HUNGARIAN HELSINKI COMMITTEE

26 October 2022, Budapest

Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR

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Subject: NGO communication with regard to the execution of the judgments of the European Court of Human Rights in the *Gubacsi v. Hungary* group of cases

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 judgments of the European Court of Human Rights in the *Gubacsi v. Hungary* (Application no. 44686/07, Judgment of 28 June 2011) group of cases.

The HHC is an independent human rights watchdog organisation, with one of its aims being to challenge the impunity of law enforcement for torture and ill-treatment through monitoring, research, advocacy and litigation. The HHC's attorneys have represented applicants successfully before the European Court of Human Rights in relation to ill-treatment by the police and the lack of an adequate investigation in this respect in several cases, including applicants in the group of cases in question, namely in *Gubacsi v. Hungary*, *Réti and Fizli v. Hungary*, *Tarjáni v. Hungary, Csonka v. Hungary, Nagy v. Hungary* and *Csúcs v. Hungary*.

The HHC already submitted four communications under Rule 9(2) in relation to the execution of the judgments in question, at the turn of 2014 and 2015,[1] in 2018,[2] in 2020,[3] and in 2021.[4] The present communication concerns the suggested general measures as included in the decision of the Committee of Ministers from December 2021.[5]

The HHC is of the view that **no tangible progress has been achieved** by Hungary with regard to the general measures required for the execution of the judgments in the *Gubacsi* group of cases since the above decision by the Committee of Ministers. It is still **not possible to discern an overall strategy** by the Hungarian authorities to ensure that ill-treatment by law-enforcement agents is eradicated and ill-treatment reports are effectively investigated. The Hungarian authorities have **failed to submit an**

[1] DH-DD(2014)1528, http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E; DH-DD(2015)232, http://hudoc.exec.coe.int/eng?i=DH-DD(2015)232E
[2] DH-DD(2018)770, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808cc89e
[3] DH-DD(2020)394, http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E
[4] DH-DD(2021)1121, https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)1121E; DH-DD(2021)1174, https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)1174E
[5] CM/Del/Dec(2021)1419/H46-16

updated action plan by the end of September 2022 deadline provided by the last decision of the Committee of Ministers, and also **failed to comply with the guidance provided by the Committee of Ministers** in the decision. **No meaningful legislative changes** have been undertaken, and so **none of the systemic deficiencies related to preventing, investigating and sanctioning police ill-treatment have been addressed** on a legal level. Quantitative data acquired from the authorities do not show any tangible progress either.

The HHC upholds its view that to prevent, investigate and sanction police ill-treatment adequately and more effectively, Hungary should address outstanding deficiencies in the following key areas:

- legal and practical deficiencies in relation to the video recording of police work;
- shortcomings in police training, interrogation techniques, and assessment of police work;
- lack of independent and adequate medical examination of detainees claiming ill-treatment;
- presence of police officers at medical examinations of detainees as a main rule;
- substantive shortcomings in the investigations into ill-treatment;
- low success rate of reporting ill-treatment;
- low success rate of indictments related to ill-treatment;
- judicial leniency towards law enforcement officers with regard to sentencing;
- eligibility for service of convicted law enforcement officers; and
- the lack of effective monitoring of detention by the police and the functioning of procedural safeguards that also prevent torture.

Below, we elaborate on the deficiencies in these areas, following the structure of the Committee of Ministers' 2021 decision, and we provide recommendations on how to address them, including a **recommendation for issuing an interim resolution regarding this group of cases**.

1. LACK OF VISIBLE PROGRESS IN THE VIDEO RECORDING OF POLICE WORK

1.1. Low number of police vehicles equipped with recording devices

In its response of 17 October 2022 to the HHC's freedom of information request,[6] the National Police Headquarters submitted that the overall number of police vehicles is 8,709, and out of those, 124 are equipped with recording devices capable of recording both image and sound. (According to the National Police Headquarters, there are no such recording devices that would only capable of recording image.) This means that **the number of police vehicles equipped with image and sound recording devices remained exactly the same as last year**,[7] and that **only 1.4% of all police vehicles** are equipped with recording devices capable of recording both image and sound. In its response, the National Police Headquarters maintained that they **do not have information on the actual operation of these devices**, since the devices are operated by the local police bodies, so there is no information available as to what percent of these devices is *actually* used/operated.

1.2. No progress in the number of police body cameras

According to the data provided by the National Police Headquarters in their reply to the HHC's freedom of information request, in 2022, the **number of body cameras remained the same** as in 2020 and 2021: altogether **70 body cameras** are available **for the entire Hungarian police force**.

[6] 29000-197/38-12/2022.KOZA, 17 October 2022

[7] See the response of the National Police Headquarters of 22 October 2021 (29000-197/54-20/2021.KOZA) to the HHC's 2021 freedom of information request, as referred to in the HHC's Rule 9(2) communication DH-DD(2021)1174.

At the same time, it is an improvement that the National Police Chief issued Instruction 15/2022. (IV. 7.) ORFK on the rules of image, sound, and image and sound recordings, which specifically addresses the use of body cameras. According to its Section 15, police officers equipped with body cameras shall begin recording with the body camera when they commence with a police measure, and also when instructed to do so by their superiors.

1.3. Recording devices in police detention facilities still not obligatory

It is problematic that the legal framework regarding recording devices in police detention remained the same: under the law, the police *may* install cameras recording only images or images and sound in the lobbies of police custody suites *("előállító egység"),* but not in the police custody suites *("előállító helyiség")* themselves, and in the police holding facilities *("rendőrségi fogda"*), but not in the police holding cells *("zárka")*.[8] Thus, it is still **not obligatory by law to install cameras in all police detention facilities**.

Furthermore, it gives rise to concerns that **no up to date information is available as to the number of recording devices installed in police detention facilities**. In its response of 17 October 2022 to the HHC's freedom of information request, the National Police Headquarters submitted that they have not conducted any data collection as to the number of cameras installed in police detention facilities which are capable of recording or on the number of those which are actually used for recording since March 2020. At that time, there were altogether 297 custody suites in the country, but there were only 114 cameras in these that were capable of recording.[9] (According to the data provided in October 2022, currently there are 324 custody suites in the country.) At the same time, in March 2020, all 21 holding facilities were equipped with a camera capable of recording image and sound.

1.4. No progress regarding the video recording of interrogations

The Hungarian government has also **failed to comply with the CPT's recommendation to extend the scope of instances where video recording of interrogations is mandatory**, as referred to by the Committee of Ministers in Point 6. a) of its latest decision. Thus, the respective **legal framework has remained the same**, and the video recording of interrogations is still not obligatory in Hungary in all criminal proceedings.[10] Furthermore, it remains the rule that it is obligatory to record a procedural act upon the request of the defendant, the defence counsel or the victim only if they advance the costs of such a recording.[11] This rule continues to **deprive indigent suspects of their rights** by virtue of their economic status, which was also criticized by the UN Human Rights Committee already in 2010.[12]

The National Police Headquarters submitted in its October 2022 reply to the HHC's freedom of information request that there has been **no change in the number of interrogation rooms where the image and sound recording of interrogations is possible since last year**: nationally, there are 404 such interrogation rooms. The overall number of interrogation rooms was not provided by the National Police Headquarters, stating that no new data collection has been carried out in this regard since March 2020. According to the data provided by National Police Headquarters to the HHC in March 2020, there were at that point in time altogether 3,659 rooms used for police interrogations. This means that **the video recording of interrogations is possible in approximately 11% of the**

[8] Article 42(5c) of Act XXXIV of 1994 on the Police. Persons taken into custody by the police can spend a maximum of 12 hours in police custody suites. Holding cells are used to detain e.g. defendants in 72-hour detention, pre-trial detainees (as an exception), and persons in petty offence confinement.

[9] Response of the National Police Headquarters to the HHC's FOI request, 29000-197/19-70/2020.KOZA, March 2020

[10] For more details about the respective legal rules, see the HHC's communication from April 2020: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E, pp. 3–4.

[11] Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

[12] *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010

interrogation rooms. Finally, it has to be reiterated that the HHC was informed by the National Police Headquarters in 2020 that the **police do not collect data on the number or proportion of recorded police interrogations**,[13] even though that would be inevitable to assess the efficiency of any related measure aimed at increasing the number of recorded interrogations.

1.5. Statutory period of storing recordings remains too short

In its latest decision, the Committee of Ministers proposed "extending the thirty-day statutory period of storage of relevant video-recordings to prevent their untimely destruction" (Point 6. b)). However, there has been **no change in the law** this regard either: recordings made in relation to police measures **shall be destroyed after 30 days**, unless it turns out within that timeframe that they are needed for certain procedures or purposes listed by law (such as criminal procedures initiated within that 30-day period).[14] When it comes to recordings made in police holding facilities and police custody suites, this deadline is considerably shorter, only **3 working days**.[15]

2. DEFICIENCIES IN RELATION TO DETAINEES' ACCESS TO A DOCTOR

2.1. Continuing lack of independent and adequate medical examination of detainees

Despite the recommendations of the Committee of Ministers in Point 7. b) of its latest decision, and against the recommendations of the UN Human Rights Committee,[16] the Hungarian government **has still not established an independent medical examination body** mandated to examine alleged victims of ill-treatment. Thus, it continues to be the case that physicians employed by the police (either the medical service of the police or the state or municipal health service contracted by the police) are the ones who examine detainees before their placement in the police detention facilities and record their health status, including potential injuries.[17] **Detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent medical expert or physician**, and the right to access an external doctor of one's own choice during detention in general is not formally guaranteed.

In addition, there is no publicly available information that would indicate that the authorities have taken or undertaken any measures to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment, even though this was also recommended by the Committee of Ministers in Point 7. a) of its last decision.

2.2. Presence of police officers at medical examinations of detainees still a main rule

Despite the recommendation of the Committee of Ministers as included in Point 7. c) of its last decision, the Hungarian government **has not ensured the full confidentiality of detainees' medical examinations** in practice. This means that **the presence of police officers at medical examinations of detainees remains the main rule**.[18] This rule and practice, which hinders the fair and independent medical examination of torture allegations and may strongly contribute to the latency of ill-treatment

[13] Response of the National Police Headquarters to the HHC's FOI request, 29000-197/19-70/2020.KOZA, March 2020
[14] Act XXXIV of 1994 on the Police, Articles 42(1) and 42(7)(a)
[15] Act XXXIV of 1994 on the Police, Articles 42(5c) and 42(7)(c)
[16] See: *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 36(c).
[17] Decree 56/2014. (XII. 5.) BM of the Ministry of Interior on the Order of Police Cells, Article 34(1)
[18] Section 8 of Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT sets out the following: "If it does not violate the requirements of the safety of guarding and of personal safety, upon the request of the doctor or the detainee, it shall be arranged that the medical examination or treatment be out of the hearing and – if possible – out of the sight of police officers."

cases and may prevent police officers committing ill-treatment being called to account, was criticized both by the UN Human Rights Committee[19] and the CPT.[20]

3. INEFFECTIVE INVESTIGATIONS; LOW INDICTMENT AND CONVICTION RATES; LENIENT SENTENCES

Even though the Committee of Ministers in Point 10. of its latest decision "exhorted the authorities anew to present, without further delay, a strategic plan aimed at tackling the problem of ineffective investigations into police ill-treatment", there is **no publicly available information that would indicate that any such strategic plan has been devised or is envisaged** by the Hungarian government or the authorities. Similarly, there is **no information** that would indicate **that the authorities have taken or envisage measures to address the deficiencies of investigations** established by the Court or to enhance the capacity of the prosecution and judicial authorities to examine ill-treatment complaints in a Convention-compliant manner, even though the lack of information on these has also been raised by the Committee of Ministers in its last decision (Points 8. and 10.).

The Committee of Ministers has also expressed its "grave concern both as to the apparently very low rates of indictment upon complaints of ill-treatment by law enforcement officers and as to the reportedly lenient sentences imposed by courts in such cases" (Point 10.). The statistical data acquired by the HHC in this regard shows that these concerns remain valid.

Based on new data available for 2021, the case clearly remains that very few reports of ill-treatment and coercive interrogation result in the pressing of charges. **Between 2017 and 2021, the prosecution decided to file an indictment** (bring charges) annually in **only 3 to 5% of the alleged "ill-treatment in official proceeding" cases**, and this ratio was **0% in four out of the last five years in terms of alleged "coercive interrogation" cases**.[21] Thus, the vast majority of the investigations was closed without any further measure or the reports made by the alleged victims were rejected. In comparison, reports on "violence against an official person" resulted in an indictment in 60.9 to 71.3% of the procedures in the same period.[22] *(Note that these ratios are calculated based on the number of cases in which a decision was reached by the prosecution in a given year, not on the basis of the number of criminal cases launched in a given year.)*

Ill-treatment in official proceeding[23]								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
2017	104	17%	487	79.7%	18	**3%**	2	0.3%
2018	117	16.5%	563	79.4%	22	**3.1%**	7	1%
2019	53	19%	213	76%	14	**5%**	-	0%
2020	80	20.4%	291	74.2%	14	**3.6%**	7	1.8%
2021	61	14.6%	332	79.6%	19	**4.6%**	5	1.2%

[19] *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, § 14; *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 35.
[20] *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, § 37.
[21] Source: data provided by the Chief Prosecutor's Office upon the HHC's FOI requests (LFIIGA//259-10/2020, 2 March 2020; LFIIGA//469-2/2021, 5 October 2021; LFIIGA//476-3/2022, 15 October 2022)
[22] For the same data for the years 2007–2016, see the HHC's previous Rule 9(2) communications.
[23] Act IV of 1978 on the Criminal Code, Article 226; Act C of 2012 on the Criminal Code, Article 301

Coercive interrogation[24]								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
2017	31	25.4%	83	68%	8	**6.6%**	-	0%
2018	32	20.8%	121	78.6%	-	**0%**	1	0.6%
2019	15	33.3%	30	66.7%	-	**0%**	-	0%
2020	28	41.2%	40	58.8%	-	**0%**	-	0%
2021	19	29.2%	46	70.8%	-	**0%**	-	0%

Violence against an official person[25]								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
2017	27	5.7%	83	17.7%	335	**71.3%**	25	5.3%
2018	7	1.8%	96	24.8%	260	**67.2%**	24	6.2%
2019	13	5.6%	61	26.2%	142	**60.9%**	17	7.3%
2020	17	5%	78	23%	216	**64%**	27	8%
2021	11	3.2%	69	20.2%	240	**70.4%**	21	6.2%

In addition, **the conviction rate of the prosecution is lower in ill-treatment cases than the average annual prosecutorial conviction rate.** For ill-treatment in official proceeding, the conviction rate ranged from 40 to 91.7% between 2017–2021, while the average conviction rate of the prosecution gradually increased from 95.95 to 97.74% between 2016–2020.[26] (The conviction rate for coercive interrogation ranged from 33.3 to 100%, but there the number of closed cases per year is very low.)[27] It has to be added that even though the conviction rate for ill-treatment in official proceeding was over 90% for the first time in 2021 since at least 2007, this is hardly enough to signal a trend in itself, especially because the conviction rate for ill-treatment in official proceeding was only 40% in the preceding year.

	Ill-treatment in official proceeding				Coercive interrogation		
	Conviction	Acquittal	Termination		Conviction	Acquittal	Termination
2017	31 (83.8%)	5 (13.5%)	1 (2.7%)		-	-	-
2018	29 (82.9%)	6 (17.1%)	-		2 (100%)	-	-
2019	24 (64.9%)	12 (32.4%)	1 (2.7%)		1 (33.3%)	2 (66.7%)	-
2020	8 (40%)	11 (55%)	1 (5%)		-	-	-
2021	11 (91.7%)	1 (8.3%)	-		-	-	-
2022*	11 (78.6%)	3 (21.4%)	-		2 (100%)	-	-

**Up until 31 August 2022*

The Committee of Ministers also expressed concerns over the reportedly lenient sentences imposed by courts in ill-treatment cases. For years, it has indeed been the case that judges sentence law enforcement officers (police officers, penitentiary staff members, etc.) to imprisonment for ill-treatment usually in a much lower proportion then civilians convicted for violence against an official

[24] Act IV of 1978 on the Criminal Code, Article 227; Act C of 2012 on the Criminal Code, Article 303

[25] Act IV of 1978 on the Criminal Code, Article 229; Act C of 2012 on the Criminal Code, Article 310

[26] Source: *A büntetőbíróság előtti ügyészi tevékenység főbb adatai I. – A 2020. évi tevékenység [Main Data on Prosecutorial Activity before Criminal Courts – Year 2020],* Chief Prosecutor's Office, http://ugyeszseg.hu/wp-content/uploads/2022/01/lfiiga_65_3_2022_1-melleklet.pdf, p. 67.

[27] Source: data provided by the National Office for the Judiciary upon the HHC's FOI requests (2020.OBH.XII.B.10/8., 23 March 2020; 2021.OBH.XII.B.69/3., 7 October 2021; 2022.OBH.XII.B.61/4., 11 October 2022). For the same data for the years 2007–2016, see the HHC's previous Rule 9(2) communications.

person (when comparing the two most frequently applied sanctions for officials and civilians alike[28]). As the data acquired from the National Office for the Judiciary shows, this has also been the case for 2021 and 2022.[29]

	2017	2018	2019	2020	2021	2022*
Ill-treatment in official proceeding						
Imprisonment	16	7	8	3	6	6
Fine	17	22	15	5	5	5
Coercive interrogation						
Imprisonment	-	1	-	-	-	-
Fine	-	-	1	-	-	2
Violence against an official person						
Imprisonment	356	323	264	195	279	169
Fine	37	33	29	23	25	14

**Up until 31 August 2022*

Finally, it has to be emphasized that **even when sentencing law enforcement officers to imprisonment, judges mostly applied suspended imprisonment**:

- in 2020, imprisonment was suspended in 2 out of 3 instances;
- in 2021, imprisonment was suspended in 6 out of 6 instances;
- in 2022 (up until the end of August), imprisonment was suspended in 4 out 6 instances.[30]

Imposing suspended imprisonment instead of an effective one has also significance when it comes to the eligibility of service of convicted law enforcement officers, as detailed in the section below: when the imprisonment is suspended and it is not effective, law enforcement officers may be allowed to continue their service.

4. LACK OF A ZERO TOLERANCE MESSAGE AND THE ELIGIBILITY FOR SERVICE OF CONVICTED LAW ENFORCEMENT OFFICERS

The Committee of Ministers in its last decision "strongly reiterated their call on the authorities, at the highest possible level, to reiterate their zero tolerance message towards ill-treatment in law enforcement" (Point 8.), and has also urged the authorities to "review[...] the domestic law allowing the restoration to their positions of law enforcement officers sentenced to suspended imprisonment for ill-treatment in order to align it with the Court's case-law" (Point 6. c)). However, **despite the Committee of Minister's recommendations, the legislator has not reviewed the respective legal provisions**, and the Minister of Interior is still entitled to "restore" the eligibility of law enforcement officers (police officers, penitentiary staff, etc.) sentenced to suspended imprisonment, and so to **allow e.g. police officers to continue their work even if they were convicted of ill-treatment**.[31]

The Minister of Interior used this power several times in the past years: since 2012 (when restoring eligibility became possible again), **59.4% of convicted law enforcement officers submitting a request**

[28] Accordingly, the table does not include all types of sanctions applied, and it does not include sanctions applicable only against law enforcement officers (e.g. demotion). In addition, the courts may have imposed more types of sanctions on one defendant, and therefore, the number of sanctions applied in a given year can be higher than that of convicted defendants.
[29] Source of the data in the table: responses of the National Office for the Judiciary to the HHC's FOI requests (2020.OBH.XII.B.10/8., 23 March 2020; 2021.OBH.XII.B.69/3., 7 October 2021; 2022.OBH.XII.B.61/4., 11 October 2022).
[30] Data provided by the National Office for the Judiciary to the HHC's FOI requests (2021.OBH.XII.B.69/3., 7 October 2021; 2022.OBH.XII.B.61/4., 11 October 2022).
[31] Legal basis up until 1 July 2015: Act XLIII of 1996 on the Status of Members of the Armed Forces, Article 56(6a); legal basis since 1 July 2015: Act XLII of 2015 on the Service Status of the Professional Members of Law Enforcement Services, Article 86(10).

for their eligibility to be restored (41 out of 69) remained on the job.[32] Data from the past years also show that requests were submitted mostly by police officers: in 2020, all four requests were submitted by police officers; in 2021, five out of six requests were submitted by police officers; while in 2022, two out of two requests were submitted by them. The Ministry of Interior has repeatedly refused to disclose data on the types of criminal offences the affected law enforcement officers were convicted of.[33]

	Requests submitted	Requests granted
2012	10	3
2013	4	2
2014	3	2
2015	12	9
2016	12	8
2017	9	5
2018	2	2
2019	5	3
2020	4	1
2021	6	4
2022*	2	2
Total:	***69***	***41***

**Up until 7 October 2022*

This **points into the direction of factual impunity**, and raises serious concerns with regard to the service of the affected law enforcement officers, especially taking into consideration the high proportion of those official persons convicted for ill-treatment who are sentenced to suspended imprisonment *(see under Section 7. of the present communication)*.

5. DEFICIENCIES IN THE EFFECTIVENESS OF THE NATIONAL PREVENTIVE MECHANISM

In its last decision, the Committee of Ministers strongly reiterated their call to the Hungarian authorities for information on various measures regarding the National Preventive Mechanism (NPM) function of the Commissioner for Fundamental Rights (the Ombudsperson of Hungary), such as measures taken to strengthen its functional independence, and to increase its capacity to carry out additional preventive work other than detention monitoring. However, **concerns over the lack of independence of the Ombudsperson and over the lack of its effective detention monitoring and additional preventive work as NPM remain.**

Since the Committee of Ministers' decision was issued in December 2021, the Hungarian NPM visited only eight places of detention (two in December 2021, and six so far in 2022), but **it has not visited any police detention facilities**.[34] In 2022, the NPM published monitoring reports of two visits to police detention facilities carried out in 2020,[35] which showed that similar to other monitoring visits the NPM conducted during the COVID-19 pandemic, these visits were paid when no detainee was present in the

[32] Data provided by the Ministry of Interior upon the HHC's FOI requests (BM/12680-4/2018., 18 July 2018; BM/33994/2020., 26 February 2020; BM/15077/2022., 17 October 2022). For the same data for the years 2012–2016, see the HHC's previous Rule 9(2) communications.

[33] Responses of the Ministry of Interior to the HHC's FOI requests (BM/14094-10/2021., 12 October 2021; BM/15077/2022., 17 October 2022)

[34] See: https://www.ajbh.hu/web/ajbh-en/opcat-visits.

[35] Report on its visit to the Fonyód Police Headquarters (25 September 2020); report on its visit to the Tata Police Headquarters (2 October 2020)

respective police detention facilities, and so the NPM was not in the position to assess, among others, the functioning of the various procedural torture prevention safeguards in practice. Furthermore, it remains to be the case that there is **no publicly available information that would show the NPM performing any additional preventive work**, such as additional data collection, interviewing former detainees, or submitting (legislative) proposals to safeguard the rights of detainees in police detention facilities, in order to prevent their ill-treatment.

Furthermore, it has to be recalled that in the spring of 2022, the Commissioner for Fundamental Rights has been **downgraded from an "A" to a "B" status as a national human rights institution** (NHRI). The Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (SCA GANHRI) had recommended the downgrade in NHRI status because the Commissioner was "acting in a way that seriously compromises its compliance with the Paris Principles": it has not been fulfilling its mandate to effectively promote and protect all human rights, and, among others, it has not been effectively carrying out its mandate in relation to vulnerable groups or related to important human rights issues. The SCA GANHRI found that "the failure to do so **evidences a lack of independence**". Furthermore, the selection and appointment process for the position of the Commissioner for Fundamental Rights was found "not sufficiently broad and transparent".[36]

6. RECOMMENDATIONS

For the reasons above, the HHC respectfully recommends the Committee of Ministers to continue examining the execution of the judgments in the *Gubacsi v. Hungary* group of cases under the **enhanced procedure**, and, **given the length of time this group has been pending implementation, the seriousness of the issue, and the lack of tangible progress, we also ask the Committee pf Ministers to consider issuing an interim resolution** regarding the group of cases.

Furthermore, the HHC reiterates its earlier recommendations, and respectfully recommends the Committee of Ministers to call on the Government of Hungary to:

1. Take steps to decrease the latency of ill-treatment and **enhance the efficiency of investigations** into ill-treatment cases in order to decrease the number of procedures launched for ill-treatment where the investigation is terminated and the case is closed without indictment due to the lack of evidence, e.g. by issuing **protocols to follow** in related criminal procedures and **training**.
2. **Revise the legal framework pertaining to the eligibility of police officers** convicted and sentenced to suspended imprisonment, and ensure that officers convicted for ill-treatment in official proceeding or coercive interrogation cannot continue their service.
3. Equip **all police vehicles with operational image and sound recording devices**, and increase the number of available police **body cameras** progressively.
4. Ensure by law that **installing recording devices in all police detention facilities is obligatory**, and that recordings are stored for an adequate period of time.
5. Widen the scope of instances where the **video recording of interrogations** of defendants and witnesses is **obligatory,** video record the interrogation upon the request of the interrogated person free of charge, and prescribe that the police shall inform persons to be interrogated that they can motion the video recording of their interrogations.

[36] *GANHRI Sub-Committee on Accreditation Report – March 2022*, https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf, pp. 43–47.

6. Ensure by law that whenever a person detained by the police presents injuries upon medical examination and makes allegations of ill-treatment, they are promptly **examined by an independent doctor with training in forensic medicine** who should draw conclusions as to the degree of consistency between the allegations of ill-treatment made by the detained person and the objective medical findings. Make it **obligatory to take photographs** of injuries.

7. Provide **training to physicians and criminal justice stakeholders on the Istanbul Protocol** (UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).[37]

8. Ensure by law that police officers may be present at the medical examination of detainees only under special circumstances, i.e. ensure that **medical examinations** (whether they are carried out in police establishments or in hospitals) **are conducted out of the hearing and** – unless the health-care professional concerned expressly requests otherwise in a given case – **out of the sight of staff with no health-care duties**.

9. Introduce measures aimed at **protecting detainees who claim that they have been ill-treated**, such as providing them with a safe way to report ill-treatment while detained in the police facility, transferring them to another police facility once a complaint is made, etc.

10. **Revise the performance assessment system of the police**: lighten its statistical approach, and place more emphasis on factors such as crime prevention and the public's trust in the police.

11. Ensure that adequate, operational trainings and training sessions are devoted to the issue of human rights in the course of the training of all police officers. Provide police officers with training on **investigative (non-coercive, non-accusatory) interviewing techniques**, such as the PEACE model.[38] Make sure that there is a data base that makes the frequency and attendance of such trainings traceable.

12. Take steps – such as the inclusion of the issue into the judicial training – in order to ensure that the **rules on exclusion of evidence obtained by torture are applied properly**. Make it explicit in the law that judges can exclude torture evidence even if there is no separate criminal conviction establishing ill-treatment.[39]

13. Ensure that the Hungarian **National Preventive Mechanism under the OPCAT** adequately **monitors the application of procedural torture prevention safeguards**, such as the right of access to a lawyer, the right of access to a doctor, the right to notify a relative or third party, and the right to information on rights. Provide the National Preventive Mechanism with sufficient resources to have the capacity to performs these tasks.

14. Ensure that the Hungarian **authorities collect the data necessary to assess the implementation of the judgments** in the *Gubacsi v. Hungary* group of cases, including data on the proportion of interrogations recorded audiovisually, and data on the offences committed by officers whose eligibility has been restored by the Minister of Interior.

[37] Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1
[38] Cf. *28th General Report of the CPT, 1 January - 31 December 2018*, CPT/Inf(2019)9, §§ 73–81.
[39] Article 167(5) of the Code of Criminal Procedure sets out that facts derived from evidentiary means which were acquired by the authorities via a criminal offence cannot be taken into account as evidence. However, there is no research data available as to how this important safeguard works in practice.

Sincerely yours,

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co-chair
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