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Subject: NGO communication with regard to the execution of the judgment of the European Court of Human Rights in the Vig v. Hungary case (Application no. [59648/13](#))

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9(2) of the “Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements” regarding the execution of the judgment of the European Court of Human Rights in the Vig v. Hungary (Application no. 59648/13, Judgment of 14 April 2021) case.

The HHC is an independent human rights watchdog organisation, with one of its aims being to challenge the stop and search practices, the use of power of the police checking individuals’ identity and search persons during enhanced checks. The HHC’s attorney have represented the applicant successfully before the European Court of Human Rights in case of Vig v. Hungary.

The Amendment at Statutory Level

According to the [Action report](#) of the Government of Hungary (submitted on 22 February 2022) (hereafter: Action Report), Act no. XXXV of 1994 on the Police (hereafter: Police Act) has been amended “to modernize certain procedures and further strengthen the security of citizens”. The Action Report further notes that “[the] amendment extends the statutory guarantees of enhanced checks by providing for a mandatory review of the order at specified intervals, thus ensuring that an enhanced check is only ordered where there is a valid objective, for the time and to the extent necessary to achieve it. The result of the review must be communicated to the head of the superior authority, or, in case there is no such authority, to the Minister, who, in the light of the information, may intervene, if necessary, under the powers conferred on him/her/it.”

Article 30 of the Police Act has been amended, a new paragraph was added to it by Act CXX of 2021 on measures to modernise certain procedures and further strengthen the security of citizens. According to this new Article 30(5) of the Police Act, “the implementation of the enhanced check shall be **reviewed on a monthly basis** by the head of the ordering police unit, irrespective of the predetermined duration

of the enhanced check, and the head of the superior police unit, or if there is no such unit, the Minister, shall be informed of the results.”

At the same time, Act CXX of 2021 also amended Article 92 of the Police Act, **expressly excluding the earlier existing possibility of submitting a complaint against the decision to order an enhanced check.** Before the amendment, Article 92 of the Police Act stated that anyone whose fundamental rights have been violated by a police measure or the omission of an obligation regulated in Chapters IV to V of the Police Act, or by the use of coercive measures regulated in Chapter VI thereof, may lodge a complaint with the police or request that the complaint be dealt with by the Commissioner for Fundamental Rights. The Amendment

Even without an in-depth analysis, it can be concluded that these amendments do not properly comply with the Court’s judgment in the Vig case. The judgment found a violation on the basis that there was not *“any real restriction or review of either the authorisation of an enhanced check or the police measures carried out during an enhanced check”* and *“that the domestic law did not provide adequate safeguards to offer the individual adequate protection against arbitrary interference”* (§ 62).

The amendments have failed to remedy these issues, and the amendment of Article 92 of the Police Act even exacerbated the problem.

Article 30(5) of the Police Act **does not provide the necessary guarantees for an independent and meaningful review** for the following reasons:

- 1) The mandatory review is conducted by the very same person who orders the enhanced check, so the review cannot be considered independent.
- 2) The rules of the review are not determined, not even the consequence of the complete failure to carry out the review is set out by the law. In the absence of such norms, the lawfulness of the review cannot be assessed.
- 3) While previously at least the theoretical possibility of filing a complaint was open for those who were concerned by the decision to order an enhanced check (e.g. because they were stopped and searched in the framework of the enhanced check), the amendment has removed it altogether. This also means that the possibility of judicial review (which is available regarding the decisions made by the police in the framework of a complaints procedure) has been removed from the system.

The Court’s judgment is clear that adequate safeguards must be provided to concerned individuals in order to offer adequate protection against arbitrary interference. Judicial review would be one of the most obvious and effective safeguards in this regard, as it would open the impugned measures to scrutiny by an external and independent body. Instead, the legislature chose to make sure that not even through judicial interpretation of the existing norms could enhanced check orders be made subject to judicial review: it passed a norm expressly excluding such orders from the scope of complaints and eventually judicial assessment.

In this regard, the Action Plan’s line of argumentation is highly troubling, when it claims that the amendment *“does not affect the right to complaint that exists under Act XXXIV of 1994 on the Police, under which the person subject to the measure may lodge a complaint against the individual police measure taken in the framework of the enhanced check”*. This was exactly the problem in the Vig case, regarding which the Court pointed out that the domestic court *“had no power to review either the authorisation of the enhanced checks or the operational plan, but only the individual police measures*

(see paragraph 18 above). Thus, judicial review of the police measures in question [...] would have been limited to formal determination of whether the police powers [...] had been exercised in accordance with domestic law” (§ 34). The Court also identified as a problem of the pre-amendment legal framework that “whereas an individual can challenge the police measures carried out in respect of him or her by way of a complaint to a police department, and subsequently by way of a judicial review, the present case demonstrates that those remedies are limited to assessing the manner in which the measures were carried out, and do not cover the necessity of the identity check and search.”

The amendment has set this very situation in stone instead of resolving it. The Action Plan states that the categorical exclusion of the traditional right to complain against the ordering of an enhanced check as a professional decision does not “*mean that the right to order such a check can be exercised without any limits. The ordering of an enhanced check must be constitutionally justified both in terms of its duration and its geographical scope, and must satisfy the three conditions of necessity, proportionality and being limited to its purpose. With regard to enhanced checks, the supervisory measures, rather than the actual right to a legal remedy, ensure the legitimacy of this measure.*” The core problem is that if there is no independent entity external to the police who is vested with the right of enforcing this constitutional limit, and the concerned individuals are not provided with the right to seek remedy before such an independent and external entity if their fundamental freedoms are breached, there is no guarantee whatsoever that the right to order enhanced checks will be exercised in a manner that is compliant with the Convention, and violations such as the one in the Vig case can be committed without effective domestic remedies.

The Amendment at Ministerial Level

At the ministerial level, Decree 30/2011 (IX. 22.) of the Minister of Interior on the Police Service Regulations (hereafter: Service Regulations) has been amended by Decree No. 46/2021 (XII. 22.) of the Minister of Interior Amending Certain Ministerial Decrees on Police Matters.

There are some progressive elements of the amendment of the Service Regulations regarding the regulation of enhanced checks, however, even the amended text **fails to provide answers** to fundamental problems in the regulatory framework.

As stated in § 12 of the Action Report, the Service Regulations provide a **new definition** of enhanced checks.¹ According to the amended text of the Service Regulations “*enhanced check is a coordinated police activity ordered for a predefined purpose, carried out within a limited period of time and in a designated geographical area*”, which is to be considered as a progress.

Prescribing a **time limit** of two months² is one of the most significant improvements of the legislative framework. It is to be noted, however, that according to the Service Regulations, if the purpose of an enhanced check remains valid, the enhanced check may be prolonged by altogether four months.³ The prolongation is not subject to any specific review (beyond the monthly review prescribed by the Police

¹ According to the previous text “enhanced check is a coordinated and concentrated police activity during which the police’s geographical area of competence or part of it is closed off and the persons present are checked.”

² Service Regulations, Article 26(3): Enhanced check can be ordered [by certain law enforcement units] for a maximum period of two months.

³ Service Regulations, Article 26(4): If the purpose of an enhanced check remains valid, it may be extended on the ordering police officer’s own initiative twice at maximum, each time for a maximum of two months.

Act). Although according to the data provided by the police in response to HHC's freedom of information request (see below), enhanced checks were not prolonged in the period between 22 December 2021 and 3 June 2022, in the long run, the lack of any review of the prolongation may lead to quasi automatic extensions.

It must also be pointed out that based on the data it seems that in some cases the Police ordered the enhanced check for periods longer than two months (see the analysis of the data below).

Another progressive element is that in terms of Article 26(5) of the Service Regulations, the enhanced check must be ordered or extended **in writing**, and the decision must be published on the website of the ordering body, stating the purpose of the order or extension and the reasons for it.

On the other hand, the requirement that the person concerned by the individual police measure taken in the framework of the enhanced check must be informed about the fact and the legal basis of the enhanced check⁴ **does not provide any substantial guarantee or effective remedy** due to the above explained fact that the underlying measure (i.e. the ordering of the enhanced check) cannot be challenged in any way.

The amended Article 26(7) of the Service Regulations prescribes that the fact that an enhanced check has been ordered shall not exempt the police officer from fulfilling his/her statutory obligations. Adding this text is redundant, it follows from other provisions of the Police Act, which set forth that the measures and coercive measures must be lawful and proportionate, and there is no implication in the Police Act anywhere that any specific type of police measure would exempt any officer from the duty of acting in accordance with the law.

Data analysis

The HHC filed a freedom of information request with the National Police Headquarters on the enhanced checks ordered in Hungary in the period between 22 December 2021 (the day the amendment of the Service Regulations was adopted) and 3 June 2022 (the date of the data request).⁵ The data provided illustrate that several challenges regarding enhanced checks have not been solved by the amendment of the relevant norms.

In this period enhanced checks were ordered 357 times. Enhanced checks for the **whole territory** of Hungary **were not ordered** in the period covered by the data collection.

Although in several cases the reasons for ordering the enhanced check seem **sufficient** and **adequate** (for example, the Mezőkövesd Police ordered an enhanced check for the whole area of the town on 13 May 2022 between 3-11 p.m. with the aim of preventing, interrupting and detecting illegal acts and maintaining public order in relation to a football match), in numerous cases the Police still provides a **very broad and general** explanation, e.g. claiming that the enhanced check is ordered "*to prevent, detect or disrupt the perpetration of breaches of law*".

⁴ According to Article 26(6) of the Service Regulations, if the police officer conducts a police measure in the framework of an enhanced check, the purpose of the enhanced check, and its legal basis must be communicated to the person subject to the measure during the execution of the police measure.

⁵ The amendments became effective on 30 December 2021.

This was the case for instance when the Baranya County Police ordered enhanced checks for the period 1 January – 31 March 2022 for the entire territory of the county. Similarly, the Csongrád-Csanád County Police ordered enhanced check for the entire county “to maintain public order and public safety and to prevent, detect and disrupt the perpetration of breaches of law” between 4 January and 8 June 2022, i.e. for a much longer period than the two months allowed by the Service Regulations as an initial term of any enhanced check. The Veszprém County Police’s ground for ordering enhanced check in the entire county for six months between 1 January and 30 June 2022 (i.e. again for a much longer period than the two months envisaged by the Service Regulations) was to “prevent, detect and disrupt illegal activities, in particular those related to illegal migration, and to prevent road traffic accidents”.

It remains to be seen whether the reason for ordering longer than allowed enhanced checks was due to the fact that these decisions were taken not long after the new rules came into force (which may explain why certain police headquarters were not aware of the two-month deadline), or whether this unlawful practice will continue. What can be said though is that the reasons for ordering enhanced checks continue to be overly board in a number of cases, exacerbating the problem that (i) no effective remedy is available about the decisions to order the enhanced check for those individuals that are taken under a police measure in the framework of the enhanced checks; and (ii) it is difficult, if not impossible, to assess whether the individual measure taken is in a sufficiently close connection with the professed objective of the enhanced check (c.f. § 59 of the Vig-judgment, in which the Court pointed out that there was a “discrepancy between the reasons underlying the authorisation of the enhanced checks throughout the country [checking illegal migration routes] and the reasons for the actual police operation carried out at the centre [alleged illegal operation of the centre where the ID check took place] in accordance with that authorisation demonstrates that the legislation did not provide for any requirement that the measures implementing enhanced checks relate to their stated objective”).

Recommendations

Procedural recommendations:

For the reasons above, the HHC respectfully recommends the Committee of Ministers to take the following procedural measures:

- 1) **continue examining the execution of the judgment in the Vig v. Hungary case**, and
- 2) move the examination process from the standard to the **enhanced procedure** due to the fact that the important structural problems that were identified in the case have not been adequately addressed when the amendments to the relevant legal framework were passed

Substantive recommendations:

Furthermore, we respectfully recommend the Committee of **Ministers to call on the Government of Hungary to:**

- 1) **Provide the necessary guarantees in respect of an independent and meaningful review** of the decisions to order an enhanced check, which complies with the standards set out by the Court.

- 2) **Ensure that effective remedy through a forum that is external to and independent from the police is available for those who are taken under any police measure in the framework of enhanced checks.** The HHC is of the view that this could be done most effectively through an amendment of Article 92(1) of the Police Act with a view to (i) expressly allowing the submission of complaints with regard to the underlying enhanced checks, and (ii) expressly allowing for the judicial review of the decisions delivered in the complaints procedures.
- 3) Ensure that the purpose of and reason for ordering and prolonging enhanced checks are **sufficiently clear and precise** and codify consequences in case the police fail to comply with these requirements.

Sincerely yours,



András Kristóf Kádár
co-chair
Hungarian Helsinki Committee