



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

ANNUAL REPORT ON ACTIVITIES

2010

1. Improving respect for human rights by law enforcement agencies

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

On 3 March 2010, the HHC and the National Prison Administration renewed the cooperation agreement that serves as the basis for prison monitoring. The reason for renewing and amending the agreement was to increase the efficiency of legal assistance provided to indigent inmates in prisons.

1.1.1. Regular monitoring visit to the Szombathely National Penitentiary Institution (27-28 September 2010)

The new penitentiary in Szombathely was built in a PPP structure, it has been in operation since 2008 and has a capacity of approx. 800 detainees. The HHC visited the new institution for the first time. As usual, the HHC's monitors entered cells and other facilities in the penitentiary and had the possibility to have private interviews with detainees. The report on the visit and on the deficiencies found is not yet public.

1.1.2. Ad hoc visits

The HHC has also carried out ad hoc visits to follow-up on individual complaints concerning suicides in detention and other problems that were communicated to the HHC's Human Rights Legal Counseling Program.

- On 19 March 2010, a person detained in the Central Holding Facility of the Budapest Police Headquarters committed suicide (by hanging himself), while his cell mate was out of the cell on his daily open air exercise. Based on the injuries detected on the deceased detainee's body, it may not be fully excluded that he had been ill-treated before he had committed suicide. The police are investigating the case in a public administrative procedure; the deceased detainee's sister is represented by the HHC's legal officer.
- On 29 March 2010, another detainee committed suicide (also by self-hanging) in the Central Holding Facility of the Budapest Police Headquarters. While in this case no suspicion of ill-treatment emerged, the deceased detainee was placed alone in her cell, although she was a serious drug addict. The detaining authority was aware of her condition, which raises the possibility that the authority did not exercise due diligence when deciding on the detainee's placement. As a result of the appeal of the HHC's lawyer representing the deceased inmate's relatives the first instance decision delivered in the public administrative procedure looking into the circumstances of the death was repealed in August on the basis that the facts of the case were not sufficiently clarified and that the decision was based on incomplete documents. The procedure is pending.
- The staff members of the HHC visited a detainee in the Tököl Central Hospital of the Penitentiary Administration who was transferred to the Central Hospital because he had been seriously ill-treated by his fellow inmates in the Vác High and Medium Security Prison on 10 July 2010. Since the detainee was to be transferred back to Vác where the offenders were still placed at that time, the HHC requested the National Prison Administration to transfer him to another penitentiary. The National Prison Administration complied with the HHC's request, and the detainee was transferred to the Budapest High and Medium Security Prison. However, at the same time, the inmates who had ill-treated the complainant were also transferred to the

same prison in Budapest, thus he was threatened again by the perpetrators. On 16 August 2010 the HHC requested the National Prison Administration again that the detainee was transferred to another penitentiary. The request was again complied with.

- In November 2010, the HHC visited a detainee in the Budapest High and Medium Security Prison, who claimed, among other things, that (i) he was completely separated from other inmates (he was not allowed to participate in the various organized group activities and he had his daily walk in a courtyard alone, without the possibility of engaging in sport activities), (ii) he was placed in a cell without heating at the beginning of his detention and (iii) he could only meet his visitors in a room where physical contact was not possible. He also claimed that his cell was checked in every fifteen minutes also at night, meaning that the light was switched on every fifteen minutes, thus he was not able to have a rest. The HHC has informed the head of the penitentiary about the problems, and received a positive answer regarding some of the complaints, e.g. the use of sports facilities, the physical conditions of the visits and the frequency of checking the complainant's cell.
- Also in November 2010, the HHC visited a female detainee in the Metropolitan Penitentiary Institution in Budapest who was in pre-trial detention. She raised serious concerns regarding her treatment by the prison staff and detention conditions in general. She also claimed that she was handcuffed in an unlawful way. After interviewing the detainee, the HHC's staff members have also attended the prisoners' forum aimed at submitting complaints and consulted the head of the penitentiary.

1.1.3. Visit to the Pálhalma Penitentiary Institution

The HHC organized a visit for Pauline McCabe, Prisoner Ombudsman for Northern Ireland and Elizabeth Moody, the Deputy Prison and Probation Ombudsman from the United Kingdom to the Pálhalma Penitentiary Institution on 12 November 2010. The two Ombudspersons had the possibility to enter prison cells and other facilities in the penitentiary and interviewed detainees and members of the prison staff. Translation was provided by the HHC's legal officer.

1.2. Promoting independent prison complaints mechanisms

The system of prison complaints is dysfunctional due to systemic and procedural reasons and does not meet international standards throughout the CEE-FSU region. As previous discussions and presentations suggest, in most of these countries the prison complaints mechanism as it operates lacks transparency and fairness and does not meet international standards. Detainees, members of one of the most vulnerable groups, cannot be sure that their complaints are dealt with in an efficient, effective and fair way. Therefore, there is a rising need to build support for reforms of prison complaints mechanisms.

With the financial and professional support of OSI the HHC launched a project to promote prison complaints mechanisms in the CEE-FSU region, to provide NGOs that are active in defending detainees' rights with information on best practices and workable models.

In the framework of the project, the HHC collected information from 20 CEE-FSU countries on their prison complaints mechanisms. The idea behind the survey was to identify common features and shortcomings of prison complaints mechanisms. The research was carried out based on a standardized questionnaire developed by HHC experts. A 70-page long study summarizing the conclusions of the research was written and disseminated among NGOs and other key stakeholders all over the region. The study provides the reader with background information on the field of research dealing with the necessity of monitoring and inspections in closed environments, such as detention centres, discusses internal and external complaint mechanisms, considers the role of NGOs in the monitoring of prison conditions and provides an analysis of the applicable standards of the European Court of Human Rights concerning detention. The study is available in English and Russian.

Building on the key findings of the research, the HHC organized a 2-day workshop. 50 experts from CEE-FSU and countries and from Western Europe participated at the workshop. Key experts included:

- Jan van den Brand (representative of the Dutch Complaints Board)
- Pauline McCabe (Prisoner Ombudsman of Northern Ireland)
- Elisabeth Moody (Deputy Prison and Probation ombudsman, United Kingdom)

- Ivan Selih (Deputy Ombudsman, Slovenia)
- Máté Szabó (Parliamentary Commissioner for Civil Rights, Hungary)
- Gergely Fliegauf (Former CPT member)
- Mary Murphy (Penal Reform International)
- Matthew Pringle (Association for the prevention of Torture)

The workshop identified common problems, presented best practices, developed potential solutions, focused on the safeguards of impartial and independent prison complaints mechanisms. It also provided the participating NGOs with a networking opportunity and an impetus for building coalitions.



1.3. Promoting independent police complaint mechanisms

The HHC has continued to take cases before the Independent Police Complaints Board (IPCB), which was established in February 2008. Some examples are presented below.

- Ms. A 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 law does not authorize the police to intervene in this manner). In January 2010, the IPCB established that Ms. A's fundamental rights had been violated.
- In another case, Ms. H – in the seventh month of her pregnancy – was taken into custody based on a warrant issued in a case of minor severity, because she failed to appear on summons before the police officer investigating the case. (Ms. H insists that she had received no summons to any hearing.) The police took her from her apartment at 00:30 a.m. and placed her in a cell without a bed. She had to wait on a wooden bench until 8:00 a.m. when a police officer started her interrogation. Because of the stress, she had painful contractions. She indicated this to the guards twice, asking for the interrogation to be held as soon as possible, but nothing happened, not even medical care was offered to her. On 16 June, the IPCB concluded that the complainant's fundamental rights had been violated. On 15 October 2010, the National Chief of Police adopted a decision on the case, in which he found the complaint concerning the violation of the complainant's right to liberty well-founded, but rejected the rest of the complaint. The HHC requested the judicial review of the decision. The case is pending.
- In another case dating from March 2010, Mr. R. was standing in front of his house with his relatives, when police officers asked them to identify themselves. Mr. R. did not have his ID card on him, but told the police officers that he could fetch it from the house. While the officers were checking the documents of his relatives, Mr. R. had his hands in his pockets. He was told by the officers to take his hands out. He showed that he only had his mobile phone and a handkerchief in his pocket. His clothing was also searched by one of the officers, who did not find any dangerous object on Mr. R. Despite this fact, he was taken into custody on the basis that he had failed to identify himself and had defied the police action. Upon the HHC's motion, in December 2010, the IPCB established that the deprivation of Mr. R.'s liberty was disproportionate, and therefore amounted to the violation of his fundamental rights.

1.4. Follow-up to 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 (which was aimed at improving police-minority relations through increasing the effectiveness and accountability of police powers to conduct identity checks and searches), the HHC made further efforts to reform police ID check practices. A new phase of follow-up activities commenced in August 2010 funded by the Open Society Justice Initiative. In the STEPSS follow-up project the following activities were included.

The HHC devised and held consultative meetings on the pilot sites for police officers and civil community members. In Szeged, after two meetings organized in 2009, a third one was held on 27 January 2010. Preparations for another five meetings were made in 2010: the selected sites in Borsod-Abaúj-Zemplén county are Miskolc, Ózd and Sárospatak. In Budapest, the 6th and 8th district police stations have been chosen. The chiefs of the relevant police headquarters have contacted and asked to cooperate. The police chief of Borsod county welcomed the idea of the consultative forums and expressed his support for the initiative. The chiefs of the two Budapest districts are also committed to cooperate in the organization of the consultative forums.

With the lead of the HHC, an expert group was established and two expert meetings were held on ID checks in 2009. As a result of the agreement of the representatives of the HHC, the TASZ and the Hungarian Police Headquarters, the working group on ID checks submitted a proposal including recommendations to the National Police Chief in February 2010. The proposal included the following points:

- A new, unified ID check form needs to be introduced.
- The new form needs to contain a warning about the possibility of filing a complaint against the measure.
- 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.
- Those personal data not necessary for the purposes of the measure shall be cleared from the forms.
- The forms need to contain a detailed explanation for the reason of the measure and information about the result or outcome of the measure.

Whereas the competent departments of the National Police Headquarters supported the idea of developing a new form along the above lines, the new leadership of the Police and the Ministry of the Interior (appointed after the change of government) rejected the idea and indicated that the police are not planning to modify the ID check form in the near future.

The HHC wrote and compiled materials about discrimination to be included in the training materials of the Hungarian Police College and police secondary schools. The HHC contacted the Police Academy and the National Police Headquarters to discuss the practical aspects of including information on 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 was promised to be incorporated into the curriculum of secondary police education from September 2010, but since the number of students to be trained was radically increased after the change of government, the secondary schools explained that at present they lack the capacity to incorporate the material meaningfully into their curriculum.

The HHC has 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. Two further lectures were held in the framework of the 2010/2011 academic year on 25 November 2010 on police stops and search, short-term arrest and the proportionality of police measures based on the case law of the IPCB.

1.5. Ratification of the Optional Protocol to the Convention against Torture (OPCAT)

The HHC is the Hungarian partner organization of the APADOR-Romanian Helsinki Committee in the project "Preventing Human Rights Abuses in Places of Detention". The main objective of the project is the implementation of effective mechanisms for the prevention of human rights abuses in places of detention. In order to achieve the objective, the project aims to set up and support a mechanism to carry out comprehensive monitoring in Hungary.

In the framework of the project, the HHC has been advocating for the ratification of the OPCAT and that the Ombudsman's Office should take the role of the national preventive mechanism. The HHC is closely monitoring the decision making procedure on the ratification and on the national preventive mechanism structure.

The HHC has performed extensive advocacy activities with international organizations and forums to effect high pressure on the national actors to make them sign the OPCAT. In March 2010, the HHC compiled an updated list of issues¹ for the consideration of the Fifth Periodic Report of Hungary and suggested that the UN Human Rights Committee (HRC) considers posing the question to the government about the date of signing the OPCAT. In its shadow report² dated September 2010, the HHC criticized Hungary's failure to become a signatory to the OPCAT. The HHC contributed to a submission³ for the UN Universal Periodic Review for the 11th session of the UPR Working Group of the Human Rights Council, and formulated recommendations⁴ including the signing and the ratification of the OPCAT.

The Director of the Fundamental Rights Agency undertook a visit in Hungary in November 2010 where he had discussions with representatives of key Hungarian civil society organizations active in promoting fundamental rights. In the course of the meeting the HHC underlined the importance of signing the OPCAT and signaled Hungary's failure to have done so.

1.6. Other relevant activities

On 18 November 2010, the program coordinator of the HHC attended and held a presentation at the sitting of the subcommittee of the Parliamentary Committee of Constitutional, Justice and Procedural Matters. The sitting took place in the Budapest High and Medium Security Prison and was aimed at discussing the legislative provisions and practical experiences concerning the ordering and the execution of pre-trial detention.

2. Right to asylum, protection from refoulement

In 2010, 2104 persons applied for asylum in Hungary, which is significantly less than in 2009 (4672 persons). Most asylum-seekers originated from Afghanistan (702 persons, 85 of whom were unaccompanied minors). The Office of Immigration and Nationality (OIN) granted refugee status to 74 persons, subsidiary protection to 115 persons, while 58 persons were given tolerated status on the basis of the risk of *refoulement*.

2.1. Effective legal counseling for persons in need of international protection

As the only such organization, the HHC continued providing free legal counseling and representation to asylum-seekers in Hungary in Budapest, in refugee reception centers (Békéscsaba, Debrecen) and in the alien policing jails in Nyírbátor, Kiskunhalas, Győr and at the Budapest International Airport.

¹

http://helsinki.hu/dokumentum/HHC%20submission%20to%20HRC%20re%20Hungary%20List%20of%20Issues_1.pdf p.17.

² http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HelsinkiCommittee_Hungary_HRC100.pdf p. 24. and summary of the report:

http://helsinki.hu/dokumentum/Executive_Summary_to_HHC_Shadow_Report_to_HRC_2010.pdf

³ http://www.helsinki.hu/dokumentum/UPR_NGO_coalition_alternative_report_Nov2010_FINAL.pdf p. 3.

⁴ http://www.helsinki.hu/dokumentum/UPR_NGO_coalition_RECOMMENDATIONS_Nov2010_FINAL.pdf

Attorneys contracted by the HHC provided legal counseling in the detention facilities and reception centers, while in the largest reception center in Debrecen 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 2010, the HHC provided legal assistance to asylum-seekers at more than 1000 occasions, provided formal legal representation to 150 asylum-seekers in the administrative phase of the asylum procedure and about 40 asylum-seekers in the judicial review procedure before the Metropolitan Court. Statistics indicate that asylum-seekers provided with professional legal assistance by the HHC have a better chance to obtain international protection than those not benefiting from this service.

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

2.1.1. A stateless refugee's case before the European Court of Justice

The Hungarian Helsinki Committee's attorney, Gábor Győző acted as counsel for a Palestinian asylum-seeker before the Metropolitan Court in an asylum case concerning the applicability of Article 1D of the 1951 Refugee Convention. The case concerned 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 effects of the case 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)⁵ 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"⁶ over which the ECJ has jurisdiction).

The case was referred to the Grand Chamber of the European Court of Justice. As the ECJ has so far only ruled in 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. Attorney Gábor Győző argued the case at a hearing in Luxembourg on 20 October 2009. The opinion of the Attorney General of the ECJ became available on 4 March 2010, and the ECJ published its judgment on 17 June 2010.⁷ A more detailed description of the case is available at:

http://helsinki.hu/Menekultek_es_kulfoldiek/Hirek/htmls/561.

2.1.2. Actions against unlawful immigration detention

In 2009, the HHC witnessed an unjustified 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 admitted to an in-merit assessment (the vast majority of cases until the 2010 December amendments) should be released from detention and accommodated in an open reception center, the 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 unlawful practice of the OIN. The response of the Chief Prosecutor's Office, dated 22 April 2009, fully concurred with the HHC's legal position.

⁵ Currently: Court of Justice of the European Union

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:082:0015:0015:EN:PDF>

⁷ <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=&nomusuel=bolbol&docno=decision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=allldocrec&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=allldocnorec&docnoor=docnoor&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

The Chief Prosecutor's intervention remained without effect and the HHC experienced an increasing number of asylum-seekers remaining in unlawful detention for several months in 2009 and 2010. HHC lawyers representing detained asylum-seekers regularly 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 examining if detention is "lawful" in the sense of Article 5 of the European Court of Human Rights (ECtHR). In February 2010, the HHC turned to the European Court of Human Rights representing two asylum-seekers who were unlawfully detained for almost 6 months in the alien policing jail of Nyírbátor. The case is yet pending before the ECtHR.

The HHC informed the US Embassy in Hungary about the OIN's unlawful detention practice, which was then reflected in the 2009 Human Rights Report on Hungary of the US Department of State (published in March 2010).⁸

The HHC turned to the Chief Prosecutor's Office again in early 2010 as the practice of detaining asylum seekers beyond the first phase of the asylum procedure continued. In April, the Chief Prosecutor's Office repeatedly called on the OIN to uphold the provisions of the law and discontinue its unlawful practice.

Furthermore, in April 2010 the police started to open new (temporary) alien policing jails around the country. By mid-summer, fifteen detention facilities were in operation compared to the four "old" (permanent) alien policing jails, and the detention capacity increased from roughly 300 places to almost 700. As a consequence of this restrictive practical measure, the detention of irregular migrants (and among them many asylum-seekers) became an automatism. Moreover, many of the newly opened detention facilities had already been closed years ago being unsuitable for even short-term (72-hour) detention. Guards in the new alien policing jails received no training before they were charged with detaining foreign migrants and were completely ill-prepared for this new responsibility (lacking any sort of language, intercultural or conflict-resolution skills).

The HHC paid a series of monitoring visits to the newly opened detention facilities in August-September 2010 and experienced unacceptable conditions at most places (resulting even in the explicit breach of relevant Hungarian and international legal standards). The publication of the findings will take place in February 2011, after an unfortunately lengthy consultations process with the police (an obligation under the agreement enabling the HHC to carry out such monitoring visits). Since the visits of the HHC, the majority of the freshly opened "temporary" immigration jails have been closed down, partly due to the HHC's efforts. However, this process was not accompanied by any official communication and it is not known whether some of these jails may be re-opened later.

2.1.3. Legislative advocacy – immigration and asylum law reform

The entry into force of Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration on 24 December 2010, brought about significant changes regarding the Hungarian asylum system and alien policing detention. These amendments in many aspects aimed to lower key standards regarding the right to asylum and alien policing detention. The HHC was actively participating in commenting the proposed text of the modified legislation by submitting two extensive documents containing its remarks and suggestions to the Ministry of the Interior in August 2010.⁹ The HHC comments highlighted every possible breach of international obligations (including universal and regional human rights standards, as well as EU law) and put forward realistic, protection-oriented alternatives. The HHC's delegate participated in three parliamentary commissions' debate concerning the bill and presented the HHC's proposals in the form of an oral intervention. The HHC also sought support for its advocacy efforts by contacting the UNHCR Regional Representation for Central Europe, the Hungarian Red Cross and other NGOs involved in the field.

The most significant negative impacts of the above amendment are the following:

- manifestly unfounded asylum claims can now be rejected already at the preliminary assessment phase of the asylum procedure (resulting in a significantly larger discretion for

⁸ <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>

⁹ http://helsinki.hu/dokumentum/Szmtv_Harmtv_Met_tervezet_MHB_eszrevetelek_20100824.pdf and http://helsinki.hu/dokumentum/Szmtv_Harmtv_Met_mod_Eloterjeszesre_HelsinkiBiz_eszrevetelek_2010aug31.pdf

authorities to reject asylum claims without any in-merit assessment and with limited possibilities of seeking legal remedy against such decisions);

- the maximum period of alien policing detention increased from 6 months to 12 months;
- the exclusive competence of the Metropolitan Court in dealing with asylum appeal cases ceased and this task has been delegated to county courts without any experience and professional capacities in this field;
- the basis for detention of asylum seekers under "Dublin procedure", in order to secure their deportation, is now included in the law;
- asylum-seekers may be lawfully kept detained for the entire asylum procedure (both administrative and judicial review), resulting in routine-like detention for the majority of those seeking international protection;
- families with children can now be held in immigration detention for maximum period of 30 days (a time period usually insufficient to carry out deportation measures and therefore resulting in unfounded and unreasonable detention).

Despite of the particularly difficult political framework, the HHC's advocacy efforts brought some significant results:

- The HHC together with the Menedék Association for Migrants and the Hungarian Red Cross prepared a joint statement against the proposal for immigration detention of children.¹⁰ Thanks to the joint campaign, the provision allowing for the alien policing detention of unaccompanied minors was deleted and the prohibition of such practices remained upheld.
- Due to the lobby efforts of the HHC and the UNHCR, the law-maker decided not to delegate the judicial review of asylum-related administrative decisions to a high number of county courts all over the country, but to four specific county courts (among which one is the Metropolitan Court, with extensive experience and exclusive competence so far). Far from being ideal, this option is still considered significantly less harmful for the quality of the asylum procedure than the original proposal.
- Partly due to the HHC's constant advocacy efforts, the law-maker adopted additional positive provisions regarding the conditions of alien policing detention.

2.2. Promoting access to territory and to the asylum procedure

Monitoring border areas and entry points is crucial in order to ensure that the principle of *non-refoulement* is respected and that asylum seekers have appropriate access to territory and to the asylum procedure. Being on the European Union's external border, this task gains particular importance in Hungary.

2.2.1. Promoting protection-sensitive entry systems through border monitoring

In order to contribute to ensuring asylum-seekers' access to protection in Hungary, the HHC concluded in 2006 a tripartite agreement with the UNHCR and the Border Guard. The agreement allows the HHC to monitor practices at 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 contracted three monitors with legal expertise, who throughout 2010 paid two border monitoring visits per month to the Ukrainian and Serbian border sections, as well as the Budapest International Airport. The methodology was the same as in previous years; the monitoring lawyers inform the UNHCR and the Police two working days before the visits, specifying the date(s) and the location(s) of the visit. The monitoring staff contacted detained foreigners and examines official files concerning asylum-seekers, to assess whether the Police respect the principle of *non-refoulement* and take adequate care of vulnerable people with special needs such as families, single women, older people, etc. The HHC prepared a short report following each visit with the cooperating parties in accordance with the Tripartite Agreement.

¹⁰ http://helsinki.hu/dokumentum/Gyerekek%20fogvatartasa%20kozso%20nyilatkozat_2010_10_25.pdf

In the framework of the border monitoring program in 2010 the HHC found that the submission of asylum applications still raises concerns at certain border sections. In cases where the necessity of an expulsion order arose, the OIN gave the Police its country of origin information assessment – based on the registered minutes of interviews – during the assessment of the *non-refoulement* principle. The HHC's experience shows that the country information assessment carried out by the OIN and its conclusions are often too short, and fail to provide sufficient time and space for an exhaustive assessment of the specific circumstances of the case, which would be indispensable for a thorough assessment of all of the relevant circumstances of a case. It is of further concern that outside office hours (when most apprehensions occur at the border) it is not the OIN's specialised country information unit, but its general duty service that provides the assessment in question, and the specific expertise of the latter is questionable. Furthermore, the worrisome practice of initiating criminal prosecution against asylum seekers for the use of forged travel documents still exists that may result in several months of pre-trial detention of later recognized refugees. The HHC's monitor at the Serbian-Hungarian border found that in some cases the Police use their own medical doctor (whose professional independence may be questionable) to determine the age of intercepted foreigners who claim to be minors.



The biannual report summarizing the HHC's border monitoring activities in 2008 and 2009 was compiled during 2009 and was published in December 2010. The report is available online at:
<http://helsinki.hu/dokumentum/Hatatmegfigyelo-program-US-proof-2.pdf> (English) and http://helsinki.hu/dokumentum/Hatatmegfigyelo-program-HU_final.pdf (Hungarian).

HHC's border monitoring project coordinator also contributed to 2 human rights report on the situation of migrants and asylum seekers in Ukraine. The Human Rights Watch published its report entitled "Buffeted in the Bordeland"¹¹ that examined both the situation migrants face in Ukraine and the practice of Slovak and Hungarian border police to fail to identify and return asylum seekers to Ukraine where due to the deficiencies of the Ukrainian asylum system, international protection is practically not available.

HHC also contributed to another report on potential refoulement cases from Hungary and Slovakia to Ukraine entitled "Access to Protection Denied"¹². It was written by the Border Monitoring Ukraine Project and ProAsyl Foundation (the largest German umbrella organization of refugee assisting NGOs) that evaluates human rights issues in the light of return cases to Ukraine told by refugees themselves.

2.2.2. Cross-border and regional cooperation on border monitoring

On 22 June 2010, together with its partners, the HHC carried out a fact-finding mission to the Serbian-Hungarian border section as well as to the alien policing jail in Kiskunhalas in order to obtain first-hand information on the treatment of potential asylum-seekers and eventual cases of refoulement, and furthermore to ensure the quality monitoring of the project implementation. In addition, the Tripartite Working Group was accompanied by a Lithuanian delegation that spent a two-day long study visit in Hungary to examine the border monitoring project being an exemplary practice in Europe. The aim of the visit was also to strengthen cooperation and communication with local police officers to gather information on the value of the HHC's activities and legal assistance services. A similar mission was conducted with Slovenian delegation in September 2010, while an Estonian delegation of border guards, immigration officials and the representative of an NGO was received in May 2010 in the HHC office in Budapest.

The importance of the different forms of regional cooperation in the asylum field has increased due to the implementation of the "Schengen acquis". Moreover, recent information confirms that returns of migrants potentially in need of international protection (e.g. Somalis and Afghans) have been

¹¹ <http://www.hrw.org/en/reports/2010/12/16/buffed-in-borderland-0>

¹² <http://bordermonitoring-ukraine.eu/files/2010/11/refoulement-report.pdf>

increasing on the Hungarian-Ukrainian and the Serbian-Hungarian border in 2009. During the implementation of the 2008 and 2009 border monitoring program, the HHC identified a number of problems and shortcomings at the eastern border section of Hungary, which were mostly related to the return of Somali and Afghan asylum-seekers to Ukraine. It appears that Ukraine is officially considered (by the OIN and the Police) a safe third country despite the contrary recommendations of the UNHCR and local NGOs and the unfavorable report by the US Department of State published in 2008 and 2009.

The HHC maintains close cooperation with NGOs in Ukraine and obtains reliable information on potential cases of *refoulement* on an *ad hoc* basis. (The HHC received information in February and April 2010 after Ukrainian partner NGOs had carried out monitoring and/or counselling visits to detention facilities in the Zakarpattya region.)

2.2.3. Sensitization for police officers

Based on training experiences from previous years, it became clear that instead of formal trainings, police officers respond better to consultations that also involve a strong psychological element. In order to follow the Tripartite Working Group's recommendations on the need to sensitize border police officers on issues related to working with traumatized persons and persons coming from a different cultural background, in 2010 the HHC's contracted partner, the Cordelia Foundation for the Rehabilitation of Torture Victims, held two psychological training sessions every month, for police officers working in border areas. The HHC was actively involved in creating the methodology for this rather pioneering initiative (unprecedented in the entire region) and closely followed its implementation.

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

As a result of the border monitoring activity, the HHC became aware of an important gap in the proper implementation of Article 31 (non-penalization for illegal entry) of the 1951 Refugee Convention. Foreign nationals who arrive at the border carrying false or forged travel documents but express a wish to seek asylum in Hungary immediately or within a short time period are regularly charged with forgery of official documents and are taken into pre-trial detention.

The HHC's attorneys were acting during the year as defense counsel for defendants in such cases. Several of the clients were eventually granted protection status in Hungary (refugee status or subsidiary protection), but were nevertheless subjected to a criminal procedure, lengthy pre-trial detention and possibly criminal sanctions for merely using a false travel document in order to gain entry into Hungary and seek protection.

In order to discuss the issues raised by the controversial application of Article 31 of the 1951 Refugee Convention the HHC organized a roundtable discussion on 18 June 2010. Representatives of several organizations, the Police, various courts, the OIN, the Chief Prosecutor's Office, the Ministry of Justice and Law Enforcement and HHC staff members participated in the event. The twenty-seven participating experts concluded that in the case of later recognized refugees the suspension of the criminal proceeding could be a solution to avoid unnecessary penalization of beneficiaries of international protection.

2.3. Training activities on asylum and international protection

In 2010, the HHC remained one of the most active European NGOs providing training services in the field of asylum:

- 25-26 March: The HHC's expert was invited to address a seminar for Slovenian judges dealing with asylum and alien policing matters.
- 3-4 June: The National Judicial Council's Office invited the HHC's expert as trainer for a seminar for criminal and administrative law judges
- 6-7 July: The HHC organized a two-day training for interpreters involved in asylum and alien policing procedures. The training aimed to broaden the knowledge of participants in intercultural communication, refugee law, the procedural role and responsibilities of the interpreter, etc. The

event was also intended as a forum for creating a firm methodology for such initiatives in the future.

- 20-21 September: A training event was held for mid- and high-ranking police officers focusing on psychological supervision of police staff, on how to challenge hostile (xenophobic) attitudes towards foreigners, age-assessment methods and international migratory trends in general.
- 24-25 September: The HHC's expert was invited as speaker to the annual conference of the European Chapter of the International Association of Refugee Law Judges (IARLJ) in Lisbon.
- 11 and 18 October: The HHC held in cooperation with the Hungarian Judicial Academy two training sessions on expulsion and human rights for criminal and administrative law judges. The events based on positive experiences from past years concentrated on the principle of *non-refoulement*, the right to family life and the rights of the child.
- 10-11 November: The HHC organized and acted as trainer at a one-day seminar for Spanish judges dealing with asylum cases. The seminar focused on evidence assessment issues in refugee status determination with particular attention to country information as evidence.
- 25-26 November: The HHC organized and acted as trainer at a one-day seminar for the judges of the French National Asylum Court. The seminar focused on evidence assessment issues in refugee status determination with particular attention to country information as evidence.
- 29-30 November: The HHC has been conducting "joint" two-day training events for asylum authorities, the UNHCR, judges, public administration officers and its own staff on asylum since 2006. In 2010, the event focused – among others – on the relevant recent practices and procedural rules of the European Court of Human Rights and the Court of Justice of the European Union; recent asylum-related legislative developments in the EU and the amendments of the Hungarian regulation on asylum.
- 6 December: The HHC led a roundtable which presented exemplary Belgian and Dutch practices in the field of voluntary return with special focus on NGOs' participation and involvement in return and reintegration programs. International experts participated in the event where Hungarian practitioners had the opportunity to better understand the importance of voluntariness and reintegration models already being widely used in the above mentioned two countries. An easy-to-use information leaflet summarizing the main findings of the project entitled "Return in a lawful and humane manner" was published in January 2011.
- 8 and 16 December: The HHC was invited to provide future armed security guards with training on the cooperation between the Police and the HHC to Nyírbátor and Győr, and to present international standards related to detention conditions.
- 9 December: The HHC organized a roundtable on gender-related issues in asylum procedures. The event involved the UNHCR and the OIN, as well as NGOs lobbying against domestic violence and for women's rights and refugee-assisting NGOs. In preparation for the roundtable, the HHC prepared a working paper on the issue of domestic violence in the context of asylum claims. The paper collected some international examples and compared them with Hungarian legislation.
- 10-12 December: The HHC expert acted as trainer on statelessness at the annual course of the European Legal Network on Asylum (ELENA) in Barcelona.

2.4. The Refugee Law Reader

The Refugee Law Reader (www.refugeelawreader.org), was initiated in 2004 by the Hungarian Helsinki Committee. Its Board of Editors includes leading experts in international refugee law who update this unique and comprehensive material on a regular basis. The Refugee Law Reader is 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 in 2010 exceeded 30,000 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 2010, the Reader's syllabus was translated into and published in French and Russian language as well.

2.5. International cooperation in the field of asylum

In 2010, the HHC continued to be an active member of the **European Council on Refugees and Exiles** (ECRE), and ECRE two "core groups" focusing on the themes of access, asylum systems and return. The HHC actively contributes to the identification of policy priorities and represents the Central European region in all these fora. Márta Pardavi, HHC co-chair continued to serve on ECRE's Executive Committee as its vice-chair until October 2010.

The HHC kept on acting as national coordinator for the **European Legal Network on Asylum** (ELENA), functioning under the aegis of ECRE. The HHC conducted extensive research on the Hungarian legal aid system (focusing on asylum) for the ELENA network in 2010 and contributed to its comparative report on this issue.¹³

The HHC is also a member and the regional focal point of the **International Coalition on the Detention of Asylum Seekers, Migrants and Refugees** (IDC), 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. The HHC attended in September 2010 an IDC workshop on detention at the borders of Europe.¹⁴

2.5.1. 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 "ASPIRE" project, coordinated by the Churches' Commission for Migrants in Europe (CCME) in 2008-2010, aimed 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.

The HHC held a roundtable discussion on refugee resettlement to Hungary on 1 March 2010 bringing together representatives of the Hungarian government, the UNHCR, civil society organizations and other EU member states. The Hungarian national roundtable was the last event in a series of debates on refugee resettlement to Europe. The event was co-organized by the Hungarian Helsinki Committee and the Churches' Commission for Migrants in Europe (CCME) in the framework of the ASPIRE project.¹⁵

2.5.2. Transnational projects on promoting the reform of 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 Regulation establishes a hierarchy of criteria for identifying the EU Member State responsible for processing an asylum claim. Usually this will be the state through which the asylum seeker first entered the EU. The Regulation aims to ensure that each claim is examined by one Member State, to deter repeated applications, and to enhance efficiency. The application of the Regulation can seriously delay the presentation of claims, and can result in claims never being heard. Causes of widespread criticism of the Dublin system include the

¹³

http://www.ecre.org/files/ECRE_ELENA_Survey_on_%20Legal_Aid_for_Asylum%20Seekers_in_Europe_October_2010.pdf

¹⁴ http://www.globaldetentionproject.org/fileadmin/publications/GDP_Workshop_Report_2010.pdf

¹⁵ For more information about the national roundtable event, see

http://www.ccme.be/fileadmin/filer/ccme/20_Areas_of_Work/01_Refugee_Protection/2010-03-newsletter.pdf

use of detention to enforce transfers of asylum seekers from the state where they apply to the state deemed responsible, the separation of families, the denial of an effective opportunity to appeal against transfers, and the reluctance of Member States to use the sovereignty clause to alleviate these and other problems. The Dublin system also increases pressures on the border regions of the EU, where states are often least able to offer asylum seekers support and protection, particularly in the case of Greece.

In 2010 the Hungarian Helsinki Committee participated in two projects concerning the „Dublin procedure“.

- Between autumn 2008 and spring 2010 the Hungarian Helsinki Committee participated in the transnational “Dubliners” project, which aimed 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 strived to present viable proposals for the improvement of the Dublin system. The project was coordinated by the Italian Refugee Council. The HHC took a leading role in preparing the project final report, published in April 2010.¹⁶
- The “Transnational advisory and assistance network for asylum-seekers under a Dublin process” (started in December 2009 and led by the French NGO Forum Réfugiés) established a network of European associations and developed an information tool in order to provide a closer monitoring of asylum-seekers in a Dublin Procedure and better provision of information for them. The HHC acts as national partner for Hungary in this project and participates in various project activities.

2.5.3. Country Information in Judicial Practice

The project “COI in Judicial Practice” primarily focuses on practical cooperation, exchange on good practices and dialogue on the assessment of country information (COI) as evidence in the judicial review of asylum decisions. This objective is to be reached primarily by a yet lacking involvement of appeal/judicial review instances in dialogue and practical cooperation, the identification and dissemination of exemplary practices and awareness-raising about existing judicial criteria and common quality standards.

The HHC – as lead organization of the project – conducted comprehensive research on the judicial review structure of asylum cases in all EU member states, country information services at European courts, as well as European and national jurisprudence on quality requirements related to COI as evidence. The project also aimed to enhance practical cooperation between courts dealing with asylum in Europe, as well as between them and other actors (e.g. NGOs) in the field. To this end, the HHC led four study visits to different COI research units providing information to judicial instances. In the framework of the project, the HHC held two pioneering (basically unprecedented) seminars for judges in Spain and France (see Section 2.3) and established exemplary cooperation with the International Association of Refugee Law Judges and the French National Asylum Court. Finally, the project provides an excellent example of cooperation between governmental, NGO, judicial and international actors, regularly referred to as “best practice” at international fora.

2.5.4. Knowledge-based harmonization of European asylum practices

The European Union has created the most complex legal regime for refugees in the world but the harmonization process of this wide-reaching legislation has been arduously slow. This is largely due to the fact that Member States have not been properly prepared to transpose these instruments into their national system and into their practice. The project “Knowledge-based harmonization of European asylum practices” led by the HHC therefore aims to:

- Improve the preparedness of national asylum officers, lawyers, judges and NGO activists on the EU asylum *acquis* across Europe, particularly in regions/countries traditionally weakly or not represented in high-quality international training events (Mediterranean region, Eastern EU) using existing teaching tools such as the Refugee Law Reader.

¹⁶ The Dubliners project final report is available at:
<http://helsinki.hu/dokumentum/dublinerCORRETTO%20definitivo.pdf>

- Contribute to a high-quality and harmonized training of asylum officers through strengthening the European Asylum Curriculum initiative by improving the synergy with the Refugee Law Reader and NGO training initiatives.
- Identify and promote exemplary judicial practices in the EU with regard to key areas of international and European refugee law; integrate this knowledge into mainstream refugee law education.
- Monitor the national follow-up of asylum-related judgments of the European Court of Justice and promote a harmonized approach.

The project started in July 2010 and different transnational research activities started in the second half of the year. The project involves the European Council on Refugees and Exiles (ECRE), the Spanish Red Cross, the Italian Council for Refugees and ACCEM (a Spanish NGO).

2.5.6. Advocacy for minimizing the detention of vulnerable asylum-seekers

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.

The HHC, as a partner of Jesuit Refugee Service Europe, took part in the "Detention of Vulnerable Asylum-Seekers in the European Union" (DEVAS, <http://www.jrseurope.org/DEVAS/intro.htm>) project that examined the detention conditions and practices regarding vulnerable asylum-seekers in 23 EU member states, including Hungary in 2009-2010. The project (funded by the European Refugee Fund) resulted in a comprehensive report ("Becoming Vulnerable in Detention"¹⁷), which was publicly released at the project's final conference, in June 2010 in Brussels. The report is based on interviews with 685 detained asylum seekers and irregular migrants in 21 EU Member States. It reveals that detention itself is a primary determinant factor that increases detainees' level of vulnerability. Despite the varying detention conditions found throughout the EU Member States, the 400-page report shows that the effects detention has on people is startlingly similar: depression, anxiety, weight loss, insomnia, isolation from loved ones and disruption of life plans. The HHC widely used the findings of this pan-European research in its efforts for challenging worsening conditions and regulatory standards regarding immigration detention in 2010 in Hungary.

2.5.6. Fleeing Homophobia, Seeking Safety in Europe

Each year, thousands of lesbian, gay, bisexual, transgender and intersexual (LGBTI) asylum-seekers apply for asylum in EU Member States. Experience shows that there are divergent rules and practices on qualification for international protection and on asylum procedures. Many asylum applications by LGBTI applicants are denied on incorrect grounds. The aim of this project (led by the Free University of Amsterdam) is to identify best practices regarding qualification for international protection and asylum procedures. These best practices should provide the basis for harmonized European standards, whether by amendment of secondary European law or in other forms. This will contribute to bringing European practice in line with international human rights norms. The HHC acts as regional focal point for the project, and as such is responsible not only for research, but also the dissemination of project results in the Eastern EU region and the identification of relevant target groups and potential partners.

The HHC (as the only Central or Eastern European NGO) has furthermore been invited in 2010 to join a global consultation process on LGBTI asylum-seekers, organized by the UNHCR, upon the joint initiative of US-based NGOs.

¹⁷ http://detention-in-europe.org/images/stories/DEVAS/jrs-europe_becoming%20vulnerable%20in%20detention_june%202010_public_updated%20on%2012july10.pdf

2.5.7. GenSen – Enhancing gender-sensitivity and a harmonized approach to gender issues in European asylum practices

The project (led by the Spanish Council for Refugees) primarily strives to enhance gender equality and provide additional safeguards for vulnerable asylum-seekers in asylum procedures conducted by European states. The project's objectives are

- ensuring access to the procedure and effective protection to women and LGBTI asylum seekers;
- attending their specific needs ensuring that they are adequately assisted and consulted; and
- ensuring that no discriminatory practices are applied towards women and LGBTI asylum seekers.

The project consists of a European comparative research, a capacity building program of national stakeholders and exchange of good practices amongst partners. The main output is a final report on findings and recommendations to identify appropriate mechanisms for integrating the gender perspective in the asylum procedures. The HHC, far beyond its official role as project partner responsible for Hungary and Romania, played a leading role in establishing the project's research methodology and designing its training and advocacy activities.

2.6. Statelessness

Since 2006, the HHC has taken the lead on promoting the rights of and protection for stateless persons among non-governmental organizations at a European level. In 2009, the HHC established and strengthened its cooperation with other stakeholders interested in statelessness issues, such as the Open Society Justice Initiative, the Equal Rights Trust, Refugees International 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.

In 2010, the HHC conducted an analysis of the Hungarian framework for the protection of stateless persons and the prevention and reduction of statelessness. The research is funded by the UNHCR Regional Representation for Central Europe, and involves the analysis of already decided applications for statelessness status in Hungary. A 60-page research study will be published in English and Hungarian in January 2011 and world-wide dissemination campaign is planned for February 2011.

The HHC held in December 2010 a roundtable discussion presenting the findings of the research and the recommendations regarding the protection of stateless persons in Hungary. The HHC also aimed to use this opportunity to promote the idea of focusing on statelessness as a "human rights foreign policy" issue (i.e. in order to convince the Hungarian government to represent the cause of stateless persons at international fora). The event involved the UNHCR, NGOs and judges active in the field, the OIN, the Ombudsperson for Civil Rights, the Ministry of the Interior and the Ministry of Foreign Affairs.

Given the nearly unique role of the HHC in promoting the rights of stateless persons in Europe and its rather unprecedented research experiences in this field, great interest could be witnessed throughout the year regarding the HHC's work on statelessness. The organization's expert has been invited to join a global expert consultation process under the aegis of the UNHCR and was invited as speaker/trainer on this issue at various occasions (see also Section 2.3.).

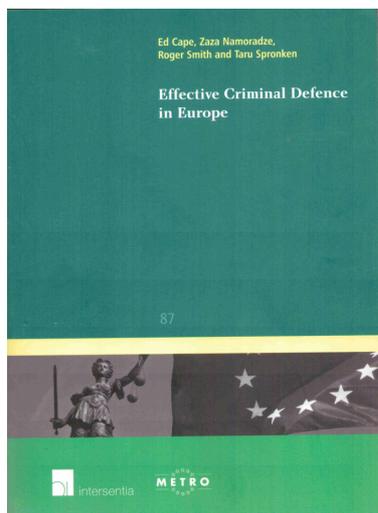
3. Promoting access to justice

In 2010, the HHC continued its work towards an efficient criminal legal aid system.

3.1. Effective defense rights in the European Union

The HHC took 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 was 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 was to contribute to the 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 was 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 was 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 gaps in the law and practice that prevent the Hungarian criminal justice system from being fully effective from the point of view of the right to defense. The report was published in July 2010 as a chapter of the book "*Effective Criminal Defence in Europe*". See:

http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/criminal-defence-europe-20100623

3.2. Access to information about ex officio appointed defense counsels

The HHC's project "**Steps Towards a Transparent Appointment System in Criminal Legal Aid**" is aimed at acquiring statistical data about the practice of appointment and promoting reform of the system with the aim of reducing the possibility of corruption.

Requesting data of public interest: As part of the project, the HHC has requested data concerning the names of appointed counsels and the number of cases in which they were appointed in 2008 from 28 police headquarters in seven regions, 7 of them being county police headquarters and 21 of them being local police headquarters.

Out of the 28 police headquarters 17 provided the requested data instantly, while five headquarters decided to provide the data after a lawsuit aimed at the provision of public interest data was launched against them. Data were received from two county police headquarters after the first instance court ruled that they are obliged to provide the data requested by the HHC; two local police headquarters provided the requested data after the second instance court decision had ruled in favor of the HHC. Furthermore, almost all county police headquarters submitted the data regarding the local police headquarters of the respective counties separately. To sum it up, currently the HHC has data on the number of appointments per counsel regarding altogether 38 local police headquarters and 6 county police headquarters. The preliminary data clearly demonstrate that the practice of having "in-house" lawyers at police headquarters is widespread. According to the available data, eight police headquarters appoint ex officio defense counsels in a way that one attorney at law is appointed in more than 50% of the cases, and the percentage of all criminal cases dealt with by the most frequently appointed defense counsel ranges between 25% and 50% at 26 police organs. One of the highest percentages in this regard was 82% at the Kiskőrös Police Headquarters, where 295 criminal cases were dealt with by the same ex officio appointed defense counsel out of the total of 358 cases in 2008.

The analysis of the data provided by the Police leaves absolutely no doubt about the fact there are "in-house" lawyers at police headquarters in most cases, who deal with a significant amount of cases.

This supports the HHC's concerns regarding the impartiality and efficiency of the ex officio appointed defense counsels, and sustains the view that the current system of ex officio appointment in criminal cases is very problematic, affecting the defendants' right to effective defense in a negative way.

As an unexpected, but positive outcome of the project, the head of the Bács-Kiskun County Police Headquarters launched an internal investigation into the practice of selecting ex officio legal counsels after he had received the HHC's request about the data. The result of the investigation was that at most police units in Bács-Kiskun county there are "in-house" lawyers who receive a large part of all appointments, the highest percentage being 82% in this respect. The Bács-Kiskun county police chief seriously criticized the revealed practice and ordered measures to counter these tendencies.

Strategic litigation against police headquarters refusing to provide statistics is also a core element of the project. The HHC has sued all 11 police units which refused to provide the requested information. The lawsuits have been launched on a count of unlawful denial of access to data of public interest. As already mentioned above, data regarding five police organs were provided to the HHC after the initiation of the civil proceedings, thus there were no court decisions in these cases. Two court decisions became final on first instance; one court decision became final on second instance, and one case (affecting a county and a local police headquarters) was ruled upon the Supreme Court. One procedure is pending before the Supreme Court.

Almost all of the final decisions ruled in favor of the HHC and obliged the respondent police organs to provide the requested information. However, there was one case (affecting a county and a local police headquarters) where the second instance decision ruled that data on the name of the ex officio appointed legal counsels and the number of their appointments are personal data that may not be shared with anyone without the prior consent of the data owner. The HHC submitted a request for the review of the second instance decision to the Supreme Court, which found in October 2010 that the request of the HHC was ill-founded. The HHC is planning to turn to the European Court of Human Rights in the case, the application is being prepared.

Even though the proceedings were not initiated in the framework of the project, it shall be mentioned that in 2010 courts ruled in favor of the HHC in freedom of information cases against the National Police Headquarters, the Budapest Police Headquarters and 16 Budapest district police headquarters, after they had refused to provide information on names of appointed counsels and the number of cases in which they were appointed in 2007.

Developing a model to reform the appointment system: A significant element of the project is the developing and testing of a "corruption-free" pilot model for a new appointment method. The Budapest Police Headquarters and the National Police Headquarters have appointed three pilot sites:

- a) Budapest 10th District Police Headquarters,
- b) Szombathely Police Headquarters,
- c) Szarvas Police Headquarters.

In all pilot sites the former system (in which police officers are fully free to select the appointed lawyer from a list compiled by the bar association) has been replaced by a software developed by the HHC's IT expert. The program selects the defense counsel randomly in a way that in the selection process special weight is given to the specialization of the counsel and the number of the cases he/she already has. In practice this means that those lawyers would enjoy priority in the otherwise randomized selection whose special field of professional activity is criminal legal defense, secondly those who have experience in criminal cases.

The software was integrated into the central IT system of the Police, called "RobotZsaru", in close cooperation with the Central IT Department of the Police. This means that sustainability of the program is ensured also in the long run: since the program is already compatible with the central IT system of the Police, it may be extended to all police headquarters easily. The local bar associations have also contributed to the project by providing lists of attorneys.

In addition to this, the performance of the attorneys will be evaluated with the help of a special questionnaire, partly elaborated in a previous project of the HHC. The questionnaire is aimed at evaluating the performance of the ex-officio defense counsels (appearance at hearings, appeals filed,

motions submitted regarding the pre-trial detention of the inmate) in cases initiated at the pilot sites before the pilot phase and during the pilot period. The HHC's assumption is that the level of the defense counsels' performance will rise as a consequence of the new appointing system and proving this assumption will strengthen the position of the HHC when lobbying for the introduction of the new system of appointments on a national level. The methodology of case selection and data analysis has already been elaborated by the HHC's staff. Questionnaires are filled in by police officers concerning cases that started after 1 October 2010, while the HHC is waiting for case file numbers to be provided by state authorities as to cases initiated before the project period.

Lobbying for legislative changes: Upon the invitation of the Ministry responsible for writing the concept paper of the new legal framework of criminal legal aid in Hungary, the HHC's program coordinator attended a meeting in the Ministry on the issue in June 2010. The HHC has also prepared a background material on criminal legal aid systems in various European countries.

The project is supported by a grant from the Trust for Civil Society in Central and Eastern Europe.

3.3. Other developments in the area

In July 2010, the HHC was approached by the Budapest Bar Association (the membership of which covers approximately half of the Hungarian attorneys). The Budapest Bar has decided to draft a Code of Ethics for ex officio appointed counsels, and asked the HHC for suggestions as to what standards may be included in such a document. The HHC has conducted research into Codes of Ethics of other countries, and provided the Bar Association with a number of comments and suggestions. The HHC's co-chair has been asked to give a presentation on the HHC's research results at a conference that will be held for criminal legal aid lawyer by the Budapest Bar Association in early March 2011.

4. Promoting equal treatment

4.1. Anti-discrimination legal clinic

The aim of the HHC's anti-discrimination law clinic program is 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 rely on after graduation.

Due to success of the first year of the program (2008-2009), the HHC decided to carry on with it in 2010 despite the fact that no funding could be secured for its continuation. Thus, at the ELTE University, the course was announced and started in February 2010. In the 2010 fall seminar, the course was launched at both ELTE and the University of Miskolc. In the meantime, partial funding was provided by the US Embassy, and two large Hungarian law firms (Nagy és Trócsányi, Oppenheim) were successfully approached to participate in the case work and the related tutoring on a *pro bono* basis.

During the 2010 spring and fall semesters, altogether 40 students were enrolled in the Budapest and 15 in the Miskolc program, which is more than expected. The students received – free of charge – the textbook written by the co-chair of Hungarian Helsinki Committee, which is the only comprehensive textbook on the topic currently available in Hungary.

In the fall semester we invited key experts of equal treatment to participate in the education: the former president of the Equal Treatment Authority introduced the case law of the equality body, whereas a former staff member of the European Court of Human Rights delivered lectures on the ECHR standards of anti-discrimination. At ELTE, the program is led by a member of the Equal Treatment Advisory Board (which was set up to assist the Hungarian equality body in 2005) whose members are widely acknowledged experts of anti-discrimination law in professional circles.

Within the framework of the program, the students visit hearings during the semester: the HHC staff organized visits to the Metropolitan Court (adjudicating appeals against the Equal Treatment Authority's decisions) and to the Authority's hearings. The students were always accompanied by a staff member of HHC. Visits to the Court and to the Authority were an outstanding opportunity for law students; they could not only see but also had the chance to understand the practice of mainstreaming equal treatment.

According to the idea behind the concept of legal clinics, students were involved in actual case work under the supervision of experienced attorneys. A group of 3-4 students were designated for each case. The students supported the attorneys work by revealing the facts of the case, writing draft petitions that the attorney (who is ultimately responsible for the case and compiles the petition to be actually submitted) discusses with them. They were involved in all subsequent phases of the case: attended the court sessions, discussed the opponent's petitions with the attorneys. During the year 2010, in the framework of the program free legal representation was provided for victims of discrimination in 10 cases (partly new clients, and partly clients with cases that started in 2009).

Cases taken in the framework of the program include the following:

- The HHC filed a complaint on behalf of a victim who had not been granted a bank loan because of his refugee status. In its decision of 31 March 2010, the Equal Treatment Authority established that the bank had violated the requirement of equal treatment, ordered the bank to refrain from future violations and to publish the decision on its website;¹⁸
- The HHC's lawyer brought a lawsuit on behalf of a blind person who had been denied access to a supermarket (Match) because of his guide 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 as non-pecuniary damages. The defendant appealed against the decision, but on 10 December 2010 the second instance court approved the decision of the first instance court;¹⁹
- The HHC 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. In its decision of 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. The mayor requested judicial review, in a decision of 2010 October, the Administrative Court ordered the Equal Treatment Authority to re-open the case. The case is now pending before the Supreme Court.²⁰
- The HHC represented an employee of Malév Hungarian Airlines who had been discriminated on the basis of her participation in the work of the trade union. Malév placed the complainant in a lower position and prevented her from participating in in-service training. On 23 July 2010, the Equal Treatment Authority established that the treatment was related to the complainant's position in the trade union, and imposed a HUF 1,000,000 fine on Malév. The Malév GH Zrt. requested a judicial review, the case is pending.²¹
- The HHC filed an *actio popularis* claim against a company which was recruiting security guards under 40 years of age. In April 2010, the case ended with a friendly settlement, in which the company undertook to send its employees to an anti-discrimination training held by an accredited training organization.²²
- A blind man was not let into a Chinese restaurant, because he had his guide dog with him. The case is pending before the Equal Treatment Authority.
- A man in a wheelchair parked his car in a place reserved for disabled persons, but his permit allowing him to park his car there had previously expired. He was fined. When trying to pay

¹⁸ See: <http://www.egyenlobanasmod.hu/zanza/715-2010.pdf>

¹⁹ See: http://helsinki.hu/Friss_anyagok/htmls/779

²⁰ See: http://helsinki.hu/Friss_anyagok/htmls/757

²¹ See: http://helsinki.hu/Friss_anyagok/htmls/722

²² See: <http://www.egyenlobanasmod.hu/zanza/695-2010.pdf>

the fine, he tried to enter the office of the public parking company, but the building was not accessible. A complaint was submitted in December 2010 to the Equal Treatment Authority. The case is still pending.

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,
- complaints procedures concerning detention implemented in penitentiary institutions or police jails,
- discrimination cases litigated before the Equal Treatment Authority and the civil courts.

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 2010, 431 persons received legal assistance (advice or representation) from the HHC's Human Rights Legal Counseling Program:

- 22 asylum cases (additional cases are covered by the Effective Legal Counseling for Persons in Need of International Protection described under Section 2.1.)
- 51 alien policing cases (visas and residence permits, expulsion, family reunification),
- 88 cases relating to detention conditions,
- 21 cases of complaints against police measures,
- 20 inquiries regarding procedures before the European Court of Human Rights,
- 8 cases concerning equal treatment,
- 93 cases concerning pending or closed criminal procedures,
- 128 miscellaneous cases.

Another 247 persons approached the HHC with matters not falling within our fields of activity. Such complainants are provided with basic advice as to where they can turn to with their problems.

Some important cases are summarized below (see also the stateless refugee's case before the European Court of Justice, as described under Section 2.1.1.).

Case of Engel v. Hungary: On 20 May 2010, the European Court of Human Rights delivered a judgment in the case of Mr. Zoltán Engel versus Hungary. Mr. Engel was sentenced to life in prison for shooting and killing a police officer and wounding another during an exchange of shots with the police after they caught him committing an armed robbery in May 2003. Mr Engel became paralyzed from the waist down as a result of the injuries he sustained during the shooting. Ever since, he is 100% disabled, suffers from incontinence, and is only able to move around in a wheelchair. Between 25 February and 15 December 2006, Mr. Engel was detained in the Szeged Prison, where – due to the circumstances of his placement – he could only wash or relieve himself if his cell-mates helped him. Classified as a high security level prisoner, Mr. Engel was always transported with his hands handcuffed to his belt. While being transported in a van without a safety belt, he could only keep himself in his wheelchair by leaning his head against the door of the transporting vehicle which caused him swelling and pain. When entering or exiting the van, he was regularly dragged by his belt, sometimes on the ground, which caused him bruises. On one occasion, while transported in the van, he had fallen off his wheel-chair on a road curve and had travelled the rest of the journey on the

van's floor, hands handcuffed to his belt and under his body. He asked for a medical check-up on the next day but was told he could only see a doctor the following week. He complained to the prosecution about the incident, however the criminal investigation opened as a result was discontinued for want of evidence. Mr. Engel's complaints had not been refuted by the Government as regards the time before August 2006.

For a long time the prison administration rejected his request for transfer in spite of the fact that this was recommended by the prison's medical service as well. His transfer to a specialized penitentiary was taken up by the prison administration only on 15 December 2006 (after the ECHR application had been submitted), when he was transferred to a different prison and placed in a single cell specially designed for disabled prisoners.

In its decision, the Court noted that the applicant had been left to the mercy of his cell mates for matters such as using the toilet, bathing and getting dressed or undressed throughout the period he had spent in Szeged prison. The Court found particularly regretful the practice of dragging the applicant on the floor to and from the transport van and that of leaving his wheelchair unsecured in a moving vehicle. In addition, the classification of the applicant as a high level security prisoner and his handcuffing had added to the hardship he had endured while transported. The Court further found that the delayed access by Mr. Engel to medical help following his alleged fall during the transportation in the van was not compatible with the Hungarian authorities' obligation to investigate effectively any complaints of ill-treatment. Consequently, the Court concluded that Mr. Engel had been subjected to degrading treatment during the entire time he had spent in Szeged prison. His transfer on 15 December 2010 to an institution adequate for his needs as a disabled prisoner had come too late. As a sanction, the Court held that Hungary was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,800 for costs and expenses.

Interim measure order by the ECHR in the case of an unaccompanied 16-year old Afghan asylum seeker:

The European Court of Human Rights requested the Hungarian government to suspend the return of an unaccompanied 16-year old Afghan asylum seeker to Greece under the Dublin Regulation on Friday, 26 February. The Afghan youngster was given free legal assistance by the Hungarian Helsinki.

The young boy fled Afghanistan as a child and arrived in Greece in 2007. Although he asked for asylum, he did not receive any social or legal assistance and he was forced to live on the streets homeless under inhuman conditions. He was arrested and detained in Athens and elsewhere in overcrowded and dirty jails on several occasions. The police harassed him and beat him several times. He became seriously ill because of the lack of proper accommodation, adequate hygienic conditions and medical assistance, but was not given any medical treatment in Greece.

In late 2009, the Afghan boy arrived in Hungary and applied for asylum. The Hungarian asylum agency decided to apply the Dublin Regulation (a European Union law that determines which EU member state is responsible for examining the asylum claim) and ordered his return to Greece in January 2010.

The Hungarian Helsinki Committee, representing the Afghan minor, requested urgent measures from the Strasbourg-based European Court of Human Rights to suspend the transfer to Greece. The HHC argued that in light of their client's previous traumatizing experiences and well-documented evidence available on the Greek asylum system's serious flaws, the young boy's return to Greece would violate his right to be free from inhuman or degrading treatment, as he would not have access to protection, including proper health care as an unaccompanied minor asylum seeker in Greece.

The European Court of Human Rights decided to apply interim measures and asked the Hungarian government not to enforce the transfer to Greece until 26 March 2010. This was the first time where the Court applied interim measures in a Hungarian asylum case involving a transfer to Greece under the Dublin Regulation.

The Hungarian immigration office decided not to enforce the transfer to Greece and to examine the Afghan minor's asylum application in the regular asylum procedure.

The hardships and lack of protection available to asylum seekers in Greece is a widely known problem. Numerous international organizations and human rights NGOs have investigated the precarious situation of children seeking asylum in Greece and found that Greece fails to offer even minimum standard of protection for them. The unfairness and the ineffectiveness of the Dublin system have been highlighted through returns to Greece that violate human rights standards.

Supreme Court decision stating that persons with subsidiary protection have same right to family reunification as refugees

The HHC represented two beneficiaries of subsidiary protection (under EU law) who intended to reunite with their families in Hungary after being granted international protection. One of them is Palestinian and the other is an Afghan national. They were granted protection in 2008-2009 in Hungary. Their requests for family reunification were repeatedly rejected by the OIN at both instances. The HHC challenged both decisions at the Supreme Court, which ruled that persons with subsidiary protection have same right to family reunification as refugees.

In the case of the Palestinian man – a father of two children – the Supreme Court issued a milestone decision since several other beneficiaries of subsidiary protection were waiting to see if the right to family unity also applies to them. On 6 July 2010 the Supreme Court decided that beneficiaries of subsidiary protection may also to reunite their families under conditions more favorable than the general provisions, similarly to recognized refugees (family members of refugees and beneficiaries of subsidiary protection have six months to initiate the administrative procedure at the closest Hungarian consulate without being obliged to pass a means test by demonstrating employment and private accommodation that otherwise they would be obliged to do). The second case that concerned an Afghan father of four children was closed by the Supreme Court on 16 November 2010 confirming the conclusions of the previous decision.²³

Harassment of supposedly gay employee by employer

The HHC provided legal representation for a complainant who was harassed by his employer on the basis of his supposed homosexuality. In October 2009, the employer called him and his colleague to account for why they go out together a lot, why they quarrel like a married couple at the workplace, and why he is wearing colorful, feminine-style shirts. A month later the complainant asked the employer at a staff meeting why he thought that he and his colleague were gay and why he had been treating them unfavorably. The employer's reply that was given in front of all the colleagues was extremely humiliating and degrading. The employee filed his complaint in May 2010. Based on a tape recording made at the staff meeting and other evidence, the Equal Treatment Authority established on 23 August 2010, that the employer's behavior amounted to harassment based on the complainant's supposed sexual orientation, forbade the continuation of the violation, ordered that its decision be published at the Authority's website for 90 days and imposed a fine of HUF 1,000,000 (USD 5,000) on the employee.²⁴

Decision of the Metropolitan Court on the closing off of Kossuth square

On 23 October 2006, the police closed off a significant part of the open square in front of the Parliament building as part of a measure to protect the building and persons from the demonstrators. The HHC did not consider this action as unlawful given the circumstances at that time. However, when the police decided to prolong this measure indefinitely on 22 November (releasing the reasoning of its decision only in January 2007 on the website of the National Police Headquarters), the HHC deemed that maintaining the fence around the square was no longer justified and was thus unlawful. In order to have legal standing to start a complaints action, on 26 January HHC staff approached the fence and were prevented by police on duty from crossing the square. Subsequently the HHC filed a complaint against the police measure at the Budapest Police Headquarters. After a series of appeals to different forums, including the Supreme Court, on 11 November 2010, the Metropolitan Court annulled the National Police Headquarters' decision rejecting the complaint, and established that the police could not substantiate the necessity of maintaining the fence after the end of November 2006,

²³ See: http://helsinki.hu/Friss_anyagok/htmls/711

²⁴ See: <http://www.egyenlobanasmod.hu/zanza/985-2010.pdf>

and that consequently the measure disproportionately restricted the complainant's freedom of movement.²⁵

6. Other activities

6.1. Activities concerning legislation

6.1.1. Communicating position on legislative changes

In 2010, the HHC was in most cases not requested formally to comment on bills. After the new Parliament was established in May 2010, a series of amendments and laws concerning fundamental constitutional institutions and principles were submitted – typically not by the Government, but as motions of individual Members of Parliament (in which case the law does not require the bill to be consulted by government and non-governmental agencies). In general, amendments and bills were adopted in an extremely short period, leaving the HHC (and other stakeholders) with very little time to assess and react. Despite these circumstances, the HHC formulated, published and communicated to the media its position on several of these legislative changes:

- Bill No. T/25. on the restrictive amendment of the Penal Code (the so-called "Three Strikes Law");²⁶
- Bills No. T/189. and T/190. on the amendment of the rules of nomination of Constitutional Court judges;²⁷
- Bill No. T/580. on legislative amendments "necessary for improving public security";²⁸
- Bill No. T/1320. on the amendment of migration legislation²⁹ (for more details see Section 2.1.3. on legislative advocacy related to immigration and asylum law reform);
- Bill No. T/1426. on the amendment of law enforcement legislation,³⁰
- Bills No. T/1445. and T/1446. on the restriction of the Constitutional Court's powers;³¹
- Amendment of the Ministerial Decree on the Rules of Executing Imprisonment and Pre-trial Detention³²

The Bill No. T/580. on legislative amendments "necessary for improving public security" has led to a situation in which juvenile offenders committing petty theft almost inevitably end up in confinement. In August 2010, the HHC prepared an analysis on how the possibility of confinement of juveniles in petty offence cases violates the UN Convention on the Rights of the Child.³³

In the case of the "Three Strikes Law" (Bill No. T/25.) the HHC has also turned to the President of Hungary, asking him not to sign the law but send it to the Constitutional Court for a review instead, preventing that the amendments enter into force³⁴ (the President did not comply with the request). The HHC's program coordinator has also published an article on the issue.³⁵

In November 2010, three NGOs, the Eötvös Károly Institute, the HHC and the Hungarian Civil Liberties Union (HCLU) wrote a letter to all MPs of the governing Fidesz party, asking them not to vote for the planned amendments (Bills No. T/1445. and 1446.) aimed at restricting the Constitutional Court's powers in a way that it may review the constitutionality of Acts and Bills on state budget and central

²⁵ See: http://helsinki.hu/Friss_anyagok/htmls/755

²⁶ http://helsinki.hu/Fogvatartas_es_rendvedelem/Hirek/htmls/682

²⁷ <http://helsinki.hu/Egyeb/Hirek/htmls/718>

²⁸ http://helsinki.hu/dokumentum/Helsinki_TASZ_kozbiztonsagi_csomag_velemenye_20100709_final.pdf

²⁹ http://helsinki.hu/dokumentum/Szmtv_Harmtv_Met_tervezet_MHB_eszrevetelek_20100824.pdf,
http://www.helsinki.hu/dokumentum/Szmtv_Harmtv_Met_mod_Eloterjesztesre_HelsinkiBiz_eszrevetelek_2010aug31.pdf

³⁰ http://www.helsinki.hu/dokumentum/MHB_velemenye_az_egyes_rendeszeti_targyu_torvenyek_modositasarol_szolo_torveny_tervezete_kapcsan_20100917.pdf

³¹ See: <http://helsinki.hu/Egyeb/Hirek/htmls/762>. The HHC and the Eötvös Károly Institute also issued another statement on the issue, see: <http://helsinki.hu/Egyeb/Hirek/htmls/763>.

³² http://helsinki.hu/Fogvatartas_es_rendvedelem/Hirek/htmls/768

³³ http://helsinki.hu/dokumentum/Helsinki_Bizottsag_fiatalkoruak_elzarasa.pdf

³⁴ http://helsinki.hu/dokumentum/Harom_csapas_KE_201006.pdf

³⁵ http://nol.hu/velemenye/20100601-a_csapas_becsapas

state taxes only in certain cases.³⁶ The three NGOs mentioned above, together with the K-Monitor Association and Transparency International Hungary, also turned to the Venice Commission of the Council of Europe to express grave concern regarding the impending restriction of the powers of the Hungarian Constitutional Court.³⁷

Furthermore, in the very beginning of January 2011, the HHC turned to the members of the press on the occasion of the Hungarian EU presidency. The open letter³⁸ contained questions worth posing by members of the press on the joint press conference of the Hungarian Prime Minister and the President of the European Commission, referring to the collision of recent Hungarian legislative changes and EU norms.

6.1.2. Ad hoc NGO platform

In June 2010, the HHC, the HCLU and the Eötvös Károly Institute established an ad hoc platform to create a more effective counterweight to the less and less restricted state power. The platform has been initiated and coordinated by the HHC. The (planned) activities of the platform consist of the following: (i) regular assessment of the legislative steps; (ii) regular and coordinated, in certain cases joint commenting on new Bills; (iii) press events for domestic and international media; (iv) issuing individual and joint press releases in objection to certain decisions and legislative steps; (v) submitting motions to the Constitutional Court, to the ECtHR and other international forums; (vi) advocacy with international human rights and other forums.

As a result of the cooperation, the NGOs reacted to legislative changes in a more coordinated manner (see 6.1.1). Furthermore, in July 2010, the three NGOs above – together with Transparency International Hungary – published a comprehensive assessment about the first wave of legislation by Hungary's new Parliament, both in Hungarian and in English.³⁹ The document – listing legislative acts that were the most problematic from a constitutional point of view – was also distributed to many foreign journalists, and the representatives of the members of the platform attended a press conference on the issue, organized by the Hungarian International Press Association (HIPA) on 31 August 2010. The NGOs have continued to cooperate in analyzing the legislative changes and the decisions of the Government: the Eötvös Károly Institute, the HHC and the HCLU issued a second analysis in December 2010,⁴⁰ focusing on those elements of the system of checks and balances which were eliminated or significantly weakened by the decisions of the Government. Furthermore, unconstitutional legislative changes, adopted since September 2010, were also addressed.

6.1.3. Motions filed to the Constitutional Court of Hungary

After the "Three Strikes Law" entered into force despite all the efforts, the HHC also filed a petition with the Constitutional Court. According to the amended rules of the Penal Code, in certain cases it is obligatory to sentence perpetrators to life-long imprisonment and the HHC has claimed in its petition that the latter provisions are unconstitutional, since they exclude the possibility of sentencing on an individual basis and violate the judges' right to discretion.⁴¹

The HHC has also submitted a request for review to the Constitutional Court concerning the legislative amendments allowing employers to dismiss certain civil servants (e.g. those working in Ministries) without justification, meaning that in these cases, due to the lack of reasons given, the dismissal may

³⁶ <http://helsinki.hu/Egyeb/Hirek/htmls/766>

³⁷ http://www.helsinki.hu/dokumentum/CoE_const_court_en.pdf

³⁸ <http://helsinki.hu/Egyeb/Hirek/htmls/793>

³⁹ Hungarian version:

http://www.helsinki.hu/dokumentum/Az_elso_torvenyalkotasi_hullam_ertekelese_final_web.pdf, English version:

http://www.helsinki.hu/dokumentum/Hungarian_NGOs_assessing_legislation_July2010.pdf

⁴⁰ Hungarian version:

http://helsinki.hu/dokumentum/A_masodik_hullam_A_%20jogallam_lebontasa_20101213.pdf,

English version:

http://www.helsinki.hu/dokumentum/Hungarian_NGOs_assessing_the%20second_wave_of_legislation_December_2010.pdf

⁴¹ http://www.helsinki.hu/dokumentum/Helsinki_Bizottsag_AB_beadvany_3_csapas_20101123.pdf

not be challenged. The HHC has claimed, among others, that the new provisions violate the right to work and are formulated in a discriminative way.⁴²

6.2. Human rights trainings

In 2010, 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. Altogether four training sessions were held at the ILEA in 2010 (in January, June, August and October 2010).

The results of the Strategies for Effective Police Stop and Search (STEPSS) Project were also presented at the Central European University. On 29 July 2010, a lecture was held by the programme coordinator of the STEPSS project in the framework of the Bard-CEU Summer Professional Internship Program Core Seminar.

For the description of training activities on asylum and international protection, see Section 2.3.

6.3. Activities before international fora

- a) After reviewing 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 questions⁴³ for the List of Issues compiled by the Human Rights Committee in preparation of evaluating Hungary's country report. Some of the issues raised by the HHC appear in the Human Rights Committee's adopted List of Issues. The HHC prepared a shadow report⁴⁴ and held an informal briefing for the members of the Human Rights Committee in October 2010 in Geneva, when the Hungarian report was discussed. The UN Human Rights Committee found numerous shortcomings in the Hungarian implementation of ICCPR after the periodic review of Hungary, often concurring with the HHC's position on the given issue.⁴⁵
- b) The HHC also contributed to a joint report,⁴⁶ submitted by the European Roma Rights Centre, the Chance for Children Foundation and the HHC, for consideration by 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 responded to several information requests on the Hungarian situation from different international non-governmental organizations conducting field visits in Hungary in relation to the serial killings against Roma persons, including Amnesty International (in March 2010) and Human Rights First (in January 2010).
- d) The HHC actively participated in the process of preparing Hungary's report to the Universal Periodic Review (UPR) by the UN Human Rights Council. The Ministry of Foreign Affairs has organized a series of consultations on different issues that are likely to be raised in the UPR process. The HHC's experts were invited to give presentations on a number of these issues, including prison conditions; *non-refoulement*; unaccompanied minors; statelessness and the Optional Protocol of the UN Convention against Torture. The Ministry promised to incorporate NGO observations into the report submitted to the Human Rights Council. In the autumn of 2010, several Hungarian NGOs prepared a joint NGO report to the Human Rights Council, submitted in early November.⁴⁷ The joint report focused on the human rights performance of Hungary in the following areas: equality and non-discrimination, the right to liberty and security of the person, administration of justice and the rule of law, freedom of association and peaceful assembly and the right to participate in public and political life, the right to social security and to an adequate standard of living and the rights of the child. The submission

⁴² http://www.helsinki.hu/dokumentum/AB_beadvany_kormanytisztviselok_2010_10_27.pdf

⁴³ http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HHC_Hungary98.pdf

⁴⁴ http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HelsinkiCommittee_Hungary_HRC100.pdf

⁴⁵ <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-HUN-CO-5.doc>

⁴⁶ <http://www2.ohchr.org/english/bodies/hrc/docs/ngo/ERRC.Hungary98.pdf>

⁴⁷ http://www.helsinki.hu/dokumentum/UPR_NGO_coalition_alternative_report_Nov2010_FINAL.pdf and http://www.helsinki.hu/dokumentum/UPR_NGO_coalition_RECOMMENDATIONS_Nov2010_FINAL.pdf

highlights human rights violations against Roma people and other national, religious and ethnic minorities, people living with disabilities, women, children, asylum seekers and persons belonging to the lesbian, gay, bisexual, transgender and intersexual (LGBTI) group.

The HHC together with the Menedék Association for Migrants prepared another joint report on rights of asylum-seekers and refugees in Hungary.⁴⁸ The report covered the following issues: the inadequate conditions and the unlawfulness of alien policing detention, the lack of effective judicial review to contest decisions ordering alien policing detention; limited access of asylum-seekers to international protection (the territory of Hungary and the asylum procedure); exclusion of Somali nationals from family reunification; insufficient access of refugees and beneficiaries of other forms of international protection to the labor market and to adequate health care services; and the lack of adequate housing measures for refugees.

Finally, the HHC (alone) submitted a third report as well to the HRC,⁴⁹ where it analysed the consequences of changing the system of checks and balances of the constitutional framework in which human rights are enforced. The report criticized the restriction of the Constitutional Court's scope of authority and the imposition of limitations on public consultation preceding the enactment of new legislation. It further examined detention conditions, the treatment of prisoners, access to justice and the inadequate response by the authorities to hate crime.

- e) International research activities of the HHC consisted of participation in the Europe wide research of EU's Fundamental Rights' Agency (FRA) on the rights of asylum seekers in EU countries. HHC conducted dozens of interviews with asylum seekers of various nationalities in the spring of 2010. The research resulted in two comprehensive summary reports by FRA on asylum seekers access to information ("The duty to inform applicants about asylum procedures: The asylum seeker perspective"⁵⁰) and access to effective remedies in asylum procedures ("Access to effective remedies: The asylum seeker perspective"⁵¹).
- f) On 11 November, the HHC organized a meeting with Hungarian NGO's for Morten Kjaerum, Director of the European Union's Fundamental Rights Agency. At the meeting, the NGO's shared with the Director their most important concerns regarding Hungary's human rights situation.
- g) Throughout the year 2010, HHC was contacted by a number of embassies, including the US, the Swedish and the South African Embassy, requesting information on the Hungarian human rights situation. Such embassies.
- h) In the very beginning of January 2011, the HHC, the HCLU and the Eötvös Károly Institute turned to Viviane Reding, the European Commission's Vice-President in charge of Justice, Fundamental Rights and Citizenship. In their letter sent to the Vice-President, the NGOs expressed their grave concerns regarding recent legislative developments in Hungary threatening the full and proper implementation of the values enshrined in Article 2 of the Treaty on European Union. A similar joint letter was sent to the presidents of the parliamentary groups of the European Parliament.

Budapest, 3 February 2011



Márta Pardavi
Co-chair
Hungarian Helsinki Committee

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http://www.helsinki.hu/dokumentum/Joint%20submission%20UPR%20HHC_Menedek%2007Nov2010_FINAL.pdf

⁴⁹ http://www.helsinki.hu/dokumentum/HHC_Hungary_UPRsubmission_2010November_final.pdf

⁵⁰ http://fra.europa.eu/fraWebsite/attachments/asylum-access-info-report-092010_en.pdf

⁵¹ http://fra.europa.eu/fraWebsite/attachments/asylum-access-remedies-report-092010_en.pdf