



Hungarian Helsinki Committee

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15 October 2021, Budapest

Council of Europe

DMI – Directorate General of Human Rights and Rule of Law Department for the Execution of Judgments of the ECHR

F-67075 Strasbourg Cedex

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

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9(2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgments of the European Court of Human Rights in the *Gubacsi v. Hungary* (Application no. 44686/07, Judgment of 28 June 2011) group of cases.

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

The HHC already submitted three communications under Rule 9(2) in relation to the execution of the judgments in question, at the turn of 2014 and 2015,¹ in 2018,² and in 2020.³ The present communication concerns the suggested general measures as included in the decision of the Committee of Ministers from October 2020⁴ and the Group Action Plan of 28 September 2021 submitted by the Government of Hungary (hereafter: Group Action Plan).⁵ It shall be noted that the Group Action Plan has been submitted with a considerable delay, as the deadline given for the Hungarian government in this regard by the Committee of Ministers was 31 March 2021.

The HHC is of the view that **the latest Group Action Plan still does not cover key areas and continues to fail to address systemic deficiencies**, and that the Hungarian government has **failed to comply with the guidance provided by the decision of the Committee of Ministers**. To prevent, investigate and sanction police ill-treatment adequately and more effectively, Hungary should address outstanding deficiencies in the following key areas:

¹ DH-DD(2014)1528, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1528E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E); DH-DD(2015)232, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)232E](http://hudoc.exec.coe.int/eng?i=DH-DD(2015)232E)

² DH-DD(2018)770, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808cc89e

³ DH-DD(2020)394, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)394E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E)

⁴ CM/Del/Dec(2020)1383/H46-9, <http://hudoc.exec.coe.int/eng?i=004-10515>

⁵ DH-DD(2021)972, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)972E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)972E)



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

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

1. DEFICIENCIES IN THE EFFECTIVENESS OF THE NATIONAL PREVENTIVE MECHANISM

Even though the Committee of Ministers invited the Hungarian authorities in Point 5. of its latest decision to provide information on measures taken in order to enhance the operation and effectiveness of the National Preventive Mechanism (NPM) function of the Commissioner for Fundamental Rights (the Ombudsperson of Hungary), **the Group Action Plan does not contain any information about the requested measures or on the NPM's operation.**

The OPCAT mandates NPMs to visit all places of deprivation of liberty in order to prevent torture and other ill-treatment, but since the *Gubacsi* group includes cases of ill-treatment by the police, we restrict our assessment here to the Hungarian NPM's visits to police detention facilities (holding facilities and custody suites). Since the new Ombudsperson entered into office on 26 September 2019, the NPM has visited 10 police detention facilities (in altogether seven days), out of which six police detention facilities were visited after the COVID-19 outbreak (these latter visits were paid within four days altogether).⁶ Most places of detention visited were selected based on the epidemiological data of the given geographical area. Even though it has to be acknowledged that the Ombudsperson (i) did not suspend the monitoring visits during the pandemic and conducted the visits in line with the "do no harm" principle, (ii) paid more visits to police jails than his predecessor, and (iii) took sufficient precautionary measures to guarantee the health and safety of NPM staff, concerns can be raised as to whether the NPM visits were sufficient to address the concerns around the treatment of persons deprived of their liberty in police detention facilities, and whether the visits have been adequately conducted.

The six visits conducted during the COVID-19 pandemic were announced to the police beforehand. The reports about these visits describe the legislative environment thoroughly, but **all six visits during the COVID-19 pandemic were paid when no detainee was present in the respective police detention**

⁶ Only three full reports (covering four police detention facilities) are available on the Ombudsperson's webpage, summary reports have been published on all the other visits paid to police detention facilities. The reports are available here: [Visit to the Békéscsaba, Békés, Sarkad and Orosháza Police Headquarters](#) (8-9-10 October 2019), [Visit to the Martonvásár Police Station](#) (7 May 2020), [Tamási Police Headquarters](#) (25 September 2020), [Keszthely Police Headquarters](#), (21 January 2021), [Ajka Police Headquarters and Devecser Police Station](#) (21 January 2021), [Szarvas Police Headquarters](#) (2 June 2021).



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facilities. Therefore, the practice is presented in the reports based on interviews conducted solely with the staff members, consulting the relevant laws and norms, and visiting the empty cells. As these were announced visits, and so the NPM staff should have been in the position to know whether there are detainees in the given police detention facilities, it is hard to justify why the NPM did not choose another time for the visits. Also, assessing the police's response to the COVID-19 pandemic would have required medical experts being part of the monitoring teams, which was not the case for most of the visits. Since the visits were conducted when no detainees were present, **the NPM was not in the position to assess the functioning of the various procedural torture prevention safeguards in practice**, such as the right of access to a lawyer, the right of access to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice.

Furthermore, while visits to places of detention are often the most visible aspect of the NPMs' monitoring mandate, there are other very important elements of an NPMs' work. However, there is no publicly available information that would show the NPM performing any additional data collection, interviewing former detainees, or submitting (legislative) proposals to safeguard the rights of detainees in police jails. Thus, the available information suggests the continued lack of sufficient preventive work, which was already a point of criticism by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in its 2017 report with regard to the Hungarian NPM.⁷

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

In Point 6. of its October 2020 decision, the Committee of Ministers urged the Hungarian authorities to provide information on further measures a) to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment, b) to establish an independent medical examination body mandated to examine alleged victims of ill-treatment; and c) to ensure the full confidentiality of detainees' medical examinations also in practice. However, **the Group Action Plan fails to address any of these issues.** Instead, it simply describes the already existing legal framework, which has already been found inadequate by the Committee of Ministers earlier. Thus, the Hungarian government **has failed to comply with any of the recommendations of the Committee of Ministers** as far as detainees' access to a doctor is concerned.

2.1. Lack of independent and adequate medical examination of detainees

Despite the recommendations of the Committee of Ministers, the Hungarian government

- **has not established and has not undertaken to establish an independent medical examination body** mandated to examine alleged victims of ill-treatment; and
- **has not taken and has not undertaken any measures to improve the quality of the medical examination** of detained persons in police holding facilities complaining of ill-treatment.

Thus, as also acknowledged by the Group Action Plan, it continues to be the case that physicians employed by the police (either the medical service of the police or the state or municipal health service contracted by the police) are the ones who examine detainees before their placement in the police detention facilities and record their health status, including potential injuries.⁸ **Detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent medical expert or**

⁷ The SPT observed that Hungarian NPM "mainly focuses on detention monitoring activities", and recommended that the NPM "focus[es] also on other preventive activities". See: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Hungary undertaken from 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism – Report of the Subcommittee*, CAT/OP/HUN/2, §§ 33–34.

⁸ Decree 56/2014. (XII. 5.) BM of the Ministry of Interior on the Order of Police Cells, Article 34(1)



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physician, and the right to access an external doctor of one's own choice during detention in general is not formally guaranteed. The failure of establishing an independent medical examination body mandated to examine alleged victims of ill-treatment goes not only against the decision of the Committee of Ministers, but against the recommendations of the UN Human Rights Committee as well.⁹

Since no measures have been taken to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment, the practical deficiencies highlighted earlier by research and monitoring remain in place. These include that there is **no requirement for physicians operating in police jails to have special forensic medical training**; physicians **hardly ever take photos of the injuries** because they are not legally obliged to do so; and, even though the law prescribes, in practice physicians do not provide an opinion about the plausible origin of the injury in question.¹⁰ It should be reiterated that during its 2018 visit, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (**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".¹¹

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

Despite the recommendations of the Committee of Ministers, the Hungarian government **has not ensured and has not undertaken to ensure the full confidentiality of detainees' medical examinations** also in practice. This means that the **presence of police officers at medical examinations of detainees remains the main rule** on the basis of the relevant instruction of the National Police Chief,¹² also cited by the Group Action Plan.

This rule and practice, which hinders the fair and independent medical examination of torture allegations and may strongly contribute to the latency of ill-treatment cases and may prevent police officers committing ill-treatment being called to account, was **criticized by the UN Human Rights Committee** both in 2010¹³ and 2018,¹⁴ along with the CPT. In its report on its 2018 visit, 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".¹⁵ However, in its response to the CPT's report, the Hungarian government made it clear that it does not intend to comply with this recommendation by stating that the recommendation "is not feasible in the majority of the cases as the protection from bodily injuries of the health care staff must be ensured".¹⁶

⁹ The UN Human Rights Committee stated in 2018 that Hungary should consider "establishing an independent medical examination body mandated to examine alleged victims of torture". See: *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 36(c)

¹⁰ *Investigation of Ill-treatment by the Police in Europe – Comparative Study of Seven EU Countries*, Hungarian Helsinki Committee, 2017, https://www.helsinki.hu/wp-content/uploads/HHC_investigation_ill-treatment_comp_EN.pdf, pp. 99–100.

¹¹ *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.

¹² Section 8 of Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT sets out the following: "If it does not violate the requirements of the safety of guarding and of personal safety, upon the request of the doctor or the detainee, it shall be arranged that the medical examination or treatment be out of the hearing and – if possible – out of the sight of police officers."

¹³ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, § 14.

¹⁴ *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 35.

¹⁵ *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.

¹⁶ *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.



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

The Committee of Ministers called on the Hungarian authorities in Point 7. of its latest decision to reiterate, "at the highest possible level", "their zero tolerance message towards ill-treatment in law enforcement". It goes against this recommendation that 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 e.g. police officers to continue their work even if they were convicted of ill-treatment**.¹⁷ The Minister of Interior used this power several times in the past years: between 2012 and 2019, **59.6% of convicted law enforcement officers** submitting a request for their eligibility to be restored (34 out of 57) **remained on the job**.¹⁸ (Statistics for 2020 and 2021 are not available, as the Ministry of Interior refused to comply with the HHC's respective data request.¹⁹) This points into the direction of factual impunity, and raises serious concerns with regard to the service of the affected law enforcement officers.

4. LACK OF A COMPREHENSIVE PLAN REGARDING HUMAN RIGHTS TRAININGS

In Point 7. of its October 2020 decision, the Committee of Ministers "urged the authorities to present a comprehensive plan for the provision of adequate and systematic training to all actors involved in order to prevent and combat ill-treatment by law enforcement officers". In this regard, the information about the training of service commanders and district commissioners as included in the Group Action Plan is to be welcomed, however, further information would be necessary to fully assess the adequacy of the training provided, including information on the proportion of the relevant training sessions as compared to the full training program and more details on the curricula.

Furthermore, it gives rise to concerns that the Group Action Plan **fails to provide any meaningful information on the frequency/extent and the curricula of the respective training of police patrols, border patrols and police officers, i.e. low-ranking officers**, and simply states that "information related to police ill-treatment are also included in [their] training material". This is highly problematic because **these officers are the ones who come in direct daily contact with persons subjected to police measures, defendants, witnesses**, etc., and the lack of information on how their training exactly addresses the prohibition of torture, coercive interrogation and cruel, inhuman or degrading treatment makes it impossible to assess the adequacy of their training. Thus, the Committee of Ministers' request to present "a comprehensive plan for the provision of adequate and systematic training" to all actors involved has not been complied with.

It has to be reiterated as well that in its latest report on Hungary (published in 2020) the **CPT** also made some recommendations showing that the training (and, consequently, the investigation techniques) of the Hungarian police leave much to be desired, and emphasized that in order to "mitigate the risks of ill-treatment during police interviews, the CPT considers that interviewing officers should be less focused on confessional evidence".²⁰ It **recommended that "the Hungarian authorities develop further guidance, procedures and training on how police interviews should be carried out, drawing on an investigative interviewing approach** and on the introduction of electronic recording of police interviews.

¹⁷ 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)

¹⁸ 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). The Ministry of Interior did not provide data as to the criminal offences committed by the official persons in question.

¹⁹ Response of the Ministry of Interior to the HHC's FOI request (BM/14094-10/2021., 12 October 2021)

²⁰ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, p. 5.



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In this context, it should be made clear to police officers that the aim of police interviews must be to obtain accurate and reliable information in order to seek the truth about matters under investigation and not to obtain a confession from a person already presumed, in the eyes of the interviewing officers, to be guilty.”²¹ In its response to the CPT’s report, the Hungarian government failed to react in any meaningful way to this suggestion, and has not made any pledge in this regard.²² Similarly, the Group Action Plan **fails to present any plan to address this issue.**

5. PRESSURES ON THE POLICE POTENTIALLY CONTRIBUTING TO ILL-TREATMENT

It has to be reiterated that **institutional pressures** that can incentivize ill-treatment continue to prevail in the Hungarian police force. For example, **the assessment of police work in Hungary “is still primarily based on a statistical approach”**.²³ Quantifiable performance quotas are established for police units annually, and the National Police Chief also establishes “professional performance indicators” for police units. These indicators include such quantifiable elements as the “success rate” of police measures, investigations, etc.²⁴ Compliance with the quotas and the indicators are taken into account when the performance of police units is assessed, which includes establishing a ranking, and a predetermined number of police units that score the lowest in the ranking shall be subject to a separate examination.²⁵ This means that even though there are no exact target numbers established to be reached for an individual police officer in terms of measures taken, arrests made, etc., these numbers still have a significance at the end of the day when the performance of the police unit is assessed. This **can put pressure on individual police officers to “contribute” to the unit reaching the quota and score high on the indicators.** This is coupled with a **general staff shortage** and **considerable fluctuation** in the Hungarian police force.²⁶

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

6.1. Recording devices in police vehicles; body cameras

It is to be welcomed that, as a response to the Committee of Ministers’ call on the Hungarian authorities in Point 8. of its latest decision “to increase their efforts towards equipping a maximum number of police vehicles with operating sound and image recording devices” and “to extend the use of body cameras within the police force”, the Group Action Plan states that in 2022, “the police will examine, emphatically within the confines of budgetary limitations, the timetable and manner in which developments [...] in this area can be implemented”. At the same time, the Group Action Plan **does not provide any data on the current**

²¹ *Ibid.*, § 32.

²² *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. 20.

²³ Vince Vári, *A bűnüldözés relatív hatékonysága és a rendőrség [The Relative Efficiency of Law Enforcement and the Police]*, PhD thesis, 2015, http://www.uni-miskolc.hu/~wwwdeak/variv_ert.pdf, p. 189.

²⁴ For the detailed rules, see: Decree 26/2013. (VI. 26.) BM of the Minister of Interior on the Recommended Elements of Assessing the Performance of Service Members of Armed Forces under the Command of the Minister of Interior, on the Procedural Rules of Applying the Recommended Elements, on the Order of Evaluation, and on the Organisational Performance Assessment

²⁵ Instruction 18/2012. (X. 12.) ORFK of the National Police Chief on the Process of Assessing County (Capital) Police Headquarters, Local Police Headquarters and Border Police Departments on the Basis of an Objective Measurement System

²⁶ For example, according to media reports, on 1 April 2019 altogether 1,644 places were not filled in the police force (as compared to the 35,205 persons serving as police officers at that time). From the altogether 2,012 persons who left the police force in 2018, 65% served less than 10 years as a police officer, and 44% of them served for a maximum of four years. Police officers had to work altogether 6.4 million hours in overtime in 2018, which means that on average, one police officer had to put in 263 hours (1.5 months) of overtime that year. These numbers raise serious doubts as to the adequacy of resources available to the police. Source:

<https://24.hu/fn/gazdasag/2019/10/20/6-millio-tulora-rendorseg-munkaerohiany/> (based on data provided by the National Police Headquarters).



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proportion of police vehicles with operating sound and image recording devices or the number of available body cameras, which makes it impossible to assess whether there has been any progress at all in the numbers since the last Committee of Ministers decision.

It has to be reiterated in this regard that data from last year showed that no substantial improvement had taken place since 2014 in terms of the number of recording devices in police vehicles, and the number and proportion of these devices remained very low: according to the data provided by the National Police Headquarters, **in March 2020, only 5.1% of all police vehicles were equipped with actually operating recording devices** of any kind, and **only 2% of all police vehicles were equipped with operational devices that were capable of recording both image and sound.**²⁷ The number of available body cameras was also very low: in March 2020, altogether **70 body cameras** were available for the entire Hungarian police force, with two counties not having access to body cameras at all.²⁸

6.2. Recording devices in police detention facilities

Even though the Committee of Ministers encouraged the Hungarian authorities in its latest decision “to reflect on measures leading to the installation of adequate recording devices in all police detention facilities and to keep the Committee informed of the progress achieved in this respect” (Point 8.), **the Group Action Plan does not address this issue at all.** This is problematic on the one hand because the legal framework remained the same: under the law, the police *may* install cameras recording only images or images and sound in the lobbies of police custody suites (“*előállító egység*”), but not in the police custody suites (“*előállító helyiség*”) themselves, and in the police holding facilities (“*rendőrségi fogda*”), but not in the police holding cells (“*zárka*”).²⁹ Thus, it is still **not obligatory by law to install cameras in all police detention facilities.** Furthermore, the Group Action Plan fails to provide any current numbers in this regard, which gives rise to concerns all the more because the latest available data in this regard from February 2020 showed that the while there were altogether **297 custody suites** in the country, there were **only 114 cameras in these that were capable of recording.**³⁰ (However, all 21 holding facilities were equipped with a camera capable of recording image and sound.)

6.3. Video recording of interrogations

The Hungarian government has also failed to comply with the Committee of Ministers’ request to “present data on the number of recorded interrogations broken down by categories as foreseen by law, and to reflect on the possibility of extending the scope of instances where video recording is mandatory in line with recommendations made by the [CPT]”. The latest **Group Action Plan completely fails to address this issue**, and the respective **legal framework has remained the same.** Thus, the video recording of interrogations is still not obligatory in Hungary in all criminal proceedings; and **the scope of instances where video recording is mandatory has not been extended.**³¹ 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.³² This rule continues to **deprive indigent suspects of**

²⁷ For the more detailed data, 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), p. 2.

²⁸ Response of the National Police Headquarters to the HHC’s FOI request (29000-197/19-70/2020.KOZA, March 2020)

²⁹ Article 42(5c) of Act XXXIV of 1994 on the Police. Persons taken into custody by the police can spend a maximum of 12 hours in police custody suites. Holding cells are used to detain e.g. defendants in 72-hour detention, pre-trial detainees (as an exception), and persons in petty offence confinement.

³⁰ Response of the National Police Headquarters to the HHC’s FOI request (29000-197/19-70/2020.KOZA, March 2020)

³¹ 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.

³² Act XC of 2017 on the Criminal Procedure Code, Article 358(4)



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their rights by virtue of their economic status, which was also criticized by the UN Human Rights Committee already in 2010.³³

Finally, the Group Action Plan **fails to provide any statistical data** that would allow to further assess the state of play in this regard, and the HHC was informed by the National Police Headquarters in 2020 that the police do not collect data on the number or proportion of recorded police interrogations,³⁴ even though that would be inevitable to assess the efficiency of any related measure aimed at increasing the number of recorded interrogations.

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

The Hungarian government has **failed to comply with the Committee of Ministers' request "to present, without further delay, a strategic plan aimed at tackling and eradicating the problem of ineffective investigations into police ill-treatment"**, and has not taken or has not undertaken the necessary measures "to remedy the shortcomings of the investigations which were identified in the [respective] judgments" (Point 9. of the Committee of Ministers' decision from 2020).

The respective part of the Group Action Plan mostly cites the existing, unchanged legal framework, which has already proven to be inadequate to address systemic deficiencies limiting the possibilities for preventing ill-treatment and adequately investigating ill-treatment allegations. Also, several of the provisions cited have little to no relevance for the actual *investigation* carried out by the prosecution service under the Code of Criminal Procedure in ill-treatment cases by law enforcement officers, and **the rules and practice of the investigation process have basically remained unaddressed.**

Also, even though the Committee of Ministers expressed its "grave concern both at the **very low rates of indictment** following complaints of ill-treatment by law enforcement officers and at the reportedly **lenient sentences** imposed by courts in these cases", the Group Action Plan

- **does not touch upon any of these issues** and does not contain any general measure taken or envisaged that would be aimed specifically at tackling these phenomena; and
- **fails to provide any data whatsoever** on the number of criminal proceedings launched on the basis of ill-treatment by the police or official persons in general and on their outcome, etc., which is all the more problematic because the statistical data acquired by the HHC in this regard shows that **the trends criticized by the Committee of Ministers remain unchanged.**

Based on new data available for 2019 and 2020, the case clearly remains that very few reports of ill-treatment and coercive interrogation result in the pressing of charges. **Between 2016 and 2020, only 3 to 5% of the procedures launched annually because of an alleged ill-treatment in official proceeding resulted in an indictment** (bringing charges), and this ratio was **0% in four out of the last five years in procedures launched on the basis of an alleged coercive interrogation.**³⁵ Thus, the vast majority of the investigations was closed without any further measure or the reports made by the alleged victims were rejected. In comparison, reports on "violence against an official person" resulted in an indictment in 60.9 to 71.3% of the procedures in the same period.³⁶

³³ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010

³⁴ Response of the National Police Headquarters to the HHC's FOI request (29000-197/19-70/2020.KOZA, March 2020)

³⁵ Data provided by the Chief Prosecutor's Office upon the HHC's FOI request (LFIIGA//469-2/2021, 5 October 2021)

³⁶ For the same data for the years 2007–2015, see the HHC's previous communications: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1528E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E), pp. 6–7.; [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)394E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E), pp. 9–10.



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Ill-treatment in official proceeding ³⁷								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
	2016	186	25%	520	69.7%	30	4%	10
2017	104	17%	487	79.7%	18	3%	2	0.3%
2018	117	16.5%	563	79.4%	22	3.1%	7	1%
2019	53	19%	213	76%	14	5%	-	0%
2020	80	20.4%	291	74.2%	14	3.6%	7	1.8%

Coercive interrogation ³⁸								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
	2016	68	41.7%	95	58.3%	-	0%	-
2017	31	25.4%	83	68%	8	6.6%	-	0%
2018	32	20.8%	121	78.6%	-	0%	1	0.6%
2019	15	33.3%	30	66.7%	-	0%	-	0%
2020	28	41.2%	40	58.8%	-	0%	-	0%

Violence against an official person ³⁹								
	Rejection of the report		Termination of the investigation/procedure		Indictment		Other	
	2016	19	3.7%	110	21.4%	357	69.3%	29
2017	27	5.7%	83	17.7%	335	71.3%	25	5.3%
2018	7	1.8%	96	24.8%	260	67.2%	24	6.2%
2019	13	5.6%	61	26.2%	142	60.9%	17	7.3%
2020	17	5%	78	23%	216	64%	27	8%

In addition to the undeniable difficulties of investigating such cases (e.g. due to the fact that ill-treatments often take place in closed police premises without the presence of external witnesses), **recurring deficiencies of prosecutorial investigations** also contribute to these trends. An example is the prosecution's failure to interrogate or hear in any way those law enforcement personnel who may be suspected of having committed the ill-treatment on the basis that such officers cannot "be questioned either as a witness, because of the risk of self-incrimination, or as a suspect, in the absence of a well-founded suspicion of a crime".⁴⁰ Although the European Court of Human Rights found this argument – among others, in the *Nagy v. Hungary* case (Application no. 43441/15) – "rather circular in nature", depriving the complainants of "any opportunity to challenge the alleged perpetrator's version of the events", and has repeatedly stated that the omission to have such officers questioned in some capacity or confronted face to face with the complainants, "is difficult to reconcile with the authorities' obligation to adequately investigate such complaints",⁴¹ the Hungarian prosecution has been continuing the practice of interpreting the Criminal Procedure Code in a way that effectively prevents the questioning of potential perpetrators. The HHC is aware of ill-treatment cases in which the prosecution used the same argument for not hearing potential suspects

³⁷ Act IV of 1978 on the Criminal Code, Article 226; Act C of 2012 on the Criminal Code, Article 301

³⁸ Act IV of 1978 on the Criminal Code, Article 227; Act C of 2012 on the Criminal Code, Article 303

³⁹ Act IV of 1978 on the Criminal Code, Article 229; Act C of 2012 on the Criminal Code, Article 310

⁴⁰ See: *Nagy v. Hungary*, Application no. 43441/15, Judgment of 26 May 2020, § 36.

⁴¹ *Ibid.*



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well after the *Nagy* judgment was handed down, showing an unwillingness to comply with the Court's standards regarding the effectiveness of the investigations. In addition, it must be pointed out that the Hungarian Criminal Procedure Code offers safeguards for the situation when a potential suspect is heard as a witness (there is a possibility to refuse to testify on this basis), and that in cases other than those conducted into ill-treatment, this kind of unwillingness to hear potentially involved individuals is not characteristic at all.

Furthermore, new data for 2020 shows that in general, **the conviction rate of the prosecution remains lower in ill-treatment cases than the average annual prosecutorial conviction rate:** for ill-treatment in official proceeding, the conviction rate ranged from 40 to 83.8% between 2016–2020, while the average conviction rate of the prosecution ranged from 95.95 to 96.95% around the same period, between 2016–2019.⁴² (The conviction rate for coercive interrogation ranged from 33.3 to 100%, but there the number of closed cases per year is very low. Also, up until the end of August this year, all six procedures launched for ill-treatment in official proceeding resulted in a conviction.)⁴³

	Ill-treatment in official proceeding			Coercive interrogation		
	Conviction	Acquittal	Termination	Conviction	Acquittal	Termination
2016	27 (60%)	17 (37.8%)	1 (2.2%)	6 (85.7%)	1 (14.3%)	-
2017	31 (83.8%)	5 (13.5%)	1 (2.7%)	-	-	-
2018	29 (82.9%)	6 (17.1%)	-	2 (100%)	-	-
2019	24 (64.9%)	12 (32.4%)	1 (2.7%)	1 (33.3%)	2 (66.7%)	-
2020	8 (40%)	11 (55%)	1 (5%)	-	-	-
2021*	6 (100%)	-	-	-	-	-

*Up until 30 August 2021

It has to be reiterated that beyond the difficulties of proving such cases, the low success rate of the prosecution in ill-treatment cases may be also attributed to a certain degree of lenience on the part of the authorities. This has been shown by the relatively mild sentences applied in the case of law enforcement officers, i.e. that **judges sentence law enforcement officers** (police officers, penitentiary staff members, etc.) **to imprisonment for ill-treatment usually in a much lower proportion than civilians convicted for violence against an official person** (when comparing the two most frequently applied sanctions for officials and civilians alike⁴⁴). In 2020, this trend continued.⁴⁵

	2016	2017	2018	2019	2020	2021*
Ill-treatment in official proceeding						
Imprisonment	12	16	7	8	3	3
Fine	14	17	22	15	5	3
Coercive interrogation						
Imprisonment	4	-	1	-	-	-
Fine	1	-	-	1	-	-

⁴² Source: *A büntetőbíróság előtti ügyészi tevékenység főbb adatai I. – A 2019. évi tevékenység [Main Data on Prosecutorial Activity before Criminal Courts – Year 2019]*, Chief Prosecutor's Office, http://ugyeszseg.hu/wp-content/uploads/merzag/2020/12/buntetobirosag_ugyeszzi_tev_i_2019.pdf, p. 67.

⁴³ Data provided by the National Judicial Office upon the HHC's FOI request (2021.OBH.XII.B.69/3., 7 October 2021). For the same data for the years 2007–2015, see the HHC's previous communications: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1528E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E), p. 7.; [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)394E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E), p. 11.

⁴⁴ Accordingly, the table does not include all types of sanctions applied, and it does not include sanctions applicable only against law enforcement officers (e.g. demotion).

⁴⁵ Source of the data in the table: responses of the National Judicial Office to the HHC's FOI requests (2020.OBH.XII.B.10/8., 23 March 2020; 2021.OBH.XII.B.69/3., 7 October 2021).



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Violence against an official person						
Imprisonment	412	356	323	264	195	156
Fine	26	37	33	29	23	15

*Up until 30 August 2021

RECOMMENDATIONS

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

1. Take steps to decrease the latency of ill-treatment and **enhance the efficiency of investigations** into ill-treatment cases in order to decrease the number of procedures launched for ill-treatment where the investigation is terminated and the case is closed without indictment due to the lack of evidence, e.g. by issuing **protocols to follow** in related criminal procedures and **training**.
2. **Revise the legal framework pertaining to the eligibility of police officers** convicted and sentenced to suspended imprisonment, and ensure that officers convicted for ill-treatment in official proceeding or coercive interrogation cannot continue their service.
3. Equip **all police vehicles with operational image and sound recording devices**, and increase the number of available police **body cameras** progressively.
4. Ensure by law that **installing recording devices in all police detention facilities is obligatory**, and that recordings are stored for an adequate period of time.
5. Widen the scope of instances where the **video recording of interrogations** of defendants and witnesses is **obligatory**, video record the interrogation upon the request of the interrogated person free of charge, and prescribe that the police shall inform persons to be interrogated that they can motion the video recording of their interrogations.
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).⁴⁶
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**.

⁴⁶ Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1



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9. Introduce measures aimed at **protecting detainees who claim that they have been ill-treated**, such as providing them with a safe way to report ill-treatment while detained in the police facility, transferring them to another police facility once a complaint is made, etc.
10. **Revise the performance assessment system of the police**: lighten its statistical approach, and place more emphasis on factors such as crime prevention and the public's trust in the police.
11. Ensure that adequate, operational trainings and training sessions are devoted to the issue of human rights in the course of the training of all police officers. Provide police officers with training on **investigative (non-coercive, non-accusatory) interviewing techniques**, such as the PEACE model.⁴⁷ 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.⁴⁸
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 perform 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 Kádár
co-chair
Hungarian Helsinki Committee

⁴⁷ Cf. *28th General Report of the CPT, 1 January - 31 December 2018*, CPT/Inf(2019)9, §§ 73–81.

⁴⁸ Article 167(5) of the Criminal Procedure Code 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.