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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: Addendum to the Hungarian Helsinki Committee’s 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 submitted its latest communication under Rule 9(2) in relation to the execution of the judgments in question on 26 October 2022.¹ However, after the submission of our communication, on 9 November 2022, the Government of Hungary submitted an information note on general measures taken and/or envisaged in the *Gubacsi v. Hungary* group of cases (hereafter: Information Note).² Therefore, the HHC respectfully submits the present addendum to its 26 October 2022 communication 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”. The present communication concerns the general measures included in the Information Note in light of the general measures as included in the decision of the Committee of Ministers from December 2021.³

Firstly, it should be pointed out that **the Government submitted the Information Note with a considerable delay**, almost six weeks after the 30 September 2022 deadline provided for by the December 2021 decision of the Committee of Ministers. This disregard for the deadline provided by the Committee of Ministers compromises the processes of the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights. Furthermore, such delays also prevent civil society groups and other actors from having the possibility to submit communications and to assess the measures taken and/or envisaged by the Government in time before the next CM-DH meeting in December 2022, to submit freedom of information requests and gather additional information related to new measures included in the Information Note that were not

¹ DH-DD(2022)1202, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)1202E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)1202E)

² DH-DD(2022)1232, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)1232E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)1232E)

³ CM/Del/Dec(2021)1419/H46-16

covered by earlier action plans/reports in time, etc. This seriously undermines the process of supervising the execution of judgments.

Moreover, as detailed below, the Government **has failed to provide most of the statistical/quantitative data and information requested by** the December 2021 decision of the **Committee of Ministers**. *(Please note however that the letter of the Hungarian Deputy Prosecutor General referred to in the Information Note as enclosed to the latter is not available on HUDOC-EXEC, and so its content could not be assessed by the HHC.)* Therefore, the HHC maintains its view as elaborated in its earlier communication 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 December 2021 decision by the Committee of Ministers. In spite of the Committee of Ministers' request, 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. Similarly, no "fundamentally renewed, swift and resolute approach" can be detected on behalf of the Hungarian authorities. **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**. The quantitative data acquired by the HHC from the authorities (detailed in our October 2022 communication) do not show any tangible progress either.

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

The Information Note **completely fails to provide any information** on the following areas related to the video recording of police work, failing to comply with Points 6. a)-b) and 9. of the decision of the Committee of Ministers from December 2021:

- any consideration given to extending the scope of instances where video recording of interrogations is mandatory;
- any consideration given to extending the thirty-day statutory period of storage of relevant video-recordings to prevent their untimely destruction;
- any consideration given to equipping a maximum number of police vehicles with operating sound and image recording devices and of extending the use of body cameras;
- any reflection on measures leading to the installation of adequate recording devices in all police detention facilities; and
- data on the number of recorded interrogations broken down by categories as foreseen by law.

In the meantime, **data acquired by the HHC** from the National Police Headquarters⁴ **and publicly available laws and regulations**, presented in detail in the HHC's 26 October 2022 communication, **show a clear lack of any visible progress** in the video recording of police work:

- the scope of instances where video recording of interrogations is mandatory has not been extended, and the legal framework has remained the same since last year,⁵ including the rule that in cases where it is not mandatory, a recording will be made upon the request of the

⁴ Response of the National Police Headquarters of 17 October 2022 to the HHC's freedom of information request (29000-197/38-12/2022.KOZA).

⁵ 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](http://hudoc.exec.coe.int/eng/?i=DH-DD(2020)394E), pp. 3–4.

defendant, the defence counsel or the victim only if they advance the costs,⁶ which continues to deprive indigent suspects of their rights by virtue of their economic status;⁷

- there has been no change in the statutory period of storing recordings, and so they remain too short: recordings made in relation to police measures shall be stored for 30 days,⁸ while recordings made in police holding facilities and police custody suites only for 3 working days;⁹
- is still not obligatory by law to install cameras in all police detention facilities;¹⁰
- the number of police vehicles equipped with image and sound recording devices remains low (1.4% of all police vehicles), exactly the same as last year;
- the number of body cameras has remained the same as in 2020 and 2021: altogether 70 body cameras are available for the entire Hungarian police force; and
- according to information provided by the National Police Headquarters to the HHC, the police do not collect data on the number or proportion of recorded police interrogations.¹¹

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

The Information Note **completely fails to cover the issue of detainee's access to a doctor** and to provide any information on the following, failing to comply with Points 7. a)-d) of the decision of the Committee of Ministers from 2021:

- any measures taken to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment;
- any measures taken to establish an independent medical examination body mandated to examine alleged victims of ill-treatment;
- any measures taken to ensure the full confidentiality of detainees' medical examinations in practice; and
- any measures taken to ensure the completeness of police files (notably as regards the medical documentation).

As elaborated in detail in the HHC's 26 October 2022 communication, there is indeed **no tangible progress to report in the area of independent and adequate medical examination of detainees**, since

- the Government has still not established an independent medical examination body mandated to examine alleged victims of ill-treatment;
- detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent medical expert or physician;
- 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; and
- the presence of police officers at medical examinations of detainees remains the main rule,¹² thus, the full confidentiality of detainees' medical examinations in practice is still not ensured.

⁶ Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

⁷ Cf.: *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010

⁸ Act XXXIV of 1994 on the Police, Articles 42(1) and 42(7)(a)

⁹ Act XXXIV of 1994 on the Police, Articles 42(5c) and 42(7)(c)

¹⁰ Cf. Article 42(5c) of Act XXXIV of 1994 on the Police.

¹¹ Response of the National Police Headquarters to the HHC's FOI request, 29000-197/19-70/2020.KOZA, March 2020

¹² Cf. Section 8 of Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT.

3. LACK OF INFORMATION ON THE TRAINING OF POLICE OFFICERS

Regrettably, in terms of the training of police officers, the Information Note **does not provide any information on the human rights training sessions aimed at low-ranking officers**, including on their frequency, duration and content of the curricula; **or on the development of guidelines for the Convention-compliant conduct of arrests and interrogations**, failing to comply with Point 8. of the December 2021 decision of the Committee of Ministers.

4. INEFFECTIVE INVESTIGATIONS

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”, the Information Note fails to refer to **any such strategic plan being devised or envisaged** by the Hungarian government or the authorities, and there is no publicly available information that would indicate the existence of such a strategic plan either.

The Government presents in Section I. of the Information Note, under “General measures, the effectiveness of investigations” the **reorganisation of the investigating prosecutors’ offices**, which, according to the Information Note, “also brought with it significant technical improvements, [and] has ensured the uniform application of the law and the conduct of the proceedings in case of criminal offences investigated by the prosecution service in a lawful and professionally correct manner”. However, the Information Note **does not elaborate further on how exactly this reorganisation has contributed to addressing the deficiencies of investigations** or to enhance the capacity of the prosecution to examine ill-treatment complaints in a Convention-compliant manner. At the same time, it is to be welcomed that “designated tutors acquaint trainee prosecutors not only with the theoretical foundations and the specialities of the investigations of public office-related offences, the difficulties of evidence-taking and the relevant investigative techniques and tactics, but they also share and disseminate their practical knowledge and expertise”. However, it is not clear how much attention is paid to ECtHR standards in the course of this tutoring.

The **measures related to the training of investigating prosecutors** as presented in Section III., such as the participation in the joint EU and CoE project entitled European Programme for Human Rights Education for Legal Professionals in the European Union and the national (distant learning) courses listed by the Information Note **are to be welcomed**. However, it is unfortunate that no information has been provided as to the number of investigating prosecutors attending these courses as compared to their total number. No information has been provided on the curriculum of two of the three national training courses, and the description of the third national course is very brief as well.

Finally, the Information Note unfortunately **does not provide any information on measures taken or envisaged to enhance the capacity of judicial authorities** to examine ill-treatment complaints in a Convention-compliant manner, failing to comply with Point 8. of the December 2021 decision of the Committee of Ministers.

5. LOW INDICTMENT AND CONVICTION RATES; LENIENT SENTENCES

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. of the December 2021 decision). The statistical **data presented in the Information Note** in Section II. **do not dissolve these**

concerns, which were reaffirmed by data acquired by the HHC and included in its 26 October 2022 communication:

- the table in the Information Note about the outcome of criminal reports (or “complaints” as per the term used by the Information Note and the Committee of Ministers’ latest decision) confirms the conclusions of the HHC that it continues to be the case that very few reports/complaints of ill-treatment and coercive interrogation result in the pressing of charges, meaning that the vast majority of the investigations is closed without any further measure or the reports made by the alleged victims are rejected;¹³
- the Government has failed to provide any data on conviction rates, whereas data acquired by the HHC shows that the conviction rate remains lower in ill-treatment cases than the average annual prosecutorial conviction rate;¹⁴
- the Government has failed to provide any data on sentencing practices, whereas data acquired by the HHC shows that it continues to be the case that judges sentence law enforcement officers to imprisonment for ill-treatment usually in a much lower proportion than civilians convicted for violence against an official person; and even when sentencing law enforcement officers to imprisonment, judges mostly apply suspended imprisonment.¹⁵

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

The Government **has failed to react explicitly to the Committee of Ministers’ “call on the authorities, at the highest possible level, to reiterate their zero tolerance message towards ill-treatment in law enforcement”** (Point 8. of the Committee of Ministers decision from December 2021).

Similarly, the Information Note **completely fails to address the Committee of Ministers’ recommendation 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)). As detailed by the HHC’s 26 October 2022 communication, despite the Committee of Ministers’ recommendations, **the legislator has not reviewed the respective legal provisions**: the Minister of Interior is still entitled to “restore” the eligibility of law enforcement officers sentenced to suspended imprisonment, and so to allow e.g. police officers to continue their work even if they were convicted of ill-treatment.¹⁶ 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 for their eligibility to be restored (41 out of 69) have been

¹³ 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. 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. 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).

¹⁴ 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. 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.

¹⁵ Source of the data: 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).

¹⁶ 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).

allowed to remain on the job.¹⁷ Data for 2020–2022 also show that requests were submitted mostly by police officers.¹⁸

7. DEFICIENCIES IN THE EFFECTIVENESS OF THE NATIONAL PREVENTIVE MECHANISM

The Information Note **completely fails to cover issues related the National Preventive Mechanism (NPM)** function of the Commissioner for Fundamental Rights (Hungary’s Ombudsperson), such as measures taken to strengthen its functional independence and funding, to increase the human and financial resources allocated to it and its capacity to carry out additional preventive work other than detention monitoring; failing to comply with Point 7. of the December 2021 decision of the Committee of Ministers.

However, as elaborated on in the HHC’s 26 October 2022 submission, **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, which include the following:

- since December 2021, the NPM has not visited any police detention facilities,¹⁹
- the two relevant monitoring reports issued in 2022 about earlier visits 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 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;
- there is no publicly available information that would show the NPM performing any additional preventive work; and
- 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) by the Global Alliance of National Human Rights Institutions (GANHRI) over its failure to effectively carry out its mandate, which evidenced “a lack of independence”, and over the deficiencies of its selection and appointment process.²⁰

RECOMMENDATIONS

For the reasons above, the HHC maintains its recommendations included in its communication submitted on 26 October 2022: it 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 respectfully asks the Committee of Ministers to **consider issuing an interim resolution** regarding the group of cases.

¹⁷ 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.

¹⁸ 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)

¹⁹ See: <https://www.ajbh.hu/web/ajbh-en/opcat-visits>.

²⁰ 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.

Furthermore, the HHC reiterates its earlier recommendations as also included in its communication submitted on 26 October 2022, 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**, and video record the interrogation upon the request of the interrogated person free of charge.
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).²¹
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

²¹ Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1

model.²² 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.²³
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.

Sincerely yours,



András Kristóf Kádár
co-chair
Hungarian Helsinki Committee

²² Cf. *28th General Report of the CPT, 1 January - 31 December 2018*, CPT/Inf(2019)9, §§ 73–81.

²³ 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.