



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

### ACTIVITIES IN 2008

#### ***1. Improving respect for human rights by law enforcement agencies***

##### **1.1. Preventing ill-treatment: human rights monitoring of detention**

The HHC continued to carry out human rights monitoring of prisons and police jails in 2008, paying altogether 2 visits to prisons and 32 visits to police jails during the year.

###### *1.1.1 Prison visits*

- April 2008: Szeged Medium and High Security Prison

The HHC visit to Szeged in 2008 was preceded by the release of a report by the Council of Europe Committee for the Prevention of Torture (CPT) on its ad hoc visit to the Szeged Prison in January-February 2007<sup>1</sup>. The 2007 CPT visit focused on the situation at Szeged Prison's High-Security Unit for prisoners serving lengthy sentences, a unique facility within the Hungarian prison system for inmates serving very long prison terms and requiring closer attention and support. The CPT's report assessed how the HSR Unit has functioned in practice since its creation, following the last periodic CPT 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 dismissed 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.

In the course of the HHC's April 2008 visit, the concerns about the HSR unit (the regime for actual lifers) were reinforced as there had been no changes in the penitentiary institution in this respect. Allegations of ill-treatment by prison staff still existed but were not as widespread as during our previous monitoring visit: interviewed prisoners told the HHC that after the governor's dismissal, the new prison governor made efforts to eliminate aggression within the prison; however there were still occasions when beatings occurred. Another practice seriously complained of by inmates was that prisoners were not allowed to touch or kiss their relatives, including their children, during visits. A further problem of serious concern was that inmates were obliged to strip naked after receiving visitors which was felt to be humiliating.

As in almost all Hungarian prisons, hygienic conditions were poor and the prison was overcrowded (in some cells, the per capita free moving space was less than 1 square meter). In some cells, the toilet was not separated and the ventilation and access to natural light were also poor.

- August 2008: Central-Transdanubian National Penitentiary Institute, Baracska

The visit was preceded by some complaints received prior to 2008 about the physical conditions in the prison. The HHC's general impression was that the overall situation was better than expected in light of the complaints; however the monitors drew the following critical conclusions concerning the shortcomings experienced during the visit:

- a) The right to use the phone for those qualified Grade 4 prisoners is not properly ensured.
- b) We received complaints about the style and tone of the communication of prison staff.

---

<sup>1</sup> <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>

- c) Everyone complained of the fact that the institute was overcrowded.
- d) The quality of food was also criticized by several inmates.

### *1.1.2. Visits to police jails*

In 2008, the HHC carried out altogether 32 visits to police detention facilities in 8 Hungarian counties. In advance of the CPT's periodic visit in early 2009, the HHC summarized the conclusions of these visits in a briefing paper<sup>2</sup>:

#### *1.1.2.1. Physical conditions*

The largest police jail, the Central Holding Facility of the Budapest Police (Gyorskocsi utca), is still in a very bad state of repair, even though the CPT emphasized the need to remedy deficiencies. The average number of detainees is high, ranging between 50 to 60 persons, natural lighting and ventilation is poor, and there is no toilet and running water in the cells. The lack of clothing, especially underwear reserved for the detainees in police cells constitutes a problem as well.

#### *1.1.2.2. Medical examinations, recording of injuries*

Despite the CPT's recommendations, medical examinations of detained persons are still carried out as a rule in the presence of police officers, even when the person examined has to strip naked. This practice raises serious concerns also from the aspect of personal data protection. Furthermore, the right of detained persons to being examined by an external doctor, not affiliated to the police, is still not guaranteed. This also applies to the case of alleged ill-treatment: a detainee making allegations of ill-treatment does not have the right to be examined by an independent medical expert, and the practice of taking statements from detained persons presenting injuries has not been reviewed. As an example, in the course of one HHC visit to the Central Holding Facility of the Budapest Police a detained person claimed that his visible injuries had been caused by the police officers during his arrest whereas the medical record issued by the internal medical expert contained no reference in this regard.

#### *1.1.2.3. Situation of those in short-term arrest*

At present the most problematic area in the field of detention by police is short-term arrest (*előállítás*). The legal framework regulating short-term arrest remains unclear due to a legislative error. Moreover, police officers do not pay enough attention to supervising such detainees, either due to ignorance or neglect, which leads to a high number of extraordinary events, such as suicide attempts.

The human rights monitoring of detention facilities in 2008 was supported by the Trust for Civil Society in Central and Eastern Europe.

## **1.2. Promoting independent handling of complaints against the police**

Following up on activities started in 2006, in 2007 the HHC put forward recommendations for reforming the system of handling complaints against police measures and was active in advocating for setting up an independent police complaints board. The Independent Police Complaints Board (IPCB) was established by a June 2007 amendment of the Police Act. The members of the IPCB, including HHC co-chair András Kádár, were elected by a qualified majority of Parliament in February 2008. The Board started operation in March 2008.

In 2008, the HHC submitted two complaints to the newly formed Independent Police Complaints Board<sup>3</sup>:

- The complainant – a Chinese citizen – was ordered to leave Hungary in an alien policing procedure and was taken into alien policing detention to prepare his deportation. He was placed in the "guarded shelter" of the Airport Police Directorate. The complainant went on a hunger strike, his state of health deteriorated significantly, so he was taken to a civilian hospital several times for an intravenous treatment. On 27 June 2008, the police wished to

<sup>2</sup> [http://helsinki.hu/dokumentum/HHC\\_briefing\\_paper\\_CPT\\_periodic\\_visit\\_2009\\_web.pdf](http://helsinki.hu/dokumentum/HHC_briefing_paper_CPT_periodic_visit_2009_web.pdf)

<sup>3</sup> In such cases the HHC's co-chair does not participate in the decision to avoid a conflict of interest.

again take him to the hospital for treatment, but he refused to get off the bed and leave his cell. A police officer grabbed him by the arm, pulled him from the bed, and dragged him by his arms along the 50-meter long corridor of the jail, which all the other detainees witnessed. At the jail entrance he was made to stand up, handcuffed and taken to the hospital. The HHC's lawyer claimed that the legal grounds of using physical force were lacking in the case, and being dragged on the floor in a lying position in front of other people amounts to degrading treatment. The IPCB found the complaint well-grounded and held that a substantial violation of the complainant's fundamental rights had taken place.

- An asylum seeker from Congo had a conflict with the driver of a long distance bus, who did not believe that the asylum seeker was entitled to use public transport for free. The bus driver called the police, and although the complainant was able to produce his humanitarian residence permit, he was handcuffed, made to sit in the police car and taken into short-term arrest. Based on the complaint submitted by the HHC's lawyer, the IPCB established that the complainant's handcuffing and arrest as well as the fact that he did not undergo a medical examination before admission to the short-term arrest cell was unlawful and therefore substantively violated the complainant's fundamental rights.

The HHC will continue to monitor the development of the IPCB's case-law. To assist with further developing the operations of the Hungarian IPCB and to promote setting up similar boards in the Central European region, the HHC will hold an international conference on the first year of the Board's operation in September 2009, in the House of Parliament, to be attended by Hungarian stakeholders and international guests from Great-Britain, Belgium, Bulgaria, Romania, the Czech Republic and Poland.

### **1.3. Promoting the elimination of actual life sentence**

Lifelong imprisonment without the possibility of parole was introduced in 1999 into Hungarian criminal law. In the EU at present Hungary and the United Kingdom are the only Member States that allow imposing a so-called "actual life sentence" on perpetrators of serious crimes. Both international and Hungarian human rights organizations have raised serious concerns about this concept, according to which such prisoners, once they are sentenced, are considered a permanent threat to the community and are deprived of any hope of being granted conditional release. In 2007, the CPT paid an ad hoc visit to the Szeged Prison with the express purpose to examine the detention conditions of "actual lifers". Quoting the Council of Europe Committee of Ministers' Recommendation on the European Prison Rules and its Recommendation on conditional release, the CPT argued that the law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners. In its report from the 2007 ad hoc visit, the CPT stated that "no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behavior, the delivery of personal development programmes, the organization of sentence plans and security". Validating the CPT's concerns, the Hungarian penitentiary system introduced excessive restraints and restrictions that further deteriorate the situation for actual lifers.

In 2008, the HHC started to organize an international round-table concerning actual life sentence, to be held in February 2009, in order to influence the Hungarian criminal policy debate. This activity is realized with support from the Trust for Civil Society in Central and Eastern Europe and the Hungarian Civil Fund.

### **1.4. "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**

#### *1.4.1. The project*

In the STEPSS project, the HHC was 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 was funded by the AGIS Program of the European Commission DG Justice, Freedom and Security and OSJI. (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 identified 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 included 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.

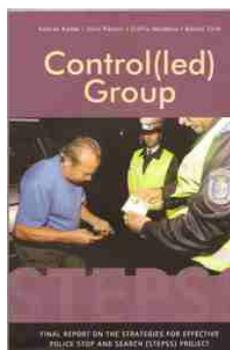
The HHC was responsible for the overall coordination of the project in Hungary. Besides coordination, the HHC staff were actively involved in the auditing of the legislative framework and practice of ID checks, the devising and implementation of the training, the devising of monitoring and the organization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

#### *1.4.2. Project results*

In February 2008 the international project's internal evaluation event was organized in Budapest by the HHC. The event provided members of the international coordination team and participants from Spain, Bulgaria and Hungary an opportunity to share their experiences and ideas about the project.

In March 2008, the monitoring phase of the Hungarian project came to an end. During the monitoring phase in the three pilot sites (Budapest 6<sup>th</sup> District, Kaposvár and Szeged), over 22,000 anonymous forms were filled out by the police officers performing ID checks. Based on the statistical analysis of the forms it was possible to assess the efficiency of the ID check strategies of the participating police units and also the tendencies of ethnic profiling. The main conclusion of the research was that while Roma people were three times more likely to be stopped at the pilot sites than non-Roma, the ID-checks targeting Roma persons were not any more likely to yield results than those which targeted non-Roma people.

In November 2008 the key participants of the project took part in the final project conference in Madrid.



#### *Control(led) Group - Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*

This publication summarizes the project activities, methodology and research findings, and contains recommendations for reform of policing practices to address stereotypes and ethnic profiling.

On 10 December 2008, the project partners, the National Police, the Police College and the Hungarian Helsinki Committee presented the project's conclusions at a press conference hosted by the National Chief of Police.

#### *1.4.3. Follow-up activities in 2009*

The Hungarian police also support some of the project's final recommendations. Hence the HHC has decided to make further efforts to reform police ID check practices through the following activities planned for 2009:

- a) Contacting the heads of relevant police units (Budapest 6th District, Szeged and Kaposvár) and agreeing about creating ongoing local consultative committees with the participation of the police representatives and the member of local communities;
- b) Devising the structure of the consultative committees and planning the issues and priorities in each pilot site,
- c) Holding 3 consultative meetings per pilot site in 2009 and raising public awareness about these for a.

## **1.5. Promoting ratification of the Optional Protocol to the UN Convention Against Torture**

On 19 April 2008 the HHC organized a roundtable meeting to promote ratification of the Optional Protocol to the UN Convention Against Torture (OPCAT). The event was hosted by the Parliamentary Commissioner for Human Rights (Ombudsman).

Under the OPCAT, signatories undertake to designate or establish national preventive mechanisms (NPM's), which are funded by the state but are fully independent. NPMs have the mandate to carry out human rights monitoring in all and any facilities where persons are being detained in a country, regardless of the purpose and legal nature of the detention. So far, most EU member states have already signed and/or ratified the OPCAT but Hungary has not done so yet.

The HHC and the Ombudsman organized the roundtable to inform key stakeholders about the OPCAT provisions and also to lobby for prompt accession. The event was well attended by a number of human rights NGOs and also representatives of various government agencies whose mandate covers issues falling under the OPCAT (Ministry of Foreign Affairs, Ministry of Justice and Law Enforcement, Ministry of Social Affairs, Prime Minister's Office, the Police, Prison Administration, Immigration Office, government agencies dealing with closed medical institutions etc.). At the roundtable, all relevant government representatives voiced support for both signing the OPCAT as well as designating the Ombudsman as the NPM. This however has to be followed up with amendments to the Ombudsman Act as well as several other relevant laws.

## ***2. Protecting refugee rights***

### **2.1. Effective Legal Counseling for Those in Need of International Protection**

The entry into force of the Act LXXX of 2007 („new Asylum Act”) on 1 January 2008 brought about significant changes regarding the Hungarian asylum system. With the new Asylum Act, Hungary accomplished the implementation of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted („Qualification Directive”). The asylum procedure is now divided into two distinct phases: the preliminary assessment procedure and the in-merit procedure. The Border Guard and the Police merged on 1 January 2008; hence the Police have become responsible for border control tasks as well. Furthermore, Hungary became a part of the Schengen border control system on 21 December 2007 with respect to land borders and on 18 March 2008 with respect to air borders.

According to the HHC's experience, in the first half of 2008 the above-mentioned legal changes led to significant improvements regarding asylum-seekers' detention in alien policing jails. Asylum seekers now spend considerably shorter periods in alien policing detention than previously and are transferred to the open refugee reception centre in Debrecen for in-merit asylum procedure. However, later on during the year, due to a newly emerged interpretation of the Asylum Law by the Office of Immigration and Nationality, many asylum seekers again remained detained in alien policing jails during the in-merit phase of the asylum procedure.

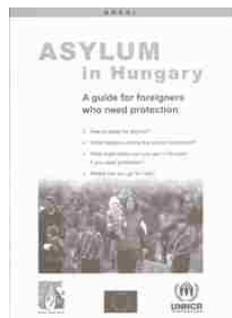
The number of asylum applications submitted in 2008 was slightly lower than in 2007. According to the statistics that were available for the HHC, 3118 persons applied for asylum in Hungary in 2008, while in 2007 this number was 3419.

The HHC continued providing free legal counseling and representation to asylum-seekers in Hungary in Budapest, in refugee reception centers (Bicske, Békéscsaba, Debrecen) and in the alien policing

jails in Nyírbátor and Győr. As of April 2008, the HHC employed a full-time legal advisor in the Debrecen refugee reception center.

In 2008, HHC lawyers provided legal assistance to a total of 493 persons, of which 129 persons were represented before the OIN or the Metropolitan Court by an HHC contracted lawyer. 21 of the HHC's clients were recognized as a refugee by the OIN and the Court, 15 persons were granted subsidiary protection ("oltalmazott") and 25 clients were granted tolerated stay (protection against refoulement).

Legal assistance for asylum seekers was supported by the European Refugee Fund (National Actions) and co-financed by the Ministry of Justice and Law Enforcement.



In December 2008, with support from UNHCR and the European Refugee Fund, the HHC published new information leaflets for asylum seekers in 10 languages, which are distributed online<sup>1</sup> and in print versions made available in reception centers and detention facilities where potential asylum seekers are placed.

## **2.2. Promoting access to territory and to the asylum procedure**

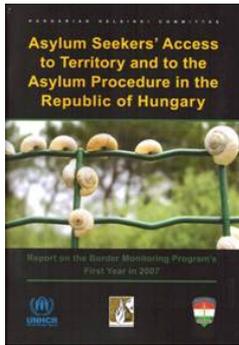
### **2.2.1. Border monitoring in Hungary**

Monitoring border areas is crucial in order to make sure that the principle of *non-refoulement* is respected and to ensure that asylum seekers have appropriate access to territory and to the asylum procedure. As Hungary is part of the European Union's external border, 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 Hungary's land borders and the Budapest International Airport on a regular basis. The purpose of the monitoring is to gather protection information on the actual situation affecting persons in need of international protection. The monitoring activity 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's monitors pay regular visits to the border areas neighbouring Ukraine, Serbia as well as the international airport in Budapest. Monitors visit border checkpoints and detention facilities along the border where foreigners can be detained for a short period before their return or entry into the country. Monitors may interview foreigners placed in short-term detention facilities and can also access the files of persons returned.

In 2008, the monitoring lawyers conducted 19 visits to the Budapest Ferihegy Airport and 16 to the Ukrainian border. The monitors sent the HHC mission reports on each visit to a border area, which was then shared with the UNHCR and the Police (members of the Tripartite Working Group as set out in the Tripartite Agreement).



The report from the first year of the border monitoring program in 2007, *Asylum Seekers' Access to Territory and to the Asylum Procedures in the Republic of Hungary*, was published in February 2009. The draft of the report was written by the HHC in 2008, followed by several rounds of consultations in the Tripartite Working Group until the entire report, inclusive of findings and recommendations could be adopted by all parties. (The official public launch of the report was held at a press conference, hosted by the National Police, on 11 February 2009.)

After almost two years of border monitoring activity, the HHC could identify the following main findings and recommendations:

- a) Foreigners held in short-term detention facilities should be informed about their rights and responsibilities in a language that is understandable for them, including foreign language sample decisions, in line with UNHCR Regional Objective 1.2; (the information leaflet produced by the HHC at the end of 2008 in 10 languages serves this purpose)
- b) The HHC continues to strongly recommend that in so-called "simple cases" (i.e. a person traveling with a false or falsified travel document or visa) at the Budapest Ferihegy Airport, the Police should interview the foreigner in order to ensure that not even one person who is at risk of persecution or who wishes to seek asylum in Hungary is returned thus guaranteeing that the principle of non-refoulement is fully respected. An interview would guarantee the transparency of procedural acts and would make it easier to retrieve information on potential asylum-seekers denied access to refugee status determination.
- c) Taken into consideration in the individual cases it is still worrisome that in a remarkable number of cases potential asylum-seekers with forged travel documents are arrested and a criminal procedure is initiated against them upon their arrival in Hungary. This practice is obviously not in line with Article 31 of the 1951 Geneva Convention.
- d) In order to facilitate inter-cultural communication between the foreigners and police officers the HHC still underlines the importance of sensitization of police officers by inter-cultural and multilingual trainings provided by various actors in the field (see Section 3.4);
- e) The HHC monitors continuously concluded that the capacity of interpreters in certain foreign languages is still insufficient, particularly regarding the increased number of Somali asylum-seekers arriving in Hungary through the Ukrainian-Hungarian border as there is only one person available for this task which might question the quality of interpretation;
- f) It has to be noted that in the course of 2008 several cases of possible refoulement were identified at the Ukrainian-Hungarian border section due to the continuous cooperation and information sharing between the UNHCR and the HHC. In our opinion it is crucial to discuss these issues with the members of the Tripartite Working Group.
- g) On the other hand, the HHC welcomes all positive changes concerning automatic and proper medical treatment for people in need and the use of "phone-interpretation" initiated by police officers at the airport in order to facilitate communication with intercepted foreigners;
- h) The HHC also welcomed that the good and fruitful cooperation between HHC lawyers and local police officers was widely presented and promoted among high-ranking Police personnel, together with the UNHCR.

In March 2008, HHC staff visited Belgrade and Timișoara to meet local refugee-assisting NGOs in order to find new possibilities of cooperation, to gather information on asylum regimes and refugee protection systems in Romania and Serbia, to gather information that would better signal the asylum-related performance and compliance with international and domestic legal instruments of the Hungarian Police, and to increase the HHC's understanding of the situation of groups of special concern in the asylum system of Romania to better understand the situation faced by Dublin II returnees there.

The HHC's attorneys acted as defense counsels for a few Iraqi asylum seekers who had entered Hungary unlawfully, and despite their eventual recognition as refugees in Hungary, were facing criminal procedures for having used forged travel documents. These cases are of a strategic importance as they demonstrate how Hungarian criminal procedure law and the actions of Hungarian

authorities fail to fully comply with Article 31 of the 1951 Geneva Convention on the status of refugees, which prohibits criminal sanctions against refugees on account of their illegal entry.

### 2.2.2. Access to protection at airports in Europe

In most Member States of the EU, the number of persons crossing the state border at airports far exceeds those at land or sea borders. Yet access of asylum seekers to the territory and the asylum procedure is often unregulated or ad hoc at such entry points. Although international and European laws contain rules and guidelines to ensure that refugees can have access to Europe, practices often do not reflect the protection envisaged in law.



The project "Monitoring asylum seekers' access to territory and procedure at European airports -- exchange of experience and best practices" sought to monitor how refugees' access to Europe through 6 airports (Amsterdam, Budapest, Madrid, Prague, Vienna and Warsaw) is ensured in law and in practice. The project's final report, *Access to Protection at Airports in Europe*, summarizes the findings.

The Hungarian Helsinki Committee coordinated this project and its partners were Asylkoordination (Austria), Dutch Council for Refugees (Netherlands), OPU (Czech Republic), Association for Legal Intervention (Poland), CEAR (Spain). The project was supported by the European Refugee Fund Community Actions.

### 2.2.3. Training activities on refugee law and for border police

19 January 2008: Training for social workers and lawyers working with refugees on the new legislative background of family reunification, with the involvement of the Ministry of Foreign Affairs, Ministry of Justice and Law Enforcement and the Office of Immigration and Nationality. The HHC also produced a short guide on the family reunification procedures for refugees.

The HHC also organized its annual refugee law training series in Sarlóspuszta with the participation of the representative of staff from the Office of Immigration and Nationality, UNHCR, the Ministry of Justice and Law Enforcement, the Metropolitan Court, the HHC's staff members and contracted lawyers. The trainings, held in September and November, focused on the questions of credibility assessment, internal protection alternative, exclusion clauses and memory from a psychological aspect.

Under the framework of the Border Monitoring Project, the HHC held 4 day-long trainings for altogether about 70 border police personnel, most of whom are working "in the field" (passport control, border patrol, etc.) and may come often into contact with potential asylum-seekers:

- 18 March & 10 April: Budapest Ferihegy Airport
- 30 May: Kiskunhalas (Serbian border section)
- 30 June: Nyírbátor (Ukrainian border section)

The trainings focused on the following issues:

- Introduction to the basic notions of refugee law: non-refoulement, refugee definition, five grounds, statelessness, etc.
- Basic legal principles concerning access to territory/refugee status determination
- Distinction between existing protection statuses under Hungarian law: refugee, *oltalmazott*, *befogadott*, stateless person
- Countries of origin: why does someone have to flee from his/her homeland, what human rights violations take place in the world in 2008
- Sensitization on intercultural communication and understanding: how to understand/cope with intercultural differences, some key features: religion, language, clothing, name

- How to understand an asylum claim and identify asylum-seekers based on the above skills and knowledge

The HHC held – in cooperation with the UNHCR – a two-day training session for high-ranking police officers on 18-19 November 2008 in Gyöngyöstarján. In addition to discussions on the implementation of the border monitoring project, the training agenda touched upon the following issues:

- Ukraine and the safe third country notion
- Somalia as country of origin
- Understanding the meaning of torture, cruel, inhuman or degrading treatment or punishment and the principle of non-refoulement

#### **2.2.4. The Refugee Law Reader**

The Refugee Law Reader ([www.refugeelawreader.org](http://www.refugeelawreader.org)), created by a group of international refugee law specialists and published by the HHC, is the first comprehensive on-line model curriculum for the study of international refugee law.

The amount of material available within its easily accessible framework has doubled to over 600 documents since the first publication of The Reader in 2004, while its user base now exceeds 20,000 individuals worldwide. As a 'living' case book, The Reader offers access to an enormous wealth of primary source material and secondary literature that we hope will further strengthen the teaching and research capacity in international refugee law. Over 85% of The Reader's documents are accessible for all users. The rest of the materials are only available for professors, students and researchers working mainly in Eastern Europe, Africa and Asia, due to strict copyright agreements with international publishing houses. The Hungarian Helsinki Committee negotiates with publishers regularly in an effort to continue expanding the circle of beneficiaries.

In January 2008, the Fourth Edition of the Refugee Law Reader was launched both online as well as in the form of a short printed Syllabus. This latest edition aims to introduce the most important legislative and legal developments that have occurred in the past year, and The Reader has been updated to keep pace with the fast moving and complex evolution of EU refugee law.

16 May 2008: The HHC, in the framework of The Refugee Law Reader project, held a roundtable discussion and seminar on the topic of "individual threat" and the qualification criteria for international protection in the European Union, with the participation of The Refugee Law Reader Editorial Board, UNHCR and further refugee law experts from various countries.

Although The Reader was originally intended as a resource for developing refugee law clinics in universities in Central and Eastern Europe, because of its extensive use across the world the Editorial Board is now engaged in the task of expanding and 'universalizing' The Reader. The Fifth edition, to be launched in 2009, will introduce new regional sections on Latin America, Africa, and Asia. In addition, adapted language editions of The Reader will be launched in French, Russian, and Spanish in order to better serve the diverse and growing community of our users.

The Refugee Law Reader is supported by the European Refugee Fund Community Actions and UNHCR.

#### **2.2.5. International cooperation in the field of refugee protection**

In 2008, the HHC continued to be an active member of the **European Council on Refugees and Exiles** (ECRE), and ECRE three 'core groups' focusing on the themes of access, asylum systems and return. The HHC actively contributes to the identification of policy priorities and represents the Central European region in all these fora. Márta Pardavi, HHC co-chair continued to serve on ECRE's Executive Committee.

The HHC is also a member and the regional focal point of the **International Coalition on the Detention of Asylum Seekers, Migrants and Refugees**, which aims to raise awareness of detention policies and practices and to promote the use of international and regional human rights

standards and principles as they relate to the detention of refugees, asylum seekers and migrants. The coalition has over 80 member organizations world-wide.

#### 2.2.5.1. Statelessness

Since 2006, the HHC has taken the lead on promoting the rights of stateless persons among non-governmental organizations at a European level. As a first step, we conducted a regional research on the issue of statelessness in four countries (Hungary, Poland, Slovakia and Slovenia), focusing on statelessness determination mechanisms, the main features of the protection status granted to formally recognized stateless persons and the available durable solutions (access to citizenship). It finally

The HHC regularly provides training on statelessness for governmental and non-governmental target groups from various countries. In late 2008, we began working towards establishing a trans-national NGO focus group on statelessness raising funds in order to conduct large-scale research and awareness-raising projects related to statelessness in forthcoming years.

#### 2.2.5.2. Detention of Vulnerable Asylum-Seekers in the European Union

The detention of vulnerable asylum-seekers is currently a concern in Europe given the higher risk of abuse and neglect these people face in detention as well as the increased willingness of states to detain asylum-seekers in general. Detained female asylum-seekers, for example, are vulnerable to physical and sexual abuse from male detainees or male staff in the detention centre. Women also experience medical needs, such as pregnancy, that require specialized protection and attention. Persons with serious medical needs require specialized attention from trained medical professionals, and some may even require 24-hour care.

The HHC, as a partner of Jesuit Refugee Service Europe, takes part in the 'Detention of Vulnerable Asylum-Seekers in the European Union' project that will research the detention conditions and practices towards vulnerable asylum-seekers in 23 EU member states, including Hungary from late 2008 till 2010. The project is funded by the European Refugee Fund (Community Actions).

#### 2.2.5.3. Networking on the Qualification Directive

This project, coordinated by the Dutch Council for Refugees and funded by the European Refugee Fund (Community Actions), aimed to establish a system of exchange of best practice and information on the implementation by EU Member States of the Qualification Directive. The HHC, as a project partner, participated in writing five fact sheets on relevant regulation and asylum law practice in Hungary related to the concrete implementation of certain articles of the Qualification Directive. In order to prepare the fact sheets and to obtain more detailed information from various national stakeholders - the Ministry of Justice and Law Enforcement, the Metropolitan Court, the Office of Immigration and Nationality, the UNHCR - the HHC organized roundtable meetings to further discuss the implementation of Article 12 and 15 of the QD.

#### 2.2.5.4. ASPIRE - Assessing and Strengthening Participation in Refugee resettlement to Europe

Resettlement from a temporary refuge to another host country is considered as one of the three "durable solutions" for refugees. More and more countries get engaged in resettlement every year, accepting to provide asylum for a certain number of refugees resettled from a conflict zone or from a temporary host country where no effective protection can be offered to them in the long run. The HHC makes efforts to promote in Hungary the idea of resettlement, encouraging the government to start making use of the yet unused resettlement quota set by the Asylum Act of 2007.

The on-going "ASPIRE" project, coordinated by the Churches' Commission for Migrants in Europe (CCME) and funded by the European Refugee Fund (Community Actions), aims to encourage several EU member states to take a formal commitment to resettlement and to explore the added value of joint European coordination in this field. To this end, in late 2008-2010, project partners (among them the HHC) strive to explore existing policies and relevant "good practices", organize debates in order to

raise awareness and to bring together key actors as well as they collect and provide information to a wider public on this topic.

#### 2.2.5.5. "Dubliners" Project – advocacy for reforming the "Dublin system"

The so-called "Dublin system", based on the Regulation 343/2003 of the European Council (Dublin II Regulation), was set up by European states to reduce the abuse of national asylum systems and enhance the effectiveness of refugee status determination (by reaching that only one member state deals with an asylum claim within the Union). The Dublin system is severely criticized by various actors in the asylum field for its lack of effectiveness, for being inhuman and for undermining access to protection for refugees in Europe.

The Hungarian Helsinki Committee in the period late 2008-2009 is participating in the transnational "Dubliners" project, which aims to identify and discuss flaws and inefficiencies in the functioning of the Dublin system, through interviews with "Dublin Units" at asylum authorities and with asylum-seekers, as well as through international meetings and comparative research. The project furthermore strives to present viable proposals for the improvement of the Dublin system. The project is coordinated by the Italian Refugee Council and is funded by the European Refugee Fund (Community Actions).

### ***3. Promoting access to justice***

#### **3.1. Promoting reform of the criminal legal aid system: a quality assurance mechanism for ex officio defense counsels**

The lack of an efficient criminal legal aid system is especially detrimental to indigent pre-trial detainees and criminal defendants in general. Fair and effective access to criminal justice for those who cannot afford to retain a lawyer is provided for by international norms and Hungarian laws enshrining the right of indigent defendants to have free and effective defense. In a number of cases (e.g. *Artico v. Italy*), the European Court of Human Rights found that the state does not fulfill its obligations under the European Convention of Human Rights by simply providing a poor defendant with an ex officio defense counsel: the counsel's performance has to be effective as well. However, according to several empirical studies, the performance of counsels appointed for such defendants is substandard in Hungary, including low attendance during pre-trial stage; poor quality of work through the proceeding; and the lack of trust by defendants. A 2003 survey of 500 pre-trial detainees by the HHC showed that 35 percent of indigent detained defendants do not meet their appointed counsel before the trial at all. The National Police Headquarters' 2006 nationwide research showed that less than 50 percent of appointed defense counsels attended their clients' interrogation, while in some counties this rate was less than 10 percent. As also shown by empirical studies (among others, under the HHC's Model Legal Aid Board Program accomplished in 2007), besides the relatively low remuneration, the main reasons for this situation is the complete lack of quality assurance mechanisms by either the state or the bar associations, and the lack of standards set for appointed lawyers. One of the Model Legal Aid Board Program's conclusions in this regard was that as a first step, a standardized tool should be developed that enables the quick scrutiny of defense work on the basis of case files.

In 2008, the HHC continued its work aimed at raising awareness of key stakeholders through identifying and substantiating problems in the existing practice of defense counsels appointed ex officio to indigent defendants.

The HHC carried out research in late 2008 into the possible ways of assessing the quality of ex officio defense through studying actual case files. In the framework of the research the files of 150 already closed criminal cases were analyzed in 8 different county courts on the basis of a standardized questionnaire prepared by an ad hoc expert group. The research supported the already existing empirical data on substandard performance of appointed counsels, but also proved that a statistical analysis of case files can be an efficient means of assessing the quality of defense.

The pilot research provided a unique opportunity to take a first step in the direction of developing a standardized method for the basic evaluation of the performance of ex officio appointed defense

counsels. In an effort to advocate with key stakeholders for the long-term introduction of such a system, HHC experts wrote a study summarizing the key research findings and, in cooperation with the Budapest Bar Association, a successful two-day roundtable was held in April 2009 with the purpose of discussing the material and draw conclusions from the results. The round-table was attended by representatives of the key stakeholders (the regional bar associations, the police, the Ministry of Justice, the courts, and the academia).

This activity was realized with support from the Trust for Civil Society in Central and Eastern Europe and the Open Society Justice Initiative.

### **3.2. Effective defense rights in the European Union**

The HHC takes part in a comparative research project "Effective Defense Rights in the European Union and Access to Justice: Investigating and Promoting Best Practice" project. The project is the initiative of four organizations: JUSTICE, Maastricht University, Open Society Justice Initiative and the University of West England and is funded by the European Commission and the Open Society Justice Initiative.

The project's overarching goal is to contribute to effective implementation of indigent defendants' right to real and effective defense, as part of a process of advancing observance of, and respect for, the rule of law and human rights. More specifically, the aim of the research project is to explore, backed by empirical investigation, the right to effective defense in criminal proceedings for indigent defendants across nine European jurisdictions and to provide empirical information on the extent to which procedural rights that are indispensable for an effective defense, such as the right to information, the right of access to a lawyer and the right to an interpreter, are provided in practice. A further aim is to produce a set of monitoring indicators that are relatively simple to use that can be used to assess effective criminal defense in a range of jurisdictions.

In the framework of the project, the HHC produced a country report, pointing out the gaps in law and practice that prevent the Hungarian criminal procedure system from being fully effective from the point of view of the right to defense. To utilize the advocacy potential of the material on the Hungarian level, the study was translated into Hungarian and presented to representatives of the key Hungarian stakeholders during the April 2009 round-table organized in cooperation with the Budapest Bar Association.

The translation of the country report and the organization of the round-table were supported by the Open Society Justice Initiative.

### **3.3. Access to information about ex officio appointed defense counsels**

In June 2008 the HHC sent a public interest information request to all Budapest-based police stations to find out in how many cases the police had appointed ex officio defense counsels in mandatory defense cases in 2007, who were the individual appointed attorneys and how many cases were given to each attorney. Although only 6 police stations complied with the HHC's request (7 stations refused and 12 failed to answer) the responses corroborated the HHC's experience: police stations assign the vast majority of cases to only a small handful of attorneys. In order to obtain more accurate data regarding the practice of Budapest police stations, the HHC brought legal action under the Freedom of Information Act against all non-responding police stations in the framework of a public interest information lawsuit. The first instance court judgment was delivered in early January 2009, and obliged the police to provide the requested public interest data to the HHC. However, the police --- arguing that the compilation of the request data requires excessively resources - appealed the judgment and the second instance procedure will continue in 2009.

## ***4. Promoting equal treatment***

### **4.1. Anti-discrimination and Diversity Management Trainings**

4.1.1. On 29-30 January 2008, the HHC provided a 2-day follow-up anti-discrimination training for 33 NGO and trade union representatives who had attended previous anti-discrimination trainings organized by the HHC. The training had two modules: one aimed at sensitizing the participants in relation to the subject and the second on transferring knowledge on domestic and international anti-discrimination legislation.

The participants were highly satisfied with the training program as it met and in certain regards even exceeded their expectations. The participants found the legal module the most useful. The trainers developed a complex case study for both seminars that generated an extensive debate among the participants. The sensitizing exercises were also found useful considering mainly their networking effect.

The training was supported by the European Community Action Programme to Combat Discrimination (2001-2006).

4.1.2. In the framework of the same project, a diversity management seminar was organized for 23 employers' representatives, HR experts and HR consultants on 22 January 2008.

Participants' feedback showed that the training was extremely useful and filled a gap by putting diversity into context as a business driven management approach. The materials distributed were also seen as fulfilling a need, since, according to feedback by the participants, no comprehensive materials were available in Hungarian on diversity and diversity management issues.

4.1.3. The HHC organized a 2-day long anti-discrimination and diversity management training for human resources managers of larger for-profit companies on 9 and 23 May 2008. The aim of the training was to improve participants' knowledge about the Equal Treatment Act and promote diversity at the workplace through also providing assistance in developing equal opportunity plans.

Altogether, 19 persons attended the training, which, in the light of the feedback provided by the participants, proved to be successful. The participants emphasized that besides having a sensitizing effect, the training provided them with an opportunity to share their concerns, questions and experiences related to the issue.

The training was supported by the National Foundation for Employment

### **4.2. Anti-discrimination legal clinic**

In December 2008, the HHC set up anti-discrimination legal clinics at two Hungarian universities (ELTE University of Budapest and the University of Miskolc) with the aim of sensitizing law students to this special legal field and provide them with a thorough theoretical background as well as practical skills that they could use in handling anti-discrimination cases. After receiving traditional theoretical education, the law students – under the close supervision of practicing attorneys – participate in the handling of actual cases, which enables them to see the law in operation and acquire skills that they will be able to use after graduation. In the framework of the project, the HHC's lawyers – aided by the students – take altogether 20 cases before Hungary's equality body, the Equal Treatment Authority, while the HHC's experts prepare a textbook for the university course and compile an on-line library of relevant legal literature. The two legal clinics have already been put into operation with 12 students at both project locations. The on-line library is available on the HHC's website, and the textbook has also been written. So far, 5 cases have been selected for submission to the ETA.

The project is supported by the European Union and the Hungarian State.

## ***5. Helping 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 the HHC legal advisor who also refers cases to attorneys working with the HHC. The HHC contracted dr Tamás Fazekas and dr Gábor Győző attorneys during the period to provide legal assistance in Budapest.

In 2008, 384 persons sought legal assistance from the HHC's Human Right Legal Counseling Program:

- 52 asylum cases,
- 39 immigration cases (visas and residence permits),
- 127 cases relating to detention conditions,
- 17 cases of complaints against police measures,
- 15 inquiries regarding procedures before the European Court of Human Rights,
- 2 cases concerning equal treatment,
- 50 cases concerning pending or closed criminal procedures,
- 82 miscellaneous cases.

Some prominent cases are described below.

- The case of Mr. I. T.: In late 2008, a final and binding decision was reached in one of the HHC's cases relating to the riots of September-October 2006. On 20 September 2006, Mr. I. T. was walking in a street near the premises of the riots in the 6th district when a group of rioters entered the street, followed by two police vans. Several police officers with assault hats jumped out of the vans, and instructed everybody to lie down. Mr. I. T. failed to do so, and turned his back, when police officers grabbed him, forced him to the ground with his face down. At least four policemen started to kick and beat him on his back, arms and legs; he also received a kick in his right eye. He was wounded so badly, that after he was handcuffed and arrested, he had to be hospitalized. The case launched against Mr. I. T. for his alleged crimes connected to the riots was terminated due to the absence of a crime committed. On the other hand, two police officers were charged with ill-treatment in official proceedings who could be identified by their reports about chasing, apprehending and arresting Mr. I. T. due to his alleged involvement in the assaults against the police force. In the proceeding – in which the HHC provided Mr. I. T. with legal representation -- the police officers were found guilty of ill-treatment. Whereas the court of first instance sentenced the defendants to imprisonment with suspending the execution, the court of second instance modified the sentence, and annulled the suspension in the case of one of the defendants who had already been found guilty of ill-treatment in the past. Effective imprisonment for ill-treatment is very rare in the Hungarian jurisprudence.<sup>4</sup>
- Daróczy v. Hungary: In July 2008, the European Court of Human Rights held that the Republic of Hungary violated the right to respect for private life of the applicant, Tiborné Daróczy, who

---

<sup>4</sup> Index: Félholtra verték a tévészékház miatt, 28 November 2008, <http://index.hu/belfold/rebisz7339/>

was represented by the HHC<sup>5</sup>. The case concerned the applicant's complaint that she was obliged to change her surname, Tiborné Daróczy, which she had been using since her marriage in 1950. The European Court of Human Rights found that the restriction imposed on the applicant had been unacceptably rigid and completely disregarded her interests, in that she had been forced to alter a name which she had used for more than 50 years and which, beyond its relevance in self-identification and self-determination, also gave her a strong personal link to her late husband. The Court therefore unanimously held that there had been a violation of Article 8 of the European Convention on Human Rights and awarded Ms Daróczy 3,500 euros in respect of non-pecuniary damage and 1,800 euros for costs and expenses.

## **6. Other activities**

### **6.1. Participation in the legislative process**

In 2008, the HHC commented on the following legislative drafts:

- Drafts of the new Civil Code (in relation to provisions concerning inherent personal rights and non-pecuniary damages),
- Draft of the law on hate speech,
- Draft of the amendment of the Law on the Right to Assembly,
- Draft of the amendment of certain laws concerning public security (amendments concerning the right to assembly and violence against particular social groups),
- Draft of the amendment of the law on penitentiaries (freedom of speech of detained persons).

### **6.2. Human rights trainings**

Within the framework of a human rights training organized by the National Academy for Judicial Training between 11 and 13 February 2008, HHC experts held trainings for over 50 criminal and civil judges in the following fields: the application of international norms and standards in domestic cases; the case law of the European Court of Human Rights in relation to pre-trial detention; the direct effect of the EC anti-discrimination acquis.

Throughout the 2008 year, the HHC was regularly invited to give presentations on human rights at the Budapest-based International Law Enforcement Academy for mid-career police and other law enforcement agency officers from Central and Eastern Europe and Central Asia.

Budapest, May 2009



Márta Pardavi  
Co-chair  
Hungarian Helsinki Committee

---

<sup>5</sup> Daróczy v. Hungary, Judgment of 1 July 2008, application no. 44378/05