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Subject: Communication from the Hungarian Helsinki Committee concerning the case of TAKÓ AND VISZTNÉ ZÁMBÓ v. Hungary
(Applications nos. *82939/17 and 27166/19*)

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.

The HHC ran a detention monitoring program for more than two decades, between 1995 and 2017. During this period, the organisation carried out 1,237 monitoring visits to police jails, 48 visits at penitentiary institutions and made 51 inspections at places of immigration detention. The HHC has submitted numerous communications to various international forums (CPT, SPT, UNWGAD, UPR, etc.) in related subject matters. HHC lawyers have litigated cases concerning conditions and treatment in Hungarian prisons before domestic courts and the European Court of Human Rights (see, for example, *Engel v. Hungary*, *Csullog v. Hungary*, three of the six applicants in the case of *Varga and Others v. Hungary*, and one of the two applicants in the subject matter of the present submission: *Takó and Visztné v Hungary*). HHC receives around 500 complaints a year from detainees and their relatives by letter, email or telephone and is frequently contacted by lawyers representing detainees in various legal proceedings. In addition, the HHC is a founding member of a grassroots organisation 'FECSKE Support Network for Detainees and their Families', which consists of people with lived experience of detention, their family members and professionals, including former members of the prison administration. As a result, the HHC has access to up-to-date information related to detention conditions. This information is supplemented by the results of the HHC's Freedom of Information (FOI) requests and the cases taken on by lawyers through the HHC's human rights legal counselling program.

With reference to the judgment of the European Court of Human Rights (hereinafter: ECtHR) **in the case of TAKO AND VISZTNE ZAMBO v. Hungary,** and the Action Plan on the implementation of this judgment 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'. This communication describes a provisional state of affairs regarding excessive restrictions on prison visits. Following the ruling, some

improvements took place in the practice of physical contact between inmates and visitors, and eventually, a bill drafted by the Ministry of Justice was passed by Parliament and promulgated on 4 December 2024, which will further amend the system of visits from 1 March 2025.

Therefore, this document:

- Provides a brief overview of restrictions on visits since 2017 and the rules currently in force;
- Explains the content of the recently passed law amending the Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereinafter the Penitentiary Code);[1]
- Raises outstanding issues relating to the individual and general measures of the judgment;
- Concludes with recommendations to the Committee of Ministers.

1. Background and context

1.1. Physical separation during visits in prisons in Hungary since 2017

The restrictions prohibiting physical contact between detainees and their visitors were introduced much earlier than stated in the Action Plan.[2] The HHC has been closely monitoring this situation since the beginning of complete physical separation, which was introduced by the National Penitentiary Administration (hereinafter NPA)[3] in 2017. Between 1995 and 2017, the HHC carried out a detention-monitoring program. During their last monitoring visit, which took place on 20-21 June 2017 in the Borsod-Abaúj-Zemplén County Remand Prison (Miskolc), HHC monitors noted with concern that visitors and inmates were not allowed any physical contact.[4] The monitoring report includes the reflections of the prison commander, who states that when constructing the visiting rooms, "while fully complying with the legal requirements", they "primarily took into account the central standards set by the Central Headquarters of the NPA".[5] The commander also noted that the severely restrictive policy was introduced in order to "prevent the entry of prohibited objects posing a security risk", while adding that they were examining the "possibility of relaxing the rules for detainees who comply with the rules for the sake of differentiation".[6] This practice was introduced by a special "Standing Order"

[1] In their communications to the Committee of Ministers, the Government regularly introduces new ways of translating the names of Hungarian legal acts. In their Action Report, in this case, they call this law EoP Act. The HHC remains using the Penitentiary Act, as it is more descriptive and prevails consistency throughout HHC communications across different cases monitored by the Committee of the Ministers.
[2] § 15 of the Action Plan, DH-DD(2024)884, states that "[i]n 2019, because of the pandemic (sic!), it was ordered that in order to prevent infections in the visitor reception rooms, ceiling-high partitioning must be used in the penitentiary institutions." It must be noted that the COVID-19 was declared a global pandemic on 11 March 2020. See further: https://www.who.int/europe/emergencies/situations/covid-19
[3] In their communications to the Committee of Ministers, the Government regularly introduces new ways of translating the names of Hungarian authorities and legal acts. In their Action Report, in this case, they call the headquarters of the penitentiary administration (in Hungarian: Büntetés-végrehajtás Országos Parancsnoksága) Director General of the Hungarian Prison Service, which neither reflects the name nor the institutional setup of this authority. Therefore, the HHC remains using the National Penitentiary Administration, as it is closer to what this authority represents and prevails consistency throughout HHC communications across different cases monitored by the Committee of the Ministers.
[4] See the Report of the HHC on the monitoring visit conducted in the Borsod-Abaúj-Zemplén County Remand Prison (in Hungarian), 21-22 June 2017, pp. 30-32.
[5] Ibid., pp. 31-32.
[6] Ibid., p. 32.

of the Commander of the NPA, which was not made public[7] and required the use of a 20-centimetre partition during visits.[8] According to this text, physical contact between visitors and detainees was not directly prohibited. However, the Ombudsperson's subsequent report from 2023 summarising 45 complaints shows that in practice, the prohibition was already being enforced as of 1 July 2017.[9]

The unlawfully restrictive visitation rules constituted a mass human rights violation for seven consecutive years, during which the NPA violated the right to respect for private and family life of hundreds of thousands of inmates and family members—although such a prohibition was never actually prescribed by the Penitentiary Code but was established in lower-level norms, such as the various orders of the NPA.[10] The only exception to this rule was during 'family visits', where inmates with minor children could request from the commander of the penitentiary to allow a visit with physical contact and without glass separation. Data showed that family visits were extraordinarily rare when it was in the discretion of the commander to grant them, in each month, 0.0-1.3% of inmates were granted such a visit between August 2022 and February 2024.[11]

The systemic nature of this issue led HHC to advocate, starting with 2017, for changes to the visitation rules before the national authorities. In addition to that, one of the applicants in the case *Takó and Visztné Zámbó v. Hungary (Applications nos. 82939/17 and 27166/19)* was represented by an HHC lawyer. The HHC's related activities included regular reporting on the issue in the Rule 9(2) communications submitted to the Committee of Ministers in the *Istvan Gabor Kovacs v. Hungary* and *Varga and Others v. Hungary* group of cases on the structural problem of inhumane detention conditions as the issue of unlawful restrictions on visits was thematised in this group of cases.

From 2017 on, physical contact between inmates and visitors was prohibited gradually. In 2019, the restrictions on visits went even further, with the installation of ceiling-high plastic screens in the visitation rooms of all penitentiaries, thus eliminating the possibility of any physical contact between inmates and their families, regardless of the actual risk level of the individual inmates.[12] The unusually long (21 months in total) total ban on visits during COVID-19—notwithstanding the plastic screens to protect against the spread of the virus—was also documented in one of HHC's communications,[13] as were the remaining restrictions on visits after the pandemic.[14] As things stand, despite some positive developments, current legislation and practice still raise concerns, both in terms of excessive restrictions on physical contact and the mandatory use of the plexiglass partition during visits.

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[7] The HHC obtained the text of these standing orders determining how penitentiaries operated on a daily basis through litigation in 2019. The court's assessment underlined that such orders constitute crucial public-interest information concerning incarceration.

[8] Section 23 of the Standing Order 13/2017 (II. 6.) of the Commander of the NPA on the procedural rules for the implementation of certain reintegration tasks.

[9] See the report of Hungary's Ombudsperson, the Commissioner for Fundamental Rights (NHRI) AJB-1262-29/2023, pp. 4-6.

[10] Order 12/2020 (IV. 24.) of the National Penitentiary Administration on the procedural rules for the implementation of visits has provided the basis for the restrictions since 26 April 2020. It is still in force and has since been amended twice, both in 2024.

[11] Source: Responses nos 30500/1347/2023, 30500/4293/2023, 30500/2587-7/2024 and 30500/4683/2024 issued by the NPA to the HHC's FOI request on 17/03/2023; Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 17/03/2023, 04/09/2023, 31/05/2024 and 16/10/2024.

[12] See the HHC's following Rule 9(2) communications with regards to the execution of the judgments of the ECtHR in the cases of Varga and Others v. Hungary and Istvan Gabor Kovacs v. Hungary (Application nos. 14097/12 and 15707/10): DH-DD(2020)396E, pp. 3, 13-14, 31; DH-DD(2021)175E, pp. 4, 5-6; pp. DH-DD(2022)1384E, pp. 15-17; DH-DD(2024)16E, pp. 20-21, 36; DH-DD(2024)288E, pp. 4-5.

[13] See DH-DD(2021)148E, pp. 2, 3-5, 16; DH-DD(2022)1384E, pp. 17-20.

[14] See DH-DD(2022)1384E, pp. 21-23.

1.2. Current legislation and practice related to restrictions on visits and other forms of contact

The HHC has noted some improvements in the rules and practice of visits in Hungarian prisons since the *Takó and Visztné Zámbó v. Hungary* judgment was handed down.

The common form of visiting is in groups, where the prisoner and their visitor can talk to each other while sitting on either side of a wide table, separated by a plexiglass partition and under supervision.[15] Until June 2024, both the normative framework and the practice of prisons imposed a total ban on physical contact during group visits; in the first half of 2024, it was the practice of prisons that first changed in a more favourable direction, followed by a change in normative framework. First, the ceiling-high partitions were replaced by 50-centimetre-high ones,[16] and then, from 20 July 2024, contact was allowed during greetings and farewells for prisoners in low and medium risk categories (I, II and III). However, physical contact during visits was and still is generally prohibited without an individual risk assessment.

In addition, physical contact during greetings and farewells is prohibited for category IV and V prisoners (approximately 30% of the prison population)[17] and for prisoners who received a disciplinary sanction for possession of a prohibited item in the year prior to the visit. In their case, a full floor-to-ceiling partition must be used during the visit.[18] In HHC's experience, it is easy to obtain a disciplinary sanction for any behaviour, including in relation to prohibited items. For example, it is a disciplinary offence for a detainee not to have a "fridge permit" (which costs money) but to have a food item that needs to be refrigerated. In addition, detainees often report to HHC that an item (such as a nail clipper) is allowed in one prison but not in another. When a detainee is transferred, they may not be aware that an item they have on them is prohibited in the new prison, and this may lead to disciplinary sanctions imposed for the possession of a prohibited item.

In other words, although the number of persons permitted to have physical contact during visits (more precisely, at the beginning and end of visits) has significantly increased (potentially to approximately 50-70% of the prison population)[19] in recent months following the ECtHR's judgment in the *Takó and Visztné Zámbó v. Hungary* case, the current regulation and practice still do not meet the ECtHR's standard of an individual and personal assessment, as the prohibition of physical contact continues to be applied in a blanket manner without individual discretion in the case of security category IV and V prisoners (30% of the prison population), as well as prisoners who have been disciplined for possessing a prohibited item in the previous year irrespective of the circumstances of the disciplinary offence.

[15] Section 10/A of Order 12/2020 (IV.24.) of the NPA on the procedural rules for the implementation of visits.
[16] The HHC requested photos of the glass walls currently in use, but the NPA refused providing any stating "There are no recent photographs available for all prisons, and the NOA is not obliged to take them for the purposes of fulfilling a FOI request." Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.
[17] Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.
[18] Sections 10/A-10/C of Order 12/2020 (IV.24.) of the NPA on the procedural rules for the implementation of visits.
[19] The lack of data makes it difficult to give a closer approximation, as this calculation is made by HHC based on the number of detainees in specific categories. The NPA stated that they did not have data available on the number of detainees who became entitled to physical contact with their family members during greetings and saying goodbye after the legislative changes. Source: Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.

There has also been some improvement in the case of visiting children, as from 1 January 2024 the Penitentiary Code will allow all detainees with children under the age of 18 to have a 'family visit' every six months. While the new regulation is promising, it is clearly not frequent enough to be considered regular, therefore, it still may not be regarded as satisfactory in light of ECtHR standards, the UN Convention on the Rights of the Child (hereinafter UN CRC)[20] and the Council of Europe Recommendation CM/Rec(2018)5 concerning children with imprisoned parents. Furthermore, in HHC's experience, prisons in Hungary largely neglect their duty to promote and support the maintenance of family relationships throughout the period of imprisonment, which they are obliged to do by law.[21] Family visits—the only form of visit where children can have continuous, direct contact with the parent they are visiting[22]—are severely underused. Between January 2023 and August 2024, there was one month when none of the prisons organised family visits (February 2023), with a prison population of around 18-19,000. In the best month, June 2024, 395 prisoners, or 2.1% of the prison population, received visits from their children.[23] Another prevalent problem is that face-to-face and Skype visits tend to be organised on weekdays. Weekday visits are a difficult obstacle to overcome for working family members, especially those raising their children alone, and it is a violation of the child's best interests[24] and right to education to have to choose between missing a school day or not being able to meet with the detained parent.[25]

The HHC also finds it concerning that the position of the family members of inmates as claimants in penitentiary decision-making is not clear, even when the decision affects their fundamental rights.[26] After the judgment in the Takó and Visztné Zámbó v. Hungary case was handed down, the HHC provided support to family members on inmates to submit requests for visits without physical separation, referring to – *inter alia* – the ECtHR's judgment.[27] The affected family members did not receive a response from the commander of the penitentiary when the first instance decision – rejecting the request in most cases – was made, but instead the inmate was verbally informed that the request of the relative had been denied.

A further concern is that, in the HHC's experience, security considerations still generally override fundamental rights considerations when the members of the penitentiary administration make

[20] See the HHC's CSO coalition submission to the UN CRC's Draft General Comment No. 27 (202x) on children's rights to access to justice and effective remedies, p. 3.
[21] Section 164(6) of the Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (Penitentiary Code).
[22] Order 20/2024. (VII. 12.) of the NPA on the amendment of certain NPA orders.
[23] Response nos 30500/2587-7/2024 and 30500/4683/2024 issued by the NPA to the HHC's FOI requests on 31/05/2024 and 16/10/2024.
[24] In *Deltuva v. Lithuania* (Application no. 38144/20), the ECtHR ruled (§§ 9, 11) that the best interests of the child must be a primary consideration in any decision affecting the child and that children separated from their parents in prison have the right to regular and continuous contact with their parents and, in this context, to preserve and maintain the family bond.
[25] In *Subaşi and Others v. Türkiye* (Application nos 3468/20 and 18 others), the ECtHR reaffirmed its consistent position that the state has a positive obligation to support the maintenance of family ties of detainees and their children. The Court found that the refusal to allow weekend visits by detainees' children caused substantial disadvantage and, therefore, a violation of Article 8 ECHR.
[26] Section 10 of the Penitentiary Code prescribes the provisions on the enforcement of rights, and it does not refer to close relatives of inmates as rights holders with the right to claim or appeal penitentiary decisions.
[27] In addition to providing legal representation in five cases, the HHC published information leaflets and sample documents for family members: https://helsinki.hu/mintabeadvanyok-plexi/.

decisions affecting detainees and their families. Physical contact during visits is especially important because other forms of personal contact provided for in the law remain vastly underused.[28]

1.3. Recent amendment to the Penitentiary Code on visits

On 4 December 2024, Act LXIV of 2024 on the Amendments to Laws Necessary for Further Effective Action Against Online Fraud and Other Laws (hereinafter: Amendment Act) was promulgated, which, among other things, amends the Penitentiary Code. The new provisions of the Penitentiary Code come into force on 1 March 2025. The Amendment Act[29] introduces four modes of visitation:

1) Visits without physical contact using a partition that must not restrict communication between the inmate and their visitor(s) (*személyes érintkezés nélküli látogatófogadás*).
2) Inmates and visitors are allowed to greet and say goodbye to each other with physical contact in a manner specified by law; physical contact is not allowed during the visit, and a glass partition is used that must not restrict their communication (*személyes érintkezést lehetővé tévő látogatófogadás*).
3) In an open visit (*kötetlen látogatófogadás*).
4) In a secure booth (*biztonsági beszélőfülke*), which completely separates the detainee from their visitor(s).[30]

The HHC welcomes that as a general rule for certain categories of inmates, prisoners and their visiting family members will be allowed to greet and say goodbye to each other with physical contact (handshakes, kisses, hugs). Although these are called 'visits allowing personal contact' (*személyes érintkezést lehetővé tévő látogatófogadás*),[31] physical contact beyond the greeting and the farewell is not permitted during the visit, and the glass partition also remains in place, however, it must be installed in such a way that it does not restrict conversation between the prisoner and the visitor.

It must also be pointed out that visits allowing personal contact will not be available for all inmates without further limitations. In terms of the new provisions, inmates in security categories I to III will have the right to receive their visitors this way from – practically – the beginning of their imprisonment, while the law prescribes a waiting period of 6 months and 1 year for category IV and category V inmates respectively before this form of visitation becomes available for them.[32] Moreover, prisoners placed in

[28] In its previous Rule 9(2) Communications to the Committee of Ministers with regards to the execution of the judgments of the European Court of Human Rights in the cases of Varga and Others v. Hungary and István Gábor Kovács v. Hungary (Application nos. 14097/12 and 15707/10), the HHC gave a detailed description of the issues related to the severe underuse of temporary release schemes. See DH-DD(2022)1384, p. 17. and DH-DD(2024)16, pp. 22-23. According to Sections 173(1)(f-h) and 179-180 of the Penitentiary Code, three types of short-term release schemes (*kimaradás, eltávozás, reintegrációs eltávozás*) are available as a form of personal contact between prisoners and the outside world. The data provided by the NPA show that the different types of short-term release The data provided by the NPA show that the different types of short-term release schemes are available to such a small proportion of prisoners that they can be considered virtually non-existent. Between 1 May and 31 July 2022, as few as 30 prisoners submitted 38 requests for short-term temporary release, of which only one was granted by the prison commander. As later revealed by the press, this person was invited to high-level government meetings while on temporary leave. The data also show that it is still almost impossible for detainees to gain access to short-term leave: only 25 were granted some form of short-term leave in the 28 months between 1 May 2022 and 24 September 2024. Data source: Responses nos 30500/1347-7/2023, 30500/4293-6/2023, 30500/2587-7/2024 and 30500/4683/2024 issued by the NPA to the HHC's FOI requests on 27/03/2023, 01/09/2023, 31/05/2024 and 16/10/2024.

[29] Section 36(2) of the Amendment Act.

[30] Section 177/A(1)(a)-(d) of the Penitentiary Code after the amendment entering into force on 1 March 2025.

[31] Section 177/A(1)(b) of the Penitentiary Code after the amendment entering into force on 1 March 2025.

[32] Section 177/A(3)(b-c) of the Penitentiary Code after the amendment entering into force on 1 March 2025.

a section for detainees presenting a particular risk to the security of detention can only participate in visits allowing personal contact only exceptionally with the permission of the prison commander.[33] (The security categorisation of inmates takes place when they start serving their sentence. It is primarily based on the security regime determined by the sentencing court and the length of the sentence, but other factors, such as the type of offence, recidivism, behaviour during previous detention, willingness to cooperate in the risk assessment procedure. By way of example, those inmates may be placed in category I, who are first time offenders, sentenced to a maximum of one year of imprisonment in a low security prison; whereas persons sentenced of imprisonment in a medium security prison are placed as a main rule in category III.)[34]

Inmates with minor children and those who meet the requirements of the law (e.g. have not committed a disciplinary offence during visits during the year preceding the visit)[35] will, in the future, be entitled to one open visit every six months without physical separation throughout the visit, which lasts for 60-120 minutes. However, a waiting period starting on the day of the initial category classification is included for prisoners in every category. The length of the waiting period depends on the severity of the inmates' category classification. It is:

- Six months in the case of prisoners assigned to categories I and II.
- One year in the case of prisoners assigned to categories III and IV.
- Two years in the case of prisoners assigned to category V.

The HHC awaits and continues to monitor further legislative steps, such as the amendment of the Decree no. 16/2014 (XII. 19.) of the Minister of Justice on the Detailed Rules on the Execution of Imprisonment, Confinement, Pre-trial detention, and Detention as a Substitute for Fines (hereinafter MoJ Decree), as well as the amendment of the NPA Order on the procedural rules for the implementation of visits, as the amendment of these norms will also be made necessary by the coming into force of the new rules of visitation on 1 March 2025.

2. Issues related to the implementation of the judgment

The purpose of this section is to provide an overview of persisting issues underlying systemic violations of the right to respect for private and family life of detainees and their families in relation to visits. While the HHC wishes to emphasise that the implementation of the recently adopted legislation will be a key factor in its assessment, it also wishes to draw attention to existing problems that the legislation does not address. These include the absence of regular open visits, the lack of adequate individual assessments, and the abuse of poorly defined discretionary powers.

2.1. Lack of regularity of open visits

Intersecting with closed conditions, the lack of the regularity of visits constitutes a significant additional burden that further aggravates the violation of the right to respect for private and family life of detainees and their relatives.

Under the Amendment Act, **open visits can take place at most once every six months**, regardless of the prisoner's classification or whether they have a minor child. The latter is a particularly pressing issue, as legislation and practice continue to contravene the rights of the child as enshrined in the UN

[33] Section 177/A(3)(d) of the Penitentiary Code after the amendment entering into force on 1 March 2025.
[34] Section 97 of the Penitentiary Code.
[35] Section 177/A(7) of the Penitentiary Code after the amendment entering into force on 1 March 2025.

Convention on the Rights of the Child,[36] which makes it clear that both direct contact and regularity, unless contrary to the best interests of the child, are an essential part of the child's right to his or her parents.

In contrast, under the Amendment Act, **visits will continue to be conducted under closed conditions**, except for the one open visit allowed every six months. To make matters worse, while the previous law provided for at least one visit every six months, the amendment limits this to at most one visit every six months.

The current restrictions are particularly incompatible with the recommendations of the Committee of Ministers concerning children with imprisoned parents, the European Prison Rules[37] and the recommendations of the CPT. This is underpinned by the absence of frequent open visits, the general nature of the restrictions and the prohibitions applicable to prisoners in the higher risk categories, which may last for years and are reinforced by the recent amendment. The latter phenomenon was specifically condemned by the CPT as indefensible in its memorandum on long sentence prisoners.[38]

Although the CPT's recent country report on Hungary, in line with the Committee of Ministers' recommendations, stressed the importance of weekly visits and that the use of a "plexiglass partition (as well as any other restriction) should be the exception for all legal categories of prisoners",[39] these standards are not implemented even for the lowest risk category of prisoners.

2.2. Lack of adequate individual assessment

In the HHC's experience, decisions requiring individual risk assessment are often subject to arbitrary and non-transparent decision-making. The NPA refused to provide information on the methods and measurement tools used to determine the individual risk assessment of a detainee with regard to the security risk they might pose during a visit,[40] as detainees do not have access to risk assessment documents and reports under the Penitentiary Code.[41] The HHC argues that this is an unfounded argument and that the NPA should provide at least general methodological information on how it assesses the individual risks that detainees may pose during open visits in order to monitor and prevent arbitrary decision-making.[42]

As a result of the lack of data, it is impossible to determine how the risk assessment takes into account the concrete, individual risks associated with the detainees' behaviour during an open visit. In addition, the NPA states that it has no data on the number and proportion of prisoners subject to special security measures (i.e. confined to closed visitation).[43] Without this information, it is impossible to demonstrate

[36] Article 9(3) of the UN Convention on the Rights of the Child.
[37] See, for example, 24(4)-24(5) of the Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules.
[38] Memorandum of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") of 27 June 2007 entitled "Actual/real life sentences", CPT (2007) 55, p. 9.
[39] §§ 130-131 on the periodic visit of the CPT to Hungary, CPT/Inf (2024) 36.
[40] Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.
[41] Section 26(4)(b) of the Penitentiary Code.
[42] According to the recommendation of the Association for the Prevention of Torture, detainees should "have access to certain information pertaining to them and should be able to request that inaccurate or obsolete data be corrected to prevent decisions being taken against them solely on the basis of unfavourable information present in the registers. Information about the dangerousness of the detainee should therefore be regularly reviewed." Available here: https://www.apt.ch/knowledge-hub/dfd/files-and-records.
[43] In their response, the NPA referred to Section 30(2a)(b) of the Act CXII on the Right of Informational Self-determination and Freedom of Information (hereinafter Information Act) when they rejected providing

that these decisions are not arbitrary, and it is also impossible to monitor the proportion of the prison population subjected to closed visits. Nor is it possible to show changes in this proportion to ensure that prisoners are not being subjected to such special security arrangements *en masse* in order to reduce the number of open visits. The lack of information on these issues is particularly worrying given that category classification, also referred to in the Action Plan,[44] is intended to serve as a means of individual assessment under current and pending legislation. However, **while differentiating prisoners by category, the government offers no real solution to the substantive shortcomings of individual risk assessments**. This is all the more problematic as the domestic authorities continue to systematically fail to provide substantive reasons for the need to restrict visits and to demonstrate that the individual risks directly linked to the visit and the specific circumstances of the detainees could jeopardise prison security. In conclusion, the security risk established, as perceived by the Hungarian authorities, remains general.

Despite the ruling, **the use of glass partitions has been normalised** and is now enshrined in the new law. Furthermore, a significant proportion of prisoners are still not allowed open visits at all. In addition, contrary to the claims made in the Action Plan,[45] the Amendment Act allows prisoners to have an open visit at most once every six months regardless of their category classification, which again points to an absence of a truly individualised assessment regime.

2.3. Issues related to abuses of discretion

Excessive restrictions on prison visits are also linked to structural problems of the scope and nature of discretion. A pressing issue in this regard concerns **ill-defined discretionary powers**. In particular, the law does not provide sufficient guidance on a number of discretionary matters, leaving room for arbitrary decisions by the NPA and prison commanders.

One aspect of the problem is well illustrated by Section 98(4) of the Penitentiary Code,[46] also referred to in the Action Plan,[47] which, in conjunction with the shortcomings of individual risk assessments, allows for the introduction of further restrictions regarding several aspects of detention (including the reception of visitors) without sufficiently specifying them. This section is invoked, for example, to introduce the provision in the relevant NPA Order that a family visit may be refused in the case of detainees under special security regulation.[48]

Another aspect of the problem is that the **hierarchy of legislation is not always respected**. As a result, practices that lead to violations are established through measures prescribed in norms that are below laws (i.e. Acts of Parliament) in the hierarchy of norms.

An example is offered by the respective NPA Order that has imposed stricter limitations on visitation rights, including the general ban on physical contacts through the introduction of mandatory glass partitions, than the Penitentiary Code itself which makes the limitation of physical contacts dependent

information on the number of detainees subjected to a special security regulation. Response no. 30500/4683/2024 issued by the NPA to the HHC's FOI request on 16/10/2024.

[44] See the general explanatory memorandum (p.41) and the detailed explanatory memorandum attached to Sections 30-32, 36 (pp. 59-60) to the draft version (T/9713) of the Amendment Act.

[45] §§ 22-23 of the Action Plan, DH-DD(2024)884.

[46] Section 98(4) of the Penitentiary Code. Also referred to by § 18 of the Action Plan, DH-DD(2024)884.

[47] § 17 of the Action Plan, DH-DD(2024)884.

[48] Section 12 of the Order 12/2020 (IV. 24.) of the National Penitentiary Administration on the procedural rules for the implementation of visits.

on actual security risks.[49] The situation is similar with regard to the restrictions imposed on prisoners of different category classifications and the restrictions imposed for possessing a prohibited item (see above): since the Amendment Act will only come into force on 1 March 2025, at present, there is no sufficient legal ground for making a differentiation between inmates in the different security categories (which will have a clear legal basis after that date), nor is there a legal basis at present for generally excluding inmates disciplined for possessing forbidden objects irrespective of the circumstances of the disciplinary offence (for examples, see the sections above). Section 177(3) of the Penitentiary Code indeed authorises the commander of the penitentiary institution to order that an inmate may only talk to their visitor from a security booth if the security of the penitentiary requires so, however, if interpreted in the light of the ECtHR's jurisprudence, it is clear that this provision provides no legal basis for generally banning certain categories of inmates from having physical contact with their family members.

The right to respect to private and family life is a fundamental right stipulated by the Fundamental Law,[50] Hungary's highest ranking legal norm. It is a clearly acknowledged principle in the Hungarian legal system that lower ranking norms must not contradict higher ranking norms, and that subordinate legislation must not restrict rights stipulated in higher ranking norms without clear legal basis in the latter.[51] However, as shown by the above examples, in the Hungarian penitentiary practice, restrictions of the fundamental rights of inmates may be put in place without a sufficient legal basis, leading to a situation whereby the actual circumstances of visits are not necessarily consistent with the legislation on which the government relies (Penitentiary Code, MoJ Decree), insofar as visitation rights are further restricted by lower ranking norms and also the authorities' discretion.

This problem is critical because although the latest amendment is indeed an important step forward from the previous provisions, it is still unclear how the new system will be shaped through subordinate legislation (primarily NPA instructions) and discretionary decisions taken by the penitentiary system.

2.4. Concerns regarding the implementation of the individual measures of the judgment

As the Communication[52] submitted to the Committee of Ministers on behalf of the applicant, Ildikó Takó, by her representative shows, although the just satisfaction granted by the ECtHR has been duly paid, the applicant is still unable to visit her husband (P.S.) without a glass partition. Thus, the violation of the applicant's right to family life persists. According to the Action Plan, the commander of the prison where P.S. is being held has placed him under special security regulations. As a result, his family members can only visit him in a closed setting.[53] The Action Plan provides a self-referential reasoning for why he has been placed under the special security regulation. The reasons provided consist of a mere list of restrictions to which he is subjected, as follows:[54]

- He has been placed in a section for detainees presenting a particular risk to the security of detention;
- He is on the "NPA's priority list of detainees";

[49] Section 10 and later 10/A-10/C of the Order of the NPA on the procedural rules for the implementation of visits.
[50] Article VI(1) of the Fundamental Law of Hungary as referred to by § 24 of the Action Plan, DH-DD(2024)884.
[51] Section 24(1) of the Act CXXX of 2010 on Law-making.
[52] See § 4 of the Rule 9(1) Communication from the applicant, DH-DD(2024)1326.
[53] § 8 of the Action Plan, DH-DD(2024)884.
[54] §§ 8-9 of the Action Plan, DH-DD(2024)884.

- He is regularly subjected to coercive measures.

The only substantive information about his behaviour provided in the Action Plan is a reference to some exceptional information in the record about P.S.'s behaviour which is said to justify the use of this individual measure: five "events were recorded in relation to an act of suicidal intent". The HHC considers that a prisoner's suicidal intent does not seem to justify the prevention of direct family contact, quite on the contrary: prolonged separation from family members is actually likely to increase the risk of suicide. On the basis of the information provided in the Action Plan, the HHC cannot rule out the possibility that the decision to place P.S. under the special security regulation was arbitrary. Furthermore, according to ECtHR case law, the placement of a detainee in a special prison regime may give rise to an issue under Article 8 of ECHR. It must be applied "in accordance with the law" and be justified as being "necessary in a democratic society".[55]

3. Recommendations

3.1. Procedural recommendations

The HHC respectfully recommends to the Committee of Ministers of the Council of Europe **to continue to monitor the case of TAKÓ AND VISZTNÉ ZÁMBÓ v. Hungary.**

Excessive restrictions on prisoners' visiting rights in Hungary can be linked to systemic violations of the right to privacy and family life of **tens of thousands of people, including children, every year**. In this context, the government's recent measures, while partially forward-looking, lack significant additional safeguards, resulting in continued violations. On the one hand, the Amendment Act does not provide a satisfactory solution to several aspects of the problem (see reasons above), and on the other hand, **it is critical how its provisions will be implemented by the penitentiary administration in practice**, especially in relation to the

- structural and systemic interconnections of the problem;
- abuses of discretionary powers;
- persisting deficiencies in legislation and practice; and
- the failure to treat close relatives as rights holders, irrespective of the fact that the judgment was handed down in a case where an inmate's relatives were the applicants.

Therefore, **close monitoring of the execution of the judgment remains essential** for the effectiveness of its implementation and the reduction of related violations. A sufficient period of time must pass after the new legislation's coming into force on 1 March 2025, before a reliable assessment of the execution can be made. Until that time, continued monitoring of the developments is crucial.

3.2. Substantive recommendations

Furthermore, the HHC respectfully recommends the Committee of Ministers to call on the Government of Hungary to:

- Improve access to open visits for all categories of prisoners, particularly those with children, both in terms of conditions and regularity.

[55] See §§ 137-177 of *Maslák v. Slovakia* (No. 2) (Application nos. 38321/17 and 8 others).

- Ensure conditions for evidence-based individual risk assessment and access to the results. Remove general restrictions that would otherwise require individual assessment.
- Clarify insufficiently regulated discretionary powers over visits to prevent arbitrary decisions by the NPA and prison commanders restricting fundamental rights.
- Regularly publish statistics on contact measures, including the number of open visits, the number of detainees in different categories and subject to special security arrangements and the number of family members affected, especially children.
- Clarify the position of inmates' family members as rights holders and potential claimants in penitentiary proceedings where their fundamental rights, including the right to respect for private and family life are affected.
- Impose restrictions on visits only in exceptional circumstances and for the shortest possible period.
- Organise visits according to good practices set out in relevant Council of Europe recommendations such as the Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, and the Recommendation CM/Rec(2018)5 on children with imprisoned parents.

Sincerely yours,

András Kristóf Kádár
Co-chair, Hungarian Helsinki Committee