



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

ANNUAL REPORT ON ACTIVITIES

2009

1. Improving respect for human rights by law enforcement agencies

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

The Hungarian Helsinki Committee's Police Cell Monitoring Program started in 1996, on the basis of an agreement concluded with the National Police Headquarters. The goal of the project is to monitor the conditions of detention implemented in police cells. Monitoring groups, which consist of attorneys, physicians, social workers and sociologists are permitted to visit police facilities at any time without advance notice. They are also allowed to enter police jails, cells and facilities used for holding detainees, may observe the state of police cells, and may have unsupervised interviews with the detainees. According to the agreement, if the monitors experience any sort of irregularity, the HCC is obliged to inform, immediately after the visit, the police organ supervising the police jail, and the National Police Headquarters or the prosecutor's office. At present, the program covers eight counties plus Budapest.

In 2000, the Hungarian Helsinki Committee, based on the success of monitoring police jails, began to carry out human rights monitoring of penitentiary institutions as well, on the basis of agreement of cooperation with the National Headquarters of Penitentiary. The monitors observe respect for human rights, detention conditions, health care provided to the detainees and also their social situation. According to the agreement, the HHC monitors are entitled to enter all national penitentiary institutions with an advance notice, where they are allowed to speak with the detainees without supervision, complete questionnaire interviews, and visit all the premises of the institution. The 4-6 member monitoring teams are composed of attorneys, law students, social workers and a physician who analyses the detainees' medical complaints. Following each visit, the HHC prepares a report detailing the findings of the visit and sends it for comments to the penitentiary institution in question and to the National Headquarters of Penitentiary. Thereafter, the report may be released and is also uploaded to the Committee's website.

The HHC continued to carry out human rights monitoring of prisons and police jails in 2009, paying altogether 4 visits to prisons and more than 20 visits to police jails.

The human rights monitoring of detention facilities in the first half of 2009 was supported by the [Trust for Civil Society in Central and Eastern Europe](#).

1.1.1 Prison visits

- 23-25 February 2009: Tiszalök Medium and High Security Prison

The visit identified six areas where improvement was necessary:

- a) Physical conditions: inmates are as a rule placed in cells for one or two people, which is positive; however very few community events are organized, which results in a certain degree of isolation and also does not enhance reintegration;
- b) Few possibilities to engage in sports or cultural activities are in place;
- c) Inmates criticized the quality and quantity of food;
- d) Medical care was also problematic: it is difficult for the management to hire a physician, and inmates complained about difficulties in access to a doctor.
- e) In practice, cell doors are kept locked longer than foreseen by the internal regulations.
- f) Only one-third of the prison population has possibility to work, which makes everyday life in the prison depressing.

- 2-4 March 2009: Szirmabesenyő Juvenile Prison

In spite of our previous assumptions, this was the institution where the least complaints were heard. One grave concern shared with the prison management was related to the extensive and regular use of physical restraints against juveniles, which is contradictory to international standards that permit such practices only under exceptional circumstances.

- 4-5 May 2009: Kalocsa Women's Medium and High Security Prison

Based on complaints received from inmates during personal interviews, it is highly presumable that certain male members of the prison staff are seriously ill-treating the inmates in Kalocsa. Despite the decrease in the number of the inmates held in the prison, the Kalocsa prison is still overcrowded (the overcrowding rate is 120 %). The HHC monitors noticed rooms of only 8-9 sq. meters where four inmates were kept. The prison management claimed that the regime in the prison is very relaxed, recalling that inmates may receive 2 visits a month for 2 hours each time. (According to the current regulation, the minimum number of visits is one per month, and the minimum visiting time is only thirty minutes, which may be extended to one hour.) However, the extended length of the visits is used as disciplinary means, i.e. that it is cut when an inmate commits a disciplinary offence.

- 3-4 September 2009: Veszprém County Remand prison

While no serious complaints were heard concerning the treatment and the physical conditions, the HHC monitors were faced with the consequences of the National Prison Administration's "proportionality program". The program is aimed at making the distribution of overcrowding more even among penitentiaries in the different regions. While the objective is to be welcome, the program has serious drawbacks, as a lot of inmates are transferred to institutions which are far away from their place of residence, which makes family visits very difficult. A lot of inmates in Veszprém complained that their families would have to travel up to 8 hours for a visit of one hour. They claimed that they preferred overcrowding to the lack of family visits. We have warned the National Prison Administration about our concerns related to the program.

1.1.2. Visits to police jails

In 2009, the HHC carried out altogether 23 visits to police detention facilities in 12 Hungarian counties and in the capital. The main problems listed in the 2008 annual report still prevail, but there were some positive developments. Recently several police jails have been refurbished (e.g. Kecskemét), while many jails were closed down (e.g. Budapest 10th and 11th district jails), and there is only one jail in each county. It has become general practice outside of Budapest that defendants are only detained in police jails during custody, thus it is now very rare that pre-trial detainees would be held in police detention facilities.

1.2.3. Briefing paper for and meeting with the CPT delegation

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted its scheduled periodic visit to Hungary in early 2009. The HHC summarized its main concerns for the CPT in a briefing paper¹ and also met in person with the members of the CPT delegation for a briefing session on 24 March 2009. (The main points of the briefing paper were detailed in our 2008 annual activity report, and therefore are not be repeated here.)

1.2. Promoting independent handling of complaints against the police

Partly as a result of the HHC's advocacy efforts, a new body for examining complaints against the police, the Independent Police Complaints Board (IPCB) was established by a June 2007 amendment of the Police Act. The HHC has been monitoring the development of the IPCB's case-law since the establishment of the new complaints body.

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 organized an international conference on the first year of the Board's operation. The event took place on 23-24 September 2009, in the Houses of Parliament, and was attended by Hungarian stakeholders and international guests from Great-Britain, Belgium, Bulgaria, Romania, the Czech Republic and Poland.

The conference was supported by the [Trust for Civil Society in Central and Eastern Europe](#).

¹ See: http://helsinki.hu/dokumentum/HHC_briefing_paper_CPT_periodic_visit_2009_web.pdf



The HHC also published a study on the first 18 months of the IPCB, titled *Másfél év mérlegen: A Független Rendészeti Panasztestület gyakorlatának elemzése*. The study examines the types of right violations and the IPCB's related practices, questions about the Board's authority, rules of procedure, and data protection and freedom of information issues as far as the IPCB's practices are concerned.

In addition, the HHC has continued to take cases before the IPCB.

- An example is the case of Ms. A, who was taken into custody after she had tried to dissuade police officers from mistreating a homeless person. When she tried to make a phone call to her husband, informing him about the fact that she is being deprived of her liberty, one of the officers tore the mobile from her hand and turned it off (although Hungarian laws do not authorize the police to intervene in this manner). In January 2010, the IPCB established that Ms. A's fundamental rights have been violated.

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 programs, 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. The round-table was held on 9-10 February 2009 with the participation of 25 experts, practitioners and representatives of the academia and key stakeholders, among them representatives of the Parliamentary parties, the Ministry of Justice and Law Enforcement, the Supreme Court, the National Penitentiary Administration and the Constitutional Court. Presentations were held among others by Professor Renate Kicker, the first vice-president of the CPT and Jörg Kinzig, professor of criminal procedure law at Tübingen University, Faculty of Law. The professional consensus reached at the event was that there is no constitutionally acceptable justification for the sanction and therefore actual life sentence should be abolished from the Hungarian legal system.

The event received strong media coverage. Ms. Ibolya Dávid, President of MDF, one of the conservative Parliamentary parties, who had been the Minister of Justice when the sanctioned had been introduced, spoke highly of the event in one of the TV programs (ATV „Egyenes beszéd”).

Besides organizing the round-table, the HHC submitted a motion to the Hungarian Constitutional Court on 5 March 2009, requesting the body to quash the legal provisions allowing actual life sentence to be imposed. The case is pending before the Court.

These activities were realized with support from the [Trust for Civil Society in Central and Eastern Europe](#) and the [Hungarian Civil Fund](#).

1.4. Follow-up for the project "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)

In order to follow up on the results of the STEPSS project aimed at improving police-minority relations through increasing the effectiveness and accountability of police powers to conduct identity checks and searches, the HHC has decided to make further efforts to reform police ID check practices through the following activities:

- a) Devising and holding consultative meetings on the pilot sites for police officers and civil community members in 2009;
- b) Establishing an expert group, and holding expert meetings (detailed analysis of the possible ways of police reform in areas concerning human rights issues);
- c) Writing and compiling materials about discrimination to be included in the training materials of the Hungarian Police College and police secondary schools.

Activity a): In 2009 altogether three consultative committee meetings were held in two pilot sites: one in Budapest 6th District, and two in Szeged. The Budapest 6th District Police the meeting (27 November 2009) was attended by fourteen NGOs and local civil organizations, the District's MP and vice-mayor were also present. After listening to a short presentation about the local police's activities, human resources and indicators and a description of the STEPSS projects activities, the participants had the possibility to pose questions to the police chief. Many of the participants expressed their support for holding regular meetings in the future, the captain promised to organize a consultative meeting every third month. The event was covered by the local TV channel and newspaper, a summary is also available on the police's website².

In Szeged two meetings were held in 2009 (3 December and 11 December). The events were also covered by the local media.

Activity b): Two expert meetings were held on ID checks on 12 June and on 12 December 2009. Two other meetings (12 October 2009, 4 November 2009) were organized by the Budapest Police Headquarters on issues related to the right of assembly. Experts representing the HHC and the Hungarian Civil Liberties Union (TASZ) attended all these meetings.

At the December meeting on ID checks, representatives of the HHC, the TASZ and the Hungarian Police Headquarters agreed that the working group on ID checks will submit a proposal to the National Police Chief with the following points:

1. A new, unified ID check form needs to be introduced.
2. The new form needs to contain a warning about the possibility of filing a complaint against the measure.
3. A copy of the form, signed by the ID checked person and the officer taking the measure, needs to be handed over to the person subject to the measure.
4. Those personal data not necessary for the purposes of the measure shall be cleared from the forms.
5. The forms need to contain a detailed explanation for the reason of the measure and information about the result or outcome of the measure.

The proposal, including the recommendations, was submitted to the National Commander in February 2010.

Activity c): The HHC contacted the Police Academy and the National Police Headquarters to discuss the practical aspects of including ethnic profiling and the STEPSS experience into the training of police officers. Based on the discussions, the HHC has prepared a study about the legal protection activities of NGOs in a constitutional state in general, and the STEPSS project in particular. The material will be incorporated into the curriculum of secondary police education from the next school year (from September 2010).

We have also agreed with the Police Academy that lectures on the STEPSS project and other human rights issues relevant for the police will be held by HHC staff. The first lecture was held on 9 March 2010 to senior police officers participating in in-service training.

The project – which has continued in 2010 – is funded by the [Open Society Justice Initiative](#).

² http://www.police.hu/friss/BRF-20091127_87.html?query=2009.%20november%20civil

The HHC carried out further advocacy activities building on the results of the STEPSS project in 2009. Attending a conference on the protection of ethnic data organized at the Central European University ("Ethnic data and statistics – Use and abuse") on 10 March 2009, the HHC's co-chair presented the conclusions of the monitoring of ID-checks to an audience consisting of the most acknowledged researchers of the field.³ (The conference was attended, among others, by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, the head of the Independent Police Complaints Board, representatives of NGOs working in the field, university teachers and members of the Legal Sciences Institute of the Hungarian Science Academy.)

On 13 March 2009, the STEPSS project was presented at a conference organized by the Hungarian Democratic Charter at the Office of the Mayor of Budapest (Crime and criminal investigation / Bűnözés és bűnüldözés⁴). On both occasions, the conclusions of the project and research were received with interest.

On November 9, the Parliamentary Commissioners for Data Protection and Minority Rights released a joint recommendation for introduction of ethnic data collection in several fields (<http://kisebbségiombudsman.hu/data/files/158627216.pdf>). On page 32 the recommendation expressly refers to the STEPSS project and proposes the introduction of ethnic data collection in the field of ID checks with the method applied in the STEPSS project.

This recommendation triggered a huge and heated public discourse about data ethnic data collection. While the STEPSS methodology was praised, the conclusions drawn from the data were criticized in a weekly journal (<http://www.narancs.hu/index.php?gcPage=/public/hirek/hir.php&id=20327>), to which András Kádár, Balázs Tóth and Bori Simonovits wrote a reply (<http://www.narancs.hu/index.php?gcPage=/public/hirek/hir.php&id=20380>). Following up on the debate, Magyar Nemzet also published an article about the HHC's STEPSS project on 22 December 2009, to which András Kádár also wrote a reaction.

Furthermore, numerous studies were written in different professional journals on the STEPSS project and its conclusions, and issues related to ethnic data collection. Balázs Tóth wrote a study titled "Perceived Ethnic Data and Self-determination" which was published in a law journal titled "Föld-Rész".

Other studies include the following:

- M. Tóth Balázs – Pap András László: Etnikai profilalkotás a magyar rendőrség igazoltatási gyakorlatában. In: Majtényi Balázs (szerk.) Lejtős pálya - Az antidiszkriminációs és esélyegyenlőségi szabályozásról (második, javított kiadás). Föld-Rész Könyvek. Budapest, 2009, L'Harmattan, pp. 111-134.
- Kádár András Kristóf – Pap András László: A Police Ethnic Profiling in Hungary - An empirical research. Acta Iuridica Hungarica Vol. 50. 2009/3, pp. 253-267.
- Kádár András Kristóf – M. Tóth Balázs – Pap András László: Diszkrimináció az igazoltatási gyakorlatban - egy empirikus kutatás eredményei, Rendészeti Szemle 57, 2009/9 pp. 50-67.
- Kádár András Kristóf – Moldova Zsófia – M. Tóth Balázs – Pap András László: Igazolt igazoltatás. Rendészeti Szemle 56, 2008/5, pp. 106-132.
- Kádár András Kristóf – M. Tóth Balázs – Pap András László: Police ethnic profiling in Hungary, European Police Science and Research Bulletin CEPOL, European Police College, 2009/2, pp. 4-6.

Balázs Tóth held a presentation about the STEPSS project at the International Law Enforcement Academy on 2 December 2009 upon a request from the US Embassy and in the presence of about 40 high-ranking police officers. The presentation also induced a heated debate, some of the officers expressly supported ethnic profiling claiming that – in spite of the research data proving the opposite – it is a rational and effective police practice. However, other representatives of the criminal justice system (prosecutors and criminal judges) agreed with the HHC's standpoint.

³ See: <http://web2.ceu.hu/rrn/conferences/forthcoming>

⁴ See: <http://charta.info.hu/hirek/2009/konferencia-a-bunzesrol>

2. Protecting refugee rights

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.

In 2009, 4672 persons applied for asylum in Hungary, which is significantly more than in 2008 (3118 persons). Most asylum seekers originate from Kosovo (1786 persons) and the second numerous group of asylum seekers is from Afghanistan (1194 persons). The Office of Immigration and Nationality granted refugee status to 172 persons, subsidiary protection to 62 persons, while 155 persons were given authorization to stay due to the risk of refoulement.

2.1. Effective Legal Counseling for Persons in Need of International Protection

The HHC and the Office of Immigration and Nationality signed an Agreement of Cooperation on 22 June 2009. The agreement covers issues related to practical cooperation between the two organizations. Under the Agreement, the OIN regularly provides statistical data to the HHC on asylum, Dublin, statelessness and family reunification procedures, and ensures access for lawyers and attorneys working with the HHC to reception centers in order to provide free legal assistance to asylum seekers. The HHC shares its experience regarding the situation of asylum seekers in Hungary. The parties also cooperate in the fields of training, information exchange and conflict prevention.

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, Kiskunhalas, Győr and near Ferihegy airport. Attorneys contracted by the HHC provided legal counseling in the detention facilities and reception centers, except in the largest reception center in Debrecen, where the HHC employs a full-time legal advisor. Budapest-based attorneys are contracted to provide legal representation to asylum seekers challenging the status determination decisions before the Metropolitan Court.

In 2009, the HHC provided legal assistance to a total of 820 asylum seekers out of whom 240 asylum seekers were given legal representation in the asylum procedure and 44 new clients were represented in the judicial review procedure before the Metropolitan Court. 29 of those represented by the HHC were recognized as refugee by the OIN and the Court, 13 persons were granted subsidiary protection („oltalmazott”) and 12 clients were granted tolerated stay (protection against refoulement). The positive impact of professional legal representation was particularly significant in the judicial review phase of the asylum procedure, as in 2009 the Metropolitan Court quashed unjustified or low-quality administrative decisions much more frequently than in previous years (nearly all these cases were represented by HHC lawyers).

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

2.1.1. Representation of a stateless refugee’s case before the European Court of Justice

The Hungarian Helsinki Committee’s attorney, Gábor Győző is representing a Palestinian asylum seeker before the Metropolitan Court in Budapest (Fővárosi Bíróság) in an asylum case concerning the applicability of Article 1D of the 1951 Refugee Convention, regarding the “ipso facto” recognition as refugee of those who previously received protection as refugee from a UN organ other than the UNHCR, but cannot avail themselves of this protection any more (this situation currently only applies to Palestinian refugees entitled to the services of UNRWA). Most European and North American states have so far completely overlooked and failed to apply the 1951 Refugee Convention’s provision in question, and so did Hungary in recent years. Even though some European jurisprudence argued for a truly “ipso facto” interpretation, these judgments have yet had a very limited effect on state practices. Given the vast potential effect at stake and

the lack of clarity regarding Article 1D the Metropolitan Court referred three questions for preliminary ruling to the European Court of Justice (ECJ) on 26 January 2009, in order to clarify the scope and interpretation of this provision of the 1951 Refugee Convention (through interpreting the parallel provision of the EU "Qualification Directive" over which the ECJ has jurisdiction).

The case was referred to the Grand Chamber of the European Court of Justice. Attorney Gábor Győző argued the case at a hearing in Luxembourg on 20 October 2009. The opinion of the Attorney General of the ECJ was given in March 2010, and the judgment was published on 17 June 2010⁵. As the ECJ has so far only ruled in very few asylum-related cases, and as hundreds or even thousands of Palestinian asylum-seekers claim protection in the EU year by year, this case has a great advocacy impact. A more detailed description of the case is available at http://helsinki.hu/Menekultek_es_kulfoldiek/Hirek/htmls/561.

2.1.2. Challenging the detention of asylum seekers

In the first half of 2009, the HHC witnessed an increase in the number of asylum seekers detained in alien policing jails. In contrast to the legal provisions entered into force on 1 January 2008, whereby asylum seekers whose claim is assessed in the in-merit asylum procedure should be released from detention into an open reception center, OIN began not to order release in case of many asylum seekers. Hence on 9 February 2009 the HHC turned to the Chief Prosecutor's Office to challenge the lawfulness of OIN's practice to not initiate the release of all asylum seekers from detention and transfer them to the reception center, even if OIN has decided to refer the asylum claim to the in-merit procedure. The HHC argued that the relevant provision of the Asylum Act (Section 55(3)) is unambiguous and we also referred to several concrete cases where OIN failed to comply with this provision. The OIN has on several occasions stated that Section 55(3) allows them to decide not to initiate release from detention, i.e. they have discretionary powers in this regard.

The 22 April 2009 response of the Chief Prosecutor's Office fully concurred with the HHC's legal position. The department for public administrative law (which is responsible for overseeing the legality of public administrative authorities, such as OIN) said that they had sent an "objection" to the Director General of the OIN, requesting the OIN to take immediate steps to establish practices that comply with Section 55(3), i.e. "initiate the termination of detention of all detained asylum seekers in case the claim is referred to an in-merit procedure". The department has also initiated the amendment of the Asylum Act at the MJLE in order to prevent the eventual negative consequences on public security of the legislation in force. The department overseeing the legality of detention responded that they had carried out on-site investigation at two detention facilities (regarding in Győr and Nyírbátor) to assess the situation.

In May-June, the HHC continued to become aware of asylum seekers who remained in detention beyond the preliminary assessment phase of the asylum procedure. Lawyers representing detained asylum seekers challenged the detention in court procedures, but without success, as courts reviewing detention carry out a purely formal assessment of whether there is a legal basis for detention, without fully examining if detention is "lawful" in the sense of Article 5 of the European Court of Human Rights. The HHC decided to turn to the European Court of Human Rights representing two asylum seekers who were unlawfully detained for almost 6 months in Nyírbátor.

The HHC informed the US Embassy in Hungary about the OIN's unlawful practice of the detention of asylum seekers, which is also reflected in the 2009 Human Rights Report on Hungary.⁶

The HHC closely follows up with the Chief Prosecutor's Office and through its lawyers' network it strongly and continuously advocates against the detention of asylum seekers whose asylum claim is examined in the in-merit phase of the refugee status determination procedure.

2.1.3. Advocacy in Parliament against changes in the asylum court review rules

In late November 2009, the Minister of Justice submitted Bill no. T/11209 to Parliament, without any prior consultation with the HHC, the UNHCR or any other relevant actor. While the general aim of the Bill was primarily the implementation of the Schengen Visa Information System (VIS) and the Community Visa Code, it also proposed to end the exclusive jurisdiction of the Metropolitan Court in Budapest over asylum cases, thereby involving any county-level court in the review of asylum decisions, by amending the Asylum Act and the Act on Civil Proceedings.

⁵ <http://tinyurl.com/36cntqh>

⁶ <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>

The Helsinki Committee considered the proposed amendment as a serious threat to the overall quality of the asylum system, jeopardizing the improving quality of decision-making that had been achieved as a result of many years of training and awareness-raising for judges at the Metropolitan Court (who constitute a limited and therefore more easily accessible group). Given that most asylum cases would in practice be handled by the Hajdú-Bihar county court in Debrecen, as most asylum seekers are accommodated in that reception center, the impact of the Bill would mean that exclusive jurisdiction would be practically shifted to this single court (with even less resources), not resolving thus the originally referred problem of lengthy procedures and disregarded procedural deadlines. Moreover, given the general shortage and lack of expertise in asylum law of local lawyers and translators, the quality of asylum seekers' access to justice would also suffer.

In December, at all meetings of all parliamentary committees (Constitutional Affairs Committee, Law Enforcement and Defense Committee, Human Rights Committee) where the Bill was under discussion both in the general and detailed debates, the HHC presented to the MP's its concerns about how the proposed changes would impact on the asylum procedure. As a result, two MP's submitted individual motions to cancel the proposed amendments; these motions received the necessary support in the committees sufficient for them to be voted on by the plenary session of the Parliament.

Furthermore, the HHC was invited to discuss its concerns with the State Secretary of the Ministry of Justice and Law Enforcement. UNHCR also expressed its serious concerns regarding the proposed Bill and recommended that it be withdrawn. Later the Ministry arranged for an additional motion proposing a delayed entry into force of the changes in question to allow time for regional courts to prepare for the changed rules on jurisdiction.

In February 2010, the Government decided to withdraw this amendment, hence the exclusive jurisdiction of the Budapest Municipal Court in asylum procedures remained unchanged.

2.2. Promoting access to protection

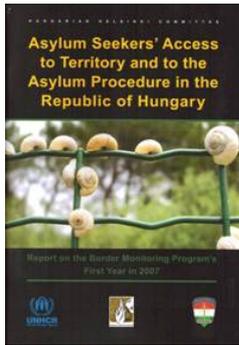
Monitoring border areas is crucial in order to make sure that the principle of *non-refoulement* is respected and to ensure that asylum seekers have appropriate access to territory and to the asylum procedure. As Hungary is part of the European Union's external border, monitoring has become even more significant.

2.2.1. Promoting better access through Border Monitoring

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 neighboring 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 2009, the monitoring lawyers conducted 21 visits to the Budapest Ferihegy Airport, 31 visits to the Serbian border and 23 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 official public launch of the report *Asylum Seekers' Access to Territory and to the Asylum Procedures in the Republic of Hungary*, which gives an account of the border monitoring program's first year in 2007, was held at a press conference hosted by the National Police, on 11 February 2009.

The report is available online at

http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_HUN_FINAL.pdf (Hungarian), and

http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf (English)

In 2009 the HHC was informed by Ukrainian NGOs and its contracted attorney in the framework of the border monitoring project about 20 cases of potential refoulement of Somali and Afghan nationals at the Ukrainian-Hungarian border.

The biannual report summarizing the HHC's border monitoring activities in 2008 and 2009 was compiled during 2009 and it is expected to be published in 2010.

2.2.2. Criminal procedures against asylum seekers in breach of international refugee law

The border monitoring activity also brought to light an important gap in the full implementation of Article 31 of the 1951 Geneva Refugee Convention (non-penalisation for illegal entry) into Hungarian law. Criminal procedures on account of forgery of official documents are regularly launched against foreign nationals who arrive at the Hungarian border carrying falsified or forged travel documents even if they express a wish to seek asylum in Hungary immediately or within a short time period after arrival. Many of these foreigners are also taken into pre-trial detention, which is carried out in prisons.

The HHC's attorneys have acted as defence counsel in a total of 13 criminal cases involving Afghan, Iraqi and Somali defendants. Although several clients were eventually granted protection status in Hungary (refugee status or subsidiary protection), they were nevertheless subjected to a criminal procedure, lengthy pre-trial detention and possibly criminal sanctions for merely using a false travel document to gain entry into Hungary and to seek protection here.

Many of these criminal cases were launched at the Budapest Airport. The Budapest 18-19th District Prosecutor's Office, which supervises the criminal investigations, argued that pre-trial detention was necessary as there was a well-founded assumption that these asylum seekers would escape from the authorities, their identities were not established; moreover, if they were released, the authorities would not be able to carry on with the procedure. As a result of the HHC's advocacy actions and the active defence counsels, these clients were eventually released from pre-trial detention after 5-6 months on average and placed in refugee reception centres in accordance with Hungarian asylum law.

In order to better facilitate the access to the asylum procedure of potential asylum seekers in pre-trial detention, the HHC turned to the Chief Prosecutor's Office to initiate supervisory measures and an examination of whether the current practice in penitentiary institutions related to lodging asylum claims complies with relevant legal provisions. The Chief Prosecutor's Office confirmed the HHC's previous experience that potential asylum seekers face difficulties when trying to submit an asylum application. This is mostly due to the lack of appropriate information, training and sensitisation of the prison staff. As a result of the supervisory measures of the Chief Prosecutor's Office and the good cooperation from the National Prison Service, foreign national detainees now are provided information leaflets on the asylum procedure produced by the HHC and have to be informed about the right to seek asylum in Hungary right upon their reception into the penitentiary institution.

In May, a case taken on by the HHC concerning the treatment and asylum and criminal procedures against an Afghan refugee family was featured in the political-cultural weekly Magyar Narancs:

<http://mancs.hu/index.php?qcPage=/public/hirek/hir.php&id=18973>

2.3. Training activities on refugee protection issues

30-31 January 2009 and 13 February 2009: HHC staff acted as trainers on general asylum, family unification, the prohibition of discrimination and NGO establishment issues in the framework of the Menedék Association's training for migrant assisting NGOs in Hungary.

18 March and 22 April 2009: As part of Menedék Association's project on training various professionals working with migrants, HHC staff gave country of origin information and intercultural skills training, and on the basics of migration law issues.

21-22 May, and 12-13 November 2009: Under a joint project partnership with the Office of Immigration and Nationality and supported by the European Integration Fund, the HHC organized a training for 35 media workers from various national and local print and online newspapers, radio and television stations. The May training was the first of a two-part event and focused on general issues related to migration: definition, migratory trends in Hungary, relevant organizations, integration and types of legal status of foreigners.

Külföldiek Magyarországon



A short document "*Foreigners in Hungary*", produced for journalists, provides a user-friendly response to a set of questions that usually arise in this context by presenting the main causes of migration, introducing the basic terminology of migration and asylum and clarifying on a factual basis the common misperception of some migratory phenomena. The training was funded by: European Integration Fund, Ministry of Justice and Law Enforcement. Available in Hungarian at: http://helsinki.hu/Menekultek_es_kulfoldiek/Szakmai_anyagok/htmls/633



June 29 and 6 July 2009: In partnership with the Hungarian Judicial Academy, and funded by the European Return Fund National Actions, the HHC organized two seminars for judges working in the criminal and public administrative benches on Expulsion and Human Rights. Trainers were HHC staff members, two judges and a UNCHR officer. Overall 25 judges participated and gave very positive feedback on the event.



The HHC published "*Expulsion and Human Rights*" to present the human rights obligations related to the prohibition of torture, inhuman and degrading treatment or punishment, as well as their extraterritorial application in cases of forced return, in a brief, user-friendly form, indicating the relevant international legal norms and case law. Available in Hungarian at: http://helsinki.hu/Friss_anyagok/htmls/649

Kiutasítás és emberi jogok

A kínzás, emberellen vagy megalkotó bírságmód vagy büntetés tilalmának alkalmazási kérdései a kiutasítás bírói elrendelése vagy felülvizsgálata során

Gyulai Gábor



JEGYZET

13 May, 3, 4 and 8 June 2009: In the framework of the border monitoring project, the HHC held trainings for police officers working "in the field" (passport control, border patrol, etc.) who often come into contact with potential asylum-seekers. The trainings dealt with the situation in Somalia and Afghanistan, as well as -- with psychiatrists and psychologists of the Cordelia Foundation for the Rehabilitation of Torture Victims acting as resource persons -- recognizing victims of Post Traumatic Stress Syndrome (PTSD).

22 September 2009: Legal training of social workers in the field of asylum supported by the European Return Fund National Actions. The training focused on the general rules of the Hungarian administrative proceedings with special regard to the social worker's role, country of origin information research methodology and the questions of the change of marital status of refugees (marriage, divorce, death and

civil registration). Participants were given a lecture about female genital mutilation as a typical problem of asylum seeking women from certain regions. Trainers were HHC staff members.

19-20 and 23-24 November 2009: Complex training on refugee law for all relevant actors in the field; lawyers, asylum officers, judges, UNHCR staff, HHC interns, a colleague from the Ombudsman's Office. Trainers were from HHC staff, the OIN, and the Hungarian Academy of Sciences. The agenda dealt with gender issues in refugee status determination procedures, latest tendencies and the development of the EU asylum acquis, the connection of migration and international protection. The training was very positively evaluated by the 42 participants. The training was funded by the European Return Fund National Actions.

In addition to the above training events in Hungary, the HHC's refugee program coordinator delivered a number of lectures and trainings in other European countries throughout the year, for example:

- International course on refugee law with 120 participants organized by the European Legal Network on Asylum (ELENA), in Madrid – session on statelessness
- 3-day seminar on country information as evidence in asylum procedures for Italian state officials, lawyer and UNHCR staff members, in Rome
- Seminar on gender and asylum for Spanish lawyers, NGOs and state officials, in Madrid – session on credibility in asylum procedures
- One-week course for the entire staff of the asylum authority of Luxemburg on statelessness and evidence assessment in asylum procedures, in Luxemburg
- Seminar on international protection for Spanish lawyers and NGOs, in Madrid – session on credibility in asylum procedures
- Seminar on statelessness for Slovak lawyers and state officials, Bratislava – session on the protection of stateless persons

2.4. The Refugee Law Reader

The Refugee Law Reader (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 2009 The Reader continued providing high quality services to the refugee legal community worldwide who now depend on this tool in their every-day work. One of the most important tasks set out for 2009 includes further developing the regional sections with materials reflecting all major changes in asylum legislation. In the 5th Edition, for example, the new African section includes the core legal instruments for refugee protection in Africa and focuses on the central legal and policy challenges in their implementation. East Africa is presented in the first of sub-regional case studies, and additional studies of refugee protection in Northern, Western and Southern Africa will be forthcoming in 2009 and for the 6th edition. This is a major task ahead for the editors responsible for building the Africa section. Similar tasks concerning researching more materials began in 2008 with the legal sections on Asia, Europe and Latin America as well.

In addition, there was also great anticipation about the adapted language editions in French, Russian and Spanish, which were published in late 2009.

The Refugee Law Reader is supported by the European Refugee Fund Community Actions (until February 2009) and UNHCR.

2.5. International cooperation in the field of refugee protection

In 2009, 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 Board of Directors and became vice-chair in February 2009.

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).

The HHC regularly provides training on statelessness for governmental and non-governmental target groups from various countries (e.g. the first entire module dedicated to statelessness at an annual pan-European refugee law course organized by ECRE was held by the HHC focal point in March 2009 in Madrid).

In 2009, the HHC established and reinforced various forms of cooperation with NGOs such as the Open Society Justice Initiative, the Equal Rights Trust and the Spanish Refugee Council (CEAR), as well as with the UNHCR Statelessness Unit and academics aiming at future projects tackling the problem of statelessness. The HHC statelessness focal point was repeatedly consulted in 2009 by different governmental and non-governmental partners for advice on statelessness-related issues (e.g. while drafting new legislation on this matter).

2.2.5.2. Detention of Vulnerable Asylum-Seekers in the European Union (DEVAS)

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](#) (DEVAS) project that examines 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).

In spring 2009, the HHC carried out questionnaire-based interviews with detained asylum seekers held in the detention facilities in Kiskunhalas and Nyírbátor, and in the semi-closed reception center in Békéscsaba as part of the data gathering phase in the project.

After 18 months of research in 23 European countries, the DEVAS project resulted in a comprehensive study, which found that migrant detention causes harm to physical and mental health, even among those considered as the least vulnerable. The findings of this extensive study, [Becoming Vulnerable in Detention](#), coordinated by JRSEurope, coincide with the conclusions of research studies undertaken in Australia, New Zealand and the UK. The 400-page study highlights how asylum seekers and undocumented migrants who are held in detention centres quickly become susceptible to hazardous psychological stress. The longer they are detained, the worse their conditions become. Detention does not just harm people with 'special needs'. The myth that 'single young men' are not vulnerable no longer holds.

2.2.5.3. 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.

2.2.5.4. "Dubliners" Project – advocacy for reforming the "Dublin system"

The so-called "Dublin system", based on 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 one 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.

Between autumn 2008 and spring 2010 the Hungarian Helsinki Committee participates 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). The HHC organized and led a transnational meeting of project partners in Budapest in June 2009 in the framework of this project.

2.2.5.5. European Asylum Curriculum (EAC)

The HHC continued to represent the European asylum NGO community as a delegate of ECRE in the reference group of the European Asylum Curriculum project, led by the Swedish Migration Board. This project aims at the creation of a common teaching tool for all future asylum officers in Europe and beyond, thus influencing the content and methodology of this tool is an advocacy goal of great outreach. The HHC presented proposals and amendments to the EAC team several times during 2009, the vast majority of these proposals were accepted and the HHC's contribution was largely appreciated by the participating state authorities. More information on the EAC is available at: http://www.gdisc.org/uploads/tx_gdiscdb/final_curriculum_EAC.pdf

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 2009, the HHC continued work to raise awareness of key stakeholders through identifying and substantiating problems in the current practice of defense counsels appointed ex officio to indigent defendants.

In late 2008 and early 2009 the HHC carried out research into possible ways of assessing the quality of ex officio defense through studying actual case files. In the research, 150 already closed criminal cases files were analyzed in 8 different county courts on the basis of a standardized questionnaire with 168 questions prepared by an ad hoc expert group (consisting of the president of the Hungarian Bar Association, the co-chair of the HHC, the professional advisor to the President of the Supreme Court, a professor of criminal procedure law and two assistant professors). 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 indeed serve as 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 methodology 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. Also, in cooperation with the Budapest Bar Association, a successful two-day roundtable was held on 16-17 April 2009 with the purpose of discussing the material and draw conclusions from the results. The round-table was attended by legal practitioners as well as representatives of academia and key stakeholders, including the Ministry of Justice and Law Enforcement, the Metropolitan Court, the National Bar Association and county bars, the Constitutional Court and the National Police Headquarters.

These activities were realized with support from the [Trust for Civil Society in Central and Eastern Europe](#) and the [Open Society Justice Initiative](#).

The HHC's co-chair was invited to speak about the results of the case file research into the performance of appointed defense counsels at the First national Meeting of Defense Counsels organized by the National Bar Association. The event took place on 19 June 2009, and the presentation triggered heated discussion.

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 justice 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 ("*In the Shadow of Suspicion*") and presented to representatives of the key Hungarian stakeholders during the April 2009 round-table organized in cooperation with the Budapest Bar Association (see Section 3.1). The [Open Society Justice Initiative](#) supported the publication of the country report and the round-table.

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. Due to procedural mistakes, the court of second instance quashed the first instance decision and ordered a new first instance proceeding on 23 June 2009. In the new first instance decision brought on 19 January 2010, the Pest Central District Court ruled that the Budapest Police Headquarters and the 16 district police headquarters in Budapest shall provide the requested data. Since the Police originally claimed that it is the National Police Headquarters which is processing the data requested, the HHC has launched a lawsuit against the National Police Headquarters as well. The Metropolitan Court reached a decision in the latter case on 11 January 2010, obliging the National Police Headquarters to provide the data requested by the HHC.

In the meantime, the HHC has started a new project – **“Steps Towards a Transparent Appointment System in Criminal Legal Aid”** – aimed at acquiring further statistical data about the practice of appointment and promoting reform of the system with the aim of reducing the possibility of corruption. As part of the project, the HHC will conduct a desk review based on available statistics, and has requested further statistics from 28 police headquarters in 7 regions to demonstrate that the practice of having “in-house” lawyers at police stations is widespread. Strategic litigation against police headquarters refusing to provide statistics is also a core part of the project. Altogether 20 out of the 28 police headquarters have provided the requested data (most of them upon the first request, some only after the lawsuit has been launched). The majority of lawsuits against the headquarters denying access to the data are pending, but some have been adjudicated with a final and binding decision. The decisions have been favorable for the HHC, with the exception of one case, where the Hajdú-Bihar County Court rejected the HHC's claim on the basis that the data of ex officio appointed lawyers are not data of public interest, and that no separate law prescribes access to these data. As this decision is in contradiction with the decision of another county court, the HHC is planning to turn to the Supreme Court.

The HHC will develop and test, in cooperation with county bar associations and police stations, “corruption-free” pilot model(s) for a new appointment system. Based on research and pilot experiences, a policy paper on ways to reform the appointment system will be written and a model law on the appointment system will be drafted.

The Budapest Police Headquarters and the Budapest Bar Association expressed their intent to participate in the implementation of the project elements in letters of support. The Budapest Police Headquarters designated the 10th District Police Station, the National Police Headquarters has designated the Szombathely and the Szarvas Police Headquarters as police units participating in the pilot project.

The project lasts for two years, and is supported by a grant from the [Trust for Civil Society in Central and Eastern Europe](#).

4. Promoting equal treatment

4.1. Anti-discrimination trainings for police college students and police officers

The project was aimed at decreasing racism among police officers and contributing to the development of an organizational culture of tolerance within the Hungarian police force. In order to achieve this goal, the project developed, organized and delivered a series of anti-discrimination trainings for senior police officers, members of the operational staff and their direct superiors in three regions of Hungary, and students at the Police College of Hungary.

Two-day long trainings were held in Záhony (12-13 May 2009), Siklós (26-27 May 2009) and Budapest (3-4 June 2009) for police officers. Trainings for the police college students were held on 30 March and 6 April 2009 in Budapest.

The trainings and workshops consisted of transferring relevant knowledge on international and domestic anti-discrimination law and sensitizing participants with regard to non-discrimination. The experts contributing to the anti-discrimination training emphasized that according to their experiences at the training sessions, racism is very common and prejudices are deeply ingrained in police officers. The trainers recommended holding longer and repeated

The project was carried out by the HHC in cooperation with the National Police Headquarters and the Hungarian Police College. The training series was supported by a donor that wishes to remain anonymous.

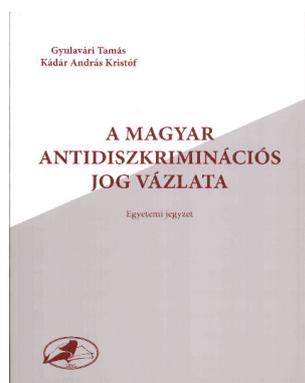
4.2. Anti-discrimination legal clinic

In December 2008, the HHC set up anti-discrimination law clinics at two Hungarian law schools (ELTE University of Budapest and the University of Miskolc) to sensitize 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 handling actual cases, which enables them to see the law in operation and acquire skills that they will be able to use after graduation.

During 2009 over 50 students participated in the program, in the framework of which 18 cases were taken before the Equal Treatment Authority, civil courts, the Constitutional Court and also international forums.

Among others the HHC

- filed a complaint on behalf of a victim who was not granted a bank loan because of his refugee status;
- addressed a communication to the Committee on the Rights of Persons with Disabilities on behalf of two blind persons who are not able to use a bank's ATM machines,
- initiated a lawsuit on behalf of a pregnant woman whose employment contract was terminated unlawfully because of her maternity,
- brought a lawsuit on behalf of a blind person who denied access to a supermarket because of his aid dog. On 18 March 2010, the first instance court established the violation of the plaintiff's inherent personal rights, and obliged the defendant to apologize and also to pay HUF 500,000 (about 2,000 EUR) as non-pecuniary damages;
- filed an *actio popularis* claim with the Equal Treatment Authority concerning statements by the Kiskunlacháza mayor, who in relation to a murder (with regard to which at present the suspicion is that it was committed by a non-Roma person) spoke at a public demonstration about the settlement's population having had enough of 'Roma aggression' and made other statements giving the impression that in his view the murder had been committed by Roma people. The HHC's lawyer claimed that by doing so, the mayor committed harassment in relation to the region's Roma population. The Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation and ordered that the decision be made public.



To support the educational work, the HHC's experts drafted a university course textbook (titled: *An outline of Hungarian anti-discrimination law*) and created an online library of relevant legal literature that is accessible on the HHC website.

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

Due to success of the first year of the program, the HHC decided to carry on with it in 2010 despite the fact that no funding could be secured for the continuation. Thus, at ELTE the course was announced and started in February 2010 with 10 students. In the meantime, partial funding was provided by the US

Embassy, and three large Hungarian law firms (Nagy és Trócsányi, Oppenheim, Szecskay) offered to participate in the case work and the related tutoring on a *pro bono* basis.

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, subsidiary and other 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 attorneys dr Tamás Fazekas, dr Gábor Győző and dr Barbara Pohárnok during the period to provide legal assistance in Budapest.

In 2009, 437 persons received legal assistance from the HHC's Human Right Legal Counseling Program:

- 55 asylum cases,
- 12 immigration cases (visas and residence permits),
- 69 cases relating to detention conditions,
- 116 cases of complaints against police measures,
- 19 inquiries regarding procedures before the European Court of Human Rights,
- 9 cases concerning equal treatment,
- 84 cases concerning pending or closed criminal procedures,
- 117 miscellaneous cases.

Some prominent cases are described below.

a) On 13 June 2009, there was a graduation ceremony in a small village in Borsod-Abaúj-Zemplén County. Some families celebrated privately after the official ceremony, and two families began to fight with each other. One of the families called the police, whose car was attacked by the members of the other family. Finally, around 40 policemen arrived on the spot, and started to beat those present, irrespective of being violent or not. According to the witness statements, police also broke into apartments, and took into custody even some persons who had not been taking part in the celebration at all. Altogether 28 persons were taken into custody and were taken to the police station in Tiszaújváros, among them juveniles and a disabled person.

In Tiszaújváros, those in custody faced degrading treatment: they had to sit on the steps of the police station, were spit and urinated upon by police officers, and those who asked for a permission to go to toilet were humiliated. Later on they were transferred to the Miskolc penitentiary, where prison guards refused to admit one of the victims into detention, because he was beaten up so badly and had to be taken to hospital. Representatives of the local minority self-government filed a complaint at the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, and 21 victims filed a report at the public prosecutor's office because of the ill-treatment by the police. A lawyer of the Hungarian Helsinki Committee is representing one of the victims in the case who had been seriously ill-treated and his admission to the jail had been refused on the ground of injuries.

b) An ill, 83 year-old lady, whose pre-trial detention was ordered in her absence by the Tatabánya Municipal Court in a criminal investigation that has been ongoing for almost eight years has been held at the Budapest Penitentiary for almost two weeks. According to medical reports, she suffers from a serious heart condition. The pre-trial detention was ordered despite the fact that the Constitutional Court of Hungary pronounced unconstitutional and nullified with immediate effect the section of procedural law that allowed for arrest in the absence of the accused in its decision 10/2007. (III. 7.) AB, in accordance with the practice of the European Court of Human Rights and international agreements. Thus the arrest of the lady – who had been transported to the penitentiary from a hospital – should not even have been ordered in the

first place, so her detention was a violation of her rights. The Komárom-Esztergom County Court rejected the appeal against the pretrial detention order. On 17 April 2009 the HHC's lawyer motioned once again to revoke the pre-trial detention order. During the hearing the Tatabánya Municipal Court revoked the pre-trial detention order of the lady, however the prosecutor appealed against the decision. With the help of the Helsinki Committee's lawyer, the lady filed a complaint at the Strasbourg European Court of Human Rights about the circumstances of the decision ordering her pre-trial detention.

c) In June 2009, an asylum seeker from Tibet was recognized as refugee by the Metropolitan Court. Previously, the Office for Immigration and Nationality merely determined that the asylum seeker cannot be sent back to China. The Tibetan asylum seeker was represented by a lawyer from the Hungarian Helsinki Committee during the judicial review. The court declared that the Tibetan asylum seeker faces the risk of persecution – as defined in the 1951 Geneva Convention relating to the status of refugees – in China for his political and religious beliefs, accepting the legal representative's reasoning.

During the trial the Consular Department of the Ministry of Foreign Affairs, at the request of the Office for Immigration and Nationality, reported that those who protest against the Chinese State are to expect grave sanctions from the Chinese authorities. The information supported the Helsinki Committee's viewpoint. In China there is no freedom of speech or assembly; observation and secret data gathering are methods frequently used against protesters. According to the Consular Department, "it is certain that the Chinese authorities gather data on individuals who protest in front of their embassies, and that the rights of such individuals may well be violated if they return home". Furthermore there is no freedom of religion in China, and the authorities are particularly sensitive when it comes to matters involving Tibet, so the asylum seeker "is also likely to face persecution due to his sympathy towards the Dalai Lama".

The HHC provided free legal assistance to three other asylum seekers from Tibet. One of them was granted refugee status, and one of them was granted subsidiary protection by the Metropolitan Court. The third Tibetan asylum seeker represented by the HHC was granted refugee status by the Office of Immigration and Nationality after submitting the second claim for asylum, revealing new facts regarding the case.

d) The HHC's attorney submitted a motion to the Hungarian Constitutional Court on 10 July 2009, requesting the Court to quash certain legal provisions of a government decree affecting the rights of Somali refugees. According to the government decree in question, Somali passports are not considered as valid passports by the Hungarian authorities. Hence requests for residence permit on the basis of family reunification filed by family members of Somali refugees residing in Hungary are automatically rejected, since they would need a valid passport in order to file a request for a residence permit. The HHC faced this problem several times with regard to Somali refugees, and decided to turn to the Constitutional Court in a test case: the HHC's lawyer submitted a motion in a case of a Somali couple, whose request has been already refused, and the decision is under judicial review. In the motion it is claimed that the relevant provisions of the government decree are restricting the right to family life in a disproportionate way. The court suspended the case in order to wait for the decision of the Constitutional Court.

e) On 5 March 2008, N. M. wanted to take a bus in Bicske. As an asylum seeker from Congo, he is entitled to travel for free on public transportation; however, this time the bus driver did not want to allow him to travel without a ticket, that N. M. protested against. Police arrived in a few minutes, and handcuffed N. M., using physical force while taking him into custody. Later on the director of the Bicske reception center and a social worker arrived to the police station, and they noticed marks of injuries, mainly on N. M's hand. The HHC lawyer representing N. M. submitted a complaint to the Bicske Police Headquarters because of the unlawful police measures, emphasizing that the N. M. could identify himself with his humanitarian residence card and did not commit any crime or petty offence, so there was no reason to take him into custody. It was furthermore stressed in the complaint that N. M. cooperated with the police officers and that there was no interpreter present at his interrogation at the police. The police rejected the complaint, and N. M. and his lawyer appealed against the decision.

Meanwhile, the case was also examined by the Independent Police Complaints Board upon the request of the HHC's attorney. According to the IPCB's position, issued on 3 December 2008, the applicant's human rights had been infringed by the police officers. On the basis of the IPCB position, on 23 February 2009, the National Chief of Police approved the applicant's complaint in part, thus, regarding the infringement of the right to personal liberty, right to fair proceedings, etc. However, at the same time, he rejected the complaints concerning the legal basis of the ID check and the right to use one's mother language in official proceedings. The HHC's attorney also filed a report against the police officers because of ill-treatment and further offences, such as forging official documents, false testimony in official proceedings, etc. (As to the

latter offences: the investigations revealed certain contradictions between the testimonies and the police minutes on the measure taken.) The public prosecutor's office rejected the report on 17 June 2009.

f) On 19 October 2009, the HHC's lawyer filed an *actio popularis* claim with the Equal Treatment Authority concerning the statements of the Kiskunlacháza mayor, who in relation to a murder (with regard to which at present the suspicion is that it was committed by a non-Roma person) spoke at a public demonstration about the settlement's population having had enough of 'Roma aggression' and made other statements giving the impression that in his view the murder had been committed by Roma people.

The HHC's lawyer claimed that by doing so, the mayor had committed harassment in relation to the region's Roma population. In its decision dated 19 January 2010, the Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation and ordered that the decision be made public.⁷ The Equal Treatment Authority stated that it was clear on the basis of the facts and documents that the mayor knew that there was a tension in the city and that there was in general a strong negative approach against the Roma members of the community. The Equal Treatment Authority claimed that the mayor's statements were able to create fear on behalf of the Roma inhabitants and contribute to a hostile environment against them. The decision is important, because it shows that the Equal Treatment Act's provisions on harassment can be efficiently used against racist speech not amounting to the level of a criminal offence.

g) The HHC represented a pregnant woman, J. P., who was prevented from having an abortion. After J. P. became aware of the fact that she was pregnant, she visited a gynecologist and indicated that she would like to have an abortion because she was not in the position to raise another child, and she took the first administrative steps being necessary. Since she needed some time to collect the money necessary for the operation, she did not take the next steps instantly, but before she would have been able to have the abortion, she was taken to short-term arrest because of the petty offence of prostitution. A 30-day long confinement was ordered by the Gödöllő City Court in her case, and J. P. was taken to the Pálhalma Penitentiary institution immediately. When arriving to the penitentiary institution, she indicated to the doctor examining her that she was pregnant and would like to have an abortion. She was informed by the penitentiary staff that she had to submit a request to the court for the interruption of her confinement in order for her to be able to have the abortion, which she did.

The Gödöllő City court refused the claim of J. P., and did not allow the interruption of her confinement, reaching its decision without even hearing J. P. The court stated that since J. P. had had the possibility to have an abortion before being taken into short-term arrest, her claim was not well-founded, and was merely aimed at the interruption of her confinement allowing her to get out of the penitentiary. Furthermore, the court claimed that it did not wish to provide assistance for a "deviant" activity, which is aimed at taking the life of a fetus and is "reprehensible according to the general moral approach". After being informed about the decision, J. P. initiated to be examined by an external gynecologist, where she was informed that she could not have the abortion any more since the deadline set out in the relevant legal provisions had expired. Thus, J. P. was not able to have the abortion, and gave birth to her child.

The lawsuit was launched against the responsible county court and the penitentiary institution. The HHC's lawyer claimed that the decision of the city court contributed to the fact that J. P. was not able to have the abortion, restricted J. P.'s fundamental rights and violated J. P.'s right to human dignity: both because of the substance of the decision and because of the way on which the decision was formulated. As far as the penitentiary institution is concerned, the attorney of the HHC claimed that it could have interrupted the confinement without the permission of the court. The first instance court granted J. P. 700,000 HUF, ruling that the way the decision of the city court was formulated violated the fundamental rights of J. P., however, it did not set out that J. P.'s rights were infringed by denying her the right to have an abortion, because the court accepted the statement of the penitentiary according to which after the court's decision J. P. had changed her mind and claimed that she wanted to keep the child.

h) The HHC's co-chair represented László Karsai, is a Hungarian historian and university professor before the European Court of Human Rights in a case concerning the applicant's freedom of expression. In 2004 there was a public debate in Hungary as to whether a statue should be set up to commemorate the former Prime Minister Pál Teleki, who had cooperated with Nazi Germany and had been involved in the passing of anti-Semitic legislation. Mr. Karsai published an article criticizing the right-wing press, including the author B.T., for praising the politician's role and for making anti-Semitic statements.

⁷ For the decision of the Equal Treatment Authority, see: http://helsinki.hu/dokumentum/EBH_hatarozat.pdf

B.T. brought a civil action against the applicant, claiming that his reputation had been harmed by a passage in the article that could be referred to him and included the expression "bashing the Jews". The Regional Court did not grant the claim, holding in essence that the impugned statement had not concerned B.T. himself but the right-wing media as such. The decision was later reversed by the Court of Appeal, which held that the statement could be seen as relating to B.T. and that the applicant had failed to prove that it was true. It ordered the applicant to publish a rectification at his own expense and to bear the legal costs. The Court of Appeal's decision was upheld by the Supreme Court in June 2006.

The applicant complained that the Hungarian court decisions amounted to a violation of his right to freedom of expression as guaranteed by Article 10 of the Convention. In particular, he argued that the obligation to arrange for a public rectification was a disproportionately severe sanction, putting his credibility as a historian at stake. In its decision delivered on 1 December 2009, the Court did not see a reason to depart from the Hungarian courts' findings that the impugned statement in the applicant's article, made with regard to the right-wing press in general, could also be considered as indirectly referring to the plaintiff B.T. and thereby affecting his reputation. However, contrary to the domestic courts, it could not find that the dispute concerned a pure statement of fact, an assessment that would limit the protection under Article 10. In the article the applicant had argued that the apology of a politician with well-known anti-Semitic convictions amounted to participation in the process, ongoing in the extreme right-wing press, of trivializing his racist policies.

The Court noted that the applicant wrote the article in question in the course of a debate of utmost public interest, concerning Hungary's coming to terms with its totalitarian past. It therefore considered that its publication deserved the high level of protection granted to the press in view of its functions in a democratic society. The Court also pointed out that the plaintiff B.T. by being the author of articles widely published in the popular daily press as part of the debate had voluntarily exposed himself to public criticism. In this context even harsh criticism expressed directly would have been protected by Article 10 of the Convention, while the applicant's disagreement with B.T.'s views had been phrased only indirectly.

With regard to the nature and severity of the sanction, the Court considered that the obligation to publish a rectification affected the applicant's professional credibility as a historian and was therefore capable of producing an intimidating effect. The Court concluded that the domestic courts had not convincingly established that protecting the reputation of a participant in a public debate was more important than the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest were concerned. Accordingly there had been a violation of Article 10. The Court awarded the applicant 4,000 euros in respect of non-pecuniary damage.

6. Other activities

6.1. Comments on draft legislation

In 2009, the HHC commented on the following legislative drafts:

- Drafts of the amendment of the Penal Code and the Code of Criminal Procedure.⁸ On 12 May 2009, the HHC's representative appeared before the Parliamentary Committee for Human Rights, Minority and Religious Affairs and presented the HHC's comments on the planned amendments.⁹
- Draft of the new Penitentiary Code.¹⁰ The HHC sent its comments on the draft to the Ministry of Justice in November 2009.¹¹
- Draft of the amendment of the Asylum Act and the Civil Procedure Code (see Section 2.1.2.),
- Proposal on the government strategy on cooperation in the European Union in the area of freedom, security and justice¹², proposal to ratify the European Agreement on the abolition for visas for refugees, proposal to ratify the 1961 UN Convention on the Reduction of Statelessness.

⁸http://helsinki.hu/dokumentum/MHB_velemenye_Btk_altalanos_resz_20090116.pdf,
http://helsinki.hu/dokumentum/MHB_velemenye_Btk_20090302.pdf,
http://helsinki.hu/dokumentum/MHB_velemenye_Btk_20090313.pdf,
http://helsinki.hu/dokumentum/MHB_velemenye_Be_20090318.pdf

⁹http://www.parlament.hu/internet/plsql/ogy_biz.keret_frissit?p_szerv=181&p_fomenu=20&p_almenu=21&p_ckl=38&p_rec=&p_nyelv=HU

¹⁰http://irm.gov.hu/velemenyezheto_eloterjztesek/cikk/2009_evi_torveny_a_buntetesek_az_intezkedesek_egyes_kenyszerintezkedesek_es_az_elzaras_vegrehajtasarol_tervezet.htm

¹¹

http://www.helsinki.hu/dokumentum/Helsinki_%20Bizottsag_velemenye_a_bv_kodex_tervezeterol_2009_11_%2011.pdf

6.2. Human rights trainings

In 2009, the HHC has continued to give presentations on human rights issues 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. Several training sessions were held at the ILEA throughout 2009.

On 15 May, the HHC's co-chair gave a presentation to over 50 trainee judges and prosecutors on the situation of minorities within the justice system.

The results of the Strategies for Effective Police Stop and Search (STEPSS) Project were also presented at the Central European University. On 28 April 2009, a lecture was held by the programme coordinator of the STEPSS project with the title „Racial Profiling and Policing”, organized by the Human Rights Initiative, and the results of the project were also presented in the framework of the Bard-CEU Summer Professional Internship Program Core Seminar on 18 June 2009.

The co-chair of the HHC held a lecture on Maltreatment and Discrimination by the Police and Law Enforcement Agencies at the Central European University on 6 May 2009 and on 16 June.

6.3. Activities concerning the situation of the Roma in Hungary

a) On 30 January 2009, Albert Pásztor, head of the Miskolc Police Headquarters held a press conference concerning robberies committed in the city of Miskolc. After the press conference, where he mentioned that all the robberies in the preceding two months had been committed by Roma perpetrators, he gave an interview, in which he said: “We can conclude that the robberies perpetrated in public areas are committed by Gypsy persons. Hungarians seem to rob banks or patrol stations, but all other robberies are committed by Gypsies.” Furthermore, he said that it is the police's duty to raise the awareness of the population concerning the Roma issue, and the ethnic confrontation may not be solved by remaining silent about the problem. He also stated that Hungarians should refrain from attending bars in certain parts of the city, since they may become victims of Roma perpetrators, and the problem is that “cute Gypsy children often grow into rude and cruel perpetrators”. Later on he said to the National News Agency (MTI) that in his opinion, the ethnic affiliation of the defendants may be taken into consideration in the course of criminal proceedings.

The HHC, the Hungarian Civil Liberties Union (TASZ), the Legal Defense Bureau for National and Ethnic Minorities (NEKI) and the Eötvös Károly Institute issued a joint statement on 3 February 2009, protesting against the statements of the head of the Miskolc Police Headquarters. A colleague of the Hungarian Helsinki Committee also took part on a field visit in Miskolc, together with the head of the Roma Civil Rights Foundation (Roma Polgárjogi Alapítvány) and sociologists.

Upon the instruction of the Minister of Justice and Law Enforcement, the National Police Headquarters initiated an inquiry into the case, and Pásztor was suspended from his position due to his racist statements. At the same time, the local and regional branches of all the parliamentary parties expressed their support for the police chief, and organized a joint demonstration in his favor. Finally, his suspension was terminated by the Head of the National Police Headquarters only two days after the press conference, and he could continue his work as head of the city police. The Minister of Justice and Law Enforcement approved of the termination of the suspension, even though he had previously said that Pásztor's conduct was unacceptable. According to analysts, this turn was due to the fact that neither him, nor the Prime Minister wished to risk a confrontation with the local and regional party units of the governing Hungarian Socialist Party.

b) The HHC, the Eötvös Károly Institute, the Legal Defense Bureau for National and Ethnic Minorities, the Roma Civil Rights Foundation and the Hungarian Civil Liberties Union addressed President László Sólyom in a joint letter issued on 25 February 2009. The NGOs expressed their view that the statement the President made concerning the series of serious attacks against Roma only after a Roma woman died and her daughter was seriously injured in Kisléta came too late and was not adequate. The NGOs claimed that the President referred solely to the obligation of the law enforcement agencies to investigate the case and expressed their view that the President should have taken a firm stand against racism and intolerance and

¹² http://helsinki.hu/dokumentum/MHB_eszrevetelek_EU_FSJ_strategia_20090316.pdf

make it clear that the verbal and physical attacks against members of the Roma community are not acceptable.¹³

c) On 2 April 2009, Dr Máté Szabó, Parliamentary Commissioner for Civil Rights (www.obh.hu), stated in an interview with the online news portal FigyelőNet, amongst other things, that "criminality categorized on an ethnic basis" – "Gypsy crime" – exists, identifying it as a type of crime performed to earn a living. He also referred to Roma as being "a collectivist, almost tribal level social group", comparing them to the individualist Hungarian society. Furthermore, Dr Szabó stated that majority society's attention should be drawn to the existence of this specific criminal profile; he also presented himself as the Parliamentary Commissioner of the majority in contrast with the Parliamentary Commissioner for the Rights of National and Ethnic Minorities – thus openly suggesting that he does not regard himself as representing members of the Roma minority, and his statements indicated that he presumes a direct connection between ethnicity and criminal acts.

The HHC issued a public statement, condemning the views expressed by the Ombudsman, together with the Roma Civil Rights Foundation, the Chance for Children Foundation, the European Roma Rights Center, and the Legal Defence Bureau for National and Ethnic Minorities (NEKI). Finally, due to the public outcry caused by the interview, the Parliamentary Commissioner withdrew his statements.

d) The HHC's co-chair attended a meeting organized by the OSCE's Office for Democratic Institutions and Human Rights on 25 June 2009 in order to have input from relevant NGO's on the situation of the Roma and increasing hate speech and racially motivated violence in Hungary. (The consultation with the representatives of civil society was organized on the occasion of a field visit by ODIHR was undertaking to assess the human rights situation of Roma ethnic minority in Hungary.) The HHC's co-chair presented the Committee's stance on the issues and called attention to the shortcomings in the handling of racially motivated crimes by Hungarian authorities, including gaps in the legal framework, wide-spread racism within the police force, and the lack of proper statistical data and appropriate protocols for the investigation of such offences.

e) On 23 June 2009, the HHC, the Hungarian Civil Liberties Union, the Chance for Children Foundation and the Legal Defense Bureau for National and Ethnic Minorities filed a criminal report against T. P., a well-known blogger for the crime of incitement against communities. On 16 June 2009, T. P. posted on his blog statements capable of inciting hatred against communities. (E.g.: "An atmosphere must be established in Hungary that is unbearable for Gypsies. They must be oppressed, excluded from public life and culture, and any of their ethnic expressions mercilessly suppressed. Their spine must be broken.") In their report, the NGOs stated that the overall message of the incriminating blog entry is no doubt capable of incitement, especially in light of the multiple lethal crimes committed by unknown persons against Roma individuals during the past year, which, according to the investigating authorities, were racially motivated. In this atmosphere, statements calling for violence against members of the Gypsy community are particularly dangerous to public order and social harmony. The fact that his website is widely known and has many is also relevant when assessing its potential to incite hatred and disrupt social order. Based on the above the NGOs asked the public prosecutor's office to act against T. P. on the reasonable suspicion of inciting hatred against a community, and requested that the necessary steps be taken in order to remove the material being the basis of the report.

f) During the summer of 2009, the HHC published a number of legal opinions on the effects of the judicial decision dissolving the Hungarian Guard.

On 4 July 2009, the Police dissolved a demonstration held by members of the Magyar Gárda and their sympathizers. The HHC issued a statement according to which the Police had committed a number of failures already in the course of noting and banning the demonstrations announced to be held on 4 July 2009. In the view of the HHC, the announced demonstration could not have been banned on the basis of the relevant legal provisions, and it is the task of the legislator to amend the law in an appropriate way. The HHC noted at the same time, that the demonstrators did not request the judicial review of the decision of the Police, which they would have been entitled to do. In the statement the HHC expressed its view that the Police had a lawful ground for dissolving the demonstration, since the participants of the demonstration committed petty offences and criminal offences and the demonstration infringed the rights and freedom of others. (The members of the dissolved Magyar Gárda were demonstrating after the court had delivered a final and binding decision proclaiming that the activity of the Magyar Gárda infringes the rights and

¹³ For the joint NGO letter see: <http://helsinki.hu/dokumentum/nyiltlevel%2020090225.pdf>

freedom of others.) However, the HHC stated that the necessity and the proportionality of the police measures applied when dissolving the demonstration shall be assessed case by case.¹⁴

The HHC issued a statement also with regard to the 11 July 2009 demonstration. The extremist right wing party "Jobbik" announced a demonstration to be held on 11 July 2009 on Szabadság Square, in the framework of which the re-foundation of the dissolved Magyar Gárda Movement was announced. The Police did not dissolve the demonstration. In the HHC's view, the demonstration should have been dissolved, since it constituted a violation of the rights and freedom of others (on the basis of the above argument).¹⁵

The HHC issued a statement concerning an event organized by the so-called "New" Magyar Gárda Movement on private premises, on 22 August 2009. In its statement the HHC claimed that the Police should have prevented the Magyar Gárda in holding the event. In the HHC's view it is clear that the "old" and the "new" Magyar Gárda Movement are the same, and taking part in the dissolved Magyar Gárda Movement and in its leadership constitutes a petty offence and a criminal offence respectively, according to the relevant legal provisions. The HHC expressed the view that the Police had the obligation to take measures in the case also on private premises.¹⁶

Furthermore, the HHC and the Legal Defense Bureau for National and Ethnic Minorities issued a statement and a detailed legal analysis as to what kind of consequences it has according to the current legal provisions if somebody wears the uniform of the dissolved Magyar Gárda in different situations.¹⁷

g) On 19 October 2009, the HHC's lawyer filed an *actio popularis* claim with the Equal Treatment Authority concerning the statements of the Kiskunlacháza mayor, who in relation to a murder (with regard to which at present the suspicion is that it was committed by a non-Roma person) spoke at a public demonstration about the settlement's population having had enough of 'Roma aggression' and made other statements giving the impression that in his view the murder had been committed by Roma people.

The HHC's lawyer claimed that by doing so, the mayor had committed harassment in relation to the region's Roma population. In its decision dated 19 January 2010, the Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation and ordered that the decision be made public.

6.4. Activities before international human rights fora

a) Preparing for the NGO shadow report to the Fifth Periodic Report prepared by the Hungarian Government on the implementation of the International Covenant on Civil and Political Rights (ICCPR), in January 2010 the HHC suggested questions¹⁸ for the List of Issues compiled by the Human Rights Committee in preparation of evaluating Hungary's country report.

b) The HHC has also contributed to a joint report, submitted by the European Roma Rights Centre, the Chance for Children Foundation and the HHC¹⁹ for consideration to the Human Rights Committee in January 2010 in connection with the Fifth Periodic Report of the Hungarian Government on the implementation of the International Covenant on Civil and Political Rights.

c) The HHC addressed a communication to the UN Committee on the Rights of Persons with Disabilities on behalf of two blind persons who are not able to use ATM machines. The applicants concluded contracts for private current account services with a bank, according to which they were entitled to use bank cards. However, as the applicants are blind, they were not able to use the ATMs without help, as the keyboards of the ATMs are not marked with Braille fonts, and ATMs of the bank do not provide voice assistance for bank card operations. Thus, they received services of worse quality for the same charges. The legal representative of the applicants lodged a complaint with the bank, requesting changes to be made to the ATMs. The claim was rejected by the bank.

The Applicants initiated a civil lawsuit, claiming that the bank violated their right to equal treatment. The first instance court obliged the bank to reconstruct at least one ATM in the capital towns of each county,

¹⁴ http://helsinki.hu/Friss_anyagok/htmls/608, http://helsinki.hu/Friss_anyagok/htmls/611

¹⁵ http://helsinki.hu/Friss_anyagok/htmls/609

¹⁶ http://helsinki.hu/Friss_anyagok/htmls/615

¹⁷ http://helsinki.hu/Friss_anyagok/htmls/622. For the detailed legal analysis, http://helsinki.hu/dokumentum/Helsinki_Bizottsag_elemzes_MagyarGarda.pdf

¹⁸ http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HHC_Hungary98.pdf

¹⁹ <http://www2.ohchr.org/english/bodies/hrc/docs/ngo/ERRC.Hungary98.pdf>

and one in each district of Budapest, and four further ATMs in the districts where the applicants reside within 120 days, and also granted pecuniary damages to both of the applicants. However, the second instance court concluded that it may not intervene into a legal relationship between private parties based on the request of one of the parties, and the court may not direct the bank to fulfil an obligation which was not included in the contract itself. Both parties requested an extraordinary judicial review from the Supreme Court, but their requests were rejected.

The HHC submitted the case to the Committee on the Convention of the Rights of Persons with Disabilities in March 2010, arguing that the applicants' rights guaranteed by the Convention on the Rights of Persons with Disabilities were violated, and they suffered direct discrimination due to their disability compared to sighted customers of the bank.



Márta Pardavi
Co-chair
Hungarian Helsinki Committee