



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

ACTIVITIES IN 2007

I. Monitoring the human rights performance of law enforcement agencies

I.1. Preventing ill-treatment: human rights monitoring of detention

The HHC continued to carry out human rights monitoring of prisons and police jails in 2007.

Prison monitoring

Penitentiaries visited in 2007:

- 7-8 March: Heves County Penitentiary Institution
- 14-16 May: Szeged High and Medium Security Prison
- 7-9 August: Budapest II Penitentiary Institution
- 8-10 October: Vác High and Medium Security Prison
- 26-28 November: Balassagyarmat High and Medium Security Prison

Our visit to Szeged was followed by the release of a report by the Council of Europe Committee for the Prevention of Torture (CPT) from its ad hoc visit to the Szeged Prison in January-February 2007. The 2007 visit focused on the situation at Szeged Prison's Special Regime Unit for prisoners serving lengthy sentences, a unique facility within the Hungarian prison system for inmates serving very long terms and requiring closer attention and support. The CPT's report assesses how this Unit has functioned in practice since its setting-up following the Committee's last periodic visit in 2005. In August 2007, presumably in connection with the variety of flaws identified by the HHC and the CPT, the governor of the Szeged Prison was fired by the National Commander of the Prison Administration, and an internal investigation was launched according to statements made by the Minister of Justice and Law Enforcement.

- A few examples of positive results of the HHC's prison monitoring during the year: In Szeged, the disciplinary ward was refurbished and the wages of inmates working in the high security area of the prison were raised as a result of the HHC's report.
- In the Budapest II Penitentiary Institution, the contract with the company providing meals was terminated following the HHC monitors' criticism.
- In the Vác High and Medium Security Prison, the amount of cleaning utensils was doubled in response to the HHC's recommendations.
- In Balassagyarmat, in response to the HHC's warning, the house rules were amended to guarantee adequate telephone contact with defense counsels.

The HHC paid 3 ad hoc visits to penitentiary institutions in the framework of the project providing legal assistance for individual detainees.

During the year, the *case of Engel v. Hungary (Appl. 46857/06)*, where the HHC provides legal representation to the applicant, was communicated to the Hungarian Government by the European Court of Human Rights (ECtHR). The case was taken on in the framework of the prison monitoring in late 2006. On 13 May 2003, the police caught the applicant, Zoltán Engel in the act of committing armed robbery. The applicant is serving his life sentence for shooting to death a police officer while

trying to escape from the crime scene. The applicant was also injured in the course of the shooting: he was shot in the spine as a result of which he became paralyzed in both of his legs from the waist down and he also suffers from fecal and urinary incontinence. Hence, the applicant is only capable of moving with the help of a wheelchair and has to use diapers. Due to the sedentary lifestyle he has been living for the past three years, the skeletal muscles of his upper body have degenerated, causing a decrease in his range of motion, stability and balance. This condition is deteriorating over time. Because of his condition, the applicant is considered to be disabled in 100%, and is incapable of leading a life without support.

The applicant turned to the HHC in relation to a number of complaints: at the time he was serving his sentence, at the Szeged Maximum and Medium Security Prison (Szeged Prison) under conditions that are fully inadequate for a disabled person. It depended solely on the goodwill of his cellmates if and when he could wash or relieve himself, as the cell was not in any way suitable for his needs, and there was no prison staff to help him get out of the wheelchair and into the bath chair. In spite of his repeated requests and the expert opinion of the Penitentiary Hospital's own physicians, his transfer to a more suitable penitentiary institution was rejected on numerous occasions.

Furthermore, in the framework of other on-going criminal proceedings against him, the applicant was regularly transported from Szeged to the Budapest Remand Prison (a distance of more than 200 kilometers). Due to the applicant's classification as highly dangerous prisoner, while being transported, he was handcuffed with his hands linked to a belt and in a one-person cell. This resulted in a situation, where as his legs are paralyzed, during transports to another penitentiary or court he was forced to support his body by leaning his head against the door of a small cabin trying to prevent himself from falling out of the wheelchair to the floor when the car accelerated, stopped or turned. The applicant was not always successful and on a number of occasions, his head bumped against the door in a way that caused severe swellings on the applicant's head. On one occasion, he fell out of the wheelchair and traveled for over an hour on the floor handcuffed to the belt with his arms under his body. After arriving at the destination, the applicant said that he was injured but he was told that it was not possible for him to see a doctor immediately; he could be examined only a week later.

Besides the submission of the application to the ECHR, the HHC also used the media to lobby the National Prison Administration to provide adequate placement for Zoltán Engel. A lengthy article in the weekly Magyar Narancs was published on 23 November 2006. As a result of the concerted efforts, in 2007 Mr. Engel was transferred to the Sopronkőhida Maximum and Medium Security Penitentiary Institution, where he was placed in one of the two cells specially designed for disabled people.

The Hungarian Government was invited to submit its observations to the ECtHR by May 2008.

Police jail monitoring

The HHC also paid a total of 101 visits to police jails in Budapest and in the counties of Jász-Nagykun-Szolnok, Pest, Békés, Bács-Kiskun, Csongrád, Nógrád, Heves, Veszprém, Komárom, Vas, Zala and Győr-Moson-Sopron.

1.2. Advocacy for an independent police complaints body

In partnership with the Hungarian Civil Liberties Union and in the framework of the project supported by the Trust for Central and Eastern Europe, the HHC organized a roundtable on 5 April 2007 to review gaps in the existing system of handling complaints against the police in Hungary and to promote reform of the system. In this interest the HHC invited representatives of the Independent Police Complaints Commission and the Police Federation of England and Wales to speak about dealing with police complaints and accountability in the United Kingdom. Furthermore, representatives of human rights NGOs from Bulgaria, Poland, Czech Republic and Romania also attended the workshop and gave insight into their respective systems. The domestic participants of the roundtable included representatives of the Hungarian police, judiciary, the Ministry of Justice and Law Enforcement, the Public Prosecutor's Office, NGOs and other concerned entities.

In early May 2007, at the request of the Prime Minister, the Minister of Justice and Law Enforcement submitted amendments to the Police Act to establish an independent body to examine complaints

alleging the violation of fundamental rights by the police that do not fall within the ambit of criminal law sanctions. Parliament adopted the amendment in late June. The HHC, together with other human rights organizations, had been calling for the establishment of such a body for a long period of time, particularly in light of police actions in autumn 2006 in Budapest. The adopted text falls somewhat short of the HHC's concepts but is considered a step in the right direction. The HHC will follow the election process to the Independent Law Enforcement Complaints Board and will also monitor its work once it becomes operational in January 2008.

On 18 December the HHC organized a workshop inviting the 5 future members of the ILECB, other law enforcement experts and state organs aiming to facilitate the new body's launch by providing its members with information and materials they can rely on when beginning to shape the Board's case law. The materials included the lessons learned from the operation of the British IPCC, and practical issues concerning the operation of the Hungarian body. The workshop turned out to be successful as generated a massive debate and experts agreed on the key procedural and practical rules of Board's operation.

HHC co-chair András Kádár was elected by Parliament as member of the Independent Law Enforcement Complaints Board in February 2008.

1.3. Advocacy and legal actions related to the riots in Fall 2006

In addition to several public statements made during the events in fall 2006, the HHC continued to advocate on this issue in 2007 as well.

a) The HHC prepared a summary for the Gönczöl Commission (an independent commission convened by the Prime Minister to assess the events of fall 2006) to evaluate police actions and the measures taken by prosecutors and courts in September and October 2006. The Gönczöl Commission's report (<http://www.gonczolbizottsag.gov.hu/jelentes.html>) took up several of our findings and concerns, and also included a comparative study authored by HHC staff on the right to assembly and its limitations in several European jurisdictions.

b) Important developments ensued in several prominent cases taken up by the HHC in relation to the riots and police actions in September and October 2006 in Budapest. The HHC provided legal representation in 4 cases where police officers had used excessive force against demonstrators or passers by. While victims filed reports against police officers on account of ill-treatment, all of them also faced criminal charges for assaulting police officers.

Due to the actions of the HHC's attorneys, criminal procedures were terminated against all victims represented by the HHC, while the prosecutors' office pressed charges against all the accused police officers. The criminal procedures against the police officers are presently pending at the court.

(These cases received wide ranging media coverage; see for example <http://index.hu/politika/belfold/torok602/> and <http://index.hu/politika/belfold/angel2358/>)

c) On 23 October 2006 the police closed off a significant part of the open square in front of the Parliament building as part of a measure to protect the building and persons from the demonstrators. The HHC did not consider this action as unlawful given the circumstances at that time. However, when the police decided to prolong this measure indefinitely on 22 November (releasing the reasoning of its decision only in January 2007 on the website of the National Police Headquarters), the HHC deemed that maintaining the fence around the square was no longer justified and thus unlawful. In order to have legal standing to start a complaint action, on 26 January HHC staff approached the fence and were prevented by police on duty from crossing the square. Consequently the HHC filed a complaint against the police measure at the Budapest Police Headquarters. This was rejected by the Budapest Police Chief on 14 March 2007, which the HHC appealed against. The National Police Headquarters annulled the first instance decision and ordered a new procedure, which resulted in partially rejecting the HHC complaints. Hence the HHC challenged the National Police Headquarters before the Metropolitan Court where the case is still pending.

In parallel to filing the appeal, the HHC also submitted a petition to the Constitutional Court arguing that the Police Act provision on the measure protecting buildings and persons, based on which the Parliament square had been closed down, is unconstitutional.

d) Expecting a new wave on demonstrations on the national holiday on 15 March, the HHC turned to the National Chief of Police on 27 February to inquire about steps taken to improve two distinct flaws from the previous fall: the lack of ID badges on police officers and the use of rubber bullets to disperse demonstrators. At a press conference held soon thereafter the police presented how the visibility of police badges will be ensured and also gave information about the new, detailed rules on the use of rubber bullets.

e) On March 6, just days before the March 15 national holiday, the government adopted an amendment to the Code on Petty Offences providing for fines of up to 50,000 HUF (200 euros) against persons who do not comply with the lawful measures of the members of law enforcement agencies. The government gave only 5 days for the entry into force of the provision. The HHC voiced its concern over the short time period as well as the lower-level regulation (government decree instead of an act of parliament), and questioned the hasty nature of the decision making process that failed to involve any consultation over the matter.

II. Promoting equal treatment in general and in criminal justice in particular

II.1. "STEPSS – Strategies for Effective Police Stop and Search": Improving police-minority relations through increasing the effectiveness and accountability of police powers to conduct identity checks and searches

The HHC is a partner of the Open Society Institute Budapest and the Open Society Justice Initiative (OSJI) together with other governmental and non-governmental partners from Hungary, Bulgaria, Spain and the United Kingdom.

The project has been selected for funding by the AGIS Program of the European Commission DG Justice, Freedom and Security. AGIS is a framework program to help police, the judiciary and professionals from the EU member states and candidate countries co-operate in criminal matters and in the fight against crime.

The STEPSS project will identify strategies to improve police relations with minority communities through supporting more accountable and effective use of police powers to stop and check identity and search individuals. Working on the basis of close community consultation, and building on lessons and good practices emerging in several contexts in England, partners in pilot areas will develop a tool to monitor the use of police identity checks and stop and search powers to determine whether they affect minority communities in a disproportionate manner, and to support analysis of their effectiveness in terms of crime detection and investigation. Project activities will include an audit of current policies, practices and training; a study tour of several sites in England; development of new guidelines, training and a monitoring tool; and active monitoring for a period of six months. Community consultation will be integrated into each step of the project process, and the monitoring results will enable police-community discussion of public safety policies and resource allocation and support the development, where necessary, of alternative approaches to local crime and safety problems. Project results will be analyzed and presented in comparative perspective at a European regional seminar with existing regional policing networks.

The HHC is responsible for the overall coordination of the project in Hungary. Besides coordination, the HHC staff are actively involved in the auditing of the legislative framework and practice of ID checks, the devising and implementation of the training, the devising of monitoring and the organization of its civilian component, as well as the writing and distributing the Hungarian country report and the dissemination of the final comparative report.

In 2007, of the above activities, the HHC carried out the following:

- The HHC has concluded an agreement with the National Police Headquarters (NPHQ) and the Police College establishing the responsibilities of the three partners with a view to the tasks within the projects. The partners held a meeting on 30 January 2007, where they agreed on a distribution of tasks between the parties. The most important outcome of the meeting was that the parties agreed on the methodology, deadlines and the procedure to be followed in the course of preparing the assessment document.
- The Partners (HHC, NPHQ and PC) held a joint press conference on 21 February 2007, informing the Hungarian public and media about the launching of the project and its main objectives. The press conference was followed up with coverage by three different televisions, including the evening news program of one of the four national television channels (RTL Club) on 27 February 2007.
- The HHC selected representatives of the Roma community in each pilot site and signed the contract on the details of cooperation with community representatives. The representative police-community task forces meet on a regular basis to discuss the progress of the project. HHC staff also participate in some of the meetings.
- The HHC has prepared a comprehensive study on the Hungarian stop and search policy and practice. The assessment reflects the point of view of the National Police and the participating police stations. This study is available in both Hungarian and English.
- On 22-29 April, the HHC and the Hungarian partners took part in a study and train the trainers' tour to the UK, which was a great opportunity to promote the UK practice, and also had a strong networking effect as civil representatives and police officers had the opportunity to discuss the details, challenges of the program, and other "hot issues".
- On 18-21 June, the UK experts paid a visit to Hungary and visited several police stations to discuss working with minority communities and stop and search practices.
- The HHC also translated a variety of manuals and practical guidance materials from the UK concerning stop and search practices, which were distributed to the Hungarian police.
- Developing and disseminating 'Stop & Search form', a tool to monitor the use of police identity checks and stop and search powers in cooperation with the National Police.
- HHC compiled operational guidelines to ensure the adequate completion of forms. The deputy of the national commander of the National Police issued an internal order concerning the rules of the project. In order to increase the commitment of police officers HHC staff held 6 presentations for officers at pilot sites on the appropriate usage of the forms.
- On 3 August the representatives of the National Police and HHC agreed to issue a joint informational leaflet on the rules of ID checks. The first draft was prepared by the police; in the final version the HHC's comments were included. We also commented the draft of the amendment of the Police Act, which is to amend the provisions on ID checks
- In September 2007, the National Police started the monitoring program at the pilot sites involving minority representatives. The HHC analysed 4,000 forms and presented the outcome at an interim workshop. The results show that there is significant disproportionality in terms of the number of ID checked Roma (their proportion in the overall population is cca. 8 % while 25 % of all those checked were Roma). The final conclusions will be drawn in May 2008.

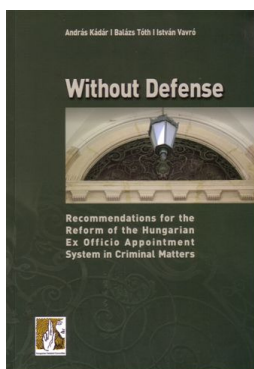
II.2. Model Legal Aid Board Project

In cooperation with the Netherlands Helsinki Committee, the HHC carried out the Model Legal Aid Board (MLAB) project, which was supported by the MATRA program of the Dutch Ministry of Foreign Affairs. The project lasted from March 2004 until June 2007.

The MLAB project aimed to strengthen access to justice in Hungary by promoting reform of the criminal legal aid system. The project's key goal was to create an input for future legislation aiming at the comprehensive reform of the existing and highly dysfunctional system of legal aid in criminal matters and its replacement with a well-devised and efficient structure, tested in practice, guaranteeing effective legal assistance for indigent defendants.

The core element of the project was the provision of free legal defense for indigent defendants in 120 cases. These cases served as a testing ground for the alternative model developed within the project

and also proved that by ensuring higher quality defense for defendants, less persons would be held in pre-trial detention than currently in Hungary.



In June 2007, the HHC published the final report of the project *Without Defense: Recommendations for the Reform of the Hungarian Ex Officio Appointment System in Criminal Matters*.

In July, a press conference was held on the occasion of the project's closing with the aim of getting the wider public acquainted with the results and conclusions of the project. The press conference was organized in cooperation with and was hosted by the Ministry of Justice. The speakers included a representative of the Netherlands Embassy, the HHC and the Ministry, as well as the president of the Hungarian Bar Association. All speakers endorsed the project and expressed their agreement with its main conclusions, namely that the function of appointment shall be taken from the police and that the operation of the whole criminal legal aid system should be handed over to an independent actor, the Legal Aid Service of the Justice Office.

In line with this general agreement, a Government Resolution [no. 2179/2007. (X. 10.)] was adopted, which prescribes that by 30 September 2010, the Minister of Justice and Law Enforcement shall present a draft law to the Government on vesting the legal aid service with the task of operating the ex officio appointment system. In the reasons attached to the draft, the following is set forth: "The Resolution sets the direction of development in the extension of legal aid representation, [...among others] by integrating ex officio appointed defense counseling among the services of the legal aid system. [...] This would guarantee that public services of similar nature and purpose are provided by the State within the same institutional framework, under the same principles and therefore in the most rational way. Most of the foreign models follow the same philosophy: legal aid systems usually include all forms of aid that may be provided by lawyers: advice, legal representation and criminal defense."

II.3. Anti-discrimination and Diversity Management Trainings

In the framework of a tender published by the European Commission's DG Employment and Social Affairs, on 24-25 September, the HHC provided a 2-day anti-discrimination training for 42 NGO and trade union representatives. The training had two modules: one aimed at sensitizing the participants in relation to the subject and another on transferring knowledge on domestic and international anti-discrimination legislation. The participants were highly satisfied with the training. Besides the legal knowledge, they found the networking opportunities to be the most valuable part of the event. Several participants expressed their wish to cooperate with the HHC in the future with the purpose of delivering similar trainings to their colleagues or NGOs that did not participate in the training.

During the second half of 2007 the HHC was actively preparing the second anti-discrimination training (which is a follow up for the participants of previous trainings) and a diversity management training targeted at HR managers of large for-profit companies and consulting firms, which will take place in 2008.

III. Safeguarding the right to seek and enjoy international protection in Hungary

The number of persons lodging an asylum claim in Hungary rose significantly in 2007 (**3419** persons), as compared to previous years (2006: 2117, 2005: 1609). The composition of the asylum-seeker population remained largely unchanged with Vietnamese, Serbian (mostly ethnic Albanian), Chinese, Iraqi, Georgian, Somali and Nigerian nationals being the most numerous groups. The rather significant number of Mongolian (79) asylum-seekers and those registered as Palestinian (52) is, however, remarkable. Throughout the year, **173** persons were recognized as refugees; most of them were Iraqi, Somali and Cuban citizens. The relatively high number (9) of recognised refugees of unknown nationality is of special interest. **84** rejected asylum-seekers were granted *befogadott* status (subsidiary protection) in 2007. The overall "protection rate" remained at the same level as in the previous year (2007: **16%**, 2006: 15%), in which refugee recognitions constitute a higher proportion than previously (2007: **10,7%**, 2006: 7,5%). It is to be noted that the number of recognised refugees includes 28 Cuban citizens "resettled" from Guantánamo. Considering the high proportion of Chinese and Vietnamese asylum-seekers and the specific profile of these groups in last years' Hungarian asylum practice, the above overall protection rate cannot be considered as excessively low.

New aliens and asylum legislation was adopted in 2007. The Act II of 2007 on the entry and stay of third country nationals, together with its executive government decree entered into force on 1 July 2007. The **new aliens legislation** constitutes an important step forward in several key aspects, while it is not free from problematic provisions either:

- As a highly positive development, a formal stateless status determination procedure and a separate stateless status were established. The statelessness procedure includes several protection-oriented guarantees copied from refugee status determination, however, it is of serious concern that only lawfully residing persons are entitled to submit such a claim, which in fact denies access for most stateless persons to statelessness determination and to protection (and as such is in contradiction with the 1954 Statelessness Convention).
- Rules concerning family reunification were improved, for example by widening the circle of eligible family members and enlarging the period during which preferential rules are applicable for refugees in this respect.
- The maximum period of alien policing detention was decreased from 12 to 6 months.

The Act LXXX of 2007 on asylum entered into force on 1 January 2008, along with its executive government decree. The **new asylum legislation** aimed at transposing both the EU Qualification Directive (2004/83/EC of 29 April 2004) and the Procedures Directive (2005/85/EC of 1 December 2005). Concerning some key issues (such as state protection, membership in a particular social group, country information, internal protection alternative, etc.) the new Asylum Law uses a progressive and protection-oriented interpretation of the Directives. The main changes brought by the legislative amendment are:

- A new subsidiary protection status has been introduced ("*oltalmazott*"), which ensures considerably more favourable legal and social conditions than those offered to the "*befogadott*".
- Limitations were introduced in order to stop repeated asylum claims: a third consecutive application (following two rejected or discontinued claims) will no longer have a suspensive effect on expulsion or extradition measures.
- A preliminary examination phase was introduced into the RSDP, in which the OIN has to carry out the "Dublin procedure" and an admissibility procedure. Special rules for a fast-track, non-litigious judicial review were also established.
- A general principle was set, according to which asylum-seekers are to be released from alien policing detention once their claim is accepted as admissible and the procedure enters into an in-merit phase.

III.1. Effective Legal Counseling for Those in Need of International Protection

Eight lawyers of the HHC's network continued to provide free legal counselling and representation to asylum-seekers residing in Hungary. The European Refugee Fund (National Actions 2006) continued to support legal assistance provided by the HHC in open refugee reception centres (Bicske, Békéscsaba, Debrecen) and in Budapest, while UNHCR supported the same services in detention facilities (Nyírbátor, Kiskunhalas, Szombathely, Győr and Budapest Airport), the HHC Budapest office and the shelter for separated children in Nagykanizsa.

In 2007, our lawyers provided **legal representation** in a total of **227** cases and verbal **legal counselling** in **287** (including both ERF and UNHCR-financed sub-projects). In respect of these cases, **29** persons were recognized as refugees and **24** persons received subsidiary protection.

Under the UNHCR sub-project, the HHC provided **legal assistance** in **252** cases (number of beneficiaries: **171** persons), including both legal advice and legal representation before refugee authorities and the Metropolitan Court.

In 2007, HHC lawyers visited all alien policing jails on a weekly basis and assisted **86 detainees**, including by both verbal on-the-spot counselling and representation. The lawyers' visiting schedule as well as their contact information was posted at a visible spot at all detention facilities. In addition, the HHC regularly distributed up-to-date information leaflets to detained asylum seekers in multiple languages.

During the whole year, it still proved to be difficult to achieve the release of asylum-seekers before the end of the maximum period of detention, once their detention had been prolonged. Despite this difficulty, HHC lawyers achieved the **release** of **14** asylum-seekers in 2007. The prolonged detention of asylum-seekers was largely due to the ineffective judicial review which lacks any individual assessment of the circumstances. Having recognised this persisting gap, the HHC, with the support of UNHCR, organised a training session for criminal judges responsible for reviewing such detention cases on 29 October 2007.

Examples of cases of asylum seekers assisted by HHC lawyers

- An HHC lawyer represented a Turkish man of Kurdish ethnic background who arrived in Hungary lawfully from Turkey in 1996. He submitted three asylum applications (in 2002, 2004, 2006). After the OIN rejected his claim all three times, the Metropolitan Court of Budapest finally granted him refugee status on 30 May 2007. The applicant was tortured by Turkish authorities in 1993-1994 and then again in 2003-2004, after he returned home trusting the political changes. The details of his story and the origin of his valid documents were finally clarified during his last hearing in the sixth year of his asylum procedures.
- An Afghan asylum-seeker (unaccompanied minor) fled to Iran from Afghanistan after the Taliban regime took over the country. After several years in Iran, the applicant's group of refugees was forced to leave the country. Being a member of an ethnic and religious minority, the applicant would have faced persecution upon his return to Afghanistan. The OIN granted the applicant subsidiary protection, but rejected his asylum claim. Following an appeal lodged by the HHC, the Metropolitan Court granted the applicant refugee status in March 2007, thus annulling the first-instance decision, which happens only in exceptional cases.
- An unaccompanied minor from Somalia has fled his country of origin because after his father (a military officer in the previous government) was detained and tortured, he was demanded to join the military by the Islamic council that had taken over his village. After refusing to enrol, he was also detained and tortured, which resulted in severe trauma. The OIN granted the applicant refugee status in February 2007.
- The HHC's lawyer in Nagykanizsa represented 5 separated children asylum seekers of Somali nationality. One of them arrived in Hungary from Romania on 18 June 2007 and immediately submitted an asylum application. The OIN ordered his transfer back to Romania under the Dublin

II Regulation. The asylum-seeker stated that reception conditions were particularly bad and the refugee status determination procedure was unfair and unlawful in Romania. The young Somali's most important reason for not willing to return to Romania was that he did not receive appropriate medical treatment, particularly considering his age. As the result of lacking medical examinations in Romania, Hungarian medical services assessed that the young asylum seeker had contracted tuberculosis. He was consequently treated in the local hospital for 8 weeks. In December the OIN withdrew its resolution considering the Somali asylum seeker's "Dublin procedure" on the basis of his personal background and special humanitarian concerns raised by the HHC and the OIN Dublin Coordination Department. The young Somali was recognised as refugee in December, together with 4 other minor asylum-seekers from the same country.

- The HHC's lawyer in Budapest assisted a Palestinian woman from the West Bank, eligible for UNRWA protection and therefore entitled to refugee status in Hungary under Article 1D of the 1951 Refugee Convention. The first-instance decision issued by the OIN stated, however, that Article 1D can only be applied in case of those refugees who would also receive protection under Article 1A. An action for court review has been submitted in this case, the case is still pending at the time of writing this report.

III.2. Monitoring the detention of migrants and asylum seekers in Hungary

The HHC carried out **four monitoring missions** to alien policing jails in 2007:

- Nyírbátor (3-4 April)
- Nagykanizsa and Győr (10 May 2007) in the framework of a study carried out for the European Parliament
- Kiskunhalas (27 September 2007)
- Győr (September 2007) and Nyírbátor (September 2007)

During the missions HHC staff discussed recent issues with the managements of the detention facilities and received statistics on the number and nationality breakdown of the detainees. According to the Border Guard staff, about half of the detained migrants had submitted asylum applications.

The HHC spoke with several detained asylum-seekers of e.g. Iranian, Pakistani, Angolan, Nigerian, Serbian and Moldovan nationality to find out the circumstances of their interception, the submission and status of their application, and their treatment while in detention. The Border Guard could not provide detailed information on the submitted asylum claims as they did not keep specific statistics on them. Several people complained about the harsh treatment and the lack of information provided to them about the reason, length and circumstances of their detention.

A visit to the Nyírbátor and Győr jails took place on 10 May 2007 in the framework of a study carried out for the European Parliament. The HHC was approached by a French consultancy firm and a French NGO to act as a national partner in the study "*The conditions in centres for third country nationals (detention camps, open centres as well as transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states*" for the European Parliament. The final study is available at <http://www.europarl.europa.eu/activities/committees/studiesCom/download.do?file=19148#search=%20detention%20>

During the monitoring mission to Kiskunhalas in September, the HHC staff met the management of the newly refurbished detention facility and the department of alien policing and petty offences of the Border Guard to discuss recently raised issues. The HHC spoke with two female detainees and visited the entire detention facility capable to hold maximum 20 men and 6 women. At the time of the visit, 2 female and 20 male foreigners were detained, mostly from Kosovo. The HHC concluded that the freshly rebuilt jail in Kiskunhalas had almost the same type of high-security prison regime as the Nyírbátor facility, although according to the Border Guard staff detainees were allowed out of their cell into communal areas at certain periods of time, which is certainly a remarkable difference compared to Nyírbátor. In addition, the monitoring staff noticed that the jail canteen was equipped with only 1.60 m high tables and no chairs, thus detainees are obliged to eat standing up at all times. As this treatment is senseless and degrading, the HHC repeatedly signalled its concern to the local head of the alien policing department of the border guards. The tables were eventually lowered later during the year.

III.3. Border monitoring

The HHC's experience from past years shows that monitoring the eastern and southern border areas and the international airport in Budapest is crucial in order to make sure that the principle of *non-refoulement* is respected and ensure that asylum seekers have appropriate access to territory and to the asylum procedure. As Hungary is the external border of the European Union, monitoring has become even more significant.

In order to contribute to ensuring asylum seekers' access, after many months of negotiations in late December 2006 the HHC concluded a tripartite agreement with UNHCR and the Border Guard. The agreement allows the HHC to monitor the Ukrainian and Serbian borders as well as the Budapest International Airport twice a month. The purpose of the monitoring is to gather protection information on the actual situation affecting persons in need of international protection. It also aims to identify individual cases of persons in need of international protection who may be or have been affected by measures that could amount to *refoulement*, and to provide legal assistance to such persons.

The HHC contracted three lawyers (two based in Budapest and one in Kiskunhalas) to carry out individual monitoring missions to the respective border areas. Monitors have been tasked with visiting the border sections where foreigners can be detained for a short-period, obtain statistics on foreigners - including on submitted an asylum application - placed in short-term detention facilities there, interview persons detained at these places and look into the files of persons returned.

The monitoring lawyers conducted individual monitoring visits to the respective border areas on a regular basis (**11** visits at the Serbian border, **9** at the Ukrainian border and **18** to the Ferihegy International Airport).

Most important issues of concern raised by border monitoring missions conducted by HHC's lawyers were the following.

- 1) In the initial period, the project monitors had difficulties with obtaining relevant information and official files concerning returned persons. Monitors experienced that in several cases information leaflets regarding return measures were handed out only in Hungarian or in a language that cannot be assumed to be spoken by most foreigners. The HHC's lawyers also concluded that persons under a forcible return procedure were not always provided with understandable and relevant information regarding the process. Consequently to fulfil its obligation stipulated in the Tripartite Agreement the HHC continuously supplied UNHCR and HHC information leaflets at border checking points and at the airport in order to ensure that people in need of international protection are aware of the possibility to claim asylum in Hungary. In relation with the concerns regarding communication witnessed by monitoring lawyers, border guards also expressed their need of interpreters in rarely spoken languages, such as Somali or Georgian.
- 2) Due to its monitoring activity, the HHC identified considerable gaps in the Border Guard's practices, mainly at the airport. As a general practice, a criminal procedure is initiated against foreigners who enter Hungary unlawfully with forged travel documents or without a valid visa, which treatment is in breach of Article 31 of the 1951 Refugee Convention. It is also worrisome that in several cases the Border Guard registered foreigners as "unknown citizens" without taking any further steps to identify their nationality or conducting an interview with them.
- 3) The HHC monitoring lawyer at the Budapest Airport reported that a remarkable number of Iraqi citizens arriving from Damascus were subject to return measures to Syria. In addition, Pakistani citizens who tried to claim asylum at the airport were sent back to Beijing. The HHC found it also worrying that persons arriving at the airport with family and children – as well as Iraqis, which is a group clearly in need of international protection – were also returned without any interview and without having their personal circumstances examined. In the Border Guard terminology these cases are considered as "simple cases", in which the authority does not have any legal obligation to further explore individual circumstances and an eventual need for international protection.

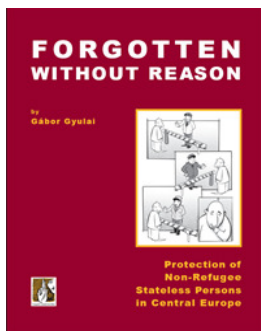
Preliminary results of the monitoring activity

It is at least partly due to the monitoring activity that the number of asylum claims lodged at the Budapest Airport is apparently on the rise: while in 2006 only 40 at the airport, in 2007 48 persons asked for asylum.

The cooperation between the UNHCR, the Border Guard and the HHC in the framework of the Tripartite Agreement proved to be a very innovative and as such, a rather singular practice in Europe. A firm methodology of cooperation between the three parties was established and constantly improved throughout the year.

Two interim reports were prepared and three working group meetings were successfully held where questions of mutual interest were discussed in detail.

III.4. Advocacy on statelessness



The HHC launched the report "*Forgotten without Reason - Protection of Non-Refugee Stateless Persons in Central Europe*" (<http://www.helsinki.hu/docs/Statelessness%20CentralEu-WEB.pdf>) on 26 June 2007. The report was widely distributed both in Hungary and abroad and also at a seminar on statelessness organized by the EU Commission in Brussels on 26 June 2007.

Despite the recent creation of a protection regime for refugees in Central Europe, a group with very similar needs and characteristics has been unjustifiably overlooked. Current protection regimes available for non-refugee stateless persons in Hungary, Poland, Slovakia and Slovenia are characterized by serious gaps and an attitude which considers this issue to be of secondary importance and associates it, at best, with subsidiary and temporary forms of protection. On the other hand, good practice examples are also present in the four countries in some particular aspects, and recently positive developments have also been witnessed.

Before presenting the results of its analysis of individual country practices, this report provides an overview of the relevant international legal context, pointing out both binding provisions and non-binding recommendations applicable for the four countries in question.

Firstly, the analysis deals with the existing mechanisms through which non-refugee stateless persons are identified by states and may be given access to a protection status. With a recent amendment, Hungary is the first country in the region to adopt separate and detailed legislation on statelessness determination, which not only elaborates procedural criteria, but also creates – as a highly progressive measure – a separate legal identity and protection status for stateless persons. Non-refugee stateless persons may have access to subsidiary forms of protection in Poland and Slovakia, without any specific procedural provision or guidance relating to them. Access to protection status has been found to be extremely difficult in Poland and is practically non-existent in Slovenia.

Secondly, the study analyses the protection status and social rights granted to non-refugee stateless persons. Among the three countries offering protection for this group, Poland is interestingly the closest to meeting the standards set by the 1954 Statelessness Convention, to which it is not party. It is of particular concern that non-refugee stateless persons are excluded from the labor market and are practically precluded from obtaining a passport and long term residence in Slovakia. The low standard of treatment of stateless persons in Hungary, with respect to social benefits and public relief, is also worrisome. Lastly, the report touches upon the issue of "durable solution", i.e. the facilitated access to a new nationality. While Slovakia sets the most preferable standards in this respect, the cumulative

effect of very strict conditions and a complete lack of any appeal or review mechanism in Hungary give rise to particular concerns. Based on these findings, the author offers a set of recommendations for the government of Hungary, Poland, Slovakia and Slovenia, with a particular emphasis on relevant international legal obligations, as well as practical aspects and feasibility.

III.5. Training activities on refugee protection issues

Training for network lawyers on litigious procedures (January 2007)

A one-day training session on effective legal representation in litigious asylum appeal procedures took place on 22 January 2007 at the Metropolitan Court.

Training on the research and use of COI as evidence in RSDP (February and March 2007)

Two training sessions on the research and use of country of origin information as evidence in RSD procedures were held on 12-13 February 2007 and on 29-30 March 2007 at the Debrecen University/Refugee Reception Centre Debrecen.

Workshop on the issue of statelessness at the ECRE Bi-annual General Meeting (May 2007)

The HHC's statelessness focal point (Gábor Gyulai) held a workshop at the ECRE Bi-annual General Meeting in Delphi, Greece with the title: "Forgotten without reason? – Protection of non-refugee stateless persons", with the participation of various NGOs from different countries (the Czech Republic, Greece, the UK, etc.) The workshop included an introductory training on statelessness (definitions, international legal background), an overview of current national practices in Europe highlighting exemplary practices.

Legal training of social workers (July 2007)

The yearly legal training of social workers was held on 2 July 2007 and touched upon three main issues: the changing asylum legislation (with special attention to the new subsidiary protection regime), the new rules related to family reunification and statelessness. In addition, several legal questions raised by the participating social workers were discussed and clarified.

Training on statelessness (July 2007)

The HHC's held a one-day training on statelessness for various NGO and government agency representatives. The training included a general introduction on statelessness from a historical/geographic point of view, the related instruments and obligations under international law, UNHCR's mandate concerning stateless persons and the freshly established stateless status determination procedure in Hungary. An expert of the Spanish Office of Asylum and Refugee was also invited to give a speech on the relevant Spanish experiences concerning statelessness determination (Spain being currently considered as best practice in this respect in Europe).

Roundtable on alien policing detention (29 October 2007)

A day-long roundtable discussion was organised with criminal judges dealing with judicial review of detention took place on 29 October 2007. Participants included UNHCR RO Budapest staff, local and county court judges, prosecutors who visit detention facilities, academics, a representative from the Parliamentary Commissioner's Office and HHC network lawyers.

III.6. 7th International Asylum Law Moot Court Competition

The Hungarian Helsinki Committee has been organizing the Annual International Asylum Law Moot Court Competition for seven years now. This event – Europe's only international asylum law moot court competition – aims to strengthen the legal protection of asylum seekers and refugees in Central and Eastern Europe by enhancing the professional capacity of the next generation of asylum experts in the region, who volunteer at refugee law clinics.

One of the goals of the Moot Court is to provide these young lawyers an opportunity to work through the entire refugee status determination procedure, including the preparation of legal submissions and court room hearing in front of judges. The competition is meant to help them improve their legal

argumentation, case organization as well as country of origin research skills and encourage them to continue working in the asylum field after graduation.

This year's event was held in Budapest, on 12-15 April 2007. Twelve teams from refugee law clinics in eight Central and Eastern European countries pleaded in the fictitious case of Ramón Alberto Durruti Ponciano versus República de Halbatante. Eight renowned asylum law experts evaluated the persuasive performance of the students in the preliminary rounds of the competition as they argued on the side of the asylum seeker and the host country.

The Hungarian Helsinki Committee was successful in securing the participation of a distinguished academic and one of the most respected refugee experts in the world - Professor James C. Hathaway, who agreed to serve as the presiding judge in the semi-final and final rounds of the competition. Professor Hathaway also held a discussion for the participants of the moot court and gave a public lecture on 14 April at the Central European University on "Resisting the Slide into Legal Ambiguity".

III.7. Access to Protection at European Airports: Monitoring access of asylum seekers to territory and procedure at European airports – exchange of experience and best practices

The HHC's partners in this project, supported by the European Refugee Fund, were Comisión Española de Ayuda al Refugiado (Spanish Commission for Refugee Assistance) (CEAR) (Spain), Organizace pro Pomoc Uprchlíkům (Organisation for Aid to Refugees) (OPU) (Czech Republic), VluchlingenWerk Nederland (Dutch Council for Refugees) (Netherlands), Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention) (Poland) and Asylkoordination Österreich (Austria).

In most member states of the European Union the number of persons crossing the state border at airports far exceeds those at land or sea borders, yet access of asylum seekers to territory and to the asylum procedure is often still unregulated and ad hoc at such entry points. Moreover, non-governmental organizations set out to provide assistance to refugees at airports in many cases are not informed about foreigners being held at detention facilities or transit zones and only learn about the forced return of refugees later from various unofficial sources. Although EU legislation as well as other international refugee protection instruments provide clear guidelines both on airport procedures and on assistance to be made available by governments and NGOs to asylum seekers confined at transit zones and detention facilities, serious gaps still persist in reality.

The project aimed to monitor how such access is ensured in the law and practice of various EU member states, while it also envisages offering recommendations to various actors by building on good practices already in place in some of these countries. The project's ultimate goal was to ensure that asylum seekers arriving by air to member states of the EU enjoy adequate international protection.

The project examined the transposition and implementation of relevant key EU and international legal instruments in six major airports in EU MS, including: Amsterdam/Schiphol, Budapest/Ferihegy, Madrid/Barajas, Prague/Ruzyne, Vienna/Schwechat International, and Warsaw/ Frederic Chopin. In the initial phase, partners developed a common questionnaire and methodology to be used during the monitoring visits and during the course of the analysis and reporting. Through regular visits to the airports with partners from other countries, the project staff interviewed asylum seekers, border guards and other actors involved to get a clear picture on the actual practices in place in light of the national and European legislation. In addition, they provided legal assistance to those in need of international protection. Analyzing the findings, the project identified best practices both in the participating countries and other European countries where exemplary practices may exist. After each visit, monitoring reports were prepared.

III.8. Creating and strengthening a sustainable network of civil society concerning administrative detention of asylum seekers and illegally staying third-country nationals across the 10 new EU Member States which acceded to the European Union on 1 May 2004

The aim of the project, led by the Jesuit Refugee Service, was to support civil society in the 10 new EU Member States, which acceded to the European Union on 1st May 2004, by creating and strengthening a sustainable network of civil society actors concerning administrative detention of asylum seekers and illegally staying third-country nationals across the ten new EU Member States.

The project partners in the 10 new EU Member States collected, analyzed and summarized information allowing for public awareness-raising and active civil society citizenship. Fact-finding tasks focused on, inter alia, mapping locations of detention facilities and premises, studying conditions in detention and highlighting best practice at national level.

On the basis of questionnaires, each project partner in the 10 new EU Member States prepared a national report that details the legal framework of detention and contains in-depth descriptions of actual detention facilities based on observations made in the course of monitoring visits carried out project staff.

The Final Report was released in December 2007 and is available at http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=75&Itemid=88

IV. Assisting victims of human rights violations

The provision of free legal counseling to victims of human rights violations is one of the core permanent activities of the Hungarian Helsinki Committee. In addition to providing assistance to individuals, the cases taken by the Helsinki Committee are also of strategic value in our legal analysis and advocacy activities as they highlight gaps in legislation or legal practice.

Over the past decade, the HHC has gained special expertise and developed a profile in the following legal areas:

- immigration law (visas, stay permits, expulsion, deportation, family unification),
- asylum law (granting and withdrawing refugee and subsidiary protection status),
- criminal procedures concerning unlawful detention, forced interrogation, abuse during official procedure, assault against an official person,
- civil damages for excessive use of force by law enforcement agencies,
- complaint procedures concerning detention implemented in penitentiary institutions or police jails.

Clients turning to the HHC receive initial legal advice from a legal advisor who also refers cases to attorneys working with the HHC.

The HHC contracted the following attorneys during the period to provide legal assistance in Budapest:

- dr Tamás Fazekas
- dr Gábor Győző
- dr József Kárpáti
- dr András Kádár

In 2007 the HHC received 302 new complaints. 172 complaints originated from police jails and prisons from detainees on remand and convicted inmates, 22 were complaints against police misconduct, 23 concerned immigration cases, as well as various criminal and civil law cases.

In a police ill-treatment case dating from 2002, *Barta v Hungary* that reached the European Court of Human Rights in Strasbourg thanks to the HHC's assistance, the Court found a violation of Article 3 as the Hungarian authorities failed to carry out a thorough investigation into the victim's complaint

against the police. The victim, represented by attorney and HHC co-chair Andras Kadar, was awarded 3000 euros in damages by the Court. (See the judgment at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=barta&sessionid=7052764&skin=hudoc-en>, press coverage e.g.: <http://index.hu/politika/belfold/stras0412/>)

Another ill-treatment case that was successfully closed was the case of M. T. versus the Budapest Penitentiary Institution. In 1999, at the age of 16, M. T. was taken in pre-trial detention for car theft. Although a juvenile, he was – in contradiction to the pertaining Hungarian laws – placed together with adult inmates. He was severely tortured and abused by his cell mates for two days, before he gathered the courage to inform the penitentiary staff about the incident. The perpetrators were convicted, but the penitentiary refused to take any responsibility for what happened. After a lengthy proceeding, in 2007 a final and binding judgment was delivered in the lawsuit initiated with the help of the HHC by M. T. against the penitentiary for moral damages. Overruling the first instance decision, which found the claim only partially justified, the Metropolitan Appellate Court established the responsibility of the penitentiary and obliged the institution to pay damages in the amount of HUF 1,000,000 (EUR 4,000) plus interests. A lengthy article was published about the case in Magyar Narancs, in July 2007.

In the year 2007, the HHC assisted victims of rights violations in submitting applications to the ECHR: one case concerns police ill-treatment, while the other claims a violation of Article 5 of the Convention through ordering and maintaining unjustified pre-trial detention for over 2 years without any convincing evidence.

V. Legislative advocacy

The HHC was actively involved in the academic debates and the legislative process aimed at drafting **hate speech legislation** in the new Civil Code. In April 2007, the HHC was invited by the Ministry of Justice and Law Enforcement to participate in the working group that plays an advisory role in the process of formulating the new draft bill. Since that time, the HHC has submitted comments to the consecutive draft texts, mainly with regard to the issue of civil law sanctions of hate speech and the claiming of moral damages in cases of human rights violations. Some of HHC's suggestions have been built into the draft bill, others are being discussed.

Budapest, 16 April 2008



Márta Pardavi
Co-chair
Hungarian Helsinki Committee