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Date: 09/10/2019

DH-DD(2019)1123

Meeting: 1362nd meeting (December 2019) (DH)

Item reference: Action report (26/09/2019)

Communication from Hungary concerning the GUBACSI group of cases v. Hungary (Application No. 44686/07)

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Réunion : 1362e réunion (décembre 2019) (DH)

Référence du point : Bilan d'action

Communication de la Hongrie concernant le groupe d'affaires GUBACSI c. Hongrie (Requête n° 44686/07) ***(anglais uniquement)***

Group Action Report of 26 September 2019
in the cases of

Gubacsi v. Hungary (Appl. No. 44686/07, judgement of 28/06/2011, final on 28/09/2011),
Borbála Kiss v. Hungary (Appl. No. 59214/11, judgement of 26/06/2012, final on 26/09/2012),
Haász and Szabó v. Hungary (Appl. No. 11327/14, judgment of, final on 13/01/2016),
László Károly (No.2.) v. Hungary (Appl. No. 50218/08, judgement of 12/02/2013, final on 12/05/2013),
M.F. v. Hungary (Appl. No. 45855/12, judgment of, final on 05/03/2018),
Réti and Fizli v. Hungary (Appl. No. 31373/11, judgement of 25/09/2012, final on 25/12/2012),
Tarjáni v. Hungary (Appl. No. 29609/16, judgment of, final on 10/01/2018), and
Terge v. Hungary (Appl. No. 3625/15, judgment of, final on 27/02/2018)

Case description

1. This group of cases concerns ill-treatment (between 2000 and 2016) by law enforcement officers, lack of adequate investigations in this respect, violations of the right to life or failure to investigate possible racist motives for ill-treatment (substantial and/or procedural violations of Articles 2, 3, and 14 in conjunction with Article 3). The issue under Article 14 is examined in the context of the Balázs group (No. 15529/12).

Individual measures

2. In the case of *Gubacsi v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (10,500 EUR) as well as in respect of costs and expenses (3,750 EUR) was paid to the applicant on 23 December 2011 (amount paid: 4,327,328 HUF; exchange rate: 306.83).

3. In the case of *Borbála Kiss v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (5,000 EUR) as well as in respect of costs and expenses (3,000 EUR) was paid to the applicant on 21 November 2012 (amount paid: 2,250,480 HUF; exchange rate: 281.31).

   Since the Borsod-Abaúj-Zemplén County Police Department learnt about the ECHR judgment given in the above case, no new fact, data or circumstance have emerged necessitating the repeat of the formerly conducted internal investigations (as a result of which the police measure complained of was found to have been lawful, professionally adequate and justified) or the conduct of new proceedings.

   No individual measures were taken in the case, but the situation was analysed for general, preventive purposes. In order to avoid similar cases, the Borsod-Abaúj-Zemplén County Police Department devotes special attention to the continuous training and evaluation of the police staff, and since the case at issue young police officers have performed their service duties together with more experienced colleagues.

4. In the case of *Haász and Szabó v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (15,000 EUR) as well as in respect of costs and expenses (5,053 EUR) was paid to Ms. Haász on 13 April 2016 (amount paid: 6.230.868 HUF; exchange rate: 310.52).

   The applicants' representative, Mr. G. Szabó sent submissions to the email address of the Central Complaint Office of the Control Service of the National Police Headquarters, which submissions were forwarded by the Complaint Office to the Veszprém County Police Department on 9 October 2018 so that action be taken where needed. In the submissions, the applicants filed damages claims in relation to a police measure taken by a police officer of the Balatonfüred Police Department.

   The judgment contained no circumstance necessitating a change in the position of the Veszprém County Police Department, therefore – in the absence of any legal ground for payment of damages – the claims for pecuniary and non-pecuniary damages were found to be ill-founded. The legal representative was informed of this fact.

5. In the case of *László Károly (No.2.) v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (5,000 EUR) as well as in respect of costs and expenses (3,000 EUR) was paid to the applicant on 25 June 2013 (amount paid: 2,372,640 HUF; exchange rate: 296.58).

6. In the case of *M.F. v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (10,000 EUR) as well as in respect of costs and expenses (4,724 EUR) was paid to the applicant on (amount paid: 4,696,662 HUF; exchange rate: 318.98).

7. In the case of *Réti and Fizli v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (2x5,000 EUR) as well as in respect of costs and expenses (3,350 EUR) was paid to the applicants on 12 February 2013 (amount paid: 3,889,001 HUF; exchange rate: 292.06).

8. In the case of *Tarjáni v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (7,500 EUR) as well as in respect of costs and expenses (3,000 EUR) was paid to the applicant on 3 April 2018 (amount paid: 3.281.670 HUF; exchange rate: 312.54).

   Following the incident, the Békés County Police Department prepared training material for the police staff of the Department, which also contained case studies on procedures related to police measure tactics.

9. In the case of *Terge v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (6,000 EUR) as well as in respect of costs and expenses (2,000 EUR) was paid to the applicant on 25 May 2018 (amount paid: 2.557.680 HUF; exchange rate: 319.71).

General measures

10. At its 1324th meeting (September 2018) the Committee of Ministers invited the Hungarian authorities to provide information on the following general measures aiming at preventing similar violations:

I. Information on the effective implementation of administrative measures, in particular on the number of police vehicles that are in fact equipped with sound and image recording devices:

11. The use of computer-connected video-recording devices installed in police service cars makes possible to visually record the police actions taken. In the framework of a project started in 2014, image recording devices were installed in 1178 police cars.

12. Under section 42(1) of *Act No. XXXIV of 1994 on the Police* (henceforth: Police Act), in relation to a police action and in the context of performing their service tasks police officers may make image or sound records or audio-visual records of a person subjected to a measure, or of his environment or of any relevant circumstance or object. Where such records are not needed for the purposes of the procedures specified in the Police Act or for any other purposes indicated in that Act, they shall be stored for 30 days from the date on which they were taken and shall be processed in the integrated electronic document and case management system used by the Police ("Robotzsaru").

13. In certain cases, specified in Instruction No. 31/2015. (XII. 17.) ORFK of the National Police Commander on *Certain Rules Governing the Use of Image Recording as well as Audio-Visual Recording Devices Installed in Police Cars*, police officers performing service must start to make such records, namely:
    a) as soon as and while operating sirens and lights together, or only lights on their police vehicle
    b) when using roadblocks or checkpoints
    c) when a moving car is stopped by a moving police car
    d) when a violation of the law is perceived.

    In addition to the above mandatory cases, records may be made in other cases, too:
    a) upon decision of the police officer taking a measure, where the making of such records is warranted by the cause, nature or possible outcome of a police action, in particular, by the need to apply a coercive measure, or by the conduct, number, composition or former conduct of the person or persons subjected to the police measure, provided that the measure is taken in the angle of view of the device installed in the police car;
    b) upon the instruction of the police inspector of the police unit, or of the superior police officer, or of the police officer on duty at the police operational command centre.

14. Records can be taken on the police measure, on the person subjected to the measure and on his environment, or on a circumstance or object having relevance in the case. In order to ensure proper provision of information, before commencing a police action or - where prior information provision would endanger the success of the action - on completion of the action, the person subjected to a police measure must be informed of the fact that records are going to be taken or have been taken, and of the duration of managing such data.

15. In addition to the use of image recording devices, the use of body cameras placed on police officers' clothes is also allowed under the law. In 2018 70 body cameras were purchased for traffic-policing police units, which are used by highway traffic-policing units and county-level traffic-control units (altogether by 30 police units). The use of body cameras ensures that traffic-policing measures are properly carried out. They record the taking of the police measure and the interaction between the police officer and the person subjected to a police measure. Such cameras can record videos, images and also sounds. The primary aim of such recordings is to supply evidence in the investigations of complaints against police actions, but it must also be emphasised that the very presence of such devices, similarly to the image recording devices installed in police cars, prompts persons subjected to police measures to act in a law-abiding manner.

16. Experience shows that where image recording devices are used, the persons subjected to police measures are typically ready to cooperate with the police officers. Where proceedings are not closed on the spot, police records help to provide factual answers to arising issues to be determined later. Moreover, since the records are also checked by the commander, they help to exercise more extensive control over the police officers which, in turn, promotes the development of a uniform, transparent, lawful and professionally appropriate police practice that meets the rule-of-law requirements.

II. Information on the monitoring of interviews by law enforcement officers, and of the treatment of persons deprived of their liberty such as for example through systematic video recording of interrogations as well as obligatory installation of recording devices in police detention facilities; highlighted in this respect the importance of the concrete recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visits:

17. Under section 42(5c) of the Police Act, in order to maintain the order of detention, to prevent criminal offences, regulatory offences and disciplinary misconducts and to protect bodily integrity, the Police may install in the custody suites, save for the holding cells, toilets and sanitary premises, electronic surveillance equipment capable of making, forwarding and recording image, sound, or image and sound. Under section 43(5d) of the same Act, if a detainee formerly attempted to commit suicide or self-harmed himself by endangering his bodily integrity, or if based on a circumstance related to the detainee's detention it can reasonably be presumed that the detainee is going to commit such acts and therefore his behaviour needs to be continuously monitored in order to protect his life or bodily integrity, the Police may install surveillance equipment capable to forward image or image and sound, but not capable to record sound and image, at the police premises where the persons brought before the police are actually held, as well as in the holding cells of the custody suites. Records made under section 42(5c) of the Police Act, and the data contained in them, can only be used in criminal proceedings or regulatory offence proceedings or disciplinary proceedings instituted for a criminal offence or a regulatory offence or a disciplinary misconduct committed at the scene of the recording, or for the purposes of examining in administrative proceedings the lawfulness of a police measure or exercising the rights of the concerned person [42(6b) of the Police Act].

18. Point 100 of *Instruction No. 14/2015. (VII. 21.) ORFK of the National Police Commander on the Rules Governing the Construction of Police Custody Suites* provides that closed CCTV systems must be installed in all custody suites, whereas Instruction No. 3/2015. (II.

20.) ORFK of the National Police Commander on the Rules Governing Police Custody Service provides that closed CCTV systems must continuously be monitored, and in order to inform the persons entering a custody suite of the fact of image and sound recording at the premises via CCTV system, warnings must be displayed thereof. Points 3-4 of the Instruction on the Rules Governing the Construction of Police Custody Suites provide that in case of renovation, reconstruction or conversion of existing custody suites the rules laid down in the Instruction are applicable, subject to the technical possibilities, to the premises to be renovated, reconstructed or converted, but if the existing custody suites are suitable to guard and detain the detainees safely, without endangering their health or the prison staff's health, no renovation, reconstruction or conversion is needed. As seen from the above presentation and from point 2 of the Instruction on the Rules Governing the Construction of Police Custody Suites, recording devices must only be installed in newly constructed custody suites, since in respect of custody suites the Police Act merely allows for the possibility of using electronic surveillance devices capable of making, forwarding and recording image, sound, or image and sound, whereas in respect of holding cells the Police Act allows for the instalment of surveillance devices not capable of recording records under strict criteria.

19. Act No. XC of 2017 on Criminal Procedure, as amended with effect from 1 July 2018, maintains the possibility of making image, sound and audio-visual recordings of the various procedural acts, and in several cases such records must be made by the authorities. Under the Act on Criminal Procedure, audio-visual recording is mandatory in the following cases:
    a) in case of a procedural act necessitating the involvement of a person below the age of 14 [section 88(1) d/ of the Act on Criminal Procedure]
    b) where a person below the age of 18 is involved in a procedural act on account of his or her being a victim of an offence committed against the freedom of sexual life or against sexual morals [section 89 (4) b/ of the Act on Criminal Procedure]
    c) where a procedural act is attended by a person by way of means of telecommunication [section 125(2) of the Act on Criminal Procedure].

20. In addition to the cases specified above, under Instruction No. 41/2018. (VII. 11.) ORFK of the National Police Commander on the *Rules Governing the Use of Image and Sound Recording Technical Devices Specified in the Act on Criminal Procedure,* image and sound recording must be made
    a) of seizures, where the seized item remains in the custody of the person concerned or the seized item is given into the custody and handling of certain organs;
    b) where the seized item is sold or destroyed, provided that in respect of the given item sample-taking is inconceivable and visual recording in itself is not suitable to show the relevant characteristics of the given item;
    c) where a person unable to read and write is involved in a procedural act;
    d) where the suspect involved in the procedural act or his counsel has filed a motion to that effect, provided that they have advanced the related costs, and the financial directorate having jurisdiction at the place of the procedural act has confirmed the receipt of the money;
    e) in any other cases when the law so provides or a person having powers under statutory authorisation to give instructions in relation to a procedural act to the person proceeding in the given case, passes such a decision.

21. In addition to the cases when recording is mandatory, the member of the authority proceeding in a given case may order to make image and sound recording of a given procedural act. Under section 358(4) of the Act on Criminal Procedure the suspect, his counsel and the injured person can also request that a procedural act be recorded, provided that they, respectively, advance the costs of such recording.

22. Relying on the possibilities offered by information technology, the Act on Criminal Procedure allows the use of means of telecommunication for speeding up proceedings. Under section 120(2) of the Act on Criminal Procedure, where means of telecommunication are used, direct and reciprocal contact between a scene specified by the prosecutor's office or the investigation authority and another scene is ensured by
    a) image and sound recording, or
    b) uninterrupted sound recording.
    Telecommunication system is primarily used to speed up proceedings and to protect the persons involved in the proceedings, but such means also increase, to a significant degree, the transparency of the proceedings. The available means are suitable not only for conducting interrogations but also for recording sound and image. Moreover, under the above presented provisions of the Act on Criminal Procedure, in certain cases sound and image recording is obligatory.

23. In the telecommunications rooms of the penitentiary institutions and of the regional and local police stations a uniform technical system is installed. The technical devices produce excellent-quality sound and image. Recording sound and image simultaneously from various camera-angles facilitates the authentic documentation of the conduct of the procedural acts. Remote hearing was first introduced at the courts and then, gradually the legal institution of remote interrogation was applied in the detection and investigation phase of the criminal proceedings conducted by police authorities. The number of remote interrogations held at penitentiary institutions and police stations, as endpoints, has grown significantly each month: in March and April 2019 the number of remote interrogations was 67 and this figure almost doubled in May, in which month altogether almost 117 procedural acts were performed via means of telecommunication.

24. Thus, if the statutory conditions are met and its use is justified, police organs rely on remote interrogation in performing their tasks. Under section 122(1) b/ of the Act on Criminal Procedure, where the use of means of telecommunication is technically feasible, the prosecutor's office and the police must, save for the exceptions specified in section 122(2) of the Act on Criminal Procedure, use such means in case of a procedural act necessitating the presence of a detained witness or defendant. Due to this rule, as a result of the increased use of means of telecommunication, the number of cases when the members of the investigation authority conducting an interrogation meet in person the detained witness or defendant is decreasing, since in such cases the detained person is not transported from the penitentiary institution to any interrogation venue.

25. *Instruction No. 22/2010 (OT 10.) of the National Police Commander on the Implementation of the Recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* also aims to suppress ill-treatment by police officers:

    - Instruction No. 22/2010 (OT 10.) provides that the provisions contained in sections 15-16 of the Police Act prescribing the requirement of proportionality and prohibiting

cruel, inhuman or degrading treatment in carrying out police actions or performing procedural acts, must form part of the trainings held for police officers, and of the briefings held for persons joining the Police (point 4 of the Instruction).

- As to its material scope, Instruction No. 22/2010 (OT 10.) is applicable to the execution of detention of persons whose freedom of movement and/or residence has been restricted, and to related tasks (point 2 of the Instruction).

- According to point 5 of Instruction No. 22/2010 (OT 10.), if a detainee complains of ill-treatment or cruel, inhuman treatment during his preliminary medical examination,
- the complaint must be recorded in minutes, and in the minutes the detainee must be warned about the legal consequences of the offences of false accusation, false witnessing and misleading the authority, and the fact that the detainee has taken note of the warnings must be recorded in the minutes;
- the detainee must be familiarised with his outpatient treatment report or medical report and the minutes, and all necessary information must be provided to him, via interpreter, where necessary, and the documents to be issued under this point must be offered for signature by the detainee who, however, cannot be obliged to sign them. Where a detainee denies to sign the documents, this fact must also be recorded.

- Point 17 of Instruction No. 22/2010 (OT 10.) provides that complaints of police measures and proceedings allegedly constituting cruel, inhuman or degrading treatment must be investigated with priority and special care by the heads of the county-level police departments, or the head of the Standby Police, or the director of the Airport Police Directorate.

- The complaints and the related investigations, the results of and the experience gained from the checks effected in respect of the complaints and all related proposals are summarised in annual reports drafted by the mentioned police organs. These reports are evaluated from a professional point of view by the Criminal High Directorate and the Policing High Directorate of the National Police Headquarters, and their findings are summarised in partial reports (points 20-21 of the Instruction).

- Based on the partial reports, the Control Service of the National Police Headquarters annually evaluates respect for human rights in the country (point 22 of the Instruction), therefore it can be stated that this mechanism is an appropriate legal institution for enforcing and forwarding detainee complaints, and the respective police and other state and civil organs function properly and adequately.

26. Where investigations are conducted by the prosecution, *to monitor the treatment of detained persons is the task of the Investigations Supervisory Department of the Central Investigations Chief Public Prosecutor's Office*. The Central Investigations Chief Public Prosecutor's Office and the subordinate investigations public prosecutor's offices transmit all submissions containing a treatment-related complaint or request to the public prosecutors in charge of supervising the lawfulness of detention and respect for detainee rights at the county-level public prosecutor's office having jurisdiction at the seat of the penitentiary institution complained of, irrespective of whether upon the detainee's submission any other measure is going to be taken by the public prosecutor's office responsible for prosecutorial investigations.

27. The technical conditions for recording interrogations via sound and image recording devices are, for the most part, ensured at the Central Investigations Chief Public Prosecutor's Office and the subordinate regional investigations public prosecutor's offices. Where a person to be interrogated motions such recording, the interrogation shall, in all cases, be recorded and this fact shall be included in the minutes, in conformity with the rules of the Act on Criminal Procedure. In the Central Investigations Chief Public Prosecutor's Office building located at 38 Könyves Kálmán körút, in the premises where persons brought before the police are held, a surveillance camera mounted above the entrance monitors the happenings at the premises and stores the records for about 12 days. So far no extraordinary incident warranting the use of those records has taken place.

III. **Information on implementation of capacity-building and awareness-raising measures, in particular on their frequency, the content of the curricula and the number of beneficiaries**:

28. In addition to organised learning and training, in the course of the briefings the police officer holding the briefing draws the fellow police officers' attention to the requirement of performing their duties in a lawful and professionally appropriate manner. Due to these measures, in the past years no unlawful conducts or deficiencies seriously affecting the fundamental rights of persons subjected to police measures or restricted in their liberty occurred and no violations of the prohibition of cruel, inhuman treatment or of the legal requirement laid down in sections 15-16 of the Police Act prescribing proportionate police action and coercive measure have been detected by the public prosecutors.

29. In the law enforcement trainings the above mentioned topics are continuously discussed at all levels.

IV. **Outline of the pertinent statutory and secondary legislation aimed at preventing ill-treatment by law enforcement officers during arrest, transfer and custody and a firm message of "zero tolerance" of ill-treatment**

30. To prevent and sanction ill-treatment by police officers requires the highest-level criminal law action, therefore all such conducts constitute criminal offences and are threatened under the law with imprisonment, that is, with the most severe penalty. All the three statutory provisions sanctioning the various forms of police ill-treatment, namely section 301 of *Act No. C of 2012 on the Criminal Code* governing *ill-treatment in official proceedings*, section 304 of the same Act governing *forced interrogation*, and section 304 of the same Act governing *unlawful detention* treat such conducts as criminal offences punishable with imprisonment lasting from 1 to 5 years, by which sanctions the legislature first of all wish to emphasise the danger such unlawful conducts pose to society.

31. In addition to the means available under substantive criminal law, certain procedural legal institutions are also aimed at effectively suppressing such conducts. As presented above, *Act No. XC of 2017 on Criminal Procedure*, which entered into force on 1 July 2018, contains:
    a) the rules governing the recording of procedural acts via sound or image recording or continuous audio-visual recording, and
    b) the legal institution of participation in a procedural act via means of telecommunication.

32. *Instruction No. 22/2010 (OT 10.) of the National Police Commander on the Implementation of the Recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, presented above in point 17., also aims to suppress ill-treatment by police officers.

33. The rules allowing for persons in the custody or under the supervision of an authority to maintain uncontrolled contact with the outer world, and the rules ensuring the use of legal remedies also aim to suppress police ill-treatment. The right of contact and the right of free (uncontrolled) communication with the competent international organisations, including the United Nations, are ensured by the following laws:

- *Section 11(3) and (6) of Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Regulatory Custody:*

  "(3) Where a convict or a person detained on other grounds is not a Hungarian national, he is entitled to contact the diplomatic or consular services of his state and to maintain contact with the representatives of those services. Where the convict or the person detained on other grounds is a stateless person, he is entitled to contact the Office of the United Nations High Commissioner for Refugees.

  (6) In matters related to his detention and in any other matters, the convict or the person detained on other grounds may maintain contact with his representative both in writing and orally, and may contact his representative during visits in person under control, while respecting the order of the organ where the detention is executed. Personal contact between the convict or the person detained on other ground and his representative in relation to a complaint made by the convict or the person detained on other grounds about the proceedings of the given penitentiary institution to a human rights organ set up under an international treaty, in particular to the European Court of Human Rights shall not be controlled, unless the representative is a relative of the convict or the person detained on other grounds."

- *Section 5(1) d/ of Act No. LXXX of 2007 on Asylum and section 7(1) of Minister of Justice Decree No. 27/2007. (V. 31.) IRM on the Rules of the Execution of Detention Ordered in Alien-Policing Procedure:*

  "section 5(1) A person seeking asylum is entitled:
  d/ to contact the Office of the United Nations High Commissioner for Refugees or other relevant international organizations or civil society organizations for the duration of the asylum procedure."

  "section 7(1) The detainee may maintain contact under security supervision, without control

  d/ with members of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and with members of the human rights bodies of the United Nations or the Council of Europe, delegated for that purpose."

- *Section 10(1) d/ of Minister of Home Affairs Decree No. 29/2013. (VI. 28.) BM on the Rules of Execution of Asylum Detention and Asylum Bail:*

"section 10(1) A person seeking recognition may maintain contact, without control,

d/ with members of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and with members of the human rights bodies of the United Nations or the Council of Europe, delegated for that purpose."

34. Under section 10(1) of *Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Regulatory Custody*, in cases related to the execution of his punishment or detention, the convict or the person detained on other grounds (person under involuntary treatment, under the effect of a coercive measure, placed in confinement for non-payment of a procedural fee, placed in regulatory custody) may file a request and thereafter a complaint against the decision given on the request, and may submit any other remedies available under the law. Where further remedies are allowed under the law, the convict or the person detained on other grounds shall be informed thereof.

    Under section 10(5) of the same Act, the convict or the person detained on other grounds may
    a) contact directly the public prosecutor's office supervising the lawfulness of the execution of punishments, measures, certain coercive measures and regulatory custody, and may seek to be heard by a public prosecutor,
    b) contact directly the ombudsman for fundamental rights or a staff member authorised to perform the tasks related to the national preventive mechanism set up under Article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
    c) file a request or complaint to an international rights protection organ expressly entitled thereto under an international convention promulgated by an Act.

    Under section 6 of the same Act, the lawfulness of such execution shall be supervised by the public prosecution according to the rights and obligations specified in the Act on the Prosecution Service.

35. Persons arrested for reasons of public security or brought before or escorted to the police under the *Police Act* may file a complaint against the measure in conformity with the rules laid down in chapter IX of the Police Act. The detained person may file a complaint not only to the police organ having taken the measure but also to the Independent Law Enforcement Complaint Board, in case his fundamental rights have been violated.

36. Regulatory custody-related issues not regulated separately shall be governed, under section 73(14) of *Act No. II of 2012 on Regulatory Offences, Regulatory Offence Procedure and Regulatory Offence Registration System*, by the above presented provisions of Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Regulatory Custody.

37. Under 61(3) g/ of *Act No. II of 2007 on the Admission and Right of Residence of Third-Country Nationals*, persons detained in secure accommodation have the right to file a complaint (as well as an objection and a request) to the representative of the authority. Such detainees can also make a complaint, irrespective of the Police, to the authorised

legal representatives of foreign embassies, to organisations providing legal assistance, and to international organisations. Public prosecutors in charge of supervising the penitentiary institutions carry out checks in the secure accommodations every two weeks, in the course of which respect for detainees' rights, including, first of all, the lawfulness of detention, proper provision of information, food supply, housing situation, treatment, etc. are examined. Public prosecutors regularly consult with the detainees, who can submit complaints. Where the prosecutor finds a violation of law, he makes an objection to the head of the police organ responsible for the detention, who shall take immediate action for terminating the unlawful situation.

38. Under section 2(6) of *Act No. CXI of 2011 on the Ombudsman of Fundamental Rights*, the tasks related to the national preventive mechanism set up under Article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Act No. CXLIII of 2011 shall be performed by the ombudsman of fundamental rights.

39. Under section 3(2) of *Act No. CLXV of 2013 on Complaints and Public-Interest Disclosures*, bona-fide complainants and persons submitting public-interest disclosures as well as complainants giving untrue information unintentionally, shall not suffer any disadvantage for making the complaint or the public-interest disclosure. Section 260/A of *Act No. II of 2012 on Regulatory Offences, Regulatory Offence Procedure and Regulatory Offence Registration System* governs the regulatory offence of "persecution of a person making a public-interest disclosure", which falls in the regulatory offence competence of the Police, and is committed by "anyone who makes a disadvantageous measure against a person having made a public-interest disclosure."

V. Statistical information on the number of complaints of ill-treatment, the number of disciplinary and criminal proceedings carried out in this regard and on their respective outcome:

40. According to the reports and partial reports drafted under *Instruction No. 22/2010 (OT 10.) of the National Police Commander on the Implementation of the Recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, as to the year of 2018 it can be established that ill-treatment in a significant number was reported to have been suffered by persons subjected to police measures during their apprehension or committal to the police, or during the use of a coercive measure. The investigations instituted by the heads of the respective police departments into the measures complained of revealed that the use of police measures and coercive measures had been lawful, professionally appropriate and justified, but the persons subjected to such measures had felt them to constitute police ill-treatment.

41. The continuous decrease in the number of complaints in the recent years attests to the fact that the training of the police officers, the exemplary conduct of the heads of the police departments and the checks regularly carried out have exerted positive influence on the culture of police actions in respect of detentions, and in the majority of cases the emergence of situations giving rise to complaints could be prevented. It is also assuring that proceedings instituted for a suspected criminal offence in relation to such measures were closed by rejecting the criminal complaint or by discontinuing the criminal proceedings.

42. Based on the information related to such complaints, no particular cases or a trend showing inhuman treatment or torture of the detainees by the police can be seen in the performance of crime-related police activities. This statement is supported, on the one hand, by the very low number of the submitted complaints and, on the other hand, by the findings of the investigations of such complaints.

43. In connection with the activities of police officers operating in criminal areas, in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, respectively, 10, 7, 4, 9, 11, 11, 10, 8, 4 and 3 complaints were filed by detainees. As to the 3 complaints filed in 2018, 2 complaints were dismissed, whereas in respect of 1 complaint the criminal proceedings were suspended. The figures show that the decrease in the number of complaints perceivable since several years constitutes a tendency.

VI. **Publication and dissemination**

44. The judgments have been published on the website of the Government (see: http://igazsagugyiinformaciok.kormany.hu/az-emberi-jogok-europai-birosaganak-iteletei).

Conclusions of the respondent state

45. The Government consider that the measures adopted have fully remedied the consequences for the applicant of the violation found by the Court in this case and that Hungary has thus complied with its obligations under Article 46, paragraph 1 of the Convention.

Budapest, 26 September 2019

Zoltán Tallódi
Agent for the Government of Hungary