18 The Question of Prison Overcrowding as Reflected in the Decisions of the European Court of Human Rights

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The judgments of the European Court of Human Rights in Strasbourg (hereinafter: Court) have gained increasing publicity. Among these, the press has assigned special attention to cases related to prison overcrowding. The opinions published are sometimes substantiated, at other times unsubstantiated; it is thus worth examining the facts.

In the cases related to prison overcrowding, the Court examines:

1. overcrowding and insufficient living conditions (Article 3 – No one shall be subjected to torture or inhuman or degrading treatment or punishment), and
2. issues of effective remedy before a national authority available in relation to the former.

The latter requires explanation by all means. Article 13 of the Convention says:

> Everyone whose rights and freedoms as set forth in this 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.

The Court has established in several cases that the rule on exhausting national legal remedies requires from applicants to use the legal remedies available in national law first, thus enabling states to avoid being called to account by the Court before they had a chance to remedy the infringement concerned within their own legal system. The rule of exhausting national legal remedies is based on the fact that, before international court proceedings are launched, the state to be called to account must be given the chance to remedy the damage allegedly caused, by national tools available within their own legal system (cf. Appl. No. 12945/87, *Hatjianastasiou v. Greece*, Decision of 4 April 1990, D.R. 65. p. 173, at p. 177). On the basis of these principles the state must be given the opportunity to examine, acknowledge and remedy the infringement of the rights protected in the Convention. The subsidiary nature is emphasised especially with reference to states that have incorporated the Convention into their national law. In Hungary, the Convention

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was promulgated (by Act XXXI of 1993) and it has thus become part of the national legislation; its provisions are directly applicable by courts.

Article 13 requires ensuring domestic remedy focusing on the essence of the "complaint supported by arguments" submitted with reference to the Convention, and providing appropriate legal remedy, although the state parties to the Convention do have certain discretion as regards the way they comply with their Convention obligation arising from this provision. The scope of the obligation arising from Article 13 changes depending on the nature of the applicant's complaint made on the basis of the Convention. In any case, the legal remedy required on the basis of Article 13 must be "effective" both practically and legally. The condition of effectiveness is that, with reference to the legal remedy concerned, the state should be able to demonstrate case law, which is evidence for the operability of the system.

18.1 Hungarian Cases Targeted by the Court

It can be pointed out as a basic tenet that, in cases related to the size of prison cells in recent times, the Court has established with reference to prisoners accommodated in an area of less than 4 sq metres the violation of the Convention without consideration, on an objective basis.

18.1.1 Szél v. Hungary *(No. 30221/06 of 07/06/2011)*

A decision in the first matter was made in the case *Szél v. Hungary*. Between 2003 and 2008 the applicant was accommodated in prison cells where the living space per person was not larger than 3.15 square metres. The amount of damages imposed was EUR 12,000; the expenses to be paid were EUR 3,750.

In its judgement, the Court formulated the problem from the human rights point of view in the following way:

> The Court […] observes […] that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") considers 4 m^2 living space per inmate an acceptable minimum standard in multi-occupancy cells (see, for example, in respect of other Hungarian prisons paragraphs 65 and 80 of the Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 24 March 2009 to 2 April 2009). […] Accordingly [the Court] concludes that the overcrowded and unsanitary conditions of this detention amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

> 1. Finally, mindful of the fact that the seriousness of the problem of overcrowding and of the resultant inadequate living and sanitary conditions in Hungarian detention facilities has been acknowledged by the domestic authorities (see paragraphs 8 and 18 above), the Court considers that an effective remedy responding to this issue could be by taking the necessary administrative and practical measures. In the Court's view, the authorities should react rapidly in order to secure appropriate conditions of detention for detainees.
> 2. The applicant's complaint about the overcrowding addressed to the prosecutorial authorities in charge of the lawfulness of detention was to no avail. In reply to his similar complaint, the National Headquarters of Penitentiary Institutions admitted in its letter of 23 July 2008 the existence of the problem of overcrowding but pointed out that the prison authorities had no influence on the number of detainees to be held in the penitentiary institutions.)

It was after the above that a series of Hungarian cases related to the overcrowding of prisons began. The Hungarian precedents were the following:

18.1.2 István Gábor Kovács v. Hungary *(No. 15707/10, Judgement of 7 January 2012)*

For 67 days between 2008 and 2010, the applicant was detained in cells where the living space per person was between 3.5-4.0 sq. metres. The damages awarded were EUR 10,000; the expenses to be paid were EUR 1,500.

It this judgement, the Court referred to the fact that, according to the National Penitentiary Service's statistics available on its website, the average occupancy rate of Hungarian prisons was 118% in 2008, 124% in 2009 and 133% in 2010.

18.1.3 Hagyó v. Hungary *(No. 62627/10, Judgement of 23 April 2013)*

The main issue in the judgement was not accommodation but, in addition to establishing the violation of several other articles, the Court pointed out in (15) of the Judgement that, in the year 2010, the applicant had been kept detained for 4 months in a cell where there was a living space of 3.53 sq metres per person, and this qualified as inhuman treatment violating Article 3 of the Convention.

18.1.4 Fehér v. Hungary *Judgement (No. 69095/10, of 2 July 2013)*

Applicant was taken to pre-trial detention for robbery and other crimes on 19 September 2006 and sentenced to 6 years and 8 months' imprisonment in 2009. He spent his pre-trial detention in 2006-2008 at Jász-Nagykun Szolnok County Penitentiary Institution where there was living space of approximately 1.7 sq metres per inmate. He spent his imprisonment in various prisons but he did not have a living space larger than 2.75 sq metres in any of those. The Court took the recommendation of the Committee against Torture (CPT) of the Council of Europe for Hungary as the basis, which currently prescribes living space of at least 4 sq metres for each inmate.

The Court established that Hungary had violated the applicant's rights laid down in Article 3 of the Convention and imposed the payment of damages of EUR 12,000 and expenses of EUR 2,000.

18.1.5 Zsák v. Hungary *(No. 71474/11, Decision approving settlement of 19 November 2013)*

In the case *Zsák v. Hungary* the Court submitted the case to friendly settlement on 11 June 2013, because, from 27 August to 5 October 2011 the applicant had been detained in a cell where the living space per head amounted to 1.7 sq metres (Art. 3 of Convention). In addition, the Court did not consider prolonging pre-trial detention as justified, either (Art. 5 of the Convention).

In 2015, events accelerated. By that time hundreds of cases had accumulated at the Court. On 10 March 2015 the Court made its pilot judgement in the case *Varga and Others v. Hungary* concerning complaints of prison overcrowding. The Court evaluated the prison conditions described by the applicants in totality and established that these had resulted in the degrading treatment of applicants and could thus be regarded to be grievous enough to consider Article 3 as violated. Beyond this, with reference to Article 13 of the Convention, the Court expressed concern that those affected did not have any effective domestic legal remedy at their disposal to remedy their complaints.

It must be pointed out here that this was the first pilot judgement with reference to Hungary. It should be made clear first of all what pilot judgment actually means. If several complaints rooting in the same problem are submitted to Strasbourg, the Court may choose one (or several) of the applications that receives priority treatment, in the judgement of which a solution beyond the actual case is sought. In this – what is referred to as a – pilot judgement the Court not only establishes the infringement of the law in the actual case but identifies its source in the operational disorder of the national legislation and gives guidance to the government concerned how to resolve this operational disorder. It was in

2004 that the Court first applied this procedure (cf. *Broniowski v. Poland* [GC] Judgment of 22 June 2004, No. 31443/96).

The judgement revealing the structural problem aims to reduce the number of "repeated" complaints, on the one hand by eliminating the problem and, on the other hand, by establishing a domestic legal remedy that provides remedy also in cases already before the Court. The procedure aims, while reducing the Court's caseload, to facilitate faster access of those concerned to legal remedy within the framework of a domestic procedure, since mass numbers of repeated applications are such overload for the Court that, considering that cases raising important legal problems and other urgent cases have priority, it would certainly take years to wait for judgement in these cases before the Court.

18.2 The Pilot Judgement in the Case Varga and Others

At the time of submitting their applications, the applicants – six persons altogether – were all inmates in various prisons in Hungary. The joint element in all the applicants' submissions was the extremely overcrowded prison cell (a living space of 1.5-3.3 sq metres per person). Beyond this, the applicants complained about other conditions of their detainment as well (e.g. poor quality meals and insufficient food; insufficient time spent outdoors; the lack of proper ventilation; the inappropriate separation of washrooms).

18.2.1 The Exhaustion of Domestic Legal Remedies and the Violation of Article 13 of the Convention

In the course of the substantive examination of the case the Court referred to its earlier judgements (*Benediktov v. Russia*, 106/02, (29); *Roman Karashev v. Russia* 30251/03, (79)) in which it established that there were two kinds of legal remedies in the case of complaints related to inhuman or degrading circumstances of detention: to improve the material conditions of the detention, and to compensate for the loss or damage suffered as a consequence of the detention conditions. In cases concerning the fundamental right of the ban on torture, preventive and compensatory legal remedies must be implemented in a complementary manner in order to be effective (*Torreggiani and Others v. Italy*, 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10 (50) and (96)). In the specific case the Court held that the civil law action for non-material damages referred to by the Government could not be considered as an effective legal remedy thus worth exhausting. With reference to the specific court decisions filed by the applicants the Court established that in most cases the national courts had either established the lack of responsibility of the defendant state organ or they had argued that the circumstances were the natural consequences of detention. Even where national courts acknowledged that

prison conditions had violated moral rights, they absolved the penitentiary institutions concerned of responsibility.

With reference to the complaint made to the heads of penitentiary institutions and the prosecutor supervising the lawfulness of the penitentiary system, the Court referred to the judgement in the case *Szél v. Hungary* in which it had established already that those did not qualify as effective legal remedy, either.

18.2.2 The Alleged Violation of Article 3 of the Convention

With reference to several previous judgements related to prison conditions (e.g. *Ananyev and Others v. Russia*, 42525/07 and 60800/08, (98)) the Court quoted the general principles laid down in Article 3. In the case of such complaints the Court examines whether the following three conditions are satisfied: (1) whether all inmates have their own sleeping areas in the cell, (2) whether they have personal space of 3 sq metres per head and (3) whether the total size of the cell is big enough for the inmates in the cell to be able to move about between the pieces of furniture. If any of these conditions are not met, there arises reasonable suspicion that Article 3 is violated. The unavailability of living space of 3 sq metres per head in itself involves the violation of Article 3 (*Nieciecki v. Greece*, 11677/11, (49-51)). At the same time the Court considers several other conditions, too, for evaluating the violation of the convention and awarding the amount of compensation, e.g. the length of imprisonment, outdoor movement opportunities and the psychical and psychological conditions of the inmate concerned.

The Court evaluated the complaints mentioned by applicants on the whole and established that they could be considered grievous enough to establish that Article 3 was violated. The limited living space inmates had, further aggravated by other adverse conditions resulted in degrading conditions for the applicants.

18.2.3 The Application of Article 46 of the Convention

The Court recalled that it had established the violation of Article 3 of the Convention due to similar detention conditions in several cases before. The violation of the Convention arises from the improper operation of the Hungarian penitentiary system and the lack of sufficient legal and administrative guarantees. The Court thus concluded that the repeated and permanent occurrence of the problem, the high number of persons affected and the necessity to order fast and appropriate legal remedy for them required a procedure based on pilot judgement.

In exceptional cases – in order to facilitate the implementation of the obligations under Article 46 of the Member State – the Court marks the potential measures by which the

State Party is able to resolve the unlawful situation (*Broniowski v. Poland*, 31443/96). The Court pointed out to the Government that despite the financial or logistic difficulties they were obliged to operate a penitentiary system respecting prisoners' human dignity. Among the possibilities available for the improvement of prison conditions the Court emphasised the wider application of punishment without imprisonment and the minimisation of pre-trial detention. The Court made a reference to the recommendation of the Committee of Ministers that prosecutors and judges should impose alternative measures to imprisonment as widely as possible, which had brought about spectacular results also in Italy. On the other hand, in the light of the violation of Article 13 of the Convention, the State must amend its existing legal remedies or introduce new ones in order to guarantee the opportunity of effective legal remedy. In relation to this the Committee recalled that, in certain cases, significantly easing the punishment in view of the delayed procedures proved to be appropriate legal remedy. The Court thus established that national authorities had to introduce effective legal remedy/remedies, within a short time, that were of both preventive and compensatory nature and could mean meaningful and effective legal remedy for prison overcrowding.

The Court emphasised that for the implementation of the objective set in the pilot judgement, the necessary changes in the Hungarian legal system and practice were to be made without delay. In the light of the nature of the problem, the Court did not set an actual deadline for taking the necessary measures but left it to the Government noting that the measures should be taken as soon as possible. The Court called upon the Government to work out an action plan under the supervision of the Committee of Ministers within 6 months from the day the judgement became final, which should include what necessary measures and preventive and compensatory legal remedies would be introduced in relation to alleged violations of Article 3. At the same time, the Court decided not to suspend the investigation into similar pending cases. The gradual processing of these cases is meant to also remind the State of its obligations arising from the judgement.

The implementation of the judgement is to be monitored by the Council of Europe's Committee of Ministers on the basis of the action plan submitted by the Government on 9 December 2015.

18.3 International Examples: The Consequences of an Italian Pilot Judgement

Hungary is not the only EU state against which a procedure has been launched before the Court due to the overcrowding of prisons.

Poland has also faced the problem of prison overcrowding, as is well illustrated by several judgements against the Polish state (e.g. *Orchowski* case, 17885/04; *Olszewski* case, 21880/03; *Sławomir Musiał* case, 28300/06.).

The Court has ruled against Romania for inhuman detention conditions, on the basis of Article 3 of the Convention, in several cases. It was in its judgement made on 2 December 2014 in the case *Cozianu v. Romania* that the Court established that living space significantly under 4 m^2 in a prison cell resulted in overcrowding of an extent whereby appropriate hygienic conditions were not to be maintained, either.

Before that, in its judgement made in the case *Iacov Stanciu v. Romania* on 24 July 2012 the Court established (on the basis of Article 46 of the Convention) that inhuman detention conditions were a reoccurring problem in Romanian prisons, for the solution of which – in addition to the legal amendments already passed – Romania had to set up an effective legal remedy system that would enable prisoners to achieve that the infringements were put an end to and even get compensation.

The Court has established the violation of Article 3 of the Convention against Slovenia as well, in the *Mandic and Jovic* case (5774/10 and 5985/10), as well as in the *Strucl and Others* case (5903/10, 6003/10, 6544/10.).

There were several reasons leading to the Court's establishing that Article 3 of the Convention was violated by Bulgaria in the *Slavcho Kostov* case (28674/03), one of which was prison overcrowding. In the *Andrei Georgiev* case (61507/00) prison overcrowding in itself did not yet involve the violation of Article 3.

There has been a judgement against Latvia as well, as a consequence of prison overcrowding conditions and other defects in detention (*Bazjaks* case, 71572/01).

It was similarly the sanitary conditions and overcrowding that led to establishing the violation of Article 3 against Lithuania in the *Savenkovas* case (871/02) and the *Karalevicius* case (53254/99).

A similar decision was made against Belgium where a cell size of smaller than three square metres alone resulted in the violation of Article 3 (*Vasilescu v. Belgium* case, 64682/12). What is remarkable about the case is that the detention under such conditions lasted for a relatively short time (15 days).

In the case *M.S.S. v. Belgium and Greece* (30696/09) the violation of Article 3 was established against Greece due to overcrowded detention facilities in inappropriate conditions, even though it was not a prison that was involved but a facility operating next to the airport where persons applying for asylum were kept detained.

Mention should be made, beyond the European Union, also of Russia where, considering that there was a system-level problem, the Court launched, similar to the case of Italy, "a procedure based on a pilot judgement" in the *Ananyev and Others* case (Nos. 42525/07 and 60800/08).

As regards EU Member States, considering the overcrowding of prisons, the Court made a similar judgement with reference to Italy, where several hundreds of Italian prisoners had filed complaints. In the case *Torreggiani and Others* (8 January 2013) the Court established that prison overcrowding had a systematic and structural nature and obliged the Italian state to take the necessary measures for tackling the problem by introducing effective legal remedy within one year.

This decision is worth special attention because the action plan worked out by Italy, to be outlined in detail in what follows, was recommended by the Court to be considered as a starting base with reference to Hungary as well.

In this case the Court established that the Italian state had violated Article 3 (the ban on torture) due to overcrowding prison conditions, which were further aggravated by other circumstances. The Court called upon Italian authorities to introduce legal remedy or remedies that would remedy the infringement caused by prison overcrowding within one year.

On 27 November 2013 the Italian government submitted a so-called Action Plan to the Ministerial Committee responsible for the enforcement of court judgements, which included both the measures already taken and those to be taken. The Action Plan is made up of four points: 1) changes in the legislation; 2) the transformation of the penitentiary system of prisons; 3) reforms affecting penitentiary institutions; 4) the introduction of new legal remedy opportunities. Furthermore the document outlines in detail the steps already taken and the suggestions already approved in the fields of the respective points, as well as the motions put up for debate in parliament, which in summary are the following:

18.3.1 Changes in the Legislation

The action plan specifically outlines the measures previously approved, those to be introduced in the near future as well as those put up for debate.

18.3.1.1 Measures Already Approved

In July 2013 the Italian government passed a decree law so as to reduce influx into prisons and make the application of other measures easier. The major measures of the new law can be put into three main categories.

1) Reducing "influx into prisons"; imposing imprisonment less frequently
- updating the catalogue that orders obligatory imprisonment in the case of the most grievous crimes and removing less severe crimes from the catalogue;
- in the case of less severe crimes, facilitating suspending the punishment;

- allowing house arrest instead of pre-trial detention in the case of persons in need of greater protection (expectant women, non-repeat offenders above 70 years of age, etc.);
- in the case of repeat offenders committing crimes anew, examining the weight of the crime; by abolishing the presumption of dangerousness, abolishing the automatic sentence of imprisonment in the case of repeated offenders;
- with reference to repeat offenders, abolishing the strictest rules of access to alternative measures in order to facilitate their reintegration into society.

2) Limiting the application of pre-trial detention
The new law periodically limits the possibility of imposing pre-trial detention for maximally five years, but at the same time retains the previous regulation with reference to crimes especially dangerous to society. As an effect, the number of persons in pre-trial detention, compared to 2009, fell by 25%.

3) Changes in the rules of detention
- widening the range of convicts entitled to release on parole;
- broadening opportunities of employment outside the prison;
- providing more employment opportunities to prisoners.

18.3.1.2 Measures to Be Introduced in the Near Future

1) Reducing the number of incoming, new prisoners; imposing less severe punishment for crimes of lesser weight;
- qualifying the less severe versions of the possession of narcotics, production of narcotics and trade in narcotics as separate crimes involving more lenient sanctions.

2) Widening the range of prisoners released from prison: the wider application of alternative measures; in relation to this
- widening the range of those entitled to a special kind of release on parole ("probation with the social services") prior to the – otherwise obligatory – court decision, in some cases by applying an electronic ankle bracelet;
- in the case of drug or alcohol addict criminals the opportunity of release on parole for therapeutic purposes;
- applying the expulsion of foreign criminals more frequently, on the one hand by accelerating the procedure and on the other hand by widening the range of beneficiaries.

18.3.1.3 Measures Put up for Debate

1) Widening the circle of prisoners released from prison: broadening alternative measures
- introducing the possibility to suspend the criminal proceedings in the case of crimes of lesser weight and putting the perpetrator on probation, at the same time calling

upon the perpetrator to make amends for the negative consequences of the crime and pay damages;
- introducing certain less restrictive measures instead of pre-trial detention, e.g. prohibiting certain activities that can be related to the crime;
- making it possible for the judge to order the simultaneous combination of coercive measures and measures prohibiting certain activities.

18.3.2 The Reform of the Penitentiary System

This mostly affects convicts requiring medium or minor security measures, which is a category that the majority of the prison population belongs to. The introduction of "open" imprisonment along the guidelines of the European Prison Rules is also an important element, where prison cells only serve as a resting place for convicts as they spend most of their days elsewhere.

18.3.2.1 Amendments already approved and introduced

- at least 8 hours per day outside the prison cells spent with various activities or work;
- broadening and lengthening opportunities of contact with relatives;
- opportunity of application for phone cards and enabling contact on Skype in certain cases;
- setting up community areas for spending time outside the cells;
- cooperation with the National Olympic Committee in order to enable sporting activities at the highest possible number of penitentiary institutions.

18.3.2.2 Amendments already passed, the effectiveness of which is monitored

- accommodating persons in pre-trial detention, and convicts whose imprisonment is in force at separate institutions;
- cooperating with local health care authorities among others for the regular examination of sanitary conditions;
- gradually introducing digital health cards in order to ensure the continuity of the therapy.

18.3.2.3 Planned amendments

- working out new regulations for the employment of convicts;
- reorganising the catering system for convicts;
- revising the set of criteria for transfers and appointments;
- working out a set of criteria for transfer for health reasons;
- continued development of special facilities accommodating mothers and children.

18.3.3 Reforms Related to Prison Facilities

The Italian state agreed that solving the problem of prison overcrowding does not primarily mean reforming the facilities. At the same time they deemed it necessary to renovate the old buildings as well as build new facilities that would make the implementation of the reforms possible (community areas, contact with relatives, sports facilities, etc.).

18.3.4 Introducing Legal Remedies of a Compensatory Nature

The Italian state also considered the possibility of reducing the remaining prison sentence of the inmates concerned by a certain percentage of the term served under inappropriate prison conditions. This is an exceptional measure in order to perform the remedy obligation arising from the violation of Article 3. This remedy can be performed provided the following two conditions are met: on the one hand, the inappropriate prison conditions are eliminated and, on the other hand, the applicant concerned still continues serving their prison sentence. For the case that the applicant has been released already, the Italian state promised to take measures for working out appropriate compensation.

On 9 September 2014 the Italian state submitted an updated Action Plan to the Council of Europe, which included the developments made since submitting the previous document. The most important change was the promulgation of the degree law that introduced a legal remedy of a compensatory nature as a remedy for imprisonment violating Article 3 on 27 June 2014 (which became effective the following day). The convicts who are still imprisoned may request shortening their remaining sentence (by one day after every 10 days spent under conditions violating Article 3). Those who have already been released or whose pre-trial detention has terminated may claim financial compensation (an amount of EUR 8 per day for each day served under conditions violating Article 3). From the two kinds of legal remedy only one can be made use of. In both cases, the demand for legal remedy is decided on by the court: reducing the prison sentence falls under the decision of the enforcement judge, while financial compensation under that of a civil law court.

The decree law also includes transitional provisions with reference to those who were no longer imprisoned when the legislation became effective as well as those who had filed applications to the court before. For them, the legislation has opened the opportunity of civil law suit.

The package of measures passed the test of the Court. On 16 September 2014 the seven-member Chamber of the Court deemed unacceptable eight applications in which the applicants had formulated complaints in relation to prison conditions and overcrowding (*Rexhepi and Others v. Italy*, 47180/10). The decision examined the effectiveness of the

new legal remedy opportunities introduced by the Italian state in the meantime. With reference to *reducing the term of imprisonment* they established that they considered it as effective legal remedy from the point of view of the Convention 1) it was meant to remedy the violation of Article 3 of the Convention explicitly and 2) it resulted in the significant reduction of the imprisonment of the person concerned. *As regards the financial compensation the Court pointed out* that Member States had broad discretionary power to introduce legal remedies that matched their own judicial structure as well as their traditions. The effectiveness of this legal remedy would be accepted provided that the judgement 1) was made within a short time; 2) was duly justified; 3) was implemented without delay; 4) the amount of compensation awarded was not "unreasonable" (i.e. it was not unjustifiably low, although at the same time it could be less than what the Court would award). The decision reminded of the fact that financial compensation in itself could not mean an appropriate solution for managing prison overcrowding as a structural problem. Finally the Court emphasised that this decision did not mean that the effectiveness of these legal remedies could not be re-examined, e.g. in view of the requirement of establishing a uniform legal practice.

In December 2014 the Committee of Ministers established that all the applicants had either been released or transferred to other cells not affected by overcrowding. At the same time they mentioned that an Italian organisation had made critical remarks about the compensatory remedy emphasising that it was complicated for prisoners to apply to the court for compensation and it was not clear what set of criteria domestic courts applied in order to assess whether the conditions of imprisonment violated Article 3 of the Convention. In relation to this the Ministerial Committee emphasised the importance of continuous monitoring.

18.4 How to Proceed Further?

After the judgement in the *Varga* case and the setting of tasks in it, the current situation can be summarised as follows.

The pilot judgement launched an avalanche-like process. After that, the Court made convicting judgements one after the other. Table 18.1 summarises the amounts of non-financial compensations awarded from 2015 to 7 January 2016.

Table 18.1

Case	Date of judgement	Number of applicants	Amount awarded (non-financial compensation + expenses)	Average
Varga and Others	10.03.2015	6	EUR 86 050	EUR 14 342
Gégény	15.07.2015	1	EUR 27 000	EUR 27 000
Ligeti and Others	10.12.2015	10	EUR 168 200	EUR 16 820
Bota and Others	10.12.2015	13	EUR 252 300	EUR 19 407
Polgár and Others	10.12.2015	10	EUR 163 700	EUR 16 370
Balogh and Others	10.12.2015	10	EUR 155 400	EUR 15 540
Tamási and Others	07.01.2016	10	EUR 138 800	EUR 13 880
Magyar and Others	07.01.2016	11	EUR 156 200	EUR 14 200
Juhász and Others	07.01.2016	10	EUR 131 900	EUR 13 190
Bakos and Others	07.01.2016	8	EUR 120 700	EUR 15 087
Bóday and Others	07.01.2016	10	EUR 144 400	EUR 14 440
		Total: 99	Total: EUR 1 544 650	

By imposing compensations of high amounts and in mass numbers, the Court probably wishes to stimulate the Hungarian government to introduce effective domestic legal remedy as soon as possible.

The difficulty of the situation is illustrated by the fact that there are currently another 3,500 cases waiting to be judged, whose time of judgement cannot be predicted. What is more, new complaints are expected to be submitted as both prisoners and their legal representatives believe that the situation developed offers good opportunities. In certain cases even applicants who have received compensation before but continue to be accommodated in inappropriate cells may exercise their rights once again.

It can be said that the solution of the situation requires complex measures. In view of this, the action plan submitted to Strasbourg sets out to apply several measures simultaneously. The most important of these is probably providing more space.

Another possibility for improving the situation is to broaden the application of reintegration custody referred to in the action plan.

Beyond these, as a preventive and compensatory legal remedy demanded by the Court, the sui generis legal remedy referred to in the action plan may be introduced. The new legal institution must meet the effectiveness requirements determined by the Court, which are the following:

1. decisions are made within a short time and on an objective basis;
2. decisions are duly justified;

3. decisions are implemented without delay;
4. the amount of compensation awarded is not "unreasonable", (i.e. it is not unjustifiably low; at the same time it can be less than the amount the Court would award).

It is important that the applicant be given the opportunity of legal remedy of a preventive nature; that they should be able to report their complaints to authorities and these should examine if there is opportunity to provide appropriate accommodation. Lacking these, the means of compensatory remedy should be available.

It is an important question how much compensation is necessary in order to prevent that the complaint be filed with the Court later on. In its judgements, the Court calculates the amount of the compensation on the basis of the length of time spent in a cell with insufficient floor space and the evaluation of the circumstances of accommodation (the cleanliness of the cell, light conditions, sanitary opportunities, etc.). The lowest amount imposed in Hungarian cases was EUR 5,000 (for a term of 7-10 months); the highest EUR 26,000. The applicants have to be paid about half of these sums so that the amounts are found reasonable by the Court. If a lower amount is paid, the applicant concerned may successfully file a complaint later on claiming the payment of the difference.

On the whole we can say that in the foreground of public interest lies remedying a problem characteristic not only for Hungary. The solution of the problem is only conceivable at extraordinary expense and by other invested efforts. It is going to be a lengthy process but by taking complementary measures the Hungarian State may be able to comply with the expectations of Strasbourg.