

Preventing and sanctioning police ill-treatment in Hungary: systemic deficiencies and the way forward

Policy brief
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1. INTRODUCTION

In July 2015, Attila Péter Tarjáni, living in a town in Southern Hungary, had a quarrel with his partner, in the course of which she called an ambulance, because Mr Tarjáni was under the influence of alcohol, was behaving oddly, and had a violent outburst. However, instead of an ambulance, two police officers arrived, who took Mr Tarjáni to the police station, where he was allegedly assaulted by the officers. He fainted, and when he regained consciousness, he found himself handcuffed to a bench, his knees hurting. His request for help was allegedly disregarded by the police officers at first, but when it became apparent that he could not walk any more, he was taken to the hospital. The medical examination that evening found several injuries on him, the most severe being that his tibia was broken. Examinations two days later revealed further injuries. However, the domestic criminal investigation launched into his ill-treatment was discontinued for the lack of any conclusive evidence.

Mr Tarjáni submitted an application to the European Court of Human Rights (ECtHR) in the case against Hungary. In its judgment,¹ the ECtHR pointed out that the version of the facts accepted by the Hungarian authorities was based essentially on the police officers' submissions whilst no sufficient efforts were made to verify the applicant's version, and the domestic authorities simply proceeded on the assumption that the applicant was unable to recall the events owing to his drunkenness. The investigation authorities did not take any measures to hear evidence from the witnesses which, according to the applicant, could have confirmed that he had no injuries before being taken to the police station. Similarly, no further measures were taken with a view to resolving the discrepancy between the police officers' version of events, such as organising a face-to-face confrontation. The medical expert opinion obtained in the domestic procedure was non-conclusive, and in discrepancy with the applicant's testimony, but the Hungarian authorities made no attempt to obtain an additional opinion of a medical expert, addressing how the injuries could have occurred and resolving the contradiction between the different explanations as to the applicant's leg injury.

Based on these considerations the ECtHR found that the Hungarian authorities have not done all that could have been reasonably expected of them to investigate the incident, and so failed to carry out an effective investigation into the applicant's complaint. Therefore, it was established that Mr Tarjáni's rights had been violated: there had been a violation of Article 3 of the European Convention on Human Rights on the prohibition of torture in its procedural limb.

The story of Attila Péter Tarjáni is not unique at all: **the ECtHR has condemned Hungary on similar grounds in several other police ill-treatment cases** along the years. The execution of the judgment in the above case is now pending, meaning that the Committee of Ministers of the Council of Europe, which supervises the execution of the judgments of the ECtHR, is not yet satisfied with the measures taken by Hungary to address the underlying issue. The case, along with further several other judgments against Hungary concerning police ill-treatment, forms part of the *Gubacsi v. Hungary* group of cases.² The first application in the group of cases is from 2007, while the last one is from 2016.

In September 2018, the Committee of Ministers decided to transfer the *Gubacsi* group of cases to the so-called enhanced procedure, "given the complex and long-standing nature of the problems raised" in the respective judgments.³ According to the related notes, "the **long-standing nature of these cases** [...]" as well as the **recurring patterns which led to the finding of violations** in these eight judgments, in combination with the fact that, by 31 July 2018, the [ECtHR] had communicated another 10 cases raising similar issues, are indicative of the **existence of a complex problem, requiring a comprehensive response and strategy** by the authorities. This is also corroborated by the findings by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Human Rights Committee."⁴

¹ Application no. 29609/16, Judgment of 10 October 2017

² <http://hudoc.exec.coe.int/eng?i=004-10515>

³ CM/Del/Dec(2018)1324/9, <http://hudoc.exec.coe.int/eng?i=004-10515>

⁴ <http://hudoc.exec.coe.int/eng?i=004-10515>

These statements echo the experiences of the Hungarian Helsinki Committee (HHC) from the ground. 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 in Hungary through monitoring, research, advocacy, and litigation. The HHC's attorneys have represented applicants successfully before the ECtHR in relation to ill-treatment by the police in several instances, including Mr Tarjáni and other applicants in the *Gubacsi* group of cases, and we continue to receive similar complaints of police ill-treatment and of ineffective investigations. The cases and the researches we have conducted point to systemic deficiencies in how the Hungarian criminal justice system handles ill-treatment and torture by the police. However, **Hungary has been failing to address these systemic deficiencies, which limit the possibilities of preventing ill-treatment and adequately investigating ill-treatment allegations.**

The HHC is of the view that in order to prevent, investigate and sanction police ill-treatment more effectively, Hungary should address the following key areas:

- low success rate of reporting ill-treatment;
- low success rate of indictments related to ill-treatment;
- substantive shortcomings in the investigations into ill-treatment;
- leniency towards law enforcement officers with regard to sentencing;
- eligibility for service of convicted law enforcement officers;
- legal and practical deficiencies in relation to the video recording 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; and
- pressures on the police as incentives for ill-treatment.

In this policy brief, we elaborate on each of these areas, presenting statistical data, research results and the observations of international stakeholders regarding Hungary. Following that, we put forth recommendations aimed at enhancing the effectiveness of preventing and sanctioning police ill-treatment in the country.

2. SYSTEMIC DEFICIENCIES IN PREVENTING AND SANCTIONING POLICE ILL-TREATMENT

2.1. LOW SUCCESS RATE OF REPORTING ILL-TREATMENT AND OF INDICTMENTS

The Hungarian Criminal Code criminalizes torture in the form of two criminal offences: as "ill-treatment in official proceeding"⁵ and as "coercive interrogation".⁶ Official statistics⁷ related to these two offences show that very few reports of ill-treatment result in the pressing of charges: between 2014 and 2018, **only 2.5 to 4% 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 to 6.6% with regard to procedures launched based on the claim of a coercive interrogation.** Thus, the vast majority of the investigations was closed without pressing charges, or the reports made by the alleged victims were rejected. In comparison, reports on "violence against an official person"⁸ (i.e. where official persons are alleged victims, not alleged perpetrators) resulted in an indictment in 66.7 to 71.3% of the procedures in the same period.⁹

⁵ Act C of 2012 on the Criminal Code, Article 301. Ill-treatment in official proceeding is committed by an official who, in the course of executing their duties, physically ill-treats another person.

⁶ Act C of 2012 on the Criminal Code, Article 303. Coercive interrogation is committed by an official who – with the aim of extracting a confession or declaration, or forcing a person not to make one – applies violence, threats, or uses other similar methods.

⁷ Based on data published by the Ministry of Interior at <https://bsr.bm.hu/> and data provided by the Chief Prosecutor's Office upon the HHC's FOI request (LFIIGA//259-10/2020, 2 March 2020).

⁸ Act IV of 1978 on the Criminal Code, Article 229; Act C of 2012 on the Criminal Code, Article 310

⁹ Data pertaining to 2007–2013 show similar results. See in more detail in the HHC's communication submitted to the Committee of Ministers in 2014 in the *Gubacsi v. Hungary* group of cases: [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.

Table 1 – Outcomes of reports (2014–2018)

Ill-treatment in official proceeding ¹⁰								
	Rejection of the report		Termination of the investigation		Indictment		Other	
2014	289	28.5%	690	68%	29	2.9%	6	0.6%
2015	208	25%	600	72%	21	2.5%	4	0.5%
2016	186	25%	520	69.7%	30	4%	10	1.3%
2017	104	17%	487	79.7%	18	3%	2	0.3%
2018	117	16.5%	563	79.4%	22	3.1%	7	1%

Coercive interrogation ¹¹								
	Rejection of the report		Termination of the investigation		Indictment		Other	
2014	83	36.9%	139	61.8%	3	1.3%	-	0%
2015	88	39%	136	60.2%	1	0.4%	1	0.4%
2016	68	41.7%	95	58.3%	-	0%	-	0%
2017	31	25.4%	83	68%	8	6.6%	-	0%
2018	32	20.8%	121	78.6%	-	0%	1	0.6%

Violence against an official person ¹²								
	Rejection of the report		Termination of the investigation		Indictment		Other	
2014	33	4.9%	142	21.1%	453	67.4%	44	6.6%
2015	9	1.7%	121	22.6%	357	66.7%	48	9%
2016	19	3.7%	110	21.4%	357	69.3%	29	5.6%
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%

Furthermore, **the success rate of the prosecution is lower in ill-treatment cases than the average annual prosecutorial conviction rate:** for ill-treatment in official proceeding, the conviction rate ranged from 46.9 to 83.8% between 2014–2019, while the average conviction rate of the prosecution ranged from 96.6 to 97.8% around the same period, between 2014–2017.¹³ (The success rate of prosecutions for coercive interrogation ranged from 50 to 100%, but there the number of closed cases per year was very low.)

Table 2 – Results of indictments (2014–2019)

	Ill-treatment in official proceeding			Coercive interrogation		
	Conviction	Acquittal	Termination	Conviction	Acquittal	Termination
2014	23 (46.9%)	15 (30.6%)	11 (22.5%)	8 (50%)	8 (50%)	-
2015	18 (75%)	6 (25%)	-	5 (100%)	-	-
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%)	-

¹⁰ Act IV of 1978 on the Criminal Code, Article 226; Act C of 2012 on the Criminal Code, Article 301

¹¹ Act IV of 1978 on the Criminal Code, Article 227; Act C of 2012 on the Criminal Code, Article 303

¹² Act IV of 1978 on the Criminal Code, Article 229; Act C of 2012 on the Criminal Code, Article 310

¹³ Source: *A büntetőbíróóság előtti ügyészi tevékenység főbb adatai I. – A 2017. évi tevékenység [Main Data on Prosecutorial Activity before Criminal Courts I. – Year 2017]*, Chief Prosecutor's Office, <http://ugyveszseg.hu/repository/mkudok9879.pdf>, p. 64.

In its 2018 concluding observations on the sixth periodic report of Hungary, the **UN Human Rights Committee** also identified the above as a problem, and stated that it is **“concerned about allegations regarding the excessive use of force by law enforcement officers at the time of apprehension and during interrogations, including ill-treatment and torture, and about the very low number of prosecutions and convictions in such cases”**.¹⁴

The low success rate of the reports and of the indictments is problematic not only in itself, but also because it sends the message that police officers can get away with ill-treatment. This **may contribute to underreporting** among victims, and **may strengthen the feeling of impunity** among police officers.

2.2. SUBSTANTIVE SHORTCOMINGS IN THE INVESTIGATIONS

As demonstrated by the story of Mr Tarjáni above as well, it is a recurring issue in Hungary that **investigations into police ill-treatment, conducted by the prosecution service, are not effective**. In the *Gubacsi* group of cases, the shortcomings identified by the ECtHR in finding **violations of the procedural limb of Article 2 (right to life) or Article 3 (prohibition of torture)** of the European Convention on Human Rights included the failure to hear the applicant, the suspected police officers and/or all other witnesses; the lack of face-to-face confrontation; the lack of genuine efforts by the investigating authorities and/or the competent courts to establish the chronology of the events and to resolve contradictions between different testimonies or between testimonies and medical reports; the lapse of time in obtaining testimonies; and the lack of judicial review of the decision to discontinue investigations.

However, as also criticized by the Committee of Ministers in its September 2018 decision,¹⁵ **Hungary has not taken or announced any measures to remedy the above shortcomings identified by the ECtHR**.

2.3. LENIENCY TOWARDS LAW ENFORCEMENT OFFICERS

Beyond the difficulties of proving such cases, the low conviction rate in ill-treatment cases may be also attributed to a certain degree of lenience on the part of the authorities. This is also shown by the relatively **mild sentences** applied in the case of law enforcement officers, i.e. that **judges sentenced law enforcement officers** (police officers, penitentiary staff members, etc.) **to imprisonment for ill-treatment 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 alike).¹⁶

Table 3 – Sanctions applied (2014–2019)

	2014	2015	2016	2017	2018	2019
Ill-treatment in official proceeding						
Imprisonment	13	11	12	16	7	8
Fine	10	7	14	17	22	15
Coercive interrogation						
Imprisonment	1	5	4	-	1	-
Fine	5	-	1	-	-	1
Violence against an official person						
Imprisonment	463	419	412	356	323	264
Fine	34	34	26	37	33	29

Furthermore, the data for the years 2007–2013 showed that **even when sentencing law enforcement officers to imprisonment, judges mostly applied suspended imprisonment**. (As compared to the total number of effective and suspended imprisonments and fines imposed, effective imprisonment was

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

¹⁵ CM/Del/Dec(2018)1324/9, <http://hudoc.exec.coe.int/eng?i=004-10515>, § 6

¹⁶ 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). Source for the data in the table: response of the National Judicial Office to the HHC’s FOI request, 2020.OBH.XII.B.10/8., 23 March 2020.

imposed in 0–5.56% annually, while suspended imprisonment was imposed in 15–41% of the cases.¹⁷) This is all the more problematic because as explained below, the eligibility of law enforcement officers may be restored when they are sentenced “only” to suspended imprisonment instead of an effective one.

This sentencing practice goes against the UN Human Rights Committee’s concluding observations from 2010, which sets out that Hungary should ensure that if alleged perpetrators of torture and ill-treatment are convicted, they are “punished with appropriate sanctions”.¹⁸

2.4. ELIGIBILITY FOR SERVICE OF CONVICTED LAW ENFORCEMENT OFFICERS

Since 2012, 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 for ill-treatment and were sentenced to suspended imprisonment**.¹⁹ This points into the direction of factual impunity, especially taking into consideration the data from 2007–2013 on the relatively high proportion of those official persons convicted for ill-treatment or coercive interrogation who are sentenced to suspended imprisonment (see above), and raises serious concerns with regard to the service of the affected law enforcement officers.

As the table below shows, the Minister of Interior used this power several times in the past years, resulting that 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**.²⁰ (No data is available as to the criminal offences committed by the official persons in question.) This **goes against the requirement of delivering a “firm message of zero tolerance of ill-treatment”** as required by the Committee of Ministers in its September 2018 decision.²¹

Table 4 – Outcome of requests for restoring eligibility (2012–2019)

	Requests submitted	Requests granted
2012	10	3
2013	4	2
2014	3	2
2015	12	9
2016	12	8
2017	9	5
2018	2	2
2019	5	3
<i>Total:</i>	<i>57</i>	<i>34</i>

2.5. LEGAL AND PRACTICAL DEFICIENCIES WITH REGARD TO RECORDING POLICE WORK

Even though **recording interrogations and police measures could highly contribute to the efficiency of investigating allegations of police ill-treatment and would also prevent such incidents**, there are various legal and practical deficiencies that hinder the adequate recording of police work in Hungary. The main issues in this regard are the following:

- **The proportion of police vehicles equipped with recording devices is rather low.** According to data provided by the National Police Headquarters,²² in March 2020, out of the altogether 9,634

¹⁷ For more details, see the HHC’s communication submitted to the Committee of Ministers in 2014 in the *Gubacsi v. Hungary* group of cases at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1528E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E), p. 8.

¹⁸ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, § 14.

¹⁹ 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).

²⁰ 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).

²¹ CM/Del/Dec(2018)1324/9, <http://hudoc.exec.coe.int/eng?i=004-10515>, § 5.

²² Response of the National Police Headquarters to the HHC’s FOI request, 29000-197/19-70/2020.KOZA, March 2020

police vehicles only 494 police cars were equipped with actually **operating recording devices** of any kind, which is **only 5.1% of all police vehicles**. Furthermore, **only 2% of all police vehicles were equipped with operational devices that were capable of recording both image and sound**. When compared to earlier data requested by the HHC,²³ these numbers also reveal that no improvement has been taken place since 2014 in this regard.

Table 5 – Police vehicles with recording devices

	nr.	%
Total number of police vehicles	9,634	100
Number of police vehicles with devices recording image and sound	333	3.5
○ Number of polices vehicles with operating devices recording image and sound	199	2.0
Number of police vehicles with devices recording image	446	4.6
○ Number of polices vehicles with operating devices recording image	295	3.1

- The **number of available body cameras is 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,²⁴ and body cameras being available only for traffic-policing police units.²⁵ According to information from the National Police Headquarters, the police do not collect data on the frequency of the usage of body cameras, the number of hours they record, or the number of working hours units equipped with body cameras spend with patrolling, even though these data would be necessary to assess this initiative.
- **It is not obligatory by law to install cameras in all kinds of police detention facilities**,²⁶ which can also seriously hinder the efficiency of investigating allegations of police ill-treatment. This concern is supported by the numbers: on 1 February 2020, there were altogether 297 custody suites in the country, but there were only 114 cameras in these that were capable of recording.²⁷ (However, an instruction issued by the National Police Chief in 2015 foresees that recording devices must be installed in newly constructed police custody suites,²⁸ and all 21 police holding facilities in the country, serving for longer-term detentions than custody suites, were equipped with a camera capable of recording image and sound.)
- In spite of the recommendations by the Committee of Ministers,²⁹ **no “systematic” video recording of interrogations is taking place** in Hungary. First of all, video recording of interrogations is **not obligatory in all criminal proceedings**. The new Code of Criminal Procedure (Act XC of 2017), which entered into force on 1 July 2018, brought along some positive changes, and made it mandatory to audiovisually record the interrogations of certain categories of persons. However, the scope of this obligation is very limited, and it **does not even cover all vulnerable persons**.³⁰ Furthermore, 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.³¹ This rule **deprives indigent suspects of their rights by virtue of their economic status**, and

²³ For more details, see the HHC’s communication to the Committee of Ministers in the *Gubacsi v. Hungary* group of cases from 2015 at [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1528E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1528E), pp. 4–5.

²⁴ Response of the National Police Headquarters to the HHC’s FOI request, 29000-197/19-70/2020.KOZA, March 2020

²⁵ Group Action Report of 26 September 2019 by the Government of Hungary in the *Gubacsi v. Hungary* group of cases, DH-DD(2019)1123, <https://rm.coe.int/0900001680981e8c>, § 15.

²⁶ Article 42(5c) of Act XXXIV of 1994 on the Police sets out that the police *may* install cameras recording only images or images and sound in the lobbies of police custody suites, but not in the police custody suites themselves, and in the police holding facilities, but not in the police holding cells. 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.

²⁷ Response of the National Police Headquarters to the HHC’s FOI request, March 2020, 29000-197/19-70/2020.KOZA

²⁸ Instruction 14/2015. (VII. 21.) ORFK of the National Police Chief on the Rules Governing the Construction of Police Holding Facilities

²⁹ CM/Del/Dec(2018)1324/9, <http://hudoc.exec.coe.int/eng?i=004-10515>

³⁰ Article 85(1)(j) of Act XC of 2017 on the Code of Criminal Procedure only provides for the *possibility* to make an audiovisual recording of the procedural acts in the case of vulnerable persons (“persons requiring special treatment”).

³¹ Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

was criticized by the UN Human Rights Committee already in 2010.³² Suspects and victims are not informed by law about the possibility to request the recording of interrogations, which hinders the realisation of their rights.

The National Police Headquarters informed the HHC that they **do not collect data on the number or proportion of recorded police interrogations**, even though that would be inevitable to assess the efficiency of the new rules. The latest number the HHC has access to is from 2014, which showed that police interrogations were recorded extremely rarely (0.026% of all interrogations).³³

2.6. LACK OF INDEPENDENT AND ADEQUATE MEDICAL EXAMINATION OF DETAINEES

It is a long-standing deficiency regarding the placement in police cells in Hungary that physicians employed 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.³⁴ Thus, **detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent medical expert or physician**, and the right to access an external doctor of one's own choice during detention in general is not formally guaranteed. This lack of independent medical examination goes against the recommendations of the CPT³⁵ and the UN Human Rights Committee, with the latter stating in 2018 that Hungary should consider "establishing an independent medical examination body mandated to examine alleged victims of torture and guarantee respect for human dignity during the conduct of medical examinations".³⁶ However, no such step is foreseen by the Government.

Further practical problems reported to the HHC 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. Furthermore, even though the law prescribes, in practice, physicians do not provide an opinion about the plausible origin of the injury in question, "arguing that the drawing of conclusions is the task of an outside forensic medical expert [...]. However, a forensic medical expert is appointed usually months after the initiation of a criminal proceeding against the police officer, thus the expert has no chance to examine the injuries right after the alleged ill-treatment."³⁷ During its 2018 visit to Hungary, the CPT observed that "**examinations carried out by police health-care professionals were not always as thorough as they should be**, a further examination in hospital was not always organised when necessary and the level of the medical care provided during and after examination in police holding facilities could be fairly inadequate. The delegation also observed that **injuries were poorly recorded**, if at all, in Budapest in particular."³⁸

2.7. PRESENCE OF POLICE OFFICERS AT MEDICAL EXAMINATIONS OF DETAINEES AS A MAIN RULE

Another issue hindering the fair and independent medical examination of torture allegations is the **presence of police officers at medical examinations of detainees as a main rule**, with the relevant instruction of the National Police Chief³⁹ prescribing 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."

³² *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010

³³ 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), p. 2.

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

³⁵ See e.g.: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009*, CPT/Inf(2010)16, § 15.

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

³⁷ *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.

³⁸ *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.

³⁹ Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT, Section 8

This was **criticized by the CPT** after its visit to Hungary in 2013,⁴⁰ and 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”.⁴¹ The CPT added that “[s]everal **persons who were or had been in police custody** told the delegation that, because of this [i.e. the presence of police officers], they **refrained from making any statements or felt that they had to lie about the origins of their injuries** in order to avoid potential reprisals from police officers.”⁴² The **UN Human Rights Committee also raised concerns** about this issue in its concluding observations both in 2010⁴³ and 2018.⁴⁴

However, in spite of the international criticisms and that **the presence of police officers at medical examinations of detainees is a factor which may strongly contribute to the latency of ill-treatment cases** and may prevent that police officers committing ill-treatment are called to account, the presence of police officers at medical examinations remains to be the main rule.

2.8. PRESSURES ON THE POLICE AS INCENTIVES FOR ILL-TREATMENT

The majority of interviewees in a related research by the HHC from 2016 “considered police officers more likely to commit ill treatment than prison staff”, highlighting that the “tension of arrest, or defiance by an arrested person, can generate violence; and during interrogation, **police officers may use violence instrumentally to coerce a confession or obtain some other ‘result’**.”⁴⁵ I.e. the main incentive for ill-treatment in official proceeding and coercive interrogation by the police is the general expectation to obtain a confession or a witness testimony “useful” for the case, i.e. to obtain a result. Also, if analysed against the political environment, some of the statistics showed that the **Hungarian authorities “are still not sufficiently immune to political and public pressure to combat crime and ‘produce results’,** even if this requires the application of unlawful methods”.⁴⁶

In addition, **the assessment of police work in Hungary “is still primarily based on a statistical approach”**.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.**

⁴⁰ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013*, CPT/Inf (2014) 13, § 19.

⁴¹ *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. The CPT added that “[i] order to facilitate the preservation of the confidentiality of medical examinations and care, it should be ensured that police holding facilities and the hospital structures concerned have a room available which provides appropriate security safeguards”.

⁴² *Ibid.*, § 36.

⁴³ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, § 14.

⁴⁴ *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 35.

⁴⁵ Borbála Ivány – András Kádár – András Nemes, *Hungary*. In: Richard Carver – Lisa Handley: *Does Torture Prevention Work?* Liverpool University Press, Liverpool, 2016, p. 190.

⁴⁶ Borbála Ivány – András Kádár – András Nemes, *Hungary*. In: Richard Carver – Lisa Handley: *Does Torture Prevention Work?* Liverpool University Press, Liverpool, 2016, pp. 188–189 and 230.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ 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

This is coupled with a **general staff shortage** and **considerable fluctuation** in the Hungarian police force. For example 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).⁵⁰ 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.

Interviewees also emphasized in a 2016 research by the HHC the “**shortcomings in the selection and training** of law enforcement personnel. They suggested that candidates should be psychologically screened (to identify a propensity to violence, for example), that internal intelligence units should gather information on violent police conduct [...], that law enforcement bodies should discuss cases of ill-treatment more openly, and that police training should focus more on tactics that prevent incidents from becoming violent.”⁵¹

In its latest report on Hungary (covering its visit in 2018, but 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”.⁵² 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. 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.”⁵³

All of the factors above can contribute to police officers using violence, especially if the top police management and other authorities do not send a firm zero tolerance message, and there is no other consequence of police ill-treatment either. One such consequence can be if the courts **exclude as evidence testimonies and confessions obtained by torture** not only on paper, but also in practice. In Hungary, the Code of Criminal Procedure sets out that facts derived from evidentiary means which were acquired by the authorities via a criminal offence cannot be taken into account as evidence.⁵⁴ Moreover, in theory it is also possible for the courts to exclude evidence obtained by torture even if there is no judgment yet that would condemn the police officers obtaining the evidence, and judges can exclude evidence even ex officio. However, there is no research data available as to how this important safeguard works in practice.

3. RECOMMENDATIONS

In the HHC’s view, Hungary should take the following legal and practical steps to enhance the effectiveness of preventing, investigating and sanctioning police ill-treatment:

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.

⁵⁰ Source: <https://24.hu/fn/gazdasag/2019/10/20/6-millio-tulora-rendorseg-munkaeroihiany/> (based on data provided by the National Police Headquarters).

⁵¹ Borbála Ivány – András Kádár – András Nemes, *Hungary*. In: Richard Carver – Lisa Handley: Does Torture Prevention Work? Liverpool University Press, Liverpool, 2016, p. 230.

⁵² *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.

⁵³ *Ibid.*, § 32.

⁵⁴ Act XC of 2017 on the Code of Criminal Procedure, Article 167(5)

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).⁵⁵
8. Ensure by law that police officers may be present at the medical examination of detainees only under special circumstances, i.e. ensure that **medical examinations** (whether they are carried out in police establishments or in hospitals) **are conducted out of the hearing and** – unless the health-care professional concerned expressly requests otherwise in a given case – **out of the sight of staff with no health-care duties**.
9. Introduce measures aimed at **protecting detainees who claim that they have been ill-treated**, such as transferring them to another police holding facility.
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 police officers. Provide police officers with training on **investigative (non-coercive, non-accusatory) interviewing techniques**, such as the PEACE model.⁵⁶ 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 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.
13. Ensure that the Hungarian **National Preventive Mechanism under the OPCAT** (the Ombudsperson of Hungary) 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.⁵⁷ Provide the National Preventive Mechanism with sufficient resources to have the capacity to performs these tasks.
14. Ensure that the Hungarian **authorities collect the data necessary to assess the implementation of the judgments** in the *Gubacsi v. Hungary* group of cases, including data on the proportion of interrogations recorded audiovisually, on the division of suspended and effective imprisonments imposed on officers committing ill-treatment, and detailed data on the offences committed by officers whose eligibility has been restored by the Minister of Interior.

⁵⁵ Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1

⁵⁶ Cf. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *28th General Report of the CPT, 1 January - 31 December 2018*, CPT/Inf(2019)9, §§ 73–81

⁵⁷ Cf.: the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment observed in its 2017 report after its visit to Hungary that the Hungarian NPM “mainly focuses on detention monitoring activities”, and recommended that the NPM “focus[es] also on other preventive activities” (*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).