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Meeting: 1377th meeting (June 2020) (DH)

Communication from an NGO (Hungarian Helsinki Committee) (17/04/2020) in the Gubacsi group of cases v. Hungary (Application No. 44686/07)

Information made available 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.

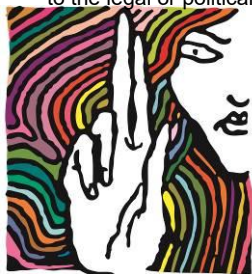
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Réunion : 1377^e réunion (juin 2020) (DH)

Communication d'une ONG (Hungarian Helsinki Committee) (17/04/2020) relative au groupe d'affaires Gubacsi c. Hongrie (requête n° 44686/07) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



Hungarian Helsinki Committee

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17 April 2020, Budapest

Council of Europe

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

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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* and *Csonka v. Hungary*.

The HHC already submitted two communications under Rule 9(2) in relation to the execution of the judgments in question, at the turn of 2014 and 2015 (hereafter: 2014–2015 HHC communication),¹ and in 2018.² The present communication concerns the suggested general measures as included in the decision of the Committee of Ministers from 20 September 2018³ and the Group Action Report of 26 September 2019 submitted by the Government of Hungary (hereafter: Group Action Report).⁴

The HHC is of the view that **the latest Group Action Report 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:

- 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;

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

⁴ DH-DD(2019)1123, <https://rm.coe.int/0900001680981e8c>



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- presence of police officers at medical examinations of detainees as a main rule;
- substantive shortcomings in the investigations into ill-treatment;
- eligibility for service of convicted law enforcement officers;
- low success rate of reporting ill-treatment;
- low success rate of indictments related to ill-treatment; and
- judicial leniency towards law enforcement officers with regard to sentencing;

Below, we elaborate on the deficiencies in these areas, following the structure of the Committee of Ministers' decision and the Group Action Report, and, finally, we provide recommendations on how to address them.

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

The Group Action Report states that "[i]n the framework of a project started in 2014, image recording devices were installed in 1,178 police cars" (§ 11). Given that there are 9,634 police vehicles as per the data received from the National Police Headquarters in March 2020,⁵ this would mean that only 12.2% of police vehicles are equipped with recording devices. What is more, according to the data provided by the National Police Headquarters, on 9 March 2020 **in fact 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**.

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

In 2014, the National Police Headquarters informed⁶ the HHC that 1,003 police vehicles were equipped with a device suitable for recording image or image and sound at that point (but these were not all necessarily operational), equalling to 16.12% of the affected pool of vehicles. This means not only that **no substantial improvement has been taken place since 2014** in terms of the number of recording devices, but there has actually been a decline.

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,⁷ and body cameras being available only for traffic-policing police units.⁸ According to the information provided to the HHC by the National Police Headquarters in March 2020, 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**

⁵ Response of the National Police Headquarters to the HHC's FOI request, 29000-197/19-70/2020.KOZA, March 2020

⁶ Response of the National Police Headquarters to the HHC's FOI request, 29000/40096-25/2014.Ált., 3 November 2014

⁷ Response of the National Police Headquarters to the HHC's FOI request, 29000-197/19-70/2020.KOZA, March 2020

⁸ Group Action Report, § 15



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working hours units equipped with body cameras spend with patrolling, even though these data would be necessary to assess this initiative.

The Group Action Report also **fails to provide the detailed rules on the usage** of the body cameras (e.g. when police officers must or may make recordings via the body cameras, whether the cameras are turned on automatically or are turned on upon the discretion of the police officer, etc.), even though this would also be important to assess the general measure taken.

Similarly, the Group Action Report fails to provide sufficient information on when “the records are [...] checked by the commander” (§ 16), i.e. whether recordings by body cameras are reviewed randomly but regularly, or only upon a complaint. The HHC is not aware of any public regulation in this regard.⁹

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

1. RECORDING DEVICES IN POLICE DETENTION FACILITIES

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 (“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”).¹⁰ Thus, it is **not obligatory by law to install cameras in all police detention facilities**. However, as also included in the Group Action Report (§ 18), under Instruction 14/2015. (VII. 21.) ORFK of the National Police Chief on the Rules Governing the Construction of Police Custody Suites, “recording devices must [...] be installed in newly constructed custody suites”.

The lack of legal obligation to install cameras in all police detention facilities can seriously hinder the efficiency of investigating allegations of police ill-treatment, which is also 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**. (There were further 206 cameras which were not capable of recording, and served only monitoring purposes.)¹¹ However, it must be added that **all 21 holding facilities were equipped** with a camera capable of recording image and sound.

2. VIDEO RECORDING OF INTERROGATIONS

The video recording of interrogations is still not obligatory in Hungary in all criminal proceedings. As also described by the Group Action Report (§§ 19–20), the new Code of Criminal Procedure (Act XC of 2017), which entered into force on 1 July 2018, indeed brought along some positive changes, making it mandatory to audiovisually record interrogations of certain persons involved in the criminal

⁹ A police statement from 2015 on the testing of the cameras refers to Act XXXIV of 1994 on the Police and Act CXII of 2011 on Informational Self-Determination and Freedom of Information as the legal framework for the testing of the body cameras. The statement refers to Article 42(1) of Act XXXIV of 1994 on the Police as the legal basis for the testing of the cameras, which says that the police may make an image, sound, or image and sound recording about the person affected by a police measure, the environment of these persons, or about circumstances or objects significant with a view to the police measure. For the statement, see: <http://www.police.hu/hirek-es-informaciok/legfrissebb-hireink/kozlekedesrendeszet/tesztuzemben-a-testkamera>.

¹⁰ 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.

¹¹ Response of the National Police Headquarters to the HHC’s FOI request, March 2020, 29000-197/19-70/2020.KOZA



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procedure, some of whom qualify as vulnerable persons by law. However, this **obligation does not cover all vulnerable persons**: if a procedural act involves a “person requiring special treatment”, i.e. a vulnerable person in general, the Code of Criminal Procedure only provides for the *possibility* to make an audiovisual recording of the procedural acts.¹² Furthermore, the new Code of Criminal Procedure upholds 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 recording¹³ (*see § 21 of the Group Action Report*). This rule continues to **deprive indigent suspects of their rights by virtue of their economic status**, which was also criticized by the UN Human Rights Committee already in 2010.¹⁴

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 general measure taken. 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).¹⁵

Another indicative data may be the proportion of cases where it was established that the person interrogated “requires special treatment”, because it may be presumed that some of their interrogations were recorded audiovisually. According to data provided by the police, the need for special treatment for an interrogated person (including defendants, victims, etc.) was established 9,727 times in the 92,592 criminal procedures launched between 1 July and 31 December 2018. In 2019, it was established in the case of 20,430 interrogated persons that they require special treatment, with 187,103 criminal procedures launched that year.

Further deficiencies related to video recordings include the following:

- It was reported to the HHC in a 2018–2019 research that there are “**often problems with the volume and the understandability of the audio**”. Recordings are usually of mediocre quality.”¹⁶
- **Suspects and victims are not informed** by law **about the possibility** to request the audiovisual recording of interrogations, which hinders the realisation of their rights. Defence counsels reported to the HHC that defendants are typically not informed by the authorities about this possibility in practice either, and so they “may receive information about this only from their defence counsel”.¹⁷ This means that when the defendants realize that they have such a possibility, it may very well be too late, because they already made a statement to the police without the presence of a defence counsel and without their statement being recorded.

Based on the above information, it can be concluded that **in spite of the recommendation included in the decision of the Committee of Ministers, no “systematic” video recording of interrogations is taking place in Hungary.**

¹² Act XC of 2017 on the Code of Criminal Procedure, Article 85(1)(j)

¹³ Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

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

¹⁵ 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.

¹⁶ *Procedural rights observed by the camera – Audiovisual recording of interrogations in the EU (ProCam)*, Country report – Hungary, Hungarian Helsinki Committee, 2019, https://www.helsinki.hu/wp-content/uploads/HHC_ProCam-country-report_ENG.pdf, p. 18.

¹⁷ *Ibid.*, p. 19.



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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

The Group Action Report **fails to provide any information on the frequency, curricula and the number of beneficiaries** with regard to the “organised learning and training” and the “briefings” of police officers, and how exactly these address the prohibition of torture, coercive interrogation and cruel, inhuman or degrading treatment. Furthermore, the National Police Headquarters informed the HHC that it does not collect data on how these trainings and briefings are carried out by the local and regional police units.¹⁸

As far as police training is concerned, interviewees 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.”¹⁹

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”.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. 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 addition, **the assessment of police work in Hungary “is still primarily based on a statistical approach”**.²² 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.²³ 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.²⁴

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

¹⁸ Response of the National Police Headquarters to the HHC’s FOI request, 29000-197/24-4/2020.KOZA, 12 March 2020

¹⁹ Borbála Ivány – András Kádár – András Nemes, *Hungary*. In: Richard Carver – Lisa Handley: Does Torture Prevention Work? Liverpool University Press, Liverpool, 2016, p. 230.

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.

²¹ *Ibid.*, § 32.

²² 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.

²³ 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

²⁴ 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



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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.²⁵

IV. 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 & INFORMATION ON THE MEASURES TAKEN OR ENVISAGED TO REMEDY THE SHORTCOMINGS IDENTIFIED BY THE EUROPEAN COURT OF HUMAN RIGHTS AS REGARDS INVESTIGATIONS INTO ALLEGATIONS OF ILL-TREATMENT

The Group Action Report of September 2019 once again **fails to address systemic deficiencies which limit the possibilities of preventing ill-treatment and adequately investigating ill-treatment allegations.** It is also telling that the Group Action Report ignored the first half of § 6 of the Committee of Ministers' September 2018 decision (saying that the Committee of Ministers "noted with regret the lack of information on the measures taken or envisaged to remedy the shortcomings identified by the [...] Court as regards investigations into allegations of ill-treatment"), and, in contrast to other paragraphs of the decision, did not even include it in any of the headings.

The systemic deficiencies not addressed by the Group Action Report include the following:

- 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;
- eligibility for service of convicted law enforcement officers.
- low success rate of reporting ill-treatment (*see the statistical data under Section V.*);
- low success rate of indictments related to ill-treatment (*see the statistical data under Section V.*);
- leniency towards law enforcement officers with regard to sentencing (*see the statistical data under Section V.*);

1. 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.²⁶ **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

²⁵ 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-munkaeroihiany/> (based on data provided by the National Police Headquarters).

²⁶ Decree 56/2014. (XII. 5.) BM of the Ministry of Interior on the Order of Police Cells, Article 34(1)



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CPT²⁷ 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”.²⁸ However, no such step is foreseen by the Group Action Report.

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.²⁹ During its 2018 visit, 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.”³⁰

2. 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 Chief³¹ 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.”

This was **criticized by the CPT** after its visit to Hungary in 2013,³² 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”.³³ 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.”³⁴ The **UN Human Rights Committee also raised concerns** about this issue in its concluding observations both in 2010³⁵ and 2018.³⁶

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

²⁷ 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.

²⁸ *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 36(c)

²⁹ *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.

³⁰ *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.

³¹ Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT, Section 8

³² *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.

³³ *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]n 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”.

³⁴ *Ibid.*, § 36.

³⁵ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, § 14.

³⁶ *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 35.



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may prevent that police officers committing ill-treatment are called to account, **the Group Action Report does not foresee any general measure to address this deficiency.**

3. SUBSTANTIVE SHORTCOMINGS IN THE INVESTIGATIONS

In the *Gubacsi* group of cases, the shortcomings identified by the Court in finding violations of the procedural limb of Article 2 or Article 3 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, to date, **Hungary has not taken or announced any general measures to remedy the above shortcomings identified by the Court.**

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.**³⁷ This points into the direction of factual impunity, especially taking into consideration 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 under Section V. of the present communication*), 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.**³⁸ (The Ministry of Interior failed to provide data as to the precise 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.

	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>

³⁷ 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)

³⁸ 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).



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5. DEFICIENCIES REGARDING THE NATIONAL PREVENTIVE MECHANISM

Since the Group Action Report refers to the National Preventive Mechanism (NPM) under the OPCAT, it is worth presenting some of the deficiencies regarding the operation of the Hungarian NPM that undermine its role and efficiency in countering ill-treatment by official persons.³⁹ First of all, the NPM **conducted only 70 monitoring visits to date in the past five years**⁴⁰ (the Commissioner for Fundamental Rights was designated to be the NPM of Hungary as of January 2015). This means an average of 14 per year, which is a low number, especially considering that the NPM's mandate covers over 500 facilities, from penitentiaries through police cells to psychiatric institutions. The publication of visit reports is slow, it usually takes more than six months. Furthermore, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) observed in its 2017 report⁴¹ 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" (§§ 33–34). The **insufficient number of visits** and the **lack of preventive activities** relates closely to **the lack of adequate resources and funding of the NPM**.

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

The Group Action Report **fails to provide any data whatsoever on the number of disciplinary and criminal proceedings launched** on the basis of ill-treatment by the police or official persons in general **and on their outcome**, and, as already stated above, fails to address the following related systemic deficiencies:

- low success rate of reporting ill-treatment by official persons;
- low success rate of indictments related to ill-treatment by official persons;
- leniency towards law enforcement officers with regard to sentencing.

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

The Group Action Report does not touch upon the issue that very few reports of ill-treatment and coercive interrogation 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 for coercive interrogation**.⁴² Thus, the vast majority of the investigations was closed or the reports made by the alleged victims were rejected. In comparison, reports on "violence against an official person" resulted in an indictment in 66.7 to 71.3% of the procedures in the same period. (Data pertaining to 2007–2013, presented in the 2014–2015 HHC communication, show similar results.⁴³)

³⁹ In more detail, see: *Assessment of the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, Hungarian Helsinki Committee, September 2019, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf, pp. 19–22.

⁴⁰ See: <http://www.ajbh.hu/hu/opcat>.

⁴¹ 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

⁴² 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).

⁴³ For more details, see the 2014–2015 HHC communication at [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.



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Ill-treatment in official proceeding ⁴⁴								
	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 ⁴⁵								
	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 ⁴⁶								
	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 success rate:** for ill-treatment in official proceeding, the success rate ranged from 46.9 to 83.8% between 2014–2019, while the average success rate of the prosecution ranged from 96.6 to 97.8% around the same period, between 2014–2017.⁴⁷ (The success rate of prosecutions for coercive interrogation ranged from 50 to 100%, but there the number of closed cases per year is very low.)

⁴⁴ Act IV of 1978 on the Criminal Code, Article 226; Act C of 2012 on the Criminal Code, Article 301

⁴⁵ Act IV of 1978 on the Criminal Code, Article 227; Act C of 2012 on the Criminal Code, Article 303

⁴⁶ Act IV of 1978 on the Criminal Code, Article 229; Act C of 2012 on the Criminal Code, Article 310

⁴⁷ Source: *A büntetőbíróság előtti ügyész tevékenység főbb adatai I. – A 2017. évi tevékenység [Main Data on Prosecutorial Activity before Criminal Courts – Year 2017]*, Legfőbb Ügyészség [Chief Prosecutor's Office], <http://ugyeszseg.hu/repository/mkudok9879.pdf>, p. 64.



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	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%)	

In its 2018 concluding observations, the **UN Human Rights Committee** also identified the above issues 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".⁴⁸ However, the **Group Action Report does not touch upon the issue or contain any general measure aimed specifically at tackling this phenomenon.**

2. LENIENCY TOWARDS LAW ENFORCEMENT OFFICERS WITH REGARD TO SENTENCING

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 is 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).⁴⁹

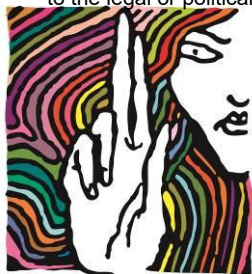
	2014	2015	2016	2017	2018	2019
Ill-treatment in official proceeding						
Imprisonment	13	11	12	16	7	8
Fine	10	7	14	17	22	15
Coercive interrogation						
Imprisonment	1	5	4	-	1	-
Fine	5	-	1	-	-	1
Violence against an official person						
Imprisonment	463	419	412	356	323	264
Fine	34	34	26	37	33	29

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 imposed in 0–5.56% annually, while suspended imprisonment was imposed in 15–41% of the cases.⁵⁰) This all the more problematic because as explained above, the eligibility of law enforcement officers may be

⁴⁸ *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 35.

⁴⁹ 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.

⁵⁰ For more details, see the 2014–2015 HHC communication 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.



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restored when they are sentenced "only" to suspended imprisonment. (The National Judicial Office failed to provide the same data for the years 2014–2019.)

The Group Action Report does not touch upon the issue or contain any general measure aimed specifically at tackling this phenomenon. Furthermore, its wording is misleading: in § 30 it does not mention specifically that the respective criminal offences are not only punishable by imprisonment (which can be effective and suspended), but also by a fine, even though the fine (and, presumably, based on earlier data cited above, suspended imprisonment) are much more frequently applied than effective imprisonment.

VI. 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 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).⁵¹
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

⁵¹ Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1



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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.⁵² 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.⁵³
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. 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, 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.

Sincerely yours,

András Kádár
co-chair
Hungarian Helsinki Committee

⁵² 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.

⁵³ Article 167(5) of Act XC of 2017 on 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. 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.