



Hungarian Helsinki Committee

**INPUT FOR THE REPORT
"PSYCHOSOCIAL DYNAMICS CONDUCTIVE
TO TORTURE AND ILL-TREATMENT"
OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

21 JUNE 2020

The [Hungarian Helsinki Committee's](#) (HHC) observations and recommendations below are based on its experience in representing victims of ill-treatment by official persons before the Hungarian courts and the European Court of Human Rights, and its researches in the field.

1. **Ineffective and inadequate investigations into allegations of ill-treatment** by law enforcement personnel lead to a low success rate of reports and indictments concerning ill-treatment as compared to other offences, which may strengthen the sense of impunity among official persons, conducive to ill-treatment, and may also contribute to underreporting among victims. Therefore, states shall take steps to decrease the latency of ill-treatment and enhance the efficiency of investigations into ill-treatment cases. For example, they should issue **protocols to follow** by investigating authorities in ill-treatment cases, provide related **training**, and **protect detainees** claiming ill-treatment (e.g. by transferring them to another facility).
2. **Structural deficiencies in relation to the medical examination of persons claiming ill-treatment** may contribute to ineffective investigations and underreporting by victims. Therefore, states shall
 - ensure that detainees claiming ill-treatment are promptly examined by an **independent physician with training in forensic medicine** who should draw conclusions as to the consistency between the allegations made and the medical findings;
 - provide training to physicians and criminal justice stakeholders on the **Istanbul Protocol**;
 - ensure that **law enforcement officers are not present** at the medical examination of detainees, unless requested otherwise by the medical personnel. (E.g. in Hungary the main rule is that police officers are present at medical examinations of detainees.)
3. **Lack of proper video recording of police work in various scenarios** contributes to the inefficiency of investigations, and can create a sense of "invisibility" among police officers, which is also conducive to ill-treatment. Therefore, states shall
 - equip all **police vehicles with image and sound recording devices**, and increase the number of police **body cameras**;
 - install **recording devices in all police detention facilities**, and ensure that recordings are stored for an adequate period of time;
 - widen the scope of instances where **video recording of interrogations** of defendants and witnesses is obligatory, and ensure that they are made free of charge for interrogated persons.
4. The **lack of zero tolerance messaging** from high-level law enforcement and government officials, coupled with **structural deficiencies leading to practical impunity** for ill-treatment can contribute to an institutional attitude that is conducive to torture. This can manifest e.g. in **lenient sentencing practices** by the courts when it comes to law enforcement officers committing ill-treatment, or by **allowing law enforcement officers committing ill-treatment to remain on the force**. (E.g. in Hungary the Minister of Interior makes regular use of his powers to "restore" the eligibility for service of law enforcement officers sentenced to suspended imprisonment.)

Accordingly,

- high-level law enforcement and government officials shall convey a strong message of zero tolerance towards torture; and
 - states shall ensure that their sanctioning system conveys the message of zero tolerance as well, and that officers convicted for ill-treatment are not allowed to continue their service.
5. It is also conducive to ill-treatment if the evidence obtained by torture is used by the courts in the underlying criminal procedure to convict the victim of the ill-treatment, thus, if the ill-treatment has no negative consequence on the underlying criminal procedure from the viewpoint of the authorities. This can retroactively justify coercive interrogations in the eyes of police officers. Therefore, it should be ensured that courts **exclude evidence obtained by torture**, even if there is no separate criminal conviction establishing ill-treatment.
 6. The **general overreliance of the national criminal justice system on confession evidence** can create an environment that implicitly pressures police officers to obtain confessions, which is conducive to ill-treatment. As put by the CPT in its 2020 report on Hungary: in order to “mitigate the risks of ill-treatment during police interviews, [...] interviewing officers should be less focused on confessional evidence”, and “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”.¹ In line with this, police officers shall be trained in **investigative interviewing techniques**.
 7. States should tackle **general organizational problems of law enforcement agencies that can contribute to an institutional culture tolerating ill-treatment**, such as shortcomings in the selection and training of officers, high level of fluctuation, staff shortage, and excessive overtime.
 8. **Basing the assessment of police work exclusively or primarily on statistics** (e.g. number of cases closed successfully) can put pressure on police officers to reach the required quota or score high on indicators, and, to that end, secure confessions and testimonies. This can create a dynamic that enhances the likelihood of coercive interrogations. Therefore, police performance assessment should place more emphasis on factors such as crime prevention and the public’s trust in the police instead of relying heavily on a statistical approach.
 9. **The lack of external monitoring of places of detention** can also be conducive to torture. Therefore, states shall **grant adequate access to independent bodies and civil society organisations** to places of detention. It shall also be ensured that the **National Preventive Mechanism under the OPCAT** adequately monitors the application of procedural torture prevention safeguards, such as the right of access to a lawyer, the right of access to a doctor, the right to notify a relative or third party, and the right to information on rights.

For a detailed account about police ill-treatment in Hungary and the HHC’s related recommendations from April 2020, see:

https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Gubacsi_v_Hungary_17042020.pdf.

10. Years-long **systematic dehumanisation of individuals and particular groups**, especially by **state authorities, government figures, and the media**, inevitably permeates the entire society thereby creating an environment conducive to abuses. The ensuing erosion of ethical barriers against the use of violence against members of these groups are furthered by the **impunity of the perpetrators and the consent, if not encouragement by influential actors**.

¹ [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, § 32.](#)

The Hungarian Government has a well-documented track record of **xenophobic statements and campaigns against migrants** dating back to 2015.² Narratives and imagery used by state media and a plethora of pro-government media have been depicting asylum-seekers and refugees as a dangerous and violent³ faceless mass⁴ for many years.

In this context two **asylum-related legislative changes** were introduced in Hungary that **led to massive human rights violations**.

In July 2016 collective expulsion (push-back⁵) of aliens without the right to stay found on Hungarian territory within an 8-km zone from the border fences built on the Hungarian-Serbian and the Hungarian-Croatian border sections was legalised.⁶ These measures preclude any kind of administrative procedure thus any remedy against such measures.⁷ Affected people cannot request asylum, seek legal assistance. As these take place without any possibility of external review or monitoring,⁸ especially since the latter became a criminal offence in July 2018,⁹ through the green border and usually during the night, the risk of abuse, torture, inhuman or degrading treatment committed with impunity¹⁰ is extremely high. The HHC represents several victims of push-backs in domestic criminal procedures and at the ECtHR, including e.g. a single mother from Yemen and her children, one with Down-syndrome; unaccompanied children, some of whom were brutally beaten by Hungarian law enforcement agents; a person who suffered serious injuries among others, to his cranium;¹¹ a young man whose brother died¹² during such a measure. Despite the robust evidence of systemic abuse,¹³ the Government and state authorities refuse to address the issue.¹⁴ Since March 2017 push-backs can take place from the entire territory of Hungary, not only from an 8-km zone of the border fences. Almost 40,000 push-backs took place between July 2016 and June 2020.¹⁵

In March 2017¹⁶ the automatic, indefinite *de facto* detention of all asylum-seekers except unaccompanied children under the age of 14 in “transit zones” entered into force. Consisting of shipping containers, surrounded by several layers of barbed wire fences, patrolled by police, military, and armed guard units, they are located at isolated and desolated places at the Hungarian-Serbian border.¹⁷ The Court of Justice of the European Union ruled that placement in these transit zones

² In detail in [HHC's submission](#) to the 18th to 25th periodic reports of Hungary to UN CERD at its 98th Session, pp. 6-10; [Concluding observations](#) on the combined 18th to 25th periodic reports of Hungary of UN CERD, 2019, CERD/C/HUN/CO/18-25, paras 8-9, 16-17 and 22-23.

³ See e.g. „[Threatening migrant horde! They are marching towards Hungary – with images!](#)”.

⁴ See e.g. the [Government's billboard campaign](#) of 2018 spring.

⁵ See HHC's guide on [collective expulsions](#).

⁶ See in detail here: <https://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>; Voynov et al., *Denial of access to asylum in Eastern EU Member States*, 2017, pp. 12-15.

⁷ Sections 5 (1a)-(1b) of Act LXXXIX on State Border

⁸ More on this: <https://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>.

⁹ See [HHC explanatory note](#); English [translation](#) of the amendment of the Criminal Code, p. 69; the European Commission's infringement procedure against Hungary, *European Commission v. Hungary*, [C-821/19](#).

¹⁰ On impunity in push-back operations, see HHC's [third-party intervention](#) in *M.H. and Others v. Croatia*, Application no. 15670/18, 2018.

¹¹ See *Khurram v. Hungary*, Application no. 12625/17, *Khurram v. Hungary*, Application no. 37967/18.

¹² [UNHCR alarmed at refugee death on Hungary-Serbia border](#), 2016; *Alhowais v. Hungary*, Application no. 59435/17.

¹³ See e.g. [Report to the Hungarian Government on the visit to Hungary by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 20 to 26 October 2017](#), CPT/Inf(2018)42, pp. 10-19; [Concluding observations on the sixth periodic report of Hungary of the CRC](#), 3 March 2020, CRC/C/HUN/CO/6, paras. 38-39; [CERD/C/HUN/CO/18-25](#), 2019, paras. 24-25; [Concluding observations on the sixth periodic report of Hungary of the HRC](#), 2018, CCPR/C/HUN/CO/6, paras. 47-48; Human Rights Watch, *Hungary: Migrants Abused at the Border (field report)*, 2016; Belgrade Centre for Human Rights et al., *A Dangerous Game*, 2017; Medecins Sans Frontieres, *Games of Violence*, 2017; Átlátszó, [Mounting evidence on police brutality against refugees](#).

¹⁴ [Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 20 to 29 November 2018](#), CPT/Inf(2020)8: “the outright refusal of Hungarian authorities to take action in the light of key recommendations made by the CPT [regarding violence during push-backs]”, p. 4.

¹⁵ Source: Police.

¹⁶ See in detail [HHC briefing note](#), 2017.

¹⁷ For details of these facilities, including the conditions, see e.g. [CRC/C/HUN/CO/6](#), 2020, paras. 38-39.; [CERD/C/HUN/CO/18-25](#), 2019, paras. 22-23.; [CCPR/C/HUN/CO/6](#), 2018, paras. 27-28, 45-46, and 49.; Opinion 22/2020 concerning Saman Ahmed Hamad (Hungary), A/HRC/WGAD/2020; Report of the SR on the human rights of migrants on his visit to Hungary, 2020, [A/HRC/44/42/Add.1](#), paras. 3, 6, 13-15, Chapter IV; [Statement by UN High Commissioner for Refugees Filippo Grandi after his visit to Hungary](#), 2017.

qualify as unlawful detention on 14 May 2020¹⁸ and consequently detainees regained their freedom on 21 May 2020 and the facilities were shut down.¹⁹ Between March 2017 and May 2020, thousands were detained unlawfully for extensive periods of time, up to almost two years. 34 individuals in 24 cases have been deprived of food, from 1 to 8(!) days by the authorities. In each case, the HHC had to request interim measures from the ECtHR to stop the starvation.²⁰ After June 2017, no independent civil society monitoring mechanism was allowed in the facilities²¹ and the media has been denied entry to asylum-related facilities since 2015.²²

¹⁸ Summary of [the judgment](#); Judgment in the joint cases of [C-924/19-C-925/19PPU](#)
<http://curia.europa.eu/juris/documents.jsf?num=C-924/19>

¹⁹ UN SR on the human rights of migrants, [Closure of the „transit zones“ by Hungary: an important step forward](#)

²⁰ [List of cases](#); [HHC note](#) of starvation in the transit zones

²¹ [HHC note](#)

²² [Szurovecz v. Hungary](#), Application no. 15428/16