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Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
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Subject: Communication from the Hungarian Helsinki Committee concerning the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary
(Application nos. 15707/10, 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13)

Dear Madams and Sirs,

The **Hungarian Helsinki Committee (HHC)** is a leading human rights organisation in Hungary and Central Europe. The HHC monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

With reference to the judgments of the European Court of Human Rights (hereinafter: ECtHR) **in the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**, and the latest Action Report on the implementation of these judgements submitted by the Government of Hungary, **the HHC respectfully submits the following observations** under Rule 9 (2) of the 'Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements.'

Introduction

The HHC submitted observations concerning the cases of István Gábor Kovács and Varga and Others v. Hungary in December 2023,¹ expressing concern regarding issues such as prison overcrowding, inadequate detention conditions, the lack of adequate access to legal remedies, and the treatment of prisoners with disabilities.

The Government mentions a few of these concerns in its latest Action Report² but fails to address most of the issues raised by the HHC's December 2023 submission. **The HHC considers these issues unresolved and maintains the position it took in its December 2023 communication.** Consequently, **the HHC is still of the firm view that the case should not be closed at this point, and the Hungarian Government should be under scrutiny for not having tended to the issues above in a meaningful way that would have been in line with the content and spirit of the related ECtHR judgments.**

¹ Communication from an NGO (HHC) [DH-DD\(2024\)16](#)

² Action Report [DH-DD\(2024\)93](#)

This Communication aims to briefly respond to the Government's recent Action Report to provide the Committee of Ministers and the public with a comprehensive picture of the situation in Hungary.

1. Preventive and compensatory remedies

It is important to note that the Government's Action Report does not contain any new information on this issue. Hence, it does not address the practical problems that the implementation of the invoked provisions of Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereinafter: Penitentiary Code)³ raise and which are described in detail in the HHC's December 2023 submission.⁴ The HHC therefore maintains the position outlined therein.

2. The expansion of prison capacity will not solve the issue of prison population inflation

The Government mentions in its Action Report that a new prison is expected to be opened in September 2024. The Government believes that the new facility could provide a long-term solution to prison overcrowding.⁵ The HHC disagrees.

It is important to note that prison overcrowding is not primarily the result of low prison capacity but of an imprisonment-centred penal policy. The long-term solution is not to build new prisons but to reduce the prison population. As the ECtHR pointed out in its *Varga and Others v. Hungary* judgment,⁶ a favourable way to do so could be "to use as widely as possible alternatives to detention and redirect [...] criminal policy towards reduced use of imprisonment in order to, among other things, solve the problem of prison population inflation" in line with the relevant Recommendations of the Council of Europe.⁷ Nevertheless, alternative sanctions and forms of early release remain mostly underused in Hungary, as explained in detail in the HHC's previous Communication.⁸

It is also important to point out that the Government's Action Report shows that 13 prisons were operating at over 100 per cent of their capacity on 31 December 2023.⁹ Empirical evidence drawn from the most recent prison building efforts of the Hungarian authorities refute the Government's claim that the opening of a new prison facility will solve the problem of recurring overcrowding. In 2020, an intensive prison building program was implemented, increasing prison capacity by thousands.¹⁰ But now, three years later, this has proved insufficient, and the prison system again runs above its capacity, as the figures in the Action Report suggest.¹¹ It can then be concluded that when the only intervention

³ § 14 of Action Report [DH-DD\(2024\)93](#)

⁴ § 3 of Communication from an NGO (HHC) [DH-DD\(2024\)16](#)

⁵ § 18 of Action Report [DH-DD\(2024\)93](#)

⁶ § 105 of [Varga and Others v. Hungary](#), Application nos. [14097/12](#), [45135/12](#), [73712/12](#), [34001/13](#), [44055/13](#), and [64586/13](#), judgment of 10 March 2015

⁷ See in particular Recommendation No. R (99) 22 and Recommendation Rec(2006)13 of the Committee of Ministers.

⁸ § 1.2.2 of Communication from an NGO (HHC) [DH-DD\(2024\)16](#)

⁹ § 17 of Action Report [DH-DD\(2024\)93](#)

¹⁰ On the 2020 capacity expansion, see: § 1 of Communication from an NGO (HHC) [DH-DD\(2021\)148](#)

¹¹ § 17 of Action Report [DH-DD\(2024\)93](#)

the State implements is to increase prison capacity, the capacities always fill up. In conclusion, as the Committee of Ministers¹² have also repeatedly pointed out: increasing prison capacity cannot be considered an effective long-term solution to prison overcrowding.

3. High phone tariffs remain

The Action Report mentions that, following the action of the Commissioner for Fundamental Rights, who is in charge of the OPCAT National Preventive Mechanism (hereinafter: OPCAT NPM), the National Penitentiary Administration (hereinafter: NPA) negotiated with the mobile phone provider for prisoners' telephone use and successfully achieved a reduction in the tariff for prisoners' telephone calls.¹³ The HHC welcomes such negotiations. However, the tariffs (the specific per-minute prices are not mentioned in the Action Report) are still disproportionately high in comparison to contracts provided outside the penitentiaries.

Detainees cannot be called back by their relatives, meaning that when they wish to speak with their relatives, **they must initiate the phone call, for which they must pay HUF 69 (approximately EUR 0.18) per minute.**¹⁴ The same mobile provider also offers telephone services as a residential service, **available to anyone at large, at the cost of HUF 27 (approximately EUR 0.07) per minute.**¹⁵ What is more, the same provider also offers a discounted phone subscription to the staff of the Prison Service. The staff subscription scheme allows prison staff to make calls at a lower price than the average residential rate and a four times lower rate than detainees, at just HUF 15.24 per minute (approximately EUR 0.039).¹⁶

The HHC considers it problematic that the rates that prisoners are charged for phone calls are so much higher than rates in the outside world. In the HHC's view, even with the additional security requirements of the prison telephone system, there is no justification for the degree of difference between prison phone rates and the rates used in the outside world. Nor is there justification for the fact that prisoners can have a penitentiary-administered mobile phone only if they pay a 35.000 HUF (approximately EUR 90) deposit. It is also worth pointing out that the HHC regularly receives complaints from relatives of detainees regarding the weekly time available for detainees to talk on the phone. A detainee is entitled to 20-120 minutes of phone time per week, depending on the security level of the imprisonment.¹⁷

¹² § 4 of CM Decision [CM/Del/Dec\(2021\)1398/H46-12](#); § 6 of CM Decision [CM/Del/Dec\(2020\)1377bis/H46-16](#); §§3-4 of CM Decision [CM/Del/Dec\(2018\)1310/H46-8](#); §3 of CM Decision [CM/Del/Dec\(2017\)1288/H46-16](#).

¹³ §§ 20-21 of Action Report [DH-DD\(2024\)93](#)

¹⁴ Annex 2 of Order 35/2020. (VII. 16.) of the National Penitentiary Administration on the tasks relating to the operation of a non-public mobile telecommunications service for prisoners

¹⁵ <https://www.telekom.hu/webshop/szolgaltatasok/domino-dijcsomagok>

¹⁶ https://www.telekom.hu/static-la/sw/file/BVOP_lakossagi_mobil_flotta_tajekoztato_2023_majus.pdf

¹⁷ There are three security levels of imprisonment: 1) low security (fogház), 2) medium-security (börtön), and 3) maximum security (fegyház). Within each security level, there are three additional regime categories: light, general and strict. On the weekly phone times, see Sections 39-42 and 187-189 of the Ministry of Justice Decree no. 16/2014 on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for fines.

In conclusion, the previously raised serious problems regarding access to phone calls still prevail.¹⁸ The high phone call tariffs still need to be resolved. Deposit and minute tariffs for penitentiary-administered mobile phones continue to constitute a severe financial difficulty for several inmates.

4. The general rule of no physical contact remains in force

The HHC must reiterate its observations concerning the unnecessary and unlawful restrictions regarding visits – the indiscriminate application of a plexiglass separation and the ban on physical contact between prisoners and their visitors. As the HHC has pointed out in several of their previous Rule 9 communications,¹⁹ a process started in 2017-2018 whereby the Hungarian penitentiary system had become increasingly closed and non-transparent, which, among others, had a severely detrimental effect on detainees' contact with the outside world. The NPA introduced a very restrictive visitation policy: physical contact between the detainees and their visitors was prohibited as a general rule. Furthermore, an internal regulation making it mandatory for every institution to install "high transparent plastic screens", physically separating inmates from visitors, came into effect on 29 April 2019.²⁰ Since then, physical contact between detainees and their visitors has been completely prohibited, except for a rarely available type of visit (family visit), which is only possible upon the detainee's request and within the penitentiary commander's discretion, based on criteria for its granting that are non-transparent.²¹ As shown in HHC's previous Communication,²² family visits are extraordinarily rare (at maximum less than 0.5% of detainees were allowed to participate in such visits per month between August 2021 and July 2023).

The general visitation regime operates with a ban on any physical contact between the detainees and their visitors. Since 26 April 2020, a regulation has been in force on the procedural rules for implementing visits issued by the Headquarters of the National Penitentiary Administration.²³ Section 10 of the Order stipulates that during the general visitation regime called "group visits", the "visiting room shall be divided by a partition", and "all forms of physical contact between a detainee and their visitor shall be prohibited".

According to the Government's position in the latest Action Report, following the OPCAT NPM's visit and Recommendation, the NPA has taken measures to ensure that the full plexiglass partition is applied to prisoners on an individual basis, where it is justified by regime classification and security risk.²⁴ However, evidence shows that the practice concerning the application of such restrictions on

¹⁸ See, for example § 2 of Communication from an NGO (HHC) [DH-DD\(2020\)396](#)

¹⁹ The HHC prepared several Rule 9 submissions with regard to the execution of the judgments of the European Court of Human Rights in the cases of Varga and Others v. Hungary and Isván Gábor Kovács v. Hungary (Application no. [14097/12](#) and [15707/10](#)), one of which was submitted on 20 April 2020 and is available here: https://helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_04_20.pdf

²⁰ Source: Response no. 30500/490/2020 issued by the NPA to the HHC's FOI request, 17 January 2020.

²¹ This practice is in clear violation of the ECtHR's consistent case law, according to which "it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family" (Moiseyev v. Russia, § 246). The ECtHR also made it clear that "although physical separation of a detainee from his visitors may be justified by security considerations in certain cases [...], the measure cannot be considered necessary in the absence of any established security risk" (Ibid., § 258).

²² § 2.2.3.1 of Communication from an NGO (HHC) [DH-DD\(2024\)16](#)

²³ Order 12/2020 (IV.24.) of the National Penitentiary Administration on procedural rules for the implementation of the visit

²⁴ § 23 of Action Report [DH-DD\(2024\)93](#)

prisoners' visiting rights is not in line with the principles developed by the ECtHR. Firstly, Section 10 of the NPA's Order²⁵ referred to above remains in force, which

1. does not contain any reference to individual assessment of security risk,
2. prescribes the use of plexiglass partitions during group visits and
3. prohibits physical contact at all group visits, which is the most common visitation form.

This piece of regulation is in clear violation of the principles established and reiterated recently by the ECtHR²⁶ that the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether the limitations are appropriate or necessary in specific cases. Secondly, the HHC receives an overwhelming amount of information from family members of detainees that different sizes of plexiglass separators are still in use and a complete ban on physical contact during prison visits, without individualised risk assessments, is still implemented in all security regimes in Hungarian penitentiaries.

Thus, the fact remains that the Hungarian penitentiary system continues to maintain the unlawful practice of physically separating detainees from their visitors without any individual risk assessment. Therefore, there is an urgent need for significant improvements in conducting prison visits to eliminate the widespread violation of detainees' and their family members' right to respect for their private and family life, as the ECtHR also underlined by deeming the practice of an indiscriminate ban on physical contact unlawful in the recent case of *Takó and Visztné Zámbo v. Hungary*.²⁷

Recommendations

Given the HHC's view that the deficiencies raised in the December 2023 submission remain, **the HHC respectfully recommends to the Committee of Ministers of the Council of Europe to continue to examine this group of cases under the enhanced procedure. The HHC also fully maintains the substantive recommendations made or repeated in its December 2023 submission.**²⁸

²⁵ Order 12/2020 (IV.24.) of the National Penitentiary Administration on procedural rules for the implementation of the visit

²⁶ § 11 of [Takó and Visztné Zámbo v. Hungary](#), applications nos. 82939/17 and 27166/19, judgment of 12 October 2023

²⁷ Case of [Takó and Visztné Zámbo v. Hungary](#), applications nos. 82939/17 and 27166/19, judgment of 12 October 2023

²⁸ § 5 Communication from an NGO (HHC) [DH-DD\(2024\)16](#)