

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 30/10/2024

DH-DD(2024)1245

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1514th meeting (December 2024) (DH)

Communication from an NGO (Hungarian Helsinki Committee) (21/10/2024) concerning 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.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1514^e réunion (décembre 2024) (DH)

Communication d'une ONG (Hungarian Helsinki Committee) (21/10/2024) 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.

DGI

21 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



21 October 2024, Budapest

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

F-67075 Strasbourg Cedex
France

dgi-execution@coe.int

Subject: Addendum to the Hungarian Helsinki Committee's 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 the following addendum to 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 submitted its latest communication under Rule 9(2) in relation to the execution of the judgments in question on 4 October 2024. However, on 3 October 2024, the Government of Hungary submitted an updated Group Action Plan (hereafter: Group Action Plan).¹

Therefore, the HHC respectfully submits the present addendum to its 4 October 2024 communication 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".

Firstly, it should be pointed out that both the first and the updated **Group Action Plans have been submitted with a considerable delay**, as the deadline given for the Hungarian government in this regard by the Committee of Ministers was 31 March 2023. This disregard for the deadline provided by the Committee of Ministers compromises the processes of the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights. Furthermore, such delays also prevent civil society groups and other actors from having the possibility to submit communications to thoroughly assess the measures taken and/or envisaged by the Government in time before the next CM-DH meeting in December 2024, to submit freedom of information requests and gather additional information on new measures included in the Group Action Plan that were not covered by earlier action plans/reports, etc. This seriously undermines the process of supervising the execution of judgments.

The HHC maintains its findings as presented in its latest communication under Rule 9(2) on 4 October 2024, with the following additions. Consequently, the present communication

¹ DH-DD(2024)1114, [https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD\(2024\)1114E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD(2024)1114E%22%5D%7D)

does not replicate the findings presented in the previous communication, which already extensively reflects the statements of the updated Group Action Plan.

1. Measures on the video recording of police work

In Point 39. of the Group Action Plan the Hungarian Government states that *“based on previous positive experience, it is planned to purchase additional body cameras, subject to budget availability. The objective is to have an in-vehicle recording camera installed in all patrol cars, and to have at least 1 body camera in every police station, to be worn by patrol officers on duty.”*

The HHC welcomes the government's objective, but given the current financial situation of the Hungarian police, it seems unlikely that they will be able to significantly increase the number of body cameras available in the coming years.

According to the response of the National Police Headquarters to the HHC's freedom of information request of 13 May 2024,²⁵ the purchase price of the body cameras in 2023 was HUF 479 400 (approximately EUR 1 197) per unit, plus the purchase of various accessories, licences and certificates not included in the latter price. The annual operating cost of these body cameras is currently HUF 264 100 (approximately EUR 659) per unit, which includes the licence and other service fees required for the operation of each body camera device. Police departments, as autonomous budgetary bodies, may acquire their technical equipment independently, not from the government budget. Press reports² indicate that Hungarian police departments are facing serious financial problems, such as not being able to pay the fees of forensic experts and public defenders on time.

According to Point 41. of the Group Action Plan, the Budapest Metropolitan Police Headquarters have 75 body cameras in use. In the HHC's view, this number is hardly sufficient given the size of Budapest.³

2. The internal target inspection of Chief Prosecutor's Office

Although the information provided in Points 87-93. of the Group Action Plan on the internal target inspection carried out by the Chief Prosecutor's Office contains findings that are consistent with the observations of the HHC, one year after the target inspection no significant positive changes can yet be detected in the statistics and in the HHC's field experience in the cases where it provides representation for the victims (actually the HHC's lawyers represent 5 victims of police ill-treatment and more than 5 victims of prison guard ill-treatment and provide legal advice in a few additional cases).

The instructions described in Point 92. of the Group's Action Plan are very general, and, in the form in which they have been presented, are certainly not capable of substantially improving the work of the investigative prosecution service, for example promoting more complete fact-finding or provision of adequate information on victims' rights. It should also be noted that, in the HHC's experience, the problem is not only the quality of interrogations, but also the fact that victims, witnesses and suspects are not interrogated at all or they are interviewed only years after they have filed the crime report. Although the actual report may contain more detailed, concrete and workable instructions for the investigating prosecutors, the HHC has no information on this matter, as the result of the inspection is not publicly available, and upon the HHC's FOI request of 25 September 2024 the Chief Prosecutor's Office refused to provide it.⁴

² <https://dailynewshungary.com/hungarian-police-bankruptcy-forensic-experts/>.

³ The population of Budapest at the time of the 2022 census was 1 682 426. The number of people passing through the city each day is even higher.

⁴ Data provided by the Chief Prosecutor's Office upon the HHC's FOI request (ABOIGA//1-354/2024., 25 September 2024).

3. Protracted prosecution proceedings

In Point 90. the government summarises the report of the prosecution on the inspections of ill-treatment cases as follows: *“The report concluded that the nature of the proceedings and the difficulties of proof did not pose any particular professional challenges or complex legal problems. The majority of cases involved the proof of one set of facts and one offence. The common feature was the poor evidence of the offence and the fact that the vast majority of cases were closed for lack of evidence. The effectiveness of the proceedings can therefore be measured in terms of their legality, completeness, timeliness and the professional quality of the decisions terminating the investigation.”*

The Group Action Plans statement is right in the sense that there might be real difficulties in obtaining evidence in certain cases, especially if the victim is detained, if only the victim's statement (contradicted by the statements of the officials) and the medical report are available, and there are no independent witnesses, no material evidence or CCTV footage. However, as presented in its submissions, the HHC's experience is that the prosecution often does not investigate in a fair procedure and closes the criminal procedure based on the assumption that there has not been appropriate evidence. The high rate of closing the procedures are underlined by statistical data as well. In the HHC's cases the prosecution regularly does not endeavour to gather all the relevant evidence, often there is no thorough and independent examination of the available evidence and inappropriate conclusions are often drawn. So the correct conclusion from the report would be that there are very complex legal problems and particular professional challenges concerning fundamental victims' rights, and the Hungarian government has a fundamental responsibility to solve the issue. If on the contrary the government is of the view that the prosecution's proceedings do not pose any particular professional challenges or complex legal problems it either refutes the statements contained in its report or confirms the fundamental flaws in the prosecution's practice.

In Point 100. of the Group Action Plan the Hungarian government states that *“as regards the timeliness of the proceedings, the national data of the prosecution offices of investigation show that some protracted investigations only worsen the timeliness indicators, but the vast majority of the proceedings in the segment under review are typically completed only within 5-6 months.”*

The statistical data presented in the Group Action Plan indicates that it might be true that the vast majority of the proceedings are typically completed only within 5-6 months, but the reason for this is that in the majority of cases the prosecution office rejected the report (18.8% of cases in 2023) or terminated the investigations (74.6% of the cases in 2023). Although the HHC does not have statistical data on the average length of ill-treatment cases, in the experience of the HHC, it is highly unlikely that the prosecution office brings charges 5-6 months after the case has been opened, but it is certainly possible that a report is rejected or the procedure is terminated within this period.

The HHC currently has at least 4 ongoing ill-treatment cases (2 of these alleged offences were committed by police officers and 2 by prison officers) that have been protracted for at least 3 years, in 2 of these cases, our clients were interrogated more than 3 years after the crime report was filed. In all 4 cases, all the evidence was available and no additional investigative steps were to be taken. (Currently HHC lawyers represent more than 10 ill-treatment victims and in none of these cases the charges have been brought in 6 months.)

Finally, in response to Point 99. of the Group Action Plan, it is important to note that the figures referred to cannot be the indictment rates (see data given in Point 97.), so it is not clear what the government could have meant by the data presented.

4. Lack of independent medical examination of detained persons and of related training

On the basis of the latest Group Action Plan submitted by the government, it is clear that no meaningful progress can be expected with regard to the continuing lack of access to independent and adequate medical examinations for detainees. In this context, the government's argument that there is no need to establish a separate, independent medical examination body because the doctors who carry out medical examinations are independent anyway continues to raise serious concerns.

Although the government itself states that the results of medical examinations may be of decisive importance, the presence of police officers at these examinations, despite the call of the Committee of Ministers, continues to violate medical confidentiality. This problem has been repeatedly highlighted by the CPT since 1994.⁵

For all these reasons, it is apparent that what is written in the Group Action Plan is far from outlining a satisfactory solution to ensure full access to respect for the right to health of detainees, pointing to the inadequacy of the commitments formulated in the Group Action Plan, especially in Point 46.

The problem is also reflected in the inadequate training of police officers. The 22/2010 (OT 10) ORFK Instruction⁶ referred to in Point 79., which, according to the government, specifies the obligations relating to the prohibition of torture and inhuman or degrading treatment and claims to implement the CPT's recommendations in this regard, in fact does the exact opposite by enshrining the presence of police officers during medical examinations as a general rule. Moreover, the Instruction cited by the government has been in force for more than a decade, i.e. at the material time of most of the cases listed by the government in the 3 October Group Action Plan.

In other words, the briefings portrayed as training, which the government presents as a way of demonstrating its compliance with international human rights standards, actually prescribe a practice that is incompatible with those very standards.

With regard to the issues raised by the *Alhowais v. Hungary*⁷ case referred to in Point 89. of the Group Action Plan, the HHC is preparing a detailed analysis in its Rule 9(2) communication on the case, due in December.

5. Recommendations

For the reasons above, the HHC maintains its recommendations included in its communication submitted on 4 October 2024, and respectfully **asks the Committee of Ministers to consider issuing an interim resolution** regarding the *Gubacsi v. Hungary* group of cases.

Sincerely yours,



András Kristóf Kádár
co-chair, Hungarian Helsinki Committee

⁵ [CPT/Inf \(96\) 5 \[Part 1\]](#)

⁶ Section 8 of Instruction No 22/2010. (OT 10.) of the National Police Chief on the Implementation of the Recommendations of the Council of Europe's Committee for the Prevention of Torture (CPT).

⁷ *Alhowais v. Hungary*, Application no. [59435/17](#).