LIBERTY DENIED

HUMAN RIGHTS VIOLATIONS IN CRIMINAL PSYCHIATRIC DETENTION REVIEWS IN HUNGARY

MDAC | Mental Disability Advocacy Center

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The Mental Disability Advocacy Center (MDAC) is an international non-governmental organization that promotes and protects the human rights of people with mental health problems and intellectual disabilities across central and eastern Europe, Russia and central Asia. MDAC works to improve the quality of life for people with mental disabilities through litigation, research and international advocacy. MDAC has participatory status at the *Council of Europe* and is a cooperating organization of the *International Helsinki Federation for Human Rights.*

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1. GLOSSARY

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms

IMEI	Igazságügyi Megfigyelő és Elmegyógyító Intézet ("Juridical and Observational Psychiatric Institute"). IMEI is Hungary's only high-security psychiatric hospital for people who have committed a criminal offence but had a mental disability at the time of the offence.

MDAC	Mental Disability Advocacy Center

Mental Disability	In this report the term "mental disability" is an umbrella term that is used to refer to people who have mental health problems and/or intellectual disabilities. Other terms for intellectual disability include: "learning disability", "developmental disability" and "mental retardation". Mental health problems include psychiatric conditions such as schizophrenia, depression, and anxiety. Intellectual disability refers to people who have a lifelong learning difficulty that affects intellectual, social and/or emotional development, which may result in a person requiring assistance, often for performing simple everyday tasks.

2. EXECUTIVE SUMMARY

MDAC's report *Liberty Denied* reveals systemic problems in the procedures for reviewing the detention of people who have committed crimes but who, because of a mental disability, have been sent to IMEI - Hungary's high-security psychiatric hospital - instead of prison. Pro forma annual court reviews of detention violate the rights of detainees, rights guaranteed under Hungarian and international law.

MDAC, has prepared this report over the past two years by conducting 60 court observations and numerous interviews with attorneys, prosecutors, judges and psychiatrists who participate in the court review of criminal psychiatric detention. The results of the research indicate systemic violations of the rights of patients, resulting from the following **shortcomings in law and practice:**

- Court-appointed attorneys fail to represent their clients.
- Court hearings, which last on average just over seven minutes, are a meaningless exercise.
- There is inadequate legal criteria for a judge to decide whether to continue a patient's detention.
- IMEI staff wield unchecked power to prevent a patient from attending the annual court review.
- Patients and their attorneys rarely see psychiatric reports in advance of the hearing.
- Psychiatric experts that are relied upon exclusively by the court are never present at court hearings, preventing any inquiry into their findings.
- Judges and patient's attorneys never challenge psychiatric opinions, even in cases where the patient clearly disagrees with the expert opinion.
- There is no social work input in the procedure.

MDAC makes the following **recommendations to the Hungarian government**, which should be implemented the earliest opportunity:

- Remove the power of the IMEI director to prevent a patient from attending their annual court review, and give this power to the judge.
- More clearly define the legal criteria for detention/release in IMEI court reviews.
- Require the relevant authorities to send to the patient in IMEI and the patient's attorney copies of the court file (including all expert opinions) without additional cost, and without delay.
- Allow patients to use an psychiatric or other expert of the patient's choosing.

- Make obligatory at the court hearing the presence of the expert psychiatrists.
- Implement a system of training on mental disability law and human rights for relevant judges and attorneys, and make such a course a pre-requisite for attorneys representing IMEI patients.
- Tighten the professional control of attorneys and the sanctions available for poor performance, and promulgate a user-friendly complaints mechanism.
- Provide for social work reports to be prepared before each annual review of detention.
- Ensure that information on legal processes and rights is available to IMEI patients.
- Encourage the formation of patients' advocacy groups within IMEI.
- Invite human rights non-government organizations to monitor the conditions human rights within IMEI.

3. METHODOLOGY

Liberty Denied was co-authored by Oliver Lewis (MDAC legal director) and Hannah Roberts (MDAC consultant researcher). The cover page was designed by Gábor Mersich.

Research was conducted by:

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The following people generously gave the authors their valuable thoughts, scrutinized drafts, or checked data:

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During the research, MDAC interviewed judges, attorneys, prosecutors and psychiatrists who participated in the court hearings described in this report. These people are not named because the report is sometimes critical of their work, and it is not MDAC's intention to hold individuals responsible where their actions represent systemic problems.

The methodology to gain data for this report includes a series of observations of IMEI court hearings. Court hearings were observed at the Capital Court in Budapest (Fővárosi Bíróság) in June 2001, March to April and September to December 2002 and January to July 2003. The researchers used a standardized data-collection sheet developed by MDAC. Initially we were concerned to accurately record the timings of the hearings, and to find out how actively the patient's attorney advocated on behalf of the patient. As the research progressed and early hearings were analyzed it became clear that there were other areas of concern, so the researchers were asked to record as much courtroom dialogue as they could. These dialogues were translated into English for analysis. The English and Hungarian dialogues that appear in this report have been checked for accuracy by the original researchers, who are native Hungarian speakers.

In order to plan this work it was necessary to ask the court administration about forthcoming court hearings. Whilst we generally encountered cooperation with court staff, sometimes officials insisted on our researchers having "permission" to observe court hearings before they would release information about forthcoming hearings. In fact, under Hungarian law all such hearings are supposed to be open to the public.

Researchers did not observe all IMEI hearings within the periods given. There were no reasons for observing or not observing any particular hearings. MDAC therefore believes that this report draws on the results of a random and representative sample of IMEI review hearings spanning a period of over two years.

4. INTRODUCTION

Hungary has been in the process of transforming its social, economic and legal framework, and is poised to accede to the European Union.[1] Conformity studies have analyzed how Hungarian law and practice meets the country's international legal obligations, but despite the many changes since the collapse of the socialist regime in 1989, there are still aspects of the legal system, which do not meet international standards. This report critically examines one such aspect, namely the annual court review of people convicted of crimes and on grounds of mental disability.[2]

Detention in a psychiatric hospital is arguably more punitive, harsh and abusive than detention in a prison. People suffer the dual stigma of being offenders/patients, both *mad* and *bad* in the public's view. People detained in a psychiatric hospital are particularly vulnerable to substantive and procedural human rights violations for at least three reasons:

First, unlike those in prisons, people in psychiatric hospitals are often forced to receive psychiatric medication (a massive invasion of bodily integrity and autonomy) as well as being deprived of their liberty.

Second, people detained in a psychiatric hospital through the criminal law are detained for an indefinite period, unlike prisoners whose release date is usually determined by the sentencing court. Although they are subject to regular court reviews, in some cases, people sentenced to psychiatric detention are detained for a substantially longer period than they would have been had they been sent for a term of imprisonment. The indeterminate nature of such detention requires regular judicial oversight to assess whether the detention is lawful – which is mandated by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR").[3]

Third, the conditions in which people are detained are very often un-monitored by independent bodies such as human rights organizations. High-security hospitals generally fall outside the scope of prison monitoring, and equally outside the scope of monitoring of other psychiatric hospitals. The human rights of people detained in such hospitals are all too often overlooked.

This report analyses whether procedures for restricting liberty of people – detained through the criminal law because of their mental disability – comply with Hungary's international and domestic legal obligations, chiefly under the Hungarian Constitution and the the ECHR. These provisions protect substantive and procedural rights when someone is detained, and protect fair trial rights.

[1] http://www.europa.eu.int/comm/enlargement/index.htm, accessed 1 February 2004.

[2] In this report, the medical term "patient" is used to describe a person with mental disability who lives in IMEI. This follows the Hungarian practice; the term is used by the legal and medical professions to describe people detained in IMEI.

[3] European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222 (1950) (entered into force 3 September 1953, ratified by Hungary 5 November 1992).

5. IMEI: DETENTION AND RELEASE

Liberty Denied focuses on the rights of people who are detained in Hungary's only high-security psychiatric hospital for persons convicted of criminal offences, the "Juridical and Observational Psychiatric Institute," whose Hungarian acronym is "IMEI". This section explains the legal provisions that govern how people can be detained in IMEI, and how – through a courtroom procedure – people can be released and regain their freedom.

5.1 ENTRY INTO IMEI

The Hungarian Criminal Code sets out the conditions under which a person can be exempted from ordinary punishment. The Code states: "a person who commits the act in a diseased mental state – specifically in a state of mental illness, of developmental disability, dementia, a confused mental state or personality disorder – which makes him incapable of recognizing the consequences of his act or acting in accordance with this recognition, is exempted from punishment."[4]

It is not enough that a person fulfils these criteria in order to be detained and compulsorily treated in IMEI. The Criminal Code specifies that a person must be ordered to receive compulsory psychiatric treatment if all of the following conditions are satisfied:

- the person committed a violent criminal offence towards another or an act which constitutes a danger to the public; and
- the person is exempt from punishment because of a diseased mind ("Kóros" in Hungarian means diseased, morbid, or pathological); and
- there is a danger of committing a similar offence; and
  a sentence of imprisonment of more than one year would otherwise have been imposed.[5]

The opinions of two experts must be obtained in such cases,[6] although the law does not specify what sort of experts. When a court orders someone under the Criminal Code to receive compulsory psychiatric treatment, that person is sent to IMEI, which is the only institution in Hungary which has been designated by law as the "appointed closed institution".[7] Every person who has been detained under the above provision in the Criminal Code is detained in IMEI.

5.2 EXIT FROM IMEI

A person detained in such a manner has the right to a court review of the lawfulness of detention within one year from the date of the initial detention.[8] If the detention at that first court review is maintained, the review shall take place annually.[9] A review may also be held upon the motion of the prosecutor, the person receiving forensic compulsory treatment, the spouse, legal representative, or his defender, or upon the application of the director of the institution of the forensic compulsory treatment. The court may disregard a request for review, if such a review has already been performed in the prior six-month period.[10] A report from a court-appointed expert must be provided to the court

[4] Section 24(1) of the Hungarian Criminal Code. See Appendix 1 of this report.
[5] Criminal Code (Act number 4 of 1978) section 74. (1). See Appendix 1 of this report.
[6] Act 19 of 1998, Code of Criminal Procedure, section 101(1) and 101(2). See Appendix 1 of this report.
[7] Criminal Code (Act number 4 of 1978) paragraph 74. (2). See Appendix 1 of this report.
[8] Act 19 of 1998, Code of Criminal Procedure, Section 566(2). This section is identical to Section 373(2) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.
[9] Act 19 of 1998, Code of Criminal Procedure, Section 566(2). This section is identical to Section 373(2) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.
[10] Act 19 of 1998, Code of Criminal Procedure, Section 566(3). This section is almost identical to Section 373(3) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.

before such a hearing.[11] The law does not specify what issues the court-appointed expert's report must address.

A professional judge presides over such hearings, which are held in open court. Two lay justices assist the judge.[12] The other people involved are the prosecutor,[13] the patient's attorney and the patient. The usual procedure in these cases is as follows. The patient is led into the court wearing a uniform resembling brown pyjamas, sometimes handcuffed by a metal lead to an IMEI warden. The judge opens the case by reading out loud (in several cases observed, at considerable speed) a report written by the psychiatrist responsible for the patient's treatment at IMEI. The judge then reads out the report written by the court-appointed psychiatrist. Sometimes the judge has a brief exchange with the patient before inviting the prosecutor's opinion on whether the patient should be further detained. Finally, the judge asks the patient's attorney for his or her comments. The judge then decides whether to order continued detention or to order the patient's release.

The patient, the patient's attorney, the patient's legal representative (such as a guardian) and the patient's spouse have the right to appeal the court's decision.[14] The judge has no power to order a transfer of the patient to another hospital.[15] Hungarian law does not provide for any form of conditional[16] or supervised discharge, or compulsory treatment in the community.[17] The court review is the only mechanism for a person detained in IMEI to be released.

5.3 IMEI STATISTICS AND CONDITIONS

Established in 1896, IMEI is situated within the territory of a prison in the suburbs of Budapest.[18] According to figures supplied to MDAC by IMEI, in August 2003, 260 patients were detained in IMEI (231 males, 29 females). 187 of these were receiving compulsory psychiatric treatment (therefore subject to annual court reviews, the focus of this study), whilst 26 were under temporary compulsory psychiatric treatment. Five people were under assessment. Three patients were under the age of 18.[19] According to Ministry of Justice figures, there were 173 people receiving such compulsory psychiatric treatment on 31 December 2000, 194 on 31 December 2001, and 192 on 31 December 2002.[20] In 2002 the number of people who entered compulsory treatment was 17, whilst the number of those released from IMEI was 27.

[11] Act 19 of 1998, Code of Criminal Procedure, Section 566(4). This section is identical to Section 373(4) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.

[12] A chamber or group of judges are required for such court reviews (Act 19 of 1998, Code of Criminal Procedure, Section 566(1)). This section is identical to Section 373(1) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.

[13] The prosecutor's role is to represent the public interest. It is clear from the court observations as well as interviews with attorneys and judges that prosecutors always follow the advice of the treating and court-appointed psychiatrists.

[14] Act 19 of 1998, Code of Criminal Procedure, Section 566(5). This section is almost identical to Section 373(5) of Act 1 of 1973 Code of Criminal Procedure, the provision that was in force until 1 July 2003. See Appendix 1 of this report.

[15] In other countries the court has the power to transfer the patient from a high-security facility to one of medium security. This is seen generally as the first step to discharge, which is carried out in a gradual, managed way.

[16] Conditional discharge means that the patient is discharged from hospital but on condition (for example) that he takes his medication and visits the psychiatrist every week.

[17] Such as a court order which obliges the patient to take psychiatric medication whilst the person is living outside hospital. In some jurisdictions the patient can be admitted compulsorily to hospital if he or she fails to comply with the order.

[18] The Hungarian name of the prison is "Budapesti Fegyház és Börtön", and is situated in Budapest's 10th district at Kozma utca 13.

[19] MDAC considers the placement of children into an institution for adults as particularly inappropriate, creating a situation that could lead to abuse.

[20] Figures taken from Ministry of Justice website http://www.im.hu/bvop/images/353.jpg, accessed 1 February 2004.

IMEI also houses offenders originally sentenced to imprisonment, but who have developed mental health problems in prison. These people are still under a prison sentence. No patients detained under the Healthcare Act 1997 – the mechanism for civil (non-criminal) psychiatric commitment – are sent to IMEI.

There are special regulations governing IMEI, issued by the Ministry of Justice.[21] The director of IMEI is the institution's chief doctor, who also has a function as IMEI's "commander", a word associated with the prison system. Indeed, IMEI is financed and managed by the Ministry of Justice, unlike all other hospitals in Hungary which are financed through and managed by the Ministry of Health, Social and Family Affairs. An attorney who has visited IMEI reports that it is a "prison within a prison".[22] In 1999 the Parliamentary Ombudsman for Human Rights described the conditions as prison-like. The Ombudsman went so far as to describe the conditions in this hospital as undermining medical treatment.[23] An IMEI orderly described to MDAC a typical day at IMEI:

> *There are up to 14 beds in each ward. They get up at 6am. At 7.15am there is breakfast, and then there's the medicine. In the morning until 11.30am there is some activity, but it is rare. They clean the corridors and the wards. At 11.30am there is lunch and then in the afternoon, again they clean the corridor and wards. Then there is some spare time. At around 5pm or 6pm there is dinner and then medicines. They sleep at 10pm. It's the same every day.*[24]

At the time of going to press, no non-governmental organization has written a human rights report about IMEI. However, during the course of our research, the consistency of comments MDAC received about the conditions and treatment within IMEI from a variety of sources calls for an urgent and independent human rights assessment of the conditions at IMEI.

Liberty Denied is not such a report about conditions, or of the initial court procedure at which a person is sent to IMEI. Rather, this report addresses the question whether the procedural human rights – for an IMEI patient to test the lawfulness of detention – are respected.

[21] 36/2003 (X. 3.) IM rendelet (Decree of the Ministry of Justice).
[22] MDAC interview with attorney who represents IMEI patients, 29 July 2003.
[23] Office of Parliamentary Commissioner for Human Rights, Reports 3041/1998 and 1042/1999.
[24] Interview with MDAC at the Capital Court, 4 April 2002.

6. DEPRIVATION OF LIBERTY: THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Liberty is a fundamental human right that is recognized in numerous international treaties and declarations[25] as well as in the Hungarian Constitution.[26] Because of its enforcement mechanism, the most important human rights instrument for Member States of the Council of Europe is the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"). Since Hungary ratified the Convention in 1992, ECHR arguments can be raised in domestic courts. After exhausting national remedies, cases may be taken to the European Court of Human Rights in Strasbourg, France. The Court's decisions[27] are binding on State respondents, and the Court's jurisprudence constitutes a binding interpretation of the legal obligations of all States Parties. In the fifty years since the ECHR and the Court have been operational, some countries have had to make considerable changes to their own national legislation and practice, including to mental disability laws and services.[28]

International legal obligations are incorporated into Hungarian domestic law by operation of Article 7 of the Hungarian Constitution. Moreover, Articles 55 and 57 (reproduced in Appendix 1) contain analogous protections to those contained in the ECHR and described below.[29]

Article 5 of the European Convention on Human Rights – so far as it is relevant to mental disability[30] – states:

> *5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> *(a) the lawful detention of a person after conviction by a competent court;*
> *[…]*
>
> *(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind[31], alcoholics or drug addicts or vagrants;*

[25] Article 3 of the Universal Declaration of Human Rights states: "Everyone has the right to life, liberty and security of person". Article 9 states: "No one shall be subjected to arbitrary arrest, detention or exile". Article 9(1) of the International Covenant on Civil and Political Rights, to which Hungary is a Party, states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." 999 U.N.T.S. 171 (Dec. 16, 1966) (entered into force March 23, 1976). Detention is also referred to in Principle 16 of the United Nations' "Protection of Persons with Mental Illness and the Improvement of Mental Health Care." Resolution 46/119. Adopted by the General Assembly on 17 December 1991.

[26] See Appendix 1, below.

[27] All decisions by the Court are public documents and may be accessed at www.echr.coe.int.

[28] For example, in X v. United Kingdom, 4 EHRR 188, the Court ruled there was a violation of Article 5(4) ECHR. As a result, the United Kingdom was forced to improve substantially the rights of some people detained under mental disability legislation by giving the Mental Health Review Tribunal the power to discharge "restricted patients" (similar to Hungary's IMEI population), not just to advise the Home Secretary (interior minister) to do so.

[29] For a discussion of ECHR law relating to mental disability, see Lewis, O., "Protecting the rights of people with mental disabilities: the European Convention on Human Rights" (2002) European Journal of Health Law, 9(4), 293-320.

[30] Other subsections of Article 5 have been omitted here because they are not relevant. For the full text of the ECHR see the Court's website at www.echr.coe.int.

[31] The Convention was drafted in the late 1940s, hence the rather outdated and now unpleasant term "persons of unsound mind."

Article 5 therefore sets out the broad circumstances in which a person can be lawfully detained. Article 5 also provides the following guarantees:

5(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

5(3) ……

5(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 of the ECHR is set out below because many of the principles contained within this Article have been imported into Article 5 in decisions by the European Court of Human Rights, as we shall see in the analysis that follows.

Article 6 – Right to a fair trial

6(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly… .

6(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

6(3) Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defense;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Domestic and international law recognize differences between the detention of someone for mental health reasons in the civil law, and in the criminal law. At the same time, in both situations, many of the same fundamental rights are implicated, and interpretations of civil law jurisprudence can be usefully applied in the criminal context. Moreover, Court jurisprudence related to criminal detention unrelated to mental disability may also be applicable in this context. The ECHR and cases decided by the European Court of Human Rights have established minimum requirements that protect the human rights of patients detained under both civil and criminal law:

1. Detention requires the existence of a law, and that the law is followed

The requirement that any deprivation of liberty should be, in the words of Article 5(1) "in accordance with a procedure prescribed by law", was explained in Winterwerp v. Netherlands.[32] The European Court of Human Rights considered

[32] Winterwerp v. Netherlands, Application No. 6301/73, judgment 24 October 1979, reported at 2 EHRR 387.

[…] that the words 'in accordance with a procedure prescribed by law' essentially refer back to domes tic law; they state the need for compliance with the relevant procedure under that law.

However the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority, and should not be arbitrary. (Paragraph 45)

The ECHR therefore requires that the admission procedures be codified. In the case of Kawka v Poland[33] the Court stressed that:

where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law should be clearly defined, and that the law itself be foreseeable in its application, so that it meets the standard of 'lawfulness' set by the Convention, a standard which requires that all law should be sufficiently precise to allow the person – if needed, to obtain the appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (Paragraph 49)

2. Detention is lawful only if the person is detained in a hospital or clinic

If a person charged with a criminal offence is found not to be responsible by reason of mental disability, and for that reason is acquitted or not convicted, then any detention ordered by the court will only be lawful if it is in a hospital, clinic or other appropriate institution.[34] A prison is not a suitable place for such detention.

3. There must be a prior medical examination showing a true "mental disorder"[35] before compulsory detention

In the case of Winterwerp v. Netherlands, the European Court of Human Rights said:

the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind". The very nature of what has to be established before the competent national authority – that is, a true mental disorder – calls for objective medical expertise.[36]

4. The "mental disorder" must be of a kind or degree which warrants compulsory detention

The European Court of Human Rights has made clear that "the mental disorder must be of a kind or degree warranting compulsory confinement."[37] A mere diagnosis of some sort of mental disability is not enough initially to detain someone or to decide to continue to detain that person.

5. A patient compulsorily admitted to a hospital or other institution should only be detained for as long as he or she has a "mental disorder" of such a degree or kind as warrants the detention

In Winterwerp, the European Court of Human Rights stated that the validity of continued confinement depends upon the persistence of such a disorder.[38] In other words, it is not acceptable for

[33] Application No. 25874/94, judgment 9 January 2001.
[34] Aerts v. Belgium, 29 EHRR 50.
[35] The term "mental disorder" is used by the European Court of Human Rights and is now established in legal discourse. Where possible, "mental disorder" is avoided in this report, as some people regard the term as inaccurate and derogatory.
[36] Winterwerp v. Netherlands, *op cit*, paragraph 39.
[37] Winterwerp v. Netherlands, *op cit*, paragraph 39.
[38] Winterwerp v. Netherlands, *op cit*, paragraph 39.

psychiatrists to assess someone only once as having a mental disorder that warrants detention. The person's mental disability must be assessed regularly. If the person no longer has a mental disability of sufficient kind or degree, then the person must be released.

6. Discharge (release) from detention need not be immediate and unconditional. A hospital may defer discharge for a reasonable time to make after-care arrangements (such as arranging a place for the person to live)

In the case of Johnson v. the United Kingdom, the European Court of Human Rights stated that the hospital:

> *[…] should be able to retain some measure of supervision over the progress of the person once he is released into the community and to that end make his discharge subject to conditions. It cannot be excluded either that the imposition of a particular condition may in certain circumstances justify a deferral of discharge from detention, having regard to the nature of the condition and to the reasons for imposing it. It is, however, of paramount importance that appropriate safeguards are in place so as to ensure that any deferral of discharge is consonant with the purpose of Article 5 § 1 and with the aim of the restriction in sub-paragraph (e) […] and, in particular, that discharge is not unreasonably delayed.*[39]

7. Following detention, a patient must be given an opportunity to test the lawfulness of his or her detention before a court which is independent of the executive, is impartial and has the power to give legally binding judgment about a person's release

If a person is convicted of a criminal act and on account of his mental disorder, the court orders him to be detained in a hospital, his detention is governed by Article 5(1)(a) and 5(1)(e). Consequently he has a right to periodic review of detention.

In Winterwerp v. Netherlands[40] the European Court of Human Rights laid down the essential requirements of a court hearing under Article 5(4):

> *The judicial proceedings referred to in Article 5(4) need not, it is true, always be attended by the same guarantees as those required under Article 6(1) for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded the 'fundamental guarantees of procedure applied in matters of deprivation of liberty'. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right. Indeed special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves.*

In X v. the United Kingdom the European Court of Human Rights, expanding its earlier case law,[41] explained the notion of a "court" in this context:

> *It is not within the province of the Court to enquire into what would be the best or most appropriate system of judicial review in this sphere, for the Contracting States are free to choose different methods of performing their obligation. Thus, in Article 5(4) the word "court" is not necessarily to be understood as signifying a court of the classic kind, integrated within the standard judicial machinery of the coun-*

[39] Johnson v. the United Kingdom, Application No. 119/1996/738/937. Judgment 24 October 1997, reported at (1998) 27 EHRR 296.
[40] *op cit*, paragraph 60.
[41] *op cit*, paragraph 53. See also Wassink v Netherlands judgment of 27/9/1990, Series A no. 185-A, paragraph. 30.

try. This term, as employed in several Articles of the Convention (including Art. 5(4)), serves to denote bodies which exhibit not only common fundamental features, of which the most important is independence of the executive and of the parties to the case, but also the guarantees ('appropriate to the kind of deprivation of liberty in question') of [a] judicial procedure the form of which may vary from one domain to another. (Paragraph 53)

The review by the "court" (however it is designated)

should […] be wide enough to bear on those conditions which, according to the Convention, are essential for the 'lawful' detention of a person on the ground of unsoundness of mind, especially as the reasons capable of initially justifying such a detention may cease to exist.[42]

In the case of D.N. v. Switzerland the European Court of Human Rights affirmed the importance of judges' independence in civil commitment review hearings saying, "any judge in respect of whom there is a legitimate reason to fear impartiality must withdraw".[43]

8. A patient detained in a psychiatric hospital through the criminal law must be given further opportunities to test the lawfulness of the detention at court at least annually

The European Court of Human Rights has not yet stated definitively how frequently a patient must be able to exercise the "periodic" right under Article 5(4). However in Herczegfalvy v. Austria,[44] a case concerning detention similar to the IMEI population, the Court considered three intervals, the first of fifteen months, the second of two years and the third of nine months. It decided that the first two could not be regarded as reasonable intervals, but did not criticise the third interval of nine months. It therefore seems highly probable that the European Court of Human Rights would accept annual intervals, but no longer.

9. A court must *speedily* decide on detention

In Musial v. Poland[45] the European Court of Human Rights held that "Article 5(4), in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful."[46]

In E v. Norway[47] the European Court of Human Rights held that a period of 55 days (seven weeks and six days) between an application for review and a decision by a "court" was insufficiently speedy to meet the requirements of Article 5(4). The maximum permissible time between an application for review and a court decision remains undecided, but could be held to be as little as four or six weeks.

Less urgency is required under Article 5(4) when a patient is exercising his right to a second or subsequent application. But in Koendjbiharie v. Netherlands[48] the European Court of Human Rights found a delay of four months to be excessive.

The European Court of Human Rights has made it clear that "the complexity of a medical dossier, however exceptional, cannot absolve national authorities from their essential obligations" under Article 5(4).[49]

[42] Wassink v. the Netherlands, *op cit*, paragraph 58.
[43] Unreported, Application No. 27154/95, judgment 29 March 2001, commentary at (2001) 5 EHRLR 589.
[44] Application No. 10533/83, judgment 24 September 1992, reported at (1992) 15 EHRR 437.
[45] Unreported. Application No. 24557/94, judgment 25 March 1999.
[46] Musial, paragraph 43.
[47] Application No. 11701/85, judgment 29 August 1990, Series A, No. 181-A, reported at (1990) 17 EHRR 30.
[48] (1991) 13 EHRR 820.
49 Musial, *op cit*, paragraph 47.

State authorities may argue that there was another method that the applicant could have used to seek a remedy for the delay (for example, lodging a complaint with a public prosecutor). The European Court of Human Rights will allow such an argument to succeed only if the government can show that the body to which they say the applicant should have complained has "judicial character".[50]

If there are proceedings before one court, the applicant need generally not have recourse to appeal to the Constitutional Court, as "[i]n principle, the intervention of one organ satisfies Article 5 Paragraph 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question".[51]

In order to determine whether a court procedure provides adequate guarantees, regard must be had to the particular circumstances in which such proceedings take place.[52]

10. A patient must have an opportunity to be heard in person, and be represented by an attorney

In Megyeri v. Germany[53] the European Court of Human Rights found a violation of Article 5(4) because the applicant was not given legal representation. After reviewing its earlier jurisprudence on this issue the Court stated:

> *…where a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should – unless there are special circumstances – receive legal assistance in subsequent proceedings relating to the continuation, suspension, or termination of his detention. The importance of what is at stake for him – personal liberty – taken together with the very nature of the affliction – diminished mental capacity – compels this conclusion.* (Paragraph 23)

In the case of Vaes v Netherlands,[54] the (now non-existent) European Commission of Human Rights considered "that the same principle (as Megyeri) should apply to proceedings which … concern the initial detention of a person in a psychiatric institution."

In Pereira v. Portugal,[55] the European Court of Human Rights noted that the applicant was suffering from a mental disorder that prevented him from conducting court proceedings satisfactorily, despite his legal training. The circumstances of the case therefore dictated the appointment of an attorney to assist him in the proceedings concerning the periodic review of the lawfulness of his confinement. The judge responsible for the execution of sentences had assigned an attorney at the outset of the proceedings but he had played no role in the proceedings. The European Court of Human Rights found a violation of Article 5(4), emphasising that merely appointing counsel did not ensure that the client would receive effective legal assistance.

In summary, Court jurisprudence requires that the State make available effective legal assistance to any person who is being detained on the basis of a mental disability.

[50] Vodenicarov v Slovakia, Application No. 25430/94, judgment 21 December 2000, paragraph 37.
[51] Jecius v Lithuania, Application No. 34578/97, judgment 31 August 2000, paragraph 100.
[52] See Vodenicarov v Slovakia, *op cit*, paragraph 33.
[53] Application No. 13770/88, judgment 12 May 1992, reported at (1992) 15 EHRR 584.
[54] Application No. 17581/90 Report of the Commission 2 September 1992.
[55] Application No.44872/98, judgment 26 February 2002.

11. An attorney representing a patient must have access to information on the patient from the hospital

The court procedure must allow the attorney access to information held about the client. In Nikolova v. Bulgaria[56] the European Court of Human Rights held that Article 5(4) of the ECHR was violated because the State did not provide an accused with access to the file that formed the basis for the accusation:

> *A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person … Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention …* (Paragraph 58)

In the case of review of detention of persons with mental disabilities accused of crimes, the relevant information that provides the justification for continued detention is contained in the reports of the psychiatric expert witnesses. The ECHR thus requires that a detained person be provided with timely access to such reports.

12. The court's powers must be sufficient to decide on matters essential to justify detention. The court must have the power to discharge the patient if detention is no longer justified

The European Court of Human Rights has said that the court review of psychiatric detention should be "wide enough to bear on those conditions which, according to the Convention, are essential for the 'lawful.' detention of a person on the ground of unsoundness of mind, especially as the reasons capable of initially justifying such a detention may cease to exist".[57] The Court went on to stress that Article 5(4) requires an appropriate procedure allowing a court to examine whether the patient's disorder still persists, as the "validity of continued confinement depends upon the persistence of such a disorder".[58]

13. If, having decided that the patient should be discharged, a court orders such discharge to be conditional on after-care arrangements being made, the court must have the power to compel such arrangements so that discharge is not unreasonably delayed

In Johnson v. United Kingdom[59] the European Court of Human Rights considered decisions of three successive mental health review tribunals that a patient found no longer to be suffering from mental illness should be discharged subject to a condition that he reside in a staffed hostel. The tribunal lacked the power to implement this condition, and his detention continued. The European Court of Human Rights, having found a breach of Article 5(1)(e), found it unnecessary to decide the Applicant's complaint that there was also a breach of Article 5(4) by reason of the tribunal's lack of legal powers. However the Judgment strongly suggests that but for the finding under Article 5(1)(e) the European Court of Human Rights would have found a violation of Article 5(4).

[56] Application No. 31195/96, judgment 25 March 1999, reported at (2001) 31 EHRR 3. Nikolova v. Bulgaria is not a mental health case, but a criminal case in which Articles 5(1)(c) and 5(4) were argued.
[57] X. v. the United Kingdom, Application No. 7215/75, judgment 5 November 1981, reported at (1981) 4 EHRR 188.
[58] Winterwerp v. the Netherlands, *op cit*, paragraph 39.
[59] *op cit.*

14. Anybody who has been of victim of any breach of Article 5 must have a legally enforceable right to compensation in that person's domestic courts

The right to compensation set out in Article 5(5) must be enforceable by a court, leading to a legally binding award. A remedy before some body other than a court (for example an ombudsman), or an *ex gratia* award, is not sufficient. A State is not prohibited from requiring proof of damage. The term "victim of arrest or detention in contravention of the provisions of this article" includes contraventions of any of the paragraphs 5(1) to 5(4).

As can be seen from this analysis, the European Court of Human Rights has established a number of requirements that must be followed in every State Party to the ECHR, including Hungary. The next section of **Liberty Denied** examines the extent to which people detained in IMEI are *in practice* protected by the stringent requirements of international human rights law set out in this section.

7. ANNUAL REVIEW HEARINGS – JUDGES AND ATTORNEYS

MDAC observed 60 court hearings at the Capital Court in Budapest from June 2001 to July 2003 at which the lawfulness of detention in IMEI was examined. On the face of it, these hearings fulfil the mandate of Article 5(4) of the ECHR. However, MDAC's research revealed such major deficiencies in law and practice as to constitute an ongoing violation of Hungary's obligations under international law to protect the rights of persons with mental disabilities detained by the State. The deficiencies fall into the following areas, each of which is addressed below:

7.1 Presence of patient at court
7.2 Legal criteria
7.3 Length of hearings
7.4 Social work input
7.5 Legal representation

In 53 out of the 60 cases observed by MDAC, the court ordered further detention; in the other seven the court ordered the release of the patient. All decisions followed the recommendations of the treating psychiatrist and the court-appointed psychiatrist, who in every case agreed with each other. MDAC found that court hearings last on average just over seven minutes and some less than three minutes. Attorneys routinely under-perform. The views of the patient are not generally sought and are rarely taken into account. As a result, patients remain ill-equipped to challenge the lawfulness of their detention, and mount an argument for being released from IMEI.

7.1. PRESENCE OF PATIENT AT COURT

In two out of the 60 court hearings observed by MDAC, the patient was not present, and detention was renewed in their absence. A Ministerial Decree gives the IMEI director the right to decide about the patient's attendance at court.[60] The use of such unchecked discretionary administrative power may well be a contravention of Hungarian law and of fair trial rights guarantees by Articles 5 and 6 of the ECHR, and has been criticised by the Hungarian Supreme Court.[61]

The same provision is detailed in the "Command of the Minister of Justice on the work of IMEI".[62] The Hungarian Parliamentary Commissioner has criticized this provision. A report written by the Commissioner in 1999 stated, "if the court contacts IMEI to have the detained person present at a [...] trial, the chief doctor determines whether the person should be present at court or not, based on the patient's mental state, and informs the court." The Ombudsman concluded that because the Ministerial Command gives the decision to one person without any possibility of external control or remedy, there is a danger of violating the patient's constitutional right to a judicial hearing.

7.2. LEGAL CRITERIA

The Code of Criminal Procedure states that an annual review of IMEI detention is necessary, but does not set out what it is that needs to be decided: "Forensic compulsory treatment must be termi-

[60] Decree of the Ministry of Justice number 11 of 1979 Provision on Punishment and Law Enforcement, 84/A. § (4). See Appendix 1.
[61] In three cases before the Supreme Court the court-appointed expert had recommended that the patient attend court review hearings. In three cases the patient's presence at such hearings was denied by IMEI for "practical" or expedi-ential" reasons. The Supreme Court found these procedures to be unlawful and ordered new review procedures. See Court decisions: BH 1977.537., BH 1978.12., and BH 1989.437.
[62] Section 13 § a of 36/2003. (X. 3.) Decree of the Ministry of Justice (hereinafter: "IMEI Decree").

nated if its necessity no longer exists".[63] However, there are no guidelines about *how* the judge should decide on the existence of the necessity to continue with the detention and forced treatment.

Legislative clarity is of fundamental importance in a democratic society, and is required by international law. As the European Court of Human Rights stated in the case of Kawka v. Poland,[64]

> *[w]here deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law should be clearly defined, and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention…*

Without clear legal criteria about the justification for continued deprivation of liberty, judges are free to make arbitrary decisions or to show total subservience to the psychiatrist-experts. Judges accept psychiatric opinion without question, allowing the psychiatrist to replace the judge as the decision maker. The lack of legal guidance of the substance of these hearings violates the obligation under Article 5 ECHR that detention is "in accordance with a procedure prescribed by law".[65]

When MDAC asked attorneys who represent patients in IMEI review hearings, "How do judges decide whether or not to order continued detention", the standard answer was: "The judge's decision always follows the experts' opinions".[66]

The following case is an example of a typical judgment. In this case the patient committed attempted murder in 1999 and was sent to IMEI. At his review hearing in April 2003, the judge's reasoning when ordering continued detention was as follows:

> *The patient is progressing. He has been in IMEI for some years. He has never been on adaptive leave.*[67] *The decision may be appealed. Next year the court will again discuss his case.*[68]

It is impossible to know from this brief statement what test the judge applied when making the decision. In another case, the judge referred to a risk of future criminality:

> *According to two professional opinions, the forensic compulsory treatment must be maintained. It would be inhuman for it to be discontinued – he may commit a criminal offence.*[69]

In another case, a different judge said:

> *It is necessary to wait until the patient's illness is better than now, because it would not be good for the patient and his family if something happened again.*[70]

[63] Paragraph 74(3) of the Criminal Code (Act No. 4 of 1978).
[64] Application No. 25874/94, judgment 9 January 2001 at paragraph 49.
[65] Article 5(1) ECHR.
[66] Interview with attorney who represents IMEI patients, 30 July 2003.
[67] Adaptive leave is explained in decree number 11 of 1979 Provision on Punishment and Law Enforcement, 84/A. If the forensic compulsory treatment began at least one year before, the patient is allowed to have "adaptive leave" by the director's permission. This maximum time for adaptive leave is 30 days, but it is possible to extend this time. According to the IMEI Decree, there must be a designated person who agrees to care for the patient and this person has to make a written statement to the court confirming that the patient can spend the adaptive leave at that person's home. The court must take into consideration the patient's condition, the host's social circumstances and the original offence. During the adaptive leave the patient must see a doctor within the first 48 hours. Thereafter, the doctor decides how often the patient has to be seen, but no less than every 2 weeks. IMEI retains medical control, but outside Budapest the patient must go the local mental health clinic. IMEI identifies the doctor who will see the patient and also informs the local police station. The mental health clinic must inform IMEI if the patient's condition deteriorates.
[68] Court hearing observed by MDAC on 28 February 2003. MDAC reference number 43.
[69] Court hearing observed by MDAC on 10 September 2002. MDAC reference number 21.
[70] Court hearing observed by MDAC on 17 September 2002. MDAC reference number 24 .

The judge did not say more about this "something" that may happen; presumably it was a reference to future criminality. The judge did not say whether the risk of the criminal offence is a high one, or merely a distant possibility (as it must be for anyone who has committed an offence, and indeed for all human beings). According to a prosecutor who represents the State in such proceedings, "judges never examine ... whether there is a higher or lower risk of commiting another crime. If there is any risk, the compulsory forensic treatment must be maintained".[71]

In a different case on the same day, the same judge as the previous example seemed to suggest that the patient – in IMEI since 1998 – had more chance of being released if he obeys internal rules in IMEI. This allegation of disobedience was contested by the patient, but not followed up by the judge or attorney. When announcing the decision that the detention will continue, the judge's reasoning was as follows:

> *He has been in IMEI for years. The family looks forward to meeting him. There are some problems about the treatment in IMEI. The patient does not want to follow the rules or the medical treatment in IMEI. It's certainly difficult to follow the rules in IMEI but he should follow them. Now the forensic compulsory treatment is not dismissed. Next year we will discuss his case again, and it would be great to have adaptive leave.*[72]

The judge failed to explain which rules were not followed, and why this was significant in assessing whether the patient's mental disability was of sufficient "kind or degree warranting compulsory confinement", as required by the ECHR.[73]

7.3. LENGTH OF HEARINGS

IMEI hearings observed by MDAC averaged just over seven minutes from the time the judge opened the hearing to when the judge finished reading the judgment. Exact figures for each hearing observed can be seen at Appendix 2, below. Some hearings were over within three minutes. During this time judges were expected to hear representations from the prosecutor, the patient and/or his or her attorney, to question the medical opinion, announce the judgment and give reasons. Given the time spent on each case, the judicial investigation is best described as superficial.

In several of the 60 cases observed by MDAC, patients stated their objections to detention,[74] but in all three cases judgments of continued detention were made without asking further questions, as the following courtroom dialogue demonstrates:

Judge How are you feeling? I know he does not speak, that's why it is not necessary to speak. There is hope you'll feel better! There are three words which are important: medication, doctors and nurses. I read that your guardian died. Are there any other relatives?

The relative I have applied to be the guardian. My father was the guardian but he died. The patient is my brother.

Judge The patient is taken care of in IMEI and there is some hope to leave it. [...] The forensic compulsory treatment is maintained. Did you understand?

Patient (quietly) No, I want to appeal [the opinions of the psychiatrists].

[71] MDAC interview with a prosecutor, 29 July 2003.
[72] Court hearing observed by MDAC on 17 September 2002. MDAC reference number 25.
[73] Winterwerp v. the Netherlands *op cit,* paragraph 39.
[74] See Appendix 3 of this report for more information.

Judge OK. You do not want to appeal it.

Patient No, I do want to appeal the decision.

Judge According to advice from two professionals the forensic compulsory treatment must be maintained. It would be inhuman to discontinue it: he may commit an unlawful act.[75]

It is questionable whether the court takes into account the patient's view at all. In the court hearings observed by MDAC, patients' opinions were rarely solicited or considered, and most of the hearings were conducted in a rushed manner with the judge and patient's attorney not questioning anything said by the professionals in their reports, and not taking seriously anything said by the patient.

7.4. SOCIAL WORK INPUT

In none of the IMEI hearings does the judge have a report setting out relevant social circumstances of the patient. In many European States, a social work report informs the court about the alternatives to the current detention, such as transfer to a hospital of a less restrictive regime, or discharge to family members. According to the director of IMEI, the IMEI psychiatric report includes information about options for the patient's discharge only when the psychiatrist's medical opinion is that the person should be discharged. In other words, the court only has information on discharge when all the professionals are agreed. If the patient – contrary to psychiatric opinion – would like to be released from IMEI, the court does not have information about alternatives to detention. This clearly puts the patient at a disadvantage and compels the court to agree with the recommendation of the psychiatrist-experts.

As the following courtroom dialogue demonstrates, patients are disadvantaged because the court lacks comprehensive information and is forced to take a defensive decision, namely to order continued detention:

Judge Does anybody visit you?

Patient My brother.

Judge How often does he see you?

Patient Every month.

Judge Have you ever been on adaptive leave?

Patient No.

Judge Do you know anything about your social care home placement?

Patient I have had a room since 1 October 2002.

Judge I can read that your room was applied for in September 2000. Have they already arranged everything?

Patient Yes, I believe so.

[75] Court hearing observed by MDAC on 10 September 2002. MDAC reference number 21.

Judge This is very interesting because I cannot see any confirmation about your social care home placement in your records.

Patient I was told that I had a room in a social care home.

The judge ordered continued compulsory detention, but stated that he would write a letter to the social care home to ask about a space for this patient.[76]

7.5. LEGAL REPRESENTATION

Attorneys who represent IMEI patients at annual review hearings do not provide meaningful representation. They do not meet their clients before the court hearing; they say things to the court which they have not been instructed to say by their clients; they do not challenge evidence even when their clients have said to the court that they do not agree with the evidence; and they do not challenge any aspect of the treating psychiatrist's or the court-appointed psychiatrist's report.

This utter failure to provide meaningful representation is a violation of lawyers' own obligations under Hungarian law. Because the State is legally obligated to ensure representation, it also represents a violation of Hungary's obligations under international law.

7.5(a) Attorneys do not meet clients before the court hearing

In nearly every hearing observed, MDAC researchers noted that the court-appointed attorney failed to recognize his or her own client, a strong indication that they had not previously met. Instead, the attorney relied on the accompanying IMEI warden to point out their client when the attorney was asked by the judge to bring the client into the courtroom. One IMEI warden told MDAC "most of the patients are aware that they have an attorney but the attorney never speaks with them."[77] A judge who hears IMEI cases confirmed this practice:

If the patient has an attorney appointed by court they do not meet before the hearing. They only meet if the patient specifically requests it.[78]

A court-appointed attorney who represents patients at IMEI confirmed this:

Patients only find out who their attorney is at their hearing, not before. Attorneys don't speak to clients before hearings. The first time that I know if a patient wants to leave is when the judge asks them in court.[79]

If attorneys do not meet their clients before the court hearings there is little chance that the attorney will be in a position to pursue any form of advocacy on behalf of the client.

7.5(b) Attorneys make representations without taking instructions from their client

The following courtroom dialogue shows how the patient's attorney makes statements to the court without taking instructions from his or her client. It was clear in this case that the attorney had not met his client directly before the hearing (quite likely they had never met), and so the attorney's concluding statement cannot be taken as reflecting the client's wishes:

[76] Court hearing observed by MDAC on 22 October 2002. MDAC reference number 31.
[77] Interview at Budapest Central Court, 4 April 2002.
[78] Telephone interview with judge who presides over IMEI review hearings, 24 July 2003.
[79] Interview, 14 June 2001.

Judge You do not do the therapy work, do you?

Patient (quietly) No, I just clean.

Judge Why don't you want to take part in it?

Patient I don't know.

Judge What do you do all day?

No answer.

Judge Don't you want to speak with me?

No answer.

Patient's attorney The compulsory treatment must be maintained.[80]

7.5(c) Attorneys do not challenge evidence even when the client disagrees with the evidence

Attorneys representing patients do not challenge facts even when it is clear that their client does not agree with what is being said. In this example, intervention by the patient's attorney could have clarified factual disputes. Instead, the attorney was silent throughout:

Judge You have a very mixed history! How are you feeling now? Why did you assault the orderly last year? You do not follow the commands of the orderlies? Why?

Patient That's not true, I try to follow the commands.

Judge Do you keep in touch with your family?[81]

Neither the judge nor the patient's attorney further explored the issue of whether the patient follows the commands of the orderlies. A person with mental health problems or intellectual disabilities who may be receiving strong medication requires the assistance of an advocate in order to represent his or her opinions. The hearings observed by MDAC show that patients are provided with attorneys who do not pay attention to what their clients say in court, and do not assist their clients to marshal arguments. As the following exchange from a court hearing demonstrates, the patient's attorney did nothing when the client expressed his unambiguous wish to be discharged from IMEI. The "tense" client was therefore unable to explore crucial issues such as being discharged:

Judge How are you feeling now?

Patient I'm fine. But I am tense.

Judge Because of the court hearing?

Patient Yes.

Judge How is your relationship with the others at the institution and what are you doing there?

Patient I read, watch TV, clean. I have been here for 6 years and 5 months.

[80] Court hearing observed by MDAC on 22 October 2002. MDAC reference number 29.
[81] Court hearing observed by MDAC on 17 September 2002. MDAC reference number 25.

Judge What about friends?

Patient Yes I have friends.

Judge What do you do with your friends?

Patient We chat, play cards.

Judge Would you like to say anything else?

Patient No.

Judge The psychiatric reports are very negative.

Patient These are really very negative. I feel now that I could live at home and I could see the doctor.

Judge Have you ever been on adaptive leave?

Patient No.

Judge According to the professional the forensic compulsory treatment is maintained.[82]

The following dialogue from a different case is another example of a person expressing a clear wish to leave IMEI, a central issue that was not explored by the attorney, who merely agreed with the psychiatric report:

Patient What sort of social care home will I go to?

Judge IMEI will look for a home for you.

Patient When will I move there?

Judge When your illness improves you will move there.

Patient When will the next hearing be held?

Judge Every year there is a hearing. If the professionals advise it, you can leave the institution. Do you understand?

Patient Yes.

Judge Would you like to say anything?

Patient No.

The patient's attorney and prosecutor agree with the psychiatrist-experts' opinion that compulsory treatment should be maintained.[83]

If facts remain unchallenged and unexplored, the judge has only one version of events upon which to decide to continue or discontinue detention.

[82] Court hearing observed by MDAC on 22 October 2002. MDAC reference number 31.
[83] Court hearing observed by MDAC on 11 November 2002. MDAC reference number 33.

7.5(d) Attorneys always accept the psychiatric opinion

Another way in which attorneys neglect their duties is that they do not challenge the psychiatric opinions. In 55 out of 57 cases observed by MDAC where the judge ordered continued detention, the patient's attorney automatically conceded acceptance of the medical reports and the prosecutor's recommendations to continue the detention of the patient, irrespective of what the patient said or wanted.[84] In all cases there was ultimately total agreement between the patient's attorney, the prosecutor, the treating psychiatrist, the court-appointed psychiatrist and the judge. This brings into question the roles of all of these professionals.

In any circumstances one would expect the opinions of expert witnesses to be highly persuasive in the courtroom. It would therefore seem obvious that a patient's strategy to persuade the judge to order release is to vigorously challenge the psychiatric reports. However, in IMEI hearings the expert opinions are conclusive, and go legally unchallenged without exception. In none of the 60 court hearings observed by MDAC did the patient's attorney make any reference to the contents of either the treating psychiatrist's or the court-appointed psychiatrist's report. Indeed, MDAC observers could not discern that the attorney had even read the psychiatric reports, or had asked the client his or her opinions about them. In several cases observed by MDAC the patient's attorney did not have any papers in front of him or her. Answering MDAC's question "Do you meet clients beforehand to talk with your client about whether s/he wants to challenge any inaccuracies in the psychiatric reports?" one attorney answered:

> *Well, I meet them at the court right before the trial. But I have never experienced that any of my clients would have wanted to challenge the experts' reports. And as a [patient's attorney] I would never suggest anything else but the opinion of the psychiatrists' because it is such a big responsibility. You know… what if a released person commits another crime?* [85]

This attitude appears to be quite common – a mix of paternalism (the attorney knows what is best for the client) and attorney-as-officer-of-the-court (that is, the attorney is acting in the best interests of society as a whole). In neither role does the attorney act as an advocate advancing the voice of the client. Asked whether it would be better for an attorney to talk to the client about the reports before the hearing instead of in the stressful courtroom environment, an attorney answered:

> *Of course it's stressful. But I have to say that these people are ill. They usually tell their opinion in an obvious way because of their mental state.*[86]

Another attorney echoed this view, and when asked how the patient is expected to challenge the psychiatric opinions without seeing the reports before the court hearing, the attorney answered: "these people with diseased minds usually know that they're sick. They want to take the medication."[87] Moreover, attorneys believe that even if patients and attorneys were given the psychiatric report beforehand, they would still not be challenged. There remains a general deference to medical opinion, which is considered unquestionable truth.

Interestingly, the IMEI director claimed that attorneys *do* read the psychiatric reports before the hearings, but conceded that they do not meet the clients beforehand. The reason given for not meeting clients was that the attorney reads in the psychiatric reports that the client has a *diseased* mental state, the implication being either that such a person's fate has already been decided, or that a person with a "diseased mind" does not need legal representation. The reality, however, is that attorneys neither read the reports nor meet their clients.

[84] In the other two cases the judge asked the patient whether he wanted to speak with his attorney, and the judge allowed one or two minutes for the attorney to speak to his or her client. In these cases the patients (through the attorney) expressed a wish to leave IMEI, but in neither case did the attorney refer to or challenge the psychiatric reports. In these two cases the judge asked no further questions, nor did the attorney pursue any active advocacy on behalf of the client expressing a wish to leave IMEI. The judge decided on continued detention in both these cases.

[85] Interview with attorney who represents IMEI patients, 30 July 2003.

[86] Interview with attorney who represents IMEI patients, 28 July 2003.

[87] Interview with attorney who represents IMEI patients, 29 July 2003.

As the European Court of Human Rights has said, "the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with."[88] If the patient's state-appointed attorney never reviews or challenges the basis on which an individual's continued detention hinges, non-compliance with the ECHR is inevitable.

7.6. JUDGES' ACCEPTANCE OF PSYCHIATRIC OPINION

In every case observed by MDAC the judge accepted the agreed conclusions of the treating and court-appointed psychiatrists. In none of the 60 cases observed did the judge ask any question about the psychiatric reports. A possible explanation of why no question was asked is that neither the treating psychiatrist nor the court-appointed psychiatrist was ever present in court. If the judge wanted to ask the psychiatrists a question the judge would have had to adjourn the case, instruct the psychiatrist to attend, and resume the case at a later date. This did not happen in any of the 60 hearings observed. As a spokesperson of the Hungarian Parliamentary Commissioner commented, these hearings are purely "administrative and bureaucratic".[89]

In some cases, the judge did not ask the patient any questions at all. In most other cases the judge asked the patient some questions about general health, and whether the patient accepted the opinions expressed in the medical reports. Judges often asked the patient questions such as "How are you feeling today?" "What are you doing in IMEI?" or "Does anyone visit you?" The judge asks these questions in a kind, but purely cursory way. These questions are of no relevance to the matter at hand. They do not allow the judge to gain a greater understanding of the patient's mental state, opinion about the psychiatric reports, or views on discharge.

In summary, the conduct of judges and attorneys and the absence of expert witnesses reveal these hearings to be a sham. The presence of the attorney added nothing to the protection of his or her client because no attorney attempted any form of advocacy; they play a purely passive and cosmetic role. Judges too, failed to protect the rights of people in their courtrooms.

[88] Herczegfalvy v. Austria, *op cit*, paragraph 82.
[89] Interview with Dr. Julia Szilágyi , Office of the Hungarian Parliamentary Commissioner, 29 July 2003.

8. FAILINGS OF JUDGES AND ATTORNEYS

This section summarises the international and Hungarian legal obligations and ethical standards of judges and state-appointed attorneys,[90] concluding that the conduct observed in 60 hearings reveals systemic violations of international and Hungarian law.

8.1 EUROPEAN CONVENTION ON HUMAN RIGHTS

The under-performance of attorneys during mental disability detention cases is certainly an issue within the ECHR. The European Court of Human Rights has stated that, "where the deprivation of liberty is at stake, the interests of justice in principle call for legal representation".[91]

In one case at the European Court of Human Rights the applicant suffered from a mental disability that prevented him from conducting court proceedings satisfactorily, despite his previous legal training. The circumstances of the case therefore dictated the appointment of an attorney to assist him in the proceedings concerning the periodic review of the lawfulness of his confinement. The judge had assigned an attorney at the outset of the proceedings but the attorney had played no role in the proceedings. The European Court of Human Rights found a violation of Article 5(4) of the ECHR and stressed that the mere appointment of an attorney to the case does not ensure that the client will receive effective legal assistance.[92] In another case, the European Court of Human Rights held that whilst the conduct of a person's defense is a matter for the person being represented and that person's attorney, it is the *judge* who retains overall responsibility for ensuring the fairness of the legal proceedings.[93] Failure of the judge to exercise such authority is a violation of Article 6 (the right to a fair trial) of the ECHR.

Legal representation must be "practical and effective".[94] The European Court of Human Rights has ruled that in criminal cases it is for the authorities responsible for granting legal assistance (in this case, the judge) to ensure that attorneys are capable of effectively defending the case. The European Court of Human Rights emphasised that:

> *A State is responsible for ensuring that legal representation is provided, and that the representation is adequate. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective*.[95]

In the case of Artico v. Italy, the Court stated:

> *[…] mere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations.*[96]

The Court went on to say that if the State's obligation finished with merely "nominating" an *ex officio* attorney, "in many instances free legal assistance might prove to be worthless".[97] This is the current situation with IMEI hearings.

[90] It must be remembered that IMEI patients are technically able to hire an attorney on a retainer, but the overwhelming majority of people in IMEI rely on the (lack of) services of an ex *officio* attorney.
[91] Benham v. the United Kingdom, (1996) 22 EHRR 293.
[92] Pereira v. Portugal, Application No. 44872/98, judgment 26 February 2002.
[93] Cuscani v. the United Kingdom, Application No. 32771/96, judgment 24 September 2002.
[94] Artico v. Italy, (1981) 3 EHRR 1.
[95] "Belgian Linguistic" case, judgment of 23 July 1968, Series A no. 6, p. 31.
[96] Artico v. Italy, (1981) 3 EHRR 1, paragraph 33.
[97] *Ibid.*

The law mandates the presence of an attorney in IMEI hearings.[98] If the State is obliged to pay for an attorney to represent a vulnerable person in proceedings at which that person's liberty is at stake, there must be a reciprocal obligation on the State to ensure that the legal representation is effective. In all IMEI hearings observed by MDAC where the judge ordered continued detention, the patient's attorney acted in a grossly substandard manner. As the Artico judgment makes clear the authorities – including judges – must dismiss under-performing attorneys or oblige them to do their jobs adequately in order that rights are protected.

8.2 CODE OF CRIMINAL PROCEDURE

General Hungarian criminal law rules apply to prosecution of persons later deemed unsuitable for incarceration in prison due to mental disability. The Code of Criminal Procedure sets out standards for attorneys who represent clients within criminal proceedings. IMEI detention review proceedings are considered "criminal proceedings" for the purpose of applying the Code of Criminal Procedure. The Code in force during the time that MDAC observed all but one of the cases described in this report states that an attorney is obliged to

a) use every legal instrument and method for defense in the interest of the defendant without delay
b) give information to the defendant on the legal instruments of defense and his or her rights
c) assist in the exploration of facts that may discharge or decrease the responsibility of the defendant.[99]

The new Code adds the additional requirement that an attorney "contact the defendant without delay." The Code of Criminal Procedure clearly mandates an attorney to be active to protect the interests of the client, something that does not happen in practice.

8.3 ATTORNEYS ACT 1998

The Hungarian Attorneys Act (1998)[101] – a law which governs court-appointed attorneys as well as those retained privately – states that "the appointed attorney is obliged to conduct the case, to be present according to the summons of the authority and initiate contact with the charged person or, if the nature of the case makes it possible with the represented person."[102] The Attorneys Act provides that an attorney commits a disciplinary offence if he or she fails to perform his or her duties under the law or the Attorneys' Ethical Code.[103] Despite a demonstrated record of poor performance, court-appointed attorneys are seldom the subjects of disciplinary complaints. One report suggests that judges do not want to damage the collegiality towards attorneys by initiating disciplinary proceedings against them.[104]

[98] Act 1 of 1973, Code of Criminal Procedure, Section 43. See Appendix 1 of this report.
[99] Section 51, Act 1 of 1973 Code of Criminal Procedure (in force until 1 July 2003). See Appendix 1 of this report.
[100] Section 50 § (1) Code of Criminal Procedure (Act 19 of 1998).
[101] 1998. evi XI.tv. See Appendix 1 of this report.
[102] Article 31(2).
[103] See chapter 8.5, below.
[104] András Kádár, Márta Pardavi and Zsolt Zádori "Access to Justice Country Reports: Hungary", Project on promoting access to justice in central and eastern Europe, Public Interest Law Initiative, 2002, page 31.

8.4 MINISTERIAL DECREE ON ATTORNEY'S PAY

Perhaps the most credible explanation for attorneys' performing below minimum requirements is the poor pay. Following entry into force of a ministerial decree,[105] from 1 January 2003 the hourly rate for lawyers appointed by courts has been increased to 2,000 Hungarian Forints (HUF). This is approximately 8 euro), with 1,000 HUF (approximately 4 euro) paid for pre-trial meetings with the client.[106] The Budapest Bar is concerned that these rates are still unrealistically low, as they compare to market fees in excess of HUF 10,000 (40 euro) per hour.[107]

On top of this extremely low fee, time spent on preparing the case and conducting any legal research is not funded. Travel time to court and any waiting time at court are not funded, although travel expenses (e.g. metro or bus fare) are paid. There is no system in place for attorneys to review the evidence in advance of the hearing. Bearing in mind the overheads of running a law office and the associated high income taxes, there is little incentive for attorneys to represent people with mental disabilities in these cases.

8.5 ATTORNEYS' ETHICAL CODE

The Budapest Bar Association[108] has issued an Attorneys' Ethical Code, which is binding on every member of the Bar in Budapest. Paragraph 3(3) of the Code states that "The attorney should use every legal means to enforce his or her client's interests. He or she should conduct the case according to the facts, legally prepared and according to his or her client's presentation of facts. The defending attorney is bound to the presentation of facts of his client."

It is expected that attorneys meet their clients before the hearings. Paragraph 8(4) makes this clear: "after receiving the client's instruction or the appointment, the authorization should be attached without delay and the attorney should present him or herself at the appointing authority, should ask for information and initiate contact with the detained client without delay. During the period of the restriction of personal freedom the defending attorney should be in contact with the charged person as it is necessary." The attorney should "reveal all the relevant circumstances of the case, inform the client of the possible outcomes of the case, the procedures that should be adopted and the necessity of getting evidence" (paragraph 12(2)). The Code warns against losing the client's general confidence in attorneys "due to [...] the lack of information or personal contact". All of these general provisions apply to IMEI hearings.

The Budapest Bar Association confirmed that it has not studied any aspect of the review hearings for persons with mental disabilities convicted of crimes, nor has the Bar Association ever disciplined any attorney appearing in these hearings.[109]

[105] Decree 7/2002. (III.30.) promulgated by the Ministry of Justice in March 2002.

[106] Prior to January 2003, an attorney appointed by the court to represent an IMEI patient at a hearing reviewing detention was paid 1,000 HUF (approximately 4 euro) for the first hour or part of an hour spent in court, and 500 HUF (approximately 2 euro) for any additional hour. See Decree 1/1974 (II. 15) of the Minister of Justice, on the Fees and Expenses of Defense Counsel appointed in Criminal Procedures. The structure of payment provided no incentive for lawyers to offer anything other than an absolute minimal level of service and represented an in-built disincentive for attorneys to take time over cases and to carry out appropriate levels of advocacy. No money was provided for pre-hearing conferences, at which an attorney could go to meet the client and take full instructions.

[107] Pesti Űgyvéd (Budapest Bar Association professional journal), 2002/6, p.1-2.

[108] As all court reviews of IMEI detention take place in the Capital Court, all court-appointed attorneys in such cases belong to the Budapest Bar.

[109] Telephone interview with dr. Bánáti János, President of the Budapest Bar Association (Budapesti Ügyvédi Kamara), 24 July 2003.

8.6 ATTORNEYS' CONCEPTION OF THEIR ROLE

The under-performance of attorneys in IMEI review hearings may also be explained because judges and attorneys regard the attorney's presence as merely fulfilling a pro forma legal requirement. When MDAC asked attorneys the question, "What role do you play in IMEI review hearings?" a standard response was, "It is basically a legal guarantee. The prosecutor and the patient's attorney must be present at court proceedures."[110]

Some attorneys are not aware of how or why they should meet their clients before a court hearing. Answering MDAC's question about why attorneys rarely meet their clients, one *ex officio* appointed attorney explained, "I do not really know if attorneys are allowed to go to IMEI."[111] It is alarming that an attorney does not know that he or she can go to the State institution where the client is detained.

As has been said in relation to criminal proceedings, "in practice the Hungarian system of *ex officio* [court-appointed] defense is often dysfunctional, due to shortcomings of the legislative framework, the failure to provide adequate payments and the negligence on the part of the authorities and… the attorneys themselves."[112] Individual attorneys must bear responsibility under Hungarian law for failing to provide adequate counsel; and the State must bear responsibility under Hungarian and international law for creating and perpetuating a system of inadequate representation.

[110] MDAC interview with court-appointed attorney who represents IMEI patients, 30 July 2003.
[111] MDAC interview with court-appointed attorney who represents IMEI patients, 30 July 2003.
[112] András Kádár, Márta Pardavi and Zsolt Zádori "Access to Justice Country Reports: Hungary", Project on promoting access to justice in central and eastern Europe, Public Interest Law Initiative, 2002.

9. ANNUAL REVIEW HEARINGS – PSYCHIATRIC OPINIONS

As this report has already pointed out, the recommendations of the IMEI psychiatrist and the court-appointed psychiatrist seem to be dispositive in the review hearings. Apart from the abdication of decision-making authority by the judge, MDAC has identified four systemic problems with the psychiatric opinions, each of which will be addressed in turn:

9.1 psychiatric reports not sent to patient or patient's attorney
9.2. reports not available free of charge
9.3 court-appointed psychiatrists always agree with treating psychiatrists
9.4 psychiatrists never present in court

9.1 PSYCHIATRIC REPORTS NOT SENT TO PATIENT OR PATIENT'S ATTORNEY

The system puts the patient in a weak position because the psychiatric reports are not sent automatically to the patient or his or her attorney. The psychiatric reports are sent to the court, and the court automatically sends the reports to the prosecutor's office. In practice, this means that the patient does not see the reports written about him or her until the moment of the IMEI hearing when the report – or a summary – is read aloud in open court. If the attorney wants to read the reports before the court hearing, he or she has to make a special trip to the courtroom to obtain the reports, something that is not included in the attorney's fee.

It seems illogical not to have a mechanism for the authorities to share information written by the treating psychiatrist and the court-appointed psychiatrist. If a patient has any chance of arguing against the psychiatric reports, the patient needs to know what they say. Finding out during the court hearing itself is far too late, leaving the patient and his or her attorney with no time to mount a counter-argument, or to bring in other evidence to challenge the psychiatric reports. This procedure violates the provision of the ECHR that mandates the "equality of arms" of the detaining authority and the detained person.[113]

9.2 REPORTS NOT AVAILABLE FREE OF CHARGE

In addition to the burden of physically going to the courtroom for the psychiatric reports, an attorney must pay for the reports. No such charge is levied on the prosecutor. This is a factor that goes some way to explaining why patients' attorneys very rarely read the reports before the hearing. An attorney who regularly represents patients confirmed this practice:

> *I don't receive the psychiatric reports before the court hearing. If I wanted the reports I would have to go to the court and pay 100 Hungarian Forints [approximately 40 euro cent] for each page. During the court hearing the judge introduces the reports, and if the patient disagrees with the report, he can tell it to the judge during the hearing.*[114]

While the attorney's failure to obtain the reports might constitute actionable malpractice in many countries, the Hungarian government must bear ultimate responsibility for imposing financial and logistical barriers to proper case preparation.

[113] See chapter 6, paragraph 11, above, "An attorney representing a patient must have access to information on the patient from the hospital".
[114] Interview with attorney who represents IMEI patients, 28 July 2003.

9.3 COURT-APPOINTED PSYCHIATRISTS ALWAYS AGREE WITH TREATING PSYCHIATRISTS

Perhaps as a direct result of the lack of independence, the court-appointed psychiatrist never disagrees with the treating psychiatrist. In every hearing observed by MDAC there was no discernable difference between the recommendations of the treating psychiatrist and the court-appointed psychiatrist. This brings into question the purpose and role of the court-appointed psychiatrist. MDAC interviewed an experienced psychiatrist who has been a court-appointed psychiatrist in IMEI cases for many years. When MDAC asked this person, "what is the purpose of the court having two psychiatric opinions in IMEI review cases?" the answer was:

> *I don't know the exact purpose. In my opinion it has absolutely no sense, because in much more complicated civil cases only one psychiatric opinion is enough.*[115]

This psychiatrist reported that she has never disagreed with a treating psychiatrist's recommendation to continue a person's detention. There was no suggestion that the purpose of a second opinion is to provide the court with an independent check on the accuracy of the treating psychiatrist's opinion, but rather an implication that the psychiatrists in IMEI are professionals who are entitled to deference.

Despite many patients having complex medical, social and criminal histories, out of 60 observed cases there was not one professional disagreement between the psychiatrists. The director of IMEI told MDAC that to the best of his knowledge, the last time the court-appointed psychiatrist disagreed with the treating psychiatrist was twenty years ago.[116]

9.4 PSYCHIATRISTS NEVER PRESENT IN COURT

The Code of Criminal Procedure states that "questions may be posed to the expert after presenting his report,"[117] but it is impossible for such questions to be posed if the person is not in court. In all of the hearings that MDAC observed neither the treating psychiatrist nor the court-appointed psychiatrist were present in court. As a result, judges and attorneys did not pose any questions or challenge the medical evidence on which the patient's freedom hinged, leaving the patient unable to challenge psychiatric opinion with which he may disagree. In no case were proceedings adjourned to allow questions to be put to the psychiatrist-experts. Even in cases where the patient questioned the medical opinion and the allegedly brief way that the psychiatrist met with the patient, neither the patient's attorney nor the judge took the issue any further, as this courtroom exchange shows:

[115] MDAC interview with court-appointed psychiatrist, 12 August 2003.
[116] MDAC interview with IMEI Director, 25 July 2003.
[117] Act 19 of 1998, Code of Criminal Procedure, Section 110(1). This section is identical to Section 76(1) of Act 1 of 1973 Code of Criminal Procedure, the provision which was in force until 1 July 2003. See Appendix 1 of this report.

Judge Would you like to say anything here at the court?

Patient Yes. I am here at the court and they say I am mad. I am 76 years old. I would like to ask for help here because they said that I am mad which is a lie. The psychiatrist who examined me asked me: "How are you uncle László?"[118] That was it!

Neither the judge nor the patient's attorney responded. There was a short break.

Judge The forensic compulsory treatment is continued. According to the professionals'opinion, he may commit an unlawful act.[119]

In the following case the judge read aloud the court-appointed psychiatrist's report. The report stated that the patient's mother indicated in a letter that the mother thought the patient should live at her home. The judge asked just one question during the hearing:

Judge Do you have an occupation in IMEI?

Patient Actually I do the cleaning. I'm feeling better and I'm progressing. The doctors don't let me go on adaptive leave. I would like to see my mother. I would like to ask another expert because the expert opinion is false.

Following the patient clearly challenging the medical opinion, the patient's attorney said to the court: "According to the professionals' advice, the forensic compulsory treatment must be maintained". The judge then ordered continued detention.[120]

[118] The name of the patient has been changed.
[119] Court hearing observed by MDAC on 11 September 2002. MDAC reference number 23.
[120] Court hearing observed by MDAC on 17 June 2003. MDAC reference number 54.

10. CONCLUSIONS AND RECOMMENDATIONS

The rights of IMEI patients under Articles 5 and 6 of the European Convention on Human Rights, and their rights under the Hungarian Constitution and other domestic laws, are systemically violated by the numerous flaws in the Hungarian detention review procedure and practice. People sent to IMEI may be incarcerated for many years without knowing when they will be released. The annual review is the only opportunity for detainees to test the lawfulness of detention. The Hungarian legal system fails to provide adequate court reviews for individuals detained in IMEI. The opinions of psychiatrists remain unchallenged, the judge is not presented with alternatives to detention, and the patient is not afforded an opportunity to be heard in a meaningful way.

The Mental Disability Advocacy Center respectfully requests that the Hungarian government implement the following measures at the earliest opportunity:

PRESENCE OF IMEI PATIENT AT COURT HEARINGS

Patients may not be present at their annual review hearings because the director of IMEI has the power to decide that the patient should not attend court. Such discretionary and unchecked administrative power may well cause a contravention of Hungarian law and of fair trial rights guarantees by Articles 5 and 6 of the ECHR.

MDAC RECOMMENDATION 1:

Modify the Decree of the Ministry of Justice number 11 of 1979 § (4) and the Ministry of Justice Decree 36/2003. (X. 3.) 13 § (1) to remove the power of the IMEI director to prevent a patient from attending their annual court review, and give this power to the judge.

LACK OF LEGAL CRITERIA

It is not clear what in law a judge must decide during IMEI annual review hearings. Apart from always following the psychiatrists' opinion, judges do not apply a standard test to their decision-making. Legislative clarity is required by the ECHR and is especially important where a person's liberty is in question.

2. MDAC RECOMMENDATION 2:

Amend section 74(3) of the Criminal Code (Act number 4 of 1978) to define the legal criteria for detention/release in IMEI court reviews. For example, the Criminal Code could adopt the standard used in Hungarian law governing civil commitment, "The patient's release must be ordered unless the hospital authority satisfies the judge that the person has a mental disability of a nature or degree which directly endangers his or her own, or another person's, life, physical integrity or health."

PSYCHIATRIC REPORTS NOT AVAILABLE

MDAC found that the reports of the psychiatrist-experts are, in practice, not available to the patient or his or her attorney. Without timely access to the reports, the patient cannot challenge their content at the hearing in a meaningful way.

MDAC RECOMMENDATION 3:

Amend the Code of Criminal Procedure to require the relevant authorities to send to the patient in IMEI and the patient's attorney copies of the court file (including all expert opinions) without additional cost, and without delay.

COURT-APPOINTED PSYCHIATRISTS ALWAYS AGREE WITH TREATING PSYCHIATRIST

In every case observed by MDAC, the court-appointed psychiatrist always followed the opinions of the treating psychiatrist. This brings into question the purpose of the court-appointed psychiatrist. The judge never hears differing professional opinions. Although the patient has a theoretical opportunity to solicit the opinion of a psychiatrist of his or her choosing, this never happens in practice.

MDAC RECOMMENDATION 4:

Amend the Code of Criminal Procedure to allow patients to use an expert of the patient's choosing. Make available to all patients and their attorneys a list of qualified psychiatrists, and organize a system whereby these experts can be paid by the State. The system must include a provision whereby, if the patient is unable to instruct an expert of his or her choosing, an *independent* psychiatrist should be instructed to provide an independent opinion.

PSYCHIATRISTS ABSENT FROM COURT

In all of the hearings observed by MDAC neither the treating psychiatrist nor the court-appointed psychiatrist were present in court. It was therefore impossible for judges, patients or their attorneys to question or challenge the medical evidence on which the person's detention/liberty hinged.

MDAC RECOMMENDATION 5:

Amend the Code of Criminal Procedure to make obligatory the presence of the IMEI psychiatrist and the patient's chosen or court-appointed independent psychiatrist at court hearings.

JUDGES FAIL AS HUMAN RIGHTS GUARANTORS

The average duration of IMEI review hearings observed was just over seven minutes from the time the judge opens the hearing to when the judge finished reading the judgment. Some hearings were over within three minutes. Given the time spent on each case, the judicial investigation is at best superficial.

In every case observed by MDAC the judge accepted the agreed conclusions of the treating and court-appointed psychiatrists. Medical opinion was accepted not only by the patient's attorney, but also by the judge as unquestionable truth. These circumstances suggest that the judge is not acting as an independent decision maker, in violation of Article 5 of the ECHR.

MDAC RECOMMENDATION 6:

Implement a system of training on human rights for judges who hear detention review cases. The training should include: the standards of the European Convention on Human Rights and the case law of the Strasbourg Court; key medical aspects of mental disability; how to analyze psychiatric opinion; and risk assessment.

COURT-APPOINTED ATTORNEYS INADEQUATELY REPRESENT THEIR CLIENTS

Attorneys very rarely meet their clients before the court hearing. In none of the court hearings observed by MDAC did the patient's attorney make any reference to the contents of either the treating psychiatrist's or the court-appointed psychiatrist's report. There was no evidence in any of these court hearings that the attorney had read the psychiatric reports, or had asked the client his or her opinions about the report. In the vast majority of cases observed by MDAC the patient's attorney conceded acceptance of the medical reports and the prosecutor's recommendations to continue the detention of the patient. Several attorneys expressed paternalistic and prejudiced attitudes towards IMEI patients. Attorneys made statements to the court, which reflected the attorney's view of the case, not their client's. The attorney's role can only be described as cosmetic, falling far below Hungarian and internationally agreed basic standards on the conduct of attorneys.

MDAC RECOMMENDATION 7:

Tighten the professional control of attorneys and the sanctions available for poor performance, and promulgate user-friendly mechanisms for clients (including people detained in IMEI) to make complaints.

MDAC RECOMMENDATION 8:

Establish specialist training in human rights and mental disability law for attorneys involved in such cases. Make the training compulsory for attorneys wishing to represent IMEI patients. The training should emphasize attorneys' responsibility to represent their clients' wishes and how to analyze and challenge the expert medical opinion.

LACK OF SOCIAL WORK INPUT

Judges in IMEI review hearings do not have a report setting out the relevant social circumstances of the patient. The court receives information about alternatives to detention only when all the professionals agree that the person should be released. The judge is therefore prevented from having the information to make an independent decision. A social work report would inform the court about the alternatives to the current detention, such as transfer to a hospital of a less restrictive regime, or the possibilities to be discharged to family members or another institution.

MDAC RECOMMENDATION 9:

Amend the Code of Criminal Procedure to require that a social work report be prepared before each annual review of detention. The social worker should meet the patient and present all relevant information about alternatives to continued detention. Such reports should be sent routinely and free-of-charge to the patient and the patient's attorney. The social worker must be independent from the detention facility.

HUMAN RIGHTS WITHIN IMEI

Although it has not been the central concern of this report, MDAC heard credible allegations from a wide variety of sources that IMEI patients are not provided with information about their rights, or how to protect them. Attorneys representing patients at their annual court reviews rarely visit IMEI, so there is no opportunity for patients to complain in private to a lawyer. MDAC was denied permission to speak with patients directly, only in the presence of the patient's guardian (who may live hundreds of kilometers away) and the patients' advocate (who attends IMEI once a week). To date, there have been no NGO reports on the human rights conditions within IMEI.

MDAC RECOMMENDATION 10:

Ensure that information on legal processes and rights is available to IMEI patients. Ensure that this information is available in an understandable format and easily accessible.

MDAC RECOMMENDATION 11:

Encourage the formation of patients' advocacy groups within IMEI.

MDAC RECOMMENDATION 12:

Invite human rights non-governmental organizations to monitor the conditions human rights within IMEI.

APPENDIX 1 – RELEVANT HUNGARIAN LAWS

A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA

55. § (1) A Magyar Köztársaságban mindenkinek joga van a szabadságra és a személyi biztonságra, senkit sem lehet szabadságától másként, mint a törvényben meghatározott okokból és a törvényben meghatározott eljárás alapján megfosztani.

(2) A bűncselekmény elkövetésével gyanúsított és őrizetbe vett személyt a lehető legrövidebb időn belül vagy szabadon kell bocsátani, vagy bíró elé kell állítani. A bíró köteles az elé állított személyt meghallgatni, és írásbeli indokolással ellátott határozatban szabadlábra helyezéséről vagy letartóztatásáról haladéktalanul dönteni.

(3) Az, aki törvénytelen letartóztatás vagy fogva-tartás áldozata volt, kártérítésre jogosult.

57. § (1) A Magyar Köztársaságban a bíróság előtt mindenki egyenlő, és mindenkinek joga van ahhoz, hogy az ellene emelt bármely vádat vagy valamely perben a jogait és kötelességeit a törvény által felállított független és pártatlan bíróság igazságos és nyilvános tárgyaláson bírálja el.
[…]
(3) A büntetőeljárás alá vont személyeket az eljárás minden szakaszában megilleti a védelem joga. A védő nem vonható felelősségre a védelem ellátása során kifejtett véleménye miatt.

BÜNTETŐ TÖRVÉNYKÖNYV

24. § (1) Nem büntethető, aki a cselekményt az elmeműködés olyan kóros állapotában – így különösen elmebeteg-ségben, gyengeelméjűségben, szellemi leépülésben, tudatzavarban vagy személyiségzavarban – követi el, amely képtelenné teszi a cselekmény következményeinek felismerésére vagy arra, hogy e felismerésnek megfelelően cselekedjék.

BÜNTETŐ TÖRVÉNYKÖNYV
A kényszergyógykezelés

74. § (1) Személy elleni erőszakos vagy közveszélyt okozó büntetendő cselekmény elkövetőjének kényszergyógykezelését kell elrendelni, ha elmeműködésének kóros állapota miatt nem büntethető, és tartani kell attól, hogy hasonló cselekményt fog elkövetni, feltéve, hogy büntethetősége esetén egyévi szabadságvesztésnél súlyosabb büntetést kellene kiszabni.

(2) A kényszergyógykezelést az erre kijelölt zárt intézetben hajtják végre.

CONSTITUTION OF THE REPUBLIC OF HUNGARY

55. § (1) In the Republic of Hungary everyone has the right to freedom and personal security; no one shall be deprived of his freedom except on the grounds and in accordance with the procedures specified by law.

(2) Any individual suspected of having committed a criminal offence and held in detention shall either be released or shall be brought before a judge within the shortest possible period of time. The judge is required to grant the detained individual a hearing and shall immediately prepare a written ruling with a justification for either releasing the detainee or having the individual placed under arrest.

(3) Any individual subject to illegal arrest or detainment is entitled to compensation.

57. § (1) In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law.
[…]
(3) Individuals subject to criminal proceedings are entitled to legal defense at all stages of the proceedings. Defense lawyers may not be held accountable for opinions expressed in the course of the defense.

CRIMINAL CODE (ACT NUMBER 4 OF 1978)

24. § (1) A person who commits the act in a diseased mental state – specifically in a state of mental illness, of developmental disability, dementia, a confused mental state or personality disorder – which makes him incapable of recognizing the consequences of his act or acting in accordance with this recognition, is exempted from punishment.

CRIMINAL CODE (ACT NUMBER 4 OF 1978)
Compulsory forensic psychiatric treatment

74. § (1) A person must be ordered to receive forensic compulsory treatment if that person committed a violent criminal offence towards another or an act which constitutes a danger to the public if the person is not punishable because of his diseased mind and if there is a danger of committing a similar offence, if a sentence of imprisonment of more than one year would otherwise have been imposed.

(2) Forensic compulsory treatment must be realized in an appointed closed institution

(3) A kényszergyógykezelést meg kell szüntetni, ha szükségessége már nem áll fenn.

(3) Forensic compulsory treatment must be terminated if its necessity no longer exists.

1973. ÉVI I. TÖRVÉNY A BÜNTETŐ-ELJÁRÁSRÓL

43. § A büntetőeljárásban – a II. fejezetben felsorolt hatóságokon, illetőleg azok tagjain kívül – a terhelt, a védő, továbbá a sértett, a magánvádló, a magánfél, az egyébként érdekeltek és ezek képviselői vesznek részt.

47. § Védő részvétele a büntetőeljárásban kötelező, ha
(…)
b) a terheltet fogva tartják, az őrizetbe vételt kivéve;

52. § (1) Ha a védelem kötelező, a védő köteles jelen lenni
a) a tárgyaláson,
b) e törvényben meghatározott más eljárási cselekményeknél

ACT 1 OF 1973, CODE OF CRIMINAL PROCEDURE

43. § Besides the authorities and their members enumerated in Chapter 2, the defendant, the defendant's attorney and the alleged victim, the private party and other interested parties and their representatives take part in criminal procedures

47. § A defense attorney must take part in criminal procedure if
(…)
b) the defendant is detained, except for pre-trial detention

52. § (1) If the defense is obliged, the defense attorney must be present at
a) the court trial
b) other acts of procedure prescribed by this law

(There are no such provisions in Act 19 of 1998, Code of Criminal Procedure)

1973. ÉVI I. TÖRVÉNY A BÜNTETŐ-ELJÁRÁSRÓL

69. § (1) Rendszerint egy szakértőt kell igénybe venni.

(…) (3) Igazságügyi orvosi boncolásnál és a terhelt elmeállapotának vizsgálatánál két szakértőt kell igénybe venni. Az igazságügyminiszter – a belügyminiszterrel és a legfőbb ügyésszel egyetértésben – több szakértő igénybevételét más esetben is kötelezővé teheti.

ACT 1 OF 1973, CODE OF CRIMINAL PROCEDURE

69. § (1)Usually one expert must be used (…)

) In cases of juridical medical autopsy and the examination of mental state of defendant, two experts must be used. In other cases more experts may be obliged by the Minister of Justice in agreement with the Minister of the Interior and the public prosecutor.

1998. ÉVI XIX. TV. A BÜNTETŐELJÁRÁSRÓL

101. § (1) Rendszerint egy szakértőt kell alkal-mazni.
(…)

(2) A halál oka és körülményei, valamint az elmeállapot vizsgálatánál két szakértőt kell alkalmazni. Jogszabály más esetben is kötelezővé teheti több szakértő alkalmazását.

ACT 19 OF 1998, CODE OF CRIMINAL PROCEDURE

101. § (1) Usually one expert must be used
(…)

(2) At the examination of the reasons and circumstances of death and at the examination of mental state, two experts must be used. More experts may be obliged by law in other cases too.

1973. ÉVI I. TÖRVÉNY A BÜNTETŐ-ELJÁRÁSRÓL

A védő
45. § (1) Védő lehet:
a) az ügyvéd, meghatalmazás vagy kirendelés alapján;
b) a helyi bíróságon vétség miatt folytatott eljárásban a terhelt törvényes képviselője és meghatalmazás alapján nagykorú hozzátartozója;
c) meghatalmazás alapján az, akit erre külön jogszabály feljogosít.

ACT 1 OF 1973, CODE OF CRIMINAL PROCEDURE

The defender
45. § (1) A defender can be
a) an attorney, based on authorization or appointment
b) the defendant's legal representative or major relative based on authorization in procedures of misdemeanour at local court
c) an authorized person empowered by a separate law.

51. § A védő köteles a terhelt érdekében minden törvényes védekezési eszközt és módot késedelem nélkül felhasználni, a terheltet a védekezés törvényes eszközeiről felvilágosítani, jogaira kioktatni és a terheltet mentő, illetőleg a felelősségét enyhítő tények felderítését elősegíteni.

1998. ÉVI XIX. TV. A BÜNTETŐELJÁRÁSRÓL

A védő
44. § (1) Védőként meghatalmazás vagy kirendelés alapján ügyvéd járhat el.

50. § (1) A védő köteles
a) a terhelttel a kapcsolatot késedelem nélkül felvenni,
b) a terhelt érdekében minden törvényes védekezési eszközt és módot kellő időben felhasználni,
c) a terheltet a védekezés törvényes eszközeiről felvilágosítani, a jogairól tájékoztatni,
d) a terheltet mentő, illetőleg a felelősségét enyhítő tények felderítését szorgalmazni.

(2) A védő a védelem érdekében az ügyben tájékozódhat, a jogszabályokban biztosított lehető-ségek keretei között adatokat szerezhet be, és gyűjthet.

(3) A terhelt jogait a védője külön is gyakorolhatja, kivéve azokat, amelyek értelemszerűen kizárólag a terheltet illetik.

1973. ÉVI I. TV A BÜNTETŐELJÁRÁSRÓL

76. § (1) A szakértőhöz a szakvélemény előadása vagy előterjesztése után kérdéseket lehet intézni.

1998. ÉVI XIX. TV. A BÜNTETŐELJÁRÁSRÓL

110. § (1) A szakvélemény előadása után a szakértőhöz kérdéseket lehet intézni.

1998. ÉVI XIX. TV. A BÜNTETŐELJÁRÁSRÓL

112. § (1) A terhelt és a védő közölheti az ügyész-szel, illetőleg a bírósággal, hogy szakvéleményt kíván készíttetni, és benyújtani.

(2) A terhelt vagy a védő által szakvélemény készítésére felkért személy (intézmény, testület) szakértőként való bevonásáról a bíróság, illetőleg az ügyész határoz. A felkért szakértő – e minőségének elismerése után – a szakértői vizsgálatokban közremű-ködhet; a bírósági eljárásban a bíróság, illetőleg az ügyész által kirendelt szakértővel azonos jogok illetik meg, és kötelezettségek terhelik.

51. § The defender is obliged to use every legal instrument and method for defense in the interest of the defendant without delay, give information to the defendant on the legal instruments of defense and his or her rights and assist in the exploration of facts that may discharge or decrease the responsibility of the defendant.

ACT 19 OF 1998, CODE OF CRIMINAL PROCEDURE

The defense attorney
44. § (1) Based on an authorization or appointment an attorney can act as a defender.

50. § (1) The defender is obliged to
a) contact the defendant without delay,
b) use every legal instrument and method for defense in the interest of the defendant in due time
c) give information to the defendant on the legal instruments of defense and his or her rights
d) encourage exploration of facts that may discharge or decrease the responsibility of the defendant

(2) On behalf of the defendant, the defender can have information of the case, obtain and collect data within the framework provided by law.

(3) The defender can individually practise the rights of the accused person, except for those, which are implicitly entitled to be practised only by the defendant.

ACT 1 OF 1973, CODE OF CRIMINAL PROCEDURE

76. § (1) Questions may be posed to the expert after presenting his report

ACT 19 OF 1998 CODE OF CRIMINAL PROCEDURE

110. § (1) A szakvélemény előadása után a szakértőhöz kérdéseket lehet intézni.

ACT 19 OF 1998 CODE OF CRIMINAL PROCEDURE

112. § (1) The defendant and the defendant's attorney can announce their request to the prosecutor and the court of obtaining an expert opinion.

(2) The court and the prosecutor decides about taking the party (institution, corporation) asked by the defendant or defender to render an opinion, into the case as an expert. After recognition of him/her as an expert, the person can take part in expert examinations and must have the same rights and obligations in court proceedings as the court or prosecutor-appointed expert has.

(3) Ha a bíróság vagy az ügyész a felkért személy bevonását megtagadja, az elkészített vélemény az okiratra vonatkozó szabályok szerint használható fel.

1973. ÉVI I. TÖRVÉNY A BÜNTETŐ-ELJÁRÁSRÓL

A kényszergyógykezelés felülvizsgálata

373. § (1) A bíróság a kényszergyógykezelés felülvizsgálatáról tanácsban, tárgyaláson határoz. Ha első fokon nem budapesti székhelyű bíróság járt el, a felülvizsgálatra a Pesti Központi Kerületi Bíróság, ha pedig első fokon megyei bíróság járt el, a Fővárosi Bíróság illetékes.

(2) A bíróság a kényszergyógykezelés megkezdé-sétől számított egy év eltelte előtt a kényszergyógy-kezelés szükségességét hivatalból felülvizsgálja. Ha a kényszergyógykezelést nem szünteti meg, a felülvizsgálatot évenként megismétli.

(3) A kényszergyógykezelés felülvizsgálatának helye van az ügyész indítványára a kényszergyógy-kezelés alatt állónak, házastársának, törvényes képvi-selőjének, vagy a védőnek a kérelmére, továbbá a kény-szergyógykezelést végrehajtó intézet vezetőjének előterjesztésére is. A bíróság a kényszergyógykezelésnek kérelemre való felülvizsgálatát mellőzheti, ha erre hat hónapon belül már sor került.

(4) A felülvizsgálat előtt orvosszakértői véleményt kell beszerezni.

(5) A kényszergyógykezelés felülvizsgálatáról hozott végzés ellen a kényszergyógykezelés alatt álló házastársa és törvényes képviselője is fellebbezhet.

1998. ÉVI XIX. TV. A BÜNTETŐELJÁRÁSRÓL

- kényszergyógykezelés felülvizsgálata

566. § (1) A bíróság a kényszergyógykezelés felülvizsgálatáról tanácsban, tárgyaláson határoz. Ha első fokon nem budapesti székhelyű helyi bíróság járt el, a felülvizsgálatra a Pesti Központi Kerületi Bíróság, ha pedig első fokon nem budapesti székhelyű megyei bíróság járt el, a felülvizsgálatra a Fővárosi Bíróság illetékes.

(2) A bíróság a kényszergyógykezelés megkezdé-sétől számított egy év eltelte előtt a kényszergyógy-kezelés szükségességét hivatalból felülvizsgálja. Ha a kényszergyógykezelést nem szünteti meg, a felülvizsgálatot évenként megismétli.

(3) If the court or the prosecutor denies taking the person into the case, his or her opinion must be used under the rules of documents.

ACT 1 OF 1973, CODE OF CRIMINAL PROCEDURE

A kényszergyógykezelés felülvizsgálata

373. § (1) The court review of forensic compulsory treatment shall be carried out by a chamber (group of judges). If the procedure of first instance was done by a non-Budapest-based court, the Central District Court of Pest is authorized to do the revision. If the procedure of first instance was done by a county court, the Capital Court is authorized to do the revision.

(2)The court shall review ex *officio* the necessity of forensic compulsory treatment prior to the expiry of the one-year period from the first date of the forensic compulsory treatment. If the forensic compulsory treatment is maintained, the review shall be done annually.

(3) A review may also be held upon the motion of the prosecutor, the person receiving forensic compulsory treatment, the spouse, legal representative, or his defender, or upon the application of the director of the institution of the forensic compulsory treatment. The court may disregard a request for review, if such a review has already been performed in the prior six-month period.

(4) A medical expert report shall be provided prior to the review.

(5) The spouse of the person under commitment and his or her legal representative may also file an appeal against the court's decision on the review of the commitment.

ACT 19 OF 1998, CODE OF CRIMINAL PROCEDURE

Review of forensic compulsory treatment

566. § (1) The court review of forensic compulsory treatment shall be carried out by a chamber (group of judges) If the procedure of first instance was done by a non-Budapest-based local court, the Central District Court of Pest is authorized to do the revision. If the procedure of first instance was done by a non-Budapest -based county court, the Capital Court is authorized to do the revision.

(2) The court shall review *ex officio* the necessity of forensic compulsory treatment prior to the expiry of the one-year period from the first date of the forensic compulsory treatment. If the forensic compulsory treatment is maintained, the review shall be done annually.

(3) A kényszergyógykezelés felülvizsgálatának helye van az ügyésznek, a kényszergyógykezelés alatt állónak, házas-társának, törvényes képviselőjének vagy a védőnek az indítványára, továbbá a kényszergyógykezelést végrehajtó intézet vezetőjének előterjesztésére is. A bíróság a kényszergyógykezelésnek indítványra történő felülvizsgálatát mellőzheti, ha erre hat hónapon belül már sor került.

(4) A felülvizsgálat előtt elmeorvos szakértői véleményt kell beszerezni.

(5) A kényszergyógykezelés felülvizsgálatáról hozott végzés ellen a kényszergyógykezelés alatt álló házastársa és törvényes képviselője is fellebbezhet.

(3) A review may also be held upon the motion of the prosecutor, the person receiving forensic compulsory treatment, the spouse, legal representative, or his defender, or upon the application of the director of the institution of the forensic compulsory treatment. The court may disregard a request for review, if such a review has already been performed in the prior six-month period.

(4) A psychiatric expert report shall be provided prior to the review.

(5) The spouse of the person under commitment and his or her legal representative may also file an appeal against the court's decision on the review of the commitment.

1979. ÉVI 11. TÖRVÉNYEREJŰ RENDELET A BÜNTETÉSEK ÉS INTÉZKEDÉSEK VÉGREHAJTÁSÁRÓL

84/A. § (4) A beteg – egészségi állapota alapján – bíróság előtti megjelenéséről a főigazgató főorvos dönt.

DECREE 11 OF 1979 OF THE MINISTER OF JUSTICE PROVISION ON PUNISHMENT AND LAW ENFORCEMENT

84/A. § (4) According to the patient's condition, the chief doctor decides about the patient's attendance at court.

1998. ÉVI XI. TÖRVÉNY AZ ÜGYVÉDEKRŐL

31. § (2) A kirendelt ügyvéd köteles az ügyben eljárni, a hatóság idézésének eleget tenni, továbbá a terhelttel, illetve ha az ügy természete lehetővé teszi, a képviselt személlyel a kapcsolatot felvenni.

ATTORNEYS ACT (ACT 11 OF 1998)

31. § (2) The appointed attorney is obliged to conduct the case, to be present according to the summons of the authority and initiate contact with the charged person or, if the nature of the case makes it possible with the represented person.

APPENDIX 2 – OBSERVATIONS OF IMEI HEARINGS: LENGTH OF TIME

This table and the following chart show the duration of the 60 court hearings observed by MDAC. The rows in **bold** with an asterisk indicate those court hearings in which the patient was released (see table at Appendix 3 for more information).

MDAC reference number	Date of observation	Start time of hearing	Finish time of hearing	Total duration of hearing (minutes)
1.	14/06/2001	08:37	08:54	17
2.	14/06/2001	08:55	09:00	5
3.	15/02/2002	08:39	08:55	16
4.	06/03/2002	08:39	08:46	7
5.	06/03/2002	08:47	08:49	2
6.	06/03/2002	08:50	08:53	3
7.	06/03/2002	08:54	08:56	2
8.	06/03/2002	08:57	08:58	1
9.	06/03/2002	08:59	09:01	2
10.	06/03/2002	09:02	09:04	2
11.	27/03/2002	08:46	08:48	2
12.	27/03/2002	08:49	08:52	3
13.	27/03/2002	09:04	09:06	2
14.	04/04/2002	09:29	09:31	2
***15.**	**09/04/2002**	**08:31**	**08:53**	**22**
16.	09/04/2002	08:55	09:01	6
17.	09/04/2002	09:02	09:10	8
18.	12/04/2002	08:35	08:38	3
19.	10/09/2002	08:55	08:57	2
***20.**	**10/09/2002**	**08:58**	**09:01**	**3**
21.	10/09/2002	09:03	09:13	10
22.	10/09/2002	09:14	09:16	2
23.	11/09/2002	08:39	08:47	8
24.	17/09/2002	08:46	08:53	7
25.	17/09/2002	08:55	09:02	7
26.	03/10/2002	08:42	08:51	9
27.	03/10/2002	08:52	09:01	9
28.	03/10/2002	10:12	10:16	4

29.	22/10/2002	09:09	09:13	4
30.	22/10/2002	09:13	09:17	4
31.	22/10/2002	09:17	09:22	5
32.	22/10/2002	09:22	09:28	6
33.	11/11/2002	08:45	08:53	8
34.	11/11/2002	08:53	09:00	7
35.	13/11/2002	08:49	08:53	4
36.	11/12/2002	08:41	08:44	3
37.	11/12/2002	08:44	08:47	3
38.	23/01/2003	11:25	11:38	13
39.	23/01/2003	11:25	11:40	15
40.	30/01/2003	09:11	09:28	17
*** 41.**	**30/01/2003**	**09:25**	**09:38**	**13**
42.	26/02/2003	08:31	08:45	14
43.	28/02/2003	08:31	08:45	14
44.	06/03/2003	09:32	09:45	13
45.	06/03/2003	08:33	08:40	7
*** 46.**	**19/03/2003**	**09:01**	**09:28**	**27**
47.	08/04/2003	09:00	09:07	7
48.	10/04/2003	08:30	08:40	10
49.	10/04/2003	08:45	09:00	15
50.	04/06/2003	08:30	08:35	5
51.	04/06/2003	08:40	08:50	10
52.	05/06/2003	09:00	09:10	10
53.	05/06/2003	09:10	09:18	8
54.	17/06/2003	08:30	08:39	9
*** 55.**	**17/06/2003**	**11:00**	**11:25**	**25**
*** 56.**	**25/06/2003**	**08:30**	**08:35**	**5**
*** 57.**	**30/06/2003**	**09:00**	**09:05**	**5**
58.	30/06/2003	09:40	09:50	10
59.	30/06/2003	10:00	10:08	8
60.	05/07/2003	08:40	08:45	5

Average Duration of all hearings observed = 7 minutes 54 seconds
Average Duration of hearings at which detention was renewed = 7 minutes 4 seconds

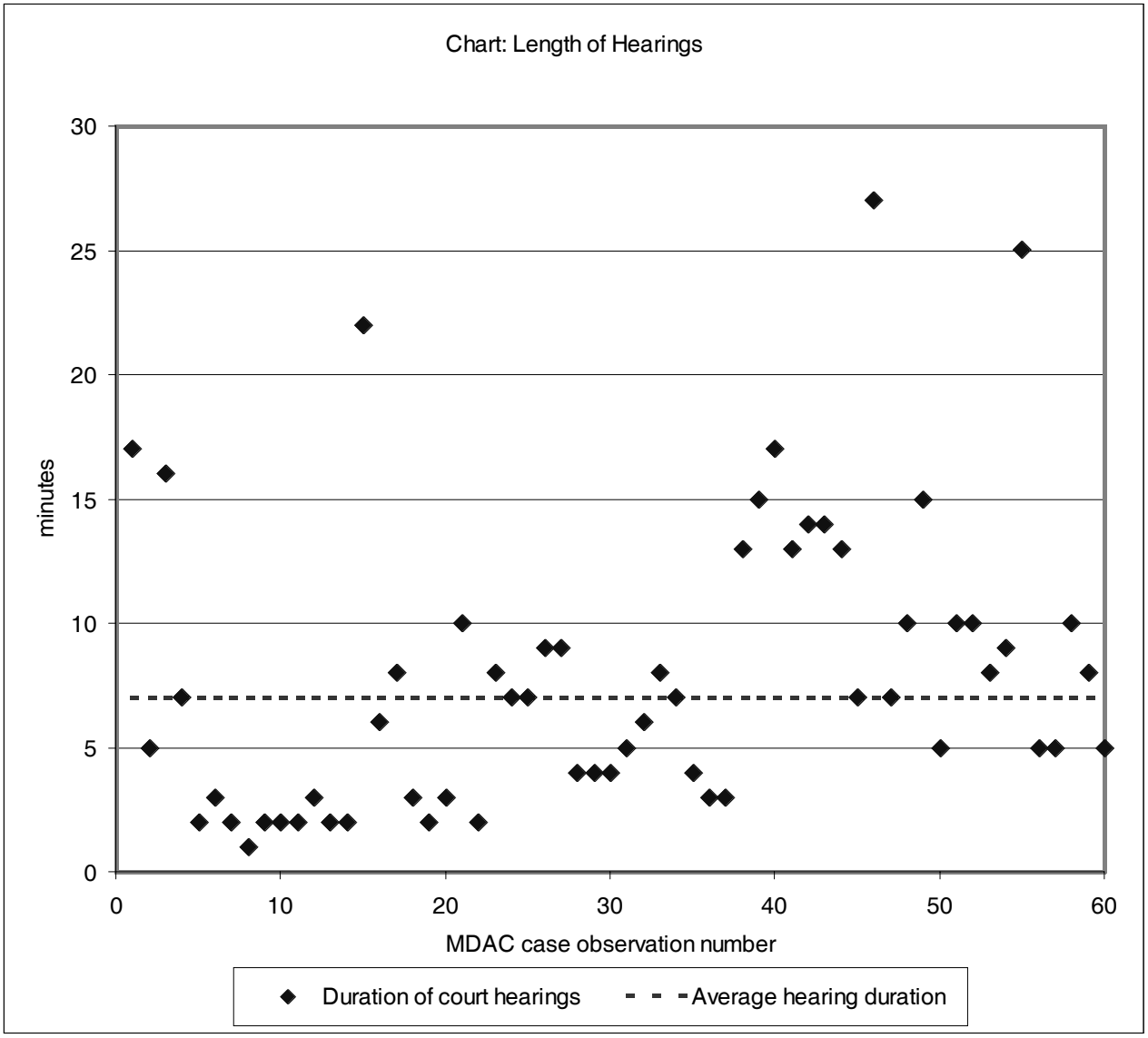
Chart: Length of Hearings
30
25
20
15
10
5
0
minutes
0
10
20
30
40
50
60
MDAC case observation number
Duration of court hearings
Average hearing duration

APPENDIX 3 – OBSERVATIONS OF IMEI HEARINGS: DETENTION/RELEASE

"D" = recommended detention
"R" = recommended release

MDAC reference Number	Date of observation	Treating psychiatrist	Court-appointed psychiatrist	Prosecutor	Patient's attorney	Patient	Court decision
1	14/06/2001	D	D	D	D		detention
2	14/06/2001	D	D	D	D		detention
3	15/02/2002	D	D	D	D		detention
4	06/03/2002	D	D	D	D	objects to detention	detention
5	06/03/2002	D	D	D	D		detention
6	06/03/2002	D	D	D	D		detention
7	06/03/2002	D	D	D	D		detention
8	06/03/2002	D	D	D	D		detention
9	06/03/2002	D	D	D	D		detention
10	06/03/2002	D	D	D	D	objects to detention	detention
11	27/03/2002	D	D	D	D	objects to detention	detention
12	27/03/2002	D	D	D	D	objects to detention	detention
13	27/03/2002	D	D	D	D		detention
14	04/04/2002	D	D	D	D	objects to detention	detention
15	09/04/2002	R	R	R	R	objects to detention	release
16	09/04/2002	D	D	D	D	objects to detention	detention
17	09/04/2002	D	D	D	D	objects to detention	detention
18	12/04/2002	D	D	D	D	objects to detention	detention
19	10/09/2002	D	D	none	none		detention
20	10/09/2002	R	R	none	none	objects to detention	release
21	10/09/2002	D	D	none	none	objects to detention	detention
22	10/09/2002	D	D	D	none		detention
23	11/09/2002	D	D	D	D	objects to detention	detention
24	17/09/2002	D	D	D	D		detention
25	17/09/2002	D	D	D	D		detention
26	03/10/2002	D	D	D	D		detention
27	03/10/2002	D	D	D	D		detention
28	03/10/2002	D	D	D	D		detention
29	22/10/2002	D	D	D	D		detention

30	22/10/2002	D	D	D	D		detention
31	22/10/2002	D	D	D	D		detention
32	22/10/2002	D	D	D	D		detention
33	11/11/2002	D	D	D	D		detention
34	11/11/2002	D	D	D	D		detention
35	13/11/2002	D	D	D	D		detention
36	11/12/2002	D	D	D	D		detention
37	11/12/2002	D	D	D	D		detention
38	23/01/2003	D	D	D	D		detention
39	23/01/2003	D	D	D	D	objects to detention	detention
40	30/01/2003	D	D	D	D	objects to detention	detention
41	30/01/2003	R	R	R	R	objects to detention	release
42	26/02/2003	D	D	D	D		detention
43	28/02/2003	D	D	D	D		detention
44	06/03/2003	D	D	D	D		detention
45	06/03/2003	D	D	D	D	objects to detention	detention
46	19/03/2003	R	R	R	R	objects to detention	release
47	08/04/2003	D	D	D	D		detention
48	10/04/2003	D	D	D	D	Not present	detention
49	10/04/2003	D	D	D	D	objects to detention	detention
50	04/06/2003	D	D	D	D		detention
51	04/06/2003	D	D	D	D	Not present	detention
52	05/06/2003	D	D	D	D		detention
53	05/06/2003	D	D	D	D		detention
54	17/06/2003	D	D	D	D	objects to detention	detention
55	17/06/2003	R	R	R	R	Not present	release
56	25/06/2003	R	R	R	R	objects to detention	release
57	30/06/2003	R	R	R	R	objects to detention	release
58	30/06/2003	D	D	D	D		detention
59	30/06/2003	D	D	D	D		detention
60	05/07/2003	D	D	D	D		detention

APPENDIX 4 – RESOURCES AND FURTHER INFORMATION

To download this report, and all conventions and laws referred within it, as well as for further information and links, see the Mental Disability Advocacy Center's website: www.mdac.info

UNITED NATIONS

MI Principles: http://www.unhchr.ch/html/menu3/b/68.htm
Office of the UN High Commissioner for Human Rights. http://www.unhchr.ch

COUNCIL OF EUROPE

European Court of Human Rights: http://www.echr.coe.int
Treaties and conventions: http://conventions.coe.int
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) http://www.cpt.coe.int
CPT visits to Hungary: http://www.cpt.coe.int/en/states/hun.htm
CPT Substantive sections: http://www.cpt.coe.int/en/docssubstantive.htm

INCLUSION EUROPE

Country Report. Hungary. Human Rights of Persons with Intellectual Disability
www.inclusion-europe.org

HUNGARIAN HELSINKI COMMITTEE

1073 Budapest, Kertész utca 42-44, II/9
Tel/Fax: (+36 1) 321 4141
www.helsinki.hu

MENTAL DISABILITY RIGHTS INTERNATIONAL

Human Rights and Mental Health: Hungary (1997)
www.mdri.org

HUNGARIAN MENTAL HEALTH INTEREST FORUM

The Human Rights of Patients in Social Care Homes for Mentally Ill, 2001.
Mailing address: 1437 Budapest, PO Box 287, Hungary
E-mail: pef@hu.inter.net

HUNGARIAN CIVIL LIBERTIES UNION

Psychiatry and Patients Rights (April 2002)
Patient Rights in Hungary - Rules and Practice (January 2002)
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