 and 96, 8 January 2013). In contrast to cases concerning the length of judicial proceedings or non-enforcement of judgments, where the Court has accepted in principle that a compensatory remedy alone may suffice (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 187, ECHR 2006-V; and *Burdov v. Russia (no. 2)*, no. 33509/04, § 99, ECHR 2009), the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3.The special importance attached by the Convention to that provision requires, in the Court's view, that the States parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Otherwise, the prospect of future compensation would legitimise particularly severe suffering in breach of this core provision of the Convention and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements (see *Yarashonen v. Turkey*, no. 72710/11, § 61, 24 June 2014).

50. The Court reiterates in this regard that it is incumbent on the respondent Government to illustrate the practical effectiveness of the remedies they suggest in the particular circumstances in issue with examples from the case-law of the relevant domestic courts or decisions of the administrative authorities (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 219, ECHR 2012).

B. Application of those principles to the present case

1. Action in damages

51. The Government suggested that an action in damages for the violation of personality rights lodged with a civil court could have been an effective remedy in the applicants' cases for their complaints about the poor conditions of their detention. They supplied one example from domestic case-law demonstrating that by using the legal avenue in question it was possible for a plaintiff to obtain damages (see paragraph 16 above).

52. Section 84(1) of the [Old] Civil Code provides for compensation for the infringement of personality rights under the general rules of tort liability in section 339(1), which could in principle secure a remedy in

respect of the plaintiffs' allegations of poor conditions of detention. Indeed, in all the cases cited by the parties, the plaintiffs' civil claims were processed and examined on the merits.

53. The Court considers that a single case cited by the Government does not suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy (see, for a similar approach, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII), in particular since the decision in that case was issued by a first-instance court which did not follow the *Kúria*'s settled case-law. Indeed, in a number of cases, the domestic courts dismissed the claimants' actions and refused compensation.

54. In particular, relying on the requirement of formal unlawfulness, the domestic courts dismissed the plaintiffs' claims in some cases arguing that the domestic law, as in force at the material time, did not provide for a legal obligation but laid down merely what was desirable (see paragraph 23 above) concerning conditions of detention. In the Court's view, this approach offers virtually no prospect of success for the plaintiffs' tort actions.

55. In further cases, where the respondent prison facility explicitly acknowledged cell overcrowding, the courts found no breach of the plaintiffs' personality rights, arguing that the conditions were inherent in detention or an objective result of several persons living together (see paragraph 26 above).

56. Even in cases where the courts established that the conditions of detention constituted an infringement of the plaintiffs' personality rights, they absolved the prison facility of any liability, finding either a lack of justiciable damage (see paragraphs 24-25 above) or a lack of fault on the respondents' side (see paragraphs 18-22 and 28-29 above). In this latter scenario, the courts' findings were apparently based on the underlying proposition that the prison authorities were only accountable for damage caused by culpable conduct or omission, in application of section 84(1) read in conjunction with section 339(1) of the [Old] Civil Code.

57. Accordingly, in the cases brought before the domestic courts the plaintiffs' actions were dismissed not because of the non-substantiation of the cases but because of the provisions of the applicable law, as interpreted and applied by the domestic courts (see, *Roman Karasev*, cited above, § 83).

58. Furthermore, the Court recalls that in *Hagyó v. Hungary* (no. 52624/10, 23 April 2013) it held that an action for damages allegedly sustained as a result of deterioration of the applicant's health because of prison conditions was not an effective remedy to be pursued (see paragraphs 31 to 36 of the *Hagyó* judgment).

59. In the light of the above considerations, the Court is not persuaded that the Hungarian law, as interpreted and applied by the

domestic courts, allowed tort claimants to recover damages on proof of their allegations of inhuman or degrading conditions of detention. Thus, it concludes that a civil claim for damages for violation of personality rights incurred in connection with inhuman or degrading conditions of detention does not satisfy the criteria of an effective remedy that offers both a reasonable prospect of success and adequate redress.

2. Complaint procedures

60. The Court further notes that, in their submissions concerning the applicable law, the Government referred to sections 6 and 7 of Decree no. 6/1996. (VII.12.) dealing with complaints to the governor of the penitentiary and the public prosecutor.

61. In as much as the Government's submissions may be understood to indicate that the applicants have not complied with the rule of exhaustion in this context, the Court recalls that it examined the effectiveness of the remedies suggested by the Government in the case of *Szél v. Hungary* (no. 30221/06, §§ 12-13, 7 June 2011) and dismissed their objection about non-exhaustion of domestic remedies in the following terms:

> "12. The Court recalls the findings of the European Commission of Human Rights ("the Commission") concerning the effectiveness of those remedies in the context of alleged violations of Articles 3 and 8 (see *Sárközi v. Hungary*, no. 21967/93, Commission's report of 6 March 1997). In that case, the Commission held as follows: 'As far as the National Headquarters of Penal Institutions is concerned, it may, in practice, proceed to a full examination of complaints. Nevertheless, it is subject to Government control and there remain doubts whether, at least in practice, it performs its supervisory functions independently' (§ 121). It went further on to conclude that 'although the possibility of recourse to the competent public prosecutor is, in the relevant legal texts, couched in vague terms as to whether there is a duty to investigate such individual complaints and whether the complainant is entitled to a decision in his or her individual case, this control mechanism has proved to be an effective remedy' (§ 123).
>
> The Court moreover recalls that in the case of *Kokavecz v. Hungary* ((dec.), no. 27312/95, 20 April 1999), the applicant's complaint about the conditions of his detention was declared inadmissible, since "the applicant has failed to show that in this respect he exhausted the remedies available to him under Hungarian law, notably, the complaint proceedings before either the police and prison or the prosecution authorities.
>
> 13. In the present case, the Court notes that the parties do not agree as to whether the applicant has actually availed himself of these remedies. However, it considers it unnecessary further to examine this question for the following reason. In the recent judgment of *Sławomir Musiał v. Poland* (no. 28300/06, ECHR 2009-... (extracts)), it held as follows: "The Court is also mindful of the fact that at the relevant time the governors of detention facilities, in which the applicant was held, acknowledged officially the existence of overcrowding and made decisions to reduce the statutory minimum standard of three square metres per person ... In these circumstances, it cannot be said that any attempt by the applicant to seek

> with the penitentiary authorities an improvement of the conditions of his detention would give sufficient prospects of a successful outcome" (§ 75). In the present case, the authorities acknowledged that the Hungarian prisons were overcrowded and that in the material period the average rate of occupancy of Budapest Prison was 150% (see paragraphs 7 and 8 above). Consequently, the Court observes that, in the circumstances of the present case, the remedies referred to by the Government were not capable of providing redress in respect of the applicant's complaint. Having regard to the above considerations, the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies."

62. The Court observes that in the Hungarian legal system the public prosecutor has jurisdiction to oversee compliance with the applicable law concerning deprivation of liberty. To perform that task, he may call on the prison authorities to remedy an unlawful conduct or omission (see paragraph 14 above).

63. Nonetheless, in the Court's view, even if detainees obtain an injunction from the prosecutor's office requiring the prison authorities to make good a violation of their right to adequate living space and sanitary conditions, their personal situation in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees. The prison authorities would not be in a position to enforce a large number of simultaneous requests, given the structural nature of the problem (see, *mutatis mutandis*, *Ananyev v. Russia*, cited above, § 111).

64. In any event, the Court observes that the Government have not provided any further information as to how the complaints to the governor or the public prosecutor about inadequate conditions of detention could have prevented the alleged violation or its continuation, or provided the applicants with adequate redress.

Thus the Court finds that such complaints fall short of the requirements of an effective remedy because its capacity to produce a preventive effect in practice has not been convincingly demonstrated.

65. In the light of the above considerations, the Court concludes that there has been a violation of Article 13, read in conjunction with Article 3, on account of the absence of an effective remedy to complain about the conditions of detention on the particular facts of the instant cases; while rejecting the Government's objection concerning the non-exhaustion of domestic remedies in respect of the applicants' Article 3 complaints.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

66. The applicants submitted that the conditions of their detention in different prisons had fallen short of standards compatible with Article 3 of the Convention. In particular, they complained that they had been detained in overcrowded cells.

Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

67. The Government contested that argument.

A. General principles

1. Assessment of evidence and establishment of facts

68. The following relevant principles have been established in the Court's case-law concerning assessment of evidence under Article 3 (see *Ananyev v. Russia*, cited above §§ 121-123):

> 121. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII).
>
> 122. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.
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> 123. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous

application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

2. Compliance with Article 3

General principles

69. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

70. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Ananyev and Others*, cited above, § 140, see also *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

71. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Ananyev and Others*, cited above,

§ 141; *Kudła*, cited above, §§ 92-94; and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

72. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

73. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Vladimir Belyayev v. Russia*, no. 9967/06, § 30, 17 October 2013; and *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005).

74. In the *Ananyev* case the Court set out the relevant standards for deciding whether or not there has been a violation of Article 3 on account of a lack of personal space. In particular, the Court has to have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each must dispose of at least 3 square metres of floor space; and (c) the overall surface area of the cell must be such as to allow detainees to move freely between items of furniture. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (see *Ananyev and Others*, cited above, § 148).

75. In a number of cases where the applicants had at their disposal less than 3 square metres of floor surface, the Court considered the overcrowding to be so severe as to justify of itself a finding of a violation of Article 3 (see, for example, *Melnik v. Ukraine*, no. 72286/01, §§ 102-103, 28 March 2006; *Dmitriy Sazonov v. Russia*, no. 30268/03, §§ 31-32, 1 March 2012; *Nieciecki v. Greece*, no. 11677/11, §§ 49-51, 4 December 2012; *Kanakis v. Greece (no. 2)*, no. 40146/11, §§ 106-107, 12 December 2013; *Tatishvili v. Greece*, no. 26452/11, § 43, 31 July 2014; *Tereshchenko v. Russia*, no. 33761/05, §§ 83-84, 5 June 2014).

76. However, the Court has so far refrained from determining how much space should be allocated to a detainee in terms of the Convention, having considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee and so forth, play an important part in deciding whether the detention conditions complied with the guarantees of Article 3 of the Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007; and *Torreggiani and Others*, cited above, § 69). Furthermore, the Court notes that, as opposed to pre-trial

detention facilities and high-security prisons where inmates are confined to their cell for most of the day, when assessing the issue of overcrowding in post-trial detention facilities such as correctional colonies, it considered that the personal space in the dormitory should be viewed in the context of the applicable regime, providing for a wider freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see *Insanov v. Azerbaijan*, no. 16133/08, § 120, 14 March 2013).

77. Applying this approach, the Court has found that the strong presumption that the conditions of detention amounted to degrading treatment in breach of Article 3 on account of a lack of personal space, set out in the *Ananyev* case (see paragraph 74 above), were refuted by the cumulative effect of the conditions of detention, in particular the brevity of the applicant's incarceration (see, for example, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 138, 17 January 2012; and *Dmitriy Rozhin v. Russia*, no. 4265/06, § 53, 23 October 2012), freedom of movement afforded to inmates and unobstructed access to natural light and air (see, for example, *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009), and relative lengthy daily periods for outdoor exercises and freedom of movement within the prison building (see *Sulejmanovic v. Italy*, no. 22635/03, §§ 48-52, 16 July 2009).

78. On the other hand, even in cases where the inmates appeared to have at their disposal sufficient personal space and a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with Article 3 and found a violation of that provision since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; and *Trepashkin v. Russia*, cited above, § 94), lack of outdoor exercise (see *Longin v. Croatia*, no. 49268/10, §§ 60-61, 6 November 2012) and poor sanitary and hygiene conditions (see *Jirsák v. the Czech Republic*, no. 8968/08, §§ 64-73; *Ananyev and Others*, cited above, §§ 164-166).

B. Application of the above principles in the present case

79. The Court first observes that the Government did not dispute the facts as submitted by the applicants concerning the actual dimension and occupancy of the cells in which they were held during their detentions. The Court further notes that the Government have not provided any information or documents regarding the additional circumstances of the applicants' detention. Therefore, the Court will proceed with the

assessment of the applicants' detention conditions based on their submissions and in the light of all information in its possession.

80. As regards Mr Varga, the Court notes that he was held in Baracska Prison. During his approximately eight months of detention he disposed of less than 1.8 square metres of personal living space. In addition, during his solitary confinement he had access to outdoor stay only 30 minutes a day and the poor sanitary conditions resulted in a skin infection.

81. Mr Lakatos spent about a year at Hajdú-Bihar County Prison where he was detained together with two detainees in a cell measuring 9 square metres, thus having 3 square metres of living space. The Court is particularly mindful of the fact that since spring 2012 he has been afforded 2.25 square metres gross living space at Jász-Nagykun-Szolnok County Prison. The applicant's situation was further exacerbated by the fact that he has been held in a cell with poor ventilation where the toilet was separated from the living area only with a curtain.

82. Mr Tóth was detained for more than four years in various prison facilities, where the living space varied between 2.5 and 3.3 square metres. It is of particular concern for the Court that although a partition, namely a curtain, was installed between the living area and the toilet, it did not offer sufficient privacy to the detainees.

83. Mr Pesti spent about three years in Márianosztra Prison where he was afforded a maximum of 2.86 square metres gross living space. Following his transfer to Sopronkőhida Prison, he was placed in a prison cell where inmates were afforded around 3.1 square metres of personal space.

84. Mr Fakó served his prison sentence at Pálhalma Prison, where the conditions were cramped, inmates having 1.5 to 2.2 square metres of living space per person. The Court further observes that Mr Fakó was confined to his cell day and night, save for one hour of outdoor exercise. The Court notes some further aspects of the applicant's detention, undisputed by the parties, namely limited access to the shower, absence of a ventilation system and the ensuing heat, and the presence of bed bugs, lice and cockroaches.

85. Mr Kapczár has been held in fourteen different cells at Szeged Prison where the living space per inmate was 2.4 to 3 square metres. The cells were not provided with adequate ventilation and some of them lacked proper sleeping arrangement.

86. These findings also coincide with the observations of the CPT subsequent to its visit in 2013 regarding the problem of overcrowding at, in particular, Sopronkőhida Prison and Szeged Prison, which provide a reliable basis for the Court's assessment (see *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005), especially since the Government, in their response, did not dispute the very fact of overcrowding. The

visits of the Hungarian Commissioner of Fundamental Rights also corroborate the evidence of a problem of overcrowding at the prison facilities of Márianosztra, Sopronkőhida and Budapest (see paragraphs 31-33 and 38 above). The Court must also have regard to the findings of the different domestic courts, which established in a number of cases that the conditions of detention, in particular placement in overcrowded prison cells, infringed the plaintiffs' personality rights, that is, their right to dignity (see paragraphs 18-22, 24-25 and 28-29 above).

87. In the absence of any objection on the Government's side or any document proving the opposite and given the widespread overcrowding as established by the CPT and the Hungarian Commissioner for Fundamental Rights, the Court has no reason to doubt the allegations of the applicants concerning their living space. It further observes that this space was on most occasions further restricted by the presence of furniture in the cells.

Therefore, these conditions do not satisfy the European standards established by the CPT and the Court's case-law.

88. In the particular case of Mr Pesti, detained for a period no less than three years in Márianosztra Prison where the living space per inmate was maximum 2.86 square metres, the Court considers that the lack of space was so severe as constituting treatment contrary to the Convention, especially in view of the duration of the detention (see *Sergey Babushkin*, cited above, § 54) and in the absence of any evidence furnished by the Government pointing to circumstances which could have alleviated this situation (see, *a contrario*, *Fetisov and Others*, cited above, §§ 134-138; and *Dmitriy Rozhin*, cited above, §§ 52-53).

89. As regards the remaining applicants, the Court observes that other aspects of the detention, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant in addition to the focal factor of the overcrowding to demonstrate that the conditions of detention went beyond the threshold tolerated by Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005).

90. It notes in particular that in some cells of these applicants, the lavatory was separated from the living area only by a curtain, the living quarters were infested with insects and had no adequate ventilation or sleeping facilities; and detainees had very limited access to the shower and could spend little time away from their cells.

The Government did not refute either the allegations made by the applicants on these points or the findings of the various bodies which had visited the detention facilities where the applicants were detained.

91. The Court finds that the limited living space available to these detainees, aggravated by other adverse circumstances, amounted to "degrading treatment".

92. Having regard to the circumstances of the applicants' cases and their cumulative effect on them, the Court considers that the distress and hardship endured by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3. Therefore, there has been a violation of Article 3 of the Convention.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

93. Article 46 provides, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. General principles

94. The Court recalls that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta* v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008). This obligation has consistently been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions DH(97)336 in cases concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of *Scozzari and Giunta v. Italy*; ResDH(2006)1 in the case of *Ryabykh and Volkova v. Russia*).

95. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V; and *Hutten-Czapska v. Poland* [GC], no. 35014/97, ECHR 2006-VIII §§ 231-239 and the operative part). This adjudicative approach is, however, pursued with due respect for the Convention

organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, *mutatis mutandis*, *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

96. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task, as defined by Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in a large series of cases (see, *mutatis mutandis*, *E.G. v. Poland* (dec.), no. 50425/99, § 27, 23 September 2008).

97. The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, § 34, ECHR 2007 (extracts)). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements.

B. Application of those principles to the present cases

1. *Existence of a structural problem warranting the application of the pilot-judgment procedure*

98. The Court has previously found a violation of Article 3 on account of similar conditions of detention in four cases (see *Szél*, cited above; *István Gábor Kovács v. Hungary*, no. 15707/10, 17 January 2012; *Hagyó*, cited above; and *Fehér v. Hungary*, no. 69095/10, 2 July 2013). Moreover, in the *Szél* judgment the Court concluded that there had been a violation of Article 13 on account of the absence of any effective domestic remedies for the applicants' complaints about the conditions of their detention (see paragraph 61 above). A similar conclusion was reached in Hagyó (see paragraph 58 above).

According to the Court's case management database, there are at present approximately 450 *prima facie* meritorious applications against Hungary awaiting first examination which feature, as their primary

grievance, a complaint about inadequate conditions of detention. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem (see, among other authorities, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; *Lukenda v. Slovenia*, no. 23032/02, §§ 90-93; ECHR 2005-X; and *Rumpf v. Germany*, no. 46344/06, §§ 64-70, 2 September 2010).

99. The violations of Article 3 found in the previous judgments, as well as those found in the present case, originated in prison facilities that were located in various administrative entities of Hungary and in geographically diverse regions. Nevertheless, the set of facts underlying these violations was substantially similar: detainees suffered inhuman and degrading treatment on account of an acute lack of personal space in their cells, restriction on access to shower facilities and outdoor activities and lack of privacy when using the sanitary facilities. It appears, therefore, that the violations were neither prompted by an isolated incident nor attributable to a particular turn of events in those cases, but originated in a widespread problem resulting from a malfunctioning of the Hungarian penitentiary system and insufficient legal and administrative safeguards against the proscribed kind of treatment. This problem has affected, and has remained capable of affecting, a large number of individuals who have been detained in detention facilities throughout Hungary (compare *Broniowski*, § 189; and *Hutten-Czapska*, § 229, both cited above).

100. Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case (see *Burdov (no. 2)*, cited above, § 130; and *Finger v. Bulgaria*, no. 37346/05, § 128, 10 May 2011).

2. General measures

101. As the Court's judgments are essentially declaratory, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Aleksanyan v. Russia*, no. 46468/06, § 238, 22 December 2008).

102. However, in exceptional cases, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an

end to a situation it has found to exist (see, for example, *Broniowski*, cited above, § 194*)*.

103. Furthermore, the Court is aware that substantial and constant efforts are needed to solve the structural problem of prison overcrowding. However, the Court notes that, given the intangible nature of the right protected under Article 3 of the Convention, it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006). The Court has already indicated in a number of cases general measures to facilitate the speediest and most effective solutions of the recurrent irregularities in detention conditions (see *Orchowski v. Poland*, no. 17885/04, § 154, 22 October 2009; *Norbert Sikorski v. Poland*, no. 17599/05, § 161, 22 October 2009; *Ananyev and Others*, §§ 197-203 and 214-231; *Torreggiani and Others*, cited above, §§ 91-99).

(a) Avenues for the improvement of detention conditions

104. In particular, when a State is not able to guarantee each detainee conditions of detention consistent with Article 3 of the Convention, it has been the constant position of the Court and all Council of Europe bodies that the most appropriate solution for the problem of overcrowding would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures (see *Norbert Sikorski*, cited above, § 158) and minimising the recourse to pre-trial detention (see *Ananyev and Others*, cited above, § 197).

In this latter regard, the Court notes that by the end of 2013 over five thousand of the inmates held in Hungarian prisons were persons detained on remand (see paragraph 6 above).

105. It is not for the Court to indicate to States the manner in which their criminal policy and prison system should be organised. These matters raise a number of complex legal and practical issues which, in principle, go beyond the judicial function of the Court (see *Torreggiani and Others*, cited above. § 95). However, it would recall in this context the recommendations of the Committee of Ministers inviting States to encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment in order to, among other things, solve the problem of prison population inflation (see in particular Recommendation No. R (99) 22 and Recommendation Rec(2006)13 of the Committee of Ministers).

The recent example of Italy shows that such measures, implemented in the context of a pilot procedure, can contribute to solving the problem of overcrowding (see *Stella and Others v. Italy* (dec.), nos. 49169/09,

54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, §§ 11-14, 21-24 and 51-52, 16 September 2014).

(b) Putting in place effective remedies

106. The Court reiterates that the applicants in the present case were victims of a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy. The Court found that the domestic remedy suggested by the Government, although accessible, was ineffective in practice, in that it did not afford plaintiffs adequate compensation for periods of detention spent under poor conditions. Furthermore, the Government has not demonstrated the existence of a remedy which was likely to improve the impugned conditions of detention (see paragraph 65 above).

107. It is not for the Court to specify what would be the most appropriate way of setting up such remedial procedures (see *Hutten-Czapska*, cited above, § 239). The State can either modify existing remedies or introduce new ones which secure genuinely effective redress for Convention violations (see *Xenides-Arestis v. Turkey*, no. 46347/99, § 40, 22 December 2005). It is also responsible, under the supervision of the Committee of Ministers, to ensure that the remedy or the newly introduced remedies meet both in theory and in practice the requirements of the Convention (see *Torreggiani and Others*, cited above, § 98).

108. Furthermore, the Court recalls that in order to assist the domestic authorities in finding appropriate solutions it has already considered specific options for preventive and compensatory remedies (see *Ananyev and others*, cited above, §§ 214-231).

109. The Court reiterates that a measureable reduction of a prison sentence represented, under certain conditions, satisfactory redress for a violation of the Convention in criminal cases, where the national authorities have explicitly or in substance recognised the breach of the Convention on account of the protraction of the procedure (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-V). In respect of conditions of detention, the Court has also affirmed that a reduced prison sentence offered adequate redress to poor material conditions of detention, provided that the reduction was carried out in an express and measurable way (see *Stella and Others*, cited above, §§ 59-63).

110. The Court concludes that the national authorities should promptly provide an effective remedy or a combination of remedies, both preventive and compensatory in nature and guaranteeing genuinely effective redress for Convention violations originating in prison overcrowding.

(c) Time-limit

111. The Court decided to apply the pilot-judgment procedure in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Hungarian legal system and practice without undue delay.

112. The Court considers that a reasonable time-limit is warranted for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right which is at stake. Nonetheless, it does not find it appropriate to indicate a specific time frame for the arrangements which could lead to an overall improvement of conditions detention and the reduction of overcrowding, and for the introduction of a combination of preventive and compensatory remedies in respect of alleged violations of Article 3, which may involve the preparation of draft laws, amendments and regulations, then their enactment and implementation, together with the provision of appropriate training for the State officials concerned. The Court is of the opinion that given the nature of the problem the Government should make the appropriate steps as soon as possible.

113. In view of the foregoing, the Court concludes that the Government should produce, under the supervision of the Committee of Ministers, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

The Court will examine the information provided by the Government and decide accordingly whether the continued examination of pending cases, or else their adjournment, is justified (see in next chapter below).

3. Procedure to be followed in similar cases

114. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the structural problem identified in the pilot judgment (see *Burdov (no. 2)*, cited above, § 142). Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of the remedial measures by the respondent State. The Court would emphasise that adjournment is a possibility rather than an obligation, as clearly shown by the inclusion of the words “as appropriate” in the text of Rule 61 § 6 and the variety of approaches used in the previous pilot-case judgments (see *Burdov (no. 2)*, cited above,

§§ 143-146, where the adjournment concerned only the applications lodged after the delivery of the pilot judgment; and *Rumpf*, cited above, § 75, where an adjournment was not considered to be necessary).

115. Furthermore, as regards the applications that were lodged before the delivery of this judgment, the Court reiterates that "it would be unfair if the applicants in such cases who had already suffered through periods of detention in allegedly inhuman or degrading conditions and, in the absence of an effective domestic remedy, sought relief in this Court, were compelled yet again to resubmit their grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise" (see *Ananyev*, cited above, § 237).

116. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court does not consider it appropriate at this stage to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State. Rather, the Court finds that continuing to process all conditions of detention cases in the usual manner will remind the respondent State on a regular basis of its obligation under the Convention and in particular resulting from this judgment (see *Rumpf*, loc. cit.).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

118. In respect of non-pecuniary damage, Mr Varga claimed 30,000 euros (EUR) for eight months' detention, Mr Lakatos EUR 30,000 for four years' detention, Mr Tóth EUR 14,000 for four years and nine months' detention, Mr Pesti EUR 3,400 for approximately four years' detention, Mr Fakó EUR 15,000 for three years and two months' detention, and Mr Kapczár EUR 30,000 for eight years' detention.

119. The Government considered their claims to be excessive.

120. As regards the violation of Article 13, the Court holds that the finding of a violation constitutes sufficient just satisfaction.

121. With regard to the breach of Article 3 of the Convention relating to the conditions of the applicants' detention, the Court considers that they must have sustained some non-pecuniary damage as a result of the

violation of their rights under that provision. Taking into account all the circumstances, and ruling on the basis of equity, the Court awards Mr Varga EUR 5,000, Mr Lakatos EUR 14,000, Mr Fakó EUR 11,500, and Mr Kapczár EUR 26,000.

As regards Mr Tóth and Mr Pesti, the Court considers it reasonable to award them the full amounts they claimed, that is, EUR 14,000 and EUR 3,400, respectively.

B. Costs and expenses

122. Mr Varga claimed EUR 29,210 for the costs and expenses incurred before the Court. This sum corresponds to 115 hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT. This global figure has been submitted in respect of the case of Mr Varga and another application not yet adjudicated.

Mr Lakatos claimed EUR 55,880 for 220 hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT. This global figure has been submitted in respect of the case of Mr Lakatos and another 18 applications not yet adjudicated.

Mr Tóth claimed EUR 4,125 for cost and expenses incurred before the Court. This sum corresponds to 27.5 hours of legal work billable by his lawyer at an hourly rate of EUR 150 plus VAT.

Mr Fakó claimed EUR 1,000 plus VAT for the legal fees incurred before the Court. This figure corresponds to 5 hours of legal work billable by his lawyer.

Mr Pesti claimed EUR 2,000 in respect of costs and expenses incurred before the Court.

Mr Kapczár claimed 45,556 Hungarian forints (approximately EUR 150) in respect of the costs and expenses incurred in the proceedings before the Court, corresponding to translation fees, as well as a non-specified amount in respect of the billable fees of his lawyer.

123. The Government contested these claims.

124. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads to Messrs Varga, Lakatos, and Tóth each.

As to Mr Kapczár, the Court considers it reasonable to award him the full amount claimed, that is, EUR 150.

As regards Messrs Fakó and Pesti, the Court finds it reasonable to award the full sums claimed, that is, EUR 1,000 and EUR 2,000, respectively.

C. Default interest

125. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* the Government's preliminary objection to the merits and *dismisses* it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention;

6. *Holds* that the finding of a violation constitutes sufficient just satisfaction in regard to Article 13 read in conjunction with Article 3 of the Convention;

7. *Holds*

(a) that, in regard to Article 3, the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) to Mr Varga; EUR 14,000 (fourteen thousand euros) to Mr Lakatos; EUR 14,000 (fourteen thousand euros) to Mr Tóth; EUR 3,400 (three thousand four hundred euros) to Mr Pesti; EUR 11,500 (eleven thousand five hundred euros) to Mr Fakó; and EUR 26,000 (twenty-six thousand euros) to Mr Kapczár, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) to Messrs Varga, Lakatos and Tóth each; EUR 150 (one hundred and fifty euros) to Mr Kapczár; EUR 2,000 (two thousand euros) to Mr Pesti; and EUR 1,000 (one thousand euros) to Mr Fakó, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction;

9. *Holds* that the respondent State should produce, under the supervision of the Committee of Ministers, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

Done in English, and notified in writing on 10 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President