



25 November 2022

The observations of the [Hungarian Helsinki Committee](#) (HHC) below are based on its experience in representing victims of ill-treatment by official persons before the Hungarian courts and the European Court of Human Rights, and its field researches.

## Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture

### 1. Ill-treatment by police officers<sup>1</sup>

- The **lack of adequate investigation protocols** to follow by investigating authorities in ill-treatment cases and the **lack of their sufficient training** that includes European Court of Human Rights (ECtHR) standards are major obstacles to the effective investigation of ill-treatment allegations.

In Hungary, the lack of the above contributed to the fact that it is a recurring issue that investigations into police ill-treatment, conducted by the prosecution service, are not effective, and the ECtHR found in multiple cases that Hungary had violated the prohibition of torture when failing to carry out adequate and effective investigations into allegations of ill-treatment by police officers. Shortcomings identified by the ECtHR included the failure to hear the applicant, the suspected police officers and/or all other witnesses; the lack of face-to-face confrontation; the lack of genuine efforts by the investigating authorities and/or the competent courts to establish the chronology of the events and to resolve contradictions between different testimonies or between testimonies and medical reports; and the lapse of time in obtaining testimonies.<sup>2</sup>

- The **lack of independent and adequate medical examination** of persons claiming ill-treatment can also contribute to ineffective investigations and underreporting by victims.

In Hungary, despite recommendations by the UN Human Rights Committee (UN HRC)<sup>3</sup> and the Committee of Ministers of the Council of Europe (CoE CM),<sup>4</sup> there is no separate independent medical examination body mandated to examine alleged victims of ill-treatment; and, despite the recommendation of the European Committee for the Prevention of Torture (CPT),<sup>5</sup> detainees presenting injuries and making allegations of ill-treatment do not have the right to be examined by an independent doctor. Thus, physicians employed by the police (either the medical service of the police or the state/municipal health service contracted by the police) examine detainees

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<sup>1</sup> For a comprehensive overview and the latest statistical data, see the HHC's communication to the Committee of Ministers of the Council of Europe from October 2022: [https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/HHC\\_Rule\\_9\\_Gubacsi\\_v\\_Hungary\\_26102022.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/HHC_Rule_9_Gubacsi_v_Hungary_26102022.pdf).

<sup>2</sup> See: *Gubacsi v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10515>.

<sup>3</sup> *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, §36(c).

<sup>4</sup> CM/Del/Dec(2021)1419/H46-16, 7. b)

<sup>5</sup> *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 24 March to 2 April 2009*, CPT/Inf(2010)16, §15.

before their placement in the police detention facilities and record their health status, including injuries.<sup>6</sup>

In addition, there is no publicly available information that would indicate that the Hungarian authorities have taken/undertaken any measures to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment, even though during its last visit to Hungary in 2018 the CPT observed that “examinations carried out by police health-care professionals were not always as thorough as they should be” and that “injuries were poorly recorded, if at all, in Budapest in particular”.<sup>7</sup> It is not obligatory to take photographs of injuries in the course of the medical examination, and there is a lack of training of stakeholders on the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Furthermore, the presence of police officers at medical examinations of detainees remains the main rule,<sup>8</sup> even though in its last report the CPT “repeat[ed] its longstanding recommendation that arrangements be made to ensure that medical consultations 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”.<sup>9</sup> However, in its response to the report, the Hungarian government made it clear that it does not intend to comply with this recommendation.<sup>10</sup> This practice, which hinders fair and independent medical examinations and which may strongly contribute to the latency of ill-treatment, was criticized by the UN HRC<sup>11</sup> as well.

- **The lack of proper video recording of police work in various scenarios** contributes to the inefficiency of investigations as well.

In Hungary, deficiencies in this regard include that the number of police vehicles equipped with image and sound recording devices remains low (1.4% of all police vehicles); and altogether 70 body cameras are available for the entire Hungarian police force.<sup>12</sup> It is not obligatory by law to install cameras in all police detention facilities;<sup>13</sup> and the statutory periods of storing recordings remain too short: recordings made in relation to police measures shall be stored for 30 days, while recordings made in police detention facilities only for 3 working days.<sup>14</sup>

The video recording of police interrogations is not obligatory in all criminal proceedings,<sup>15</sup> and the scope of instances where it is mandatory is too narrow, even though the CPT recommended already in 2013 “the accurate recording of all police interviews [...], which should be conducted

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<sup>6</sup> Decree 56/2014. (XII. 5.) BM of the Ministry of Interior on the Order of Police Cells, Article 34(1)

<sup>7</sup> *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, §36.

<sup>8</sup> Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT, Section 8

<sup>9</sup> *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.

<sup>10</sup> *Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 20 to 29 November 2018*, CPT/Inf(2020)9, <https://rm.coe.int/16809ce9ed>, p. 23.

<sup>11</sup> *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.

<sup>12</sup> Source: responses of the National Police Headquarters to the HHC’s FOI requests.

<sup>13</sup> Cf. Article 42(5c) of Act XXXIV of 1994 on the Police.

<sup>14</sup> Act XXXIV of 1994 on the Police, Articles 42(1), (5c), 7(a) and (7)(c)

<sup>15</sup> For more details about the respective legal rules, see the HHC’s communication from April 2020 to the CoE CM: [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.

with electronic recording equipment”.<sup>16</sup> This goes against the guidance provided by the CoE CM as well.<sup>17</sup> 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.<sup>18</sup> This continues to deprive indigent suspects of their rights by virtue of their economic status, which was also criticized by the UN HRC already in 2010.<sup>19</sup>

- Finally, the **lack of zero tolerance messaging** from high-level law enforcement and government officials can also hinder effective investigations and prosecutions.

## **2. Ill-treatment in penitentiaries**

- The **complaint procedure(s) currently available** for detainees in Hungarian penitentiary institutions **do not provide an efficient way to report ill-treatment** by prison staff. Complaints can be submitted on paper or through an Intranet system of the National Prison Administration, but any further actions are made on the basis of the decision of the prison staff. No certificates are issued on the submission of the complaint, and it is objectively impossible to present proof of the submission. In its last report on Hungary, the CPT also noted with concern with regard to certain prison units it visited that “safe and confidential access to both internal and external complaints mechanisms, including the prison management, was an issue”, and that “inmates could not have access to the complaints boxes without staff knowing. Unsurprisingly, some prisoners told the [CPT] delegation that they refrained from making complaints and using the complaints boxes out of fear of retaliation (loss of privileges or transfer to lower standard prisoner accommodation).”<sup>20</sup>
- It is also to be added that prison staff have an excessively powerful authority that determines the most essential aspects of inmates’ everyday life, and in certain cases even their chances for early release. This extreme **power imbalance** can be detected in the field of alleged ill-treatment committed by prison staff as well. The HHC receives numerous complaints of ill-treatment from detainees and their relatives, but since in most of these cases **no video recording, medical files or independent witnesses are available**, these serious human rights violations remain without consequences.

## **3. Violent collective expulsions**

Hungary legalised collective expulsion of unlawfully staying foreigners to the Serbian side of the border fence erected at the international border between the two states in 2016.<sup>21</sup> Many of these collective expulsions are violent in nature: either during apprehension or during the removal to the Serbian side of the border fence, law enforcement officials use force against individuals. Patterns show that in many cases, the violence is accompanied by further humiliating and degrading treatment bordering on torture, including undressing in winter months. As the majority of apprehensions and all consequent removals take place in secluded places (as opposed to settlements or official border crossings), the likelihood of independent witnesses providing testimonies or making complaints is negligible. The HHC

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<sup>16</sup> 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 3 to 12 April 2013, CPT/Inf(2014)13, §14. See also: 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, §32.

<sup>17</sup> CM/Del/Dec(2021)1419/H46-16, 6. a)

<sup>18</sup> Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

<sup>19</sup> Concluding observations of the Human Rights Committee – Hungary, CCPR/C/HUN/CO/5, 16 November 2010

<sup>20</sup> 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, §87.

<sup>21</sup> For more on this, see: [https://helsinki.hu/wp-content/uploads/HHC\\_UNSR-migration\\_pushbacks.pdf](https://helsinki.hu/wp-content/uploads/HHC_UNSR-migration_pushbacks.pdf).

has been providing legal representation to victims of violent pushbacks since the summer of 2016. While investigations began in all of these cases, they were also closed without pressing charges against any perpetrator on the basis that they could not be identified. These investigations, while dragged on for years, lacked meeting the minimum standards of effectiveness, e.g. victims were not interviewed, despite requests to that end by their legal representatives. These cases are now all currently pending at the ECtHR.

## Regulatory frameworks

The Hungarian Criminal Code does not contain the notion of “torture” as defined under Article 1 of the UNCAT, but other criminal offences cover most aspects of the definition of “torture” under the UNCAT. The most relevant criminal offences in this regard are the following:

### **Ill-treatment in official proceeding:**<sup>22</sup>

- An official who in the course of executing their duties physically ill-treats another person commits a criminal offence, and shall be punishable with imprisonment for one to five years.
- If ill-treatment is committed by a group (three or more persons), the punishment shall be imprisonment for two to eight years.
- Preparation to commit ill-treatment is punishable by imprisonment of up to one year.

### **Coercive interrogation:**<sup>23</sup>

- An official who – with the aim of extracting a confession or declaration, or forcing a person not to make one – applies violence, threats, or uses other similar methods, commits a criminal offence, and shall be punishable with imprisonment for one to five years. (The use of violence means an actual physical impact on the victim suitable to influence their will. Threat is a declaration of intention to cause considerable harm so as to make the person who is the target of the threat fearful. The term “other similar methods” covers all illegal acts suitable for influencing the victim’s will without an actual physical impact, e.g. offering advantages, violating their human dignity, etc. The perpetrator commits the crime even if the victim does not make a testimony or a statement, or does not withhold the information.)
- If coercive interrogation is committed by a group, the punishment shall be imprisonment for two to eight years.
- Preparation to commit coercive interrogation is punishable by imprisonment of up to one year.

Imprisonment in these cases may be effective or suspended, and both criminal offences are also punishable by a fine instead of imprisonment on the basis of the general mitigating provisions of the Criminal Code. The above offences may be applied in combination with others. If ill-treatment or coercive interrogation causes bodily harm, the upper limit of imprisonment rises. If torture/ill-treatment causes death, it is investigated and tried as aggravated homicide (i.e. as homicide committed for a base motive or with exceptional cruelty).

**In practice, sentencing is lenient:** judges sentence law enforcement officers (police officers, penitentiary staff members, etc.) to imprisonment for ill-treatment usually in a much lower proportion

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<sup>22</sup> Act C of 2012 on the Criminal Code, Article 301

<sup>23</sup> Act C of 2012 on the Criminal Code, Article 303

than civilians convicted for violence against an official person; and even when sentencing law enforcement officers to imprisonment, judges mostly apply suspended imprisonment.<sup>24</sup>

As far as superior orders are concerned, according to the express prohibition of Act XXXIV of 1994 on the Police, police officers shall not subject others to torture, coercive interrogation, or to cruel, inhuman or degrading treatment, and shall refuse any order to do so.<sup>25</sup>

Finally, it is highly problematic that, despite e.g. the CoE CM's recommendation, the **Minister of Interior is entitled to "restore" the eligibility of law enforcement officers** (police officers, penitentiary staff, etc.) **sentenced to suspended imprisonment**, and so to allow them to continue their work even if they were convicted of ill-treatment.<sup>26</sup> The Minister of Interior used this power several times: since 2012, 59.4% of convicted law enforcement officers submitting a request for their eligibility to be restored (41 out of 69) remained on the job.<sup>27</sup> Data from the past years also show that requests were submitted mostly by police officers.

## Victim protection

The Hungarian legislative framework does not contain any specific regulation on the protection victims of ill-treatment in penitentiaries. In practice, the penitentiary institution may initiate the transfer of the prisoner concerned to another institution, but this is only optional.

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<sup>24</sup> Source: responses of the National Office for the Judiciary to the HHC's FOI requests.

<sup>25</sup> Article 16(4)

<sup>26</sup> Act XLII of 2015 on the Service Status of the Professional Members of Law Enforcement Services, Article 86(10)

<sup>27</sup> Source: data provided by the Ministry of Interior upon the HHC's FOI requests.