



## HUNGARIAN HELSINKI COMMITTEE

### ANNUAL REPORT OF ACTIVITIES 2003

The Hungarian Helsinki Committee monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims on human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms. The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

In 2003, the Hungarian Helsinki Committee carried out the following main activities and projects:

- Human Rights Legal Counselling Office
- Police cell and prison monitoring programmes
- Effective Legal Counselling for Those in Need of International Protection
- Legal Assistance through Refugee Clinics (LARC)
- Refugee law clinics in Hungary
- Equal Treatment before the Law for Roma and Non-Roma Suspects in the Hungarian Criminal Justice System
- Advocacy activities

The Hungarian Helsinki Committee's activities in 2003 supported by the Hungarian Soros Foundation, the Open Society Institute - Budapest, the Office of the UN High Commissioner for Refugees, the UK Foreign and Commonwealth Office's Human Rights Projects Fund, the European Community.

#### **Human Rights Legal Counselling Office**

The Human Rights Legal Counselling Office is one of the core programmes of the Hungarian Helsinki Committee. The Office, which is located in the premises of the HHC's office, provides free legal advice and representation to victims of human rights violations both before Hungarian authorities and courts as well as international human rights fora (European Court of Human Rights, human rights protection fora of the United Nations).

In 2003, the Human Rights Legal Counselling Office continued to provide legal advice and legal representation in several typical cases of contemporary human rights violations in Hungary.

In 2003, the Human Rights Legal Counselling Office assisted altogether 434 cases according to the following breakdown:

- legal advice (assistance in submitting petitions and applications): 77 cases
- complaints relating to detention in police jails and prison: 205 cases
- alien policing cases (visa applications, residence permits, expulsion, deportation): 41 cases
- family unification matters: 20 cases
- asylum procedures: 32 cases
- police ill-treatment: 9 cases
- miscellaneous: 50 cases

In the case of *Kmetty v Hungary*, on 16 December 2003 the European Court of Human Rights held unanimously that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the failure to carry out an effective investigation into the applicant's allegations of ill-treatment. The Court awarded the applicant 4,700 euros for non-pecuniary damage and EUR 1,300 for costs and expenses.

Mr Kmetty was provided legal representation in the domestic and the Strasbourg proceedings by dr János Somogyi, HHC attorney. This was the first case against Hungary where the European Court of Human Rights found a violation of Article 3. The full judgment may be found at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=14&Action=Html&X=105134613&Notice=0&Noticemode=&RelatedMode=1>

**Police cell and prison monitoring programmes**

The HHC has been monitoring police jails since 1996, and penitentiary institutions since 2000.

In agreement with the National Police Headquarters and the Ministry of Justice, monitoring groups may carry out unannounced visits to any police premises where pre-trial detention or police custody is implemented. In its present phase the programme serves a vital role as the only nationwide civilian monitoring mechanism of police detention facilities in Hungary. The HHC’s monitoring teams (composed of attorneys, lawyers, sociologists and doctors) have unlimited access to police jails the country. Monitoring teams carry out two visits per month in their area and report to the HHC on a regular basis about their findings. Police authorities are regularly informed about problems and gaps in enforcing human rights and detainees’ rights, and many of our recommendations have been taken into account, resulting in the resolution of a number of problems.

Based on an agreement of cooperation with the National Prison Administration, the Committee carries out human rights monitoring of penitentiary institutions: monitoring teams carry out 3-5 day long fact-finding visits to penitentiary intuitions.

The HHC continued monitoring prisons and police detention facilities in 2003.

In 2003, the HHC was successful in approaching new donors (European Commission, British Foreign and Commonwealth Office Human Rights Projects Fund) to support the monitoring programs. This allowed the HHC to continue its monitoring work in the rest of 2003, and to conduct an intensive, questionnaire-based survey in police jails and prisons. Hence in spring the HHC concentrated on securing the permission of the National Prison Administration and the National Police Headquarters for conducting the survey, as well as designing the questionnaire that will be the basis of data collection.

At the end of May the Council of Europe Committee for the Prevention of Torture paid an unannounced visit to Hungary to examine pre-trial detention. On the first day of the visit, the CPT met with the Hungarian Helsinki Committee and expressed its appreciation for the HHC’s ongoing work in monitoring detention conditions. During the meeting, the HHC’s experience in relation to pre-trial detention were discussed, touching on the following main issues: changes brought about by the new Criminal Procedure Code in ordering and prolonging pre-trial detention, implementation of pre-trial detention in police jails, recent changes in the police jails regulations, and detainees’ rights to correspondence, receiving visitors, using the telephone, open-air exercise, and material conditions of detention.

In late June, the HHC organised a two-day training for participants of its monitoring programmes. The training focussed on international and domestic norms on protecting detainees’ rights and detention conditions.

The table below provides an overview of monitoring visits to police jails and penitentiary institutions carried out during the year:

<b>Date</b>	<b>Police jails</b> (number of visits)	<b>Penitentiary institutions</b> (number and places of visits)
May 2003	<b>24</b>	<b>1</b> Baracska
June 2003	<b>83</b>	-
July 2003		<b>1</b> (Budapest Remand Prison - Venyige utca)
August 2003		<b>4</b> (Kalocsa, Szeged, Veszprém,

		Tököl)
September 2003		<b>5</b> (Debrecen, Miskolc, Kecskemét, Sopronkőhida, Kaposvár)
October 2003		<b>1</b> Márianosztra
November 2003	<b>48</b>	<b>1</b> Gyula
December 2003		<b>1</b> Forensic Observation and Mental Institute (IMEI)*
<b>Total</b>		<b>155</b>

\* Visit carried out jointly with the Mental Disability Advocacy Center

Reports on visits to prisons are regularly published on the HHC's website in Hungarian, following the receipt of comments on the report by the National Prison Administration.

### **Effective Legal Counselling for Those in Need of International Protection**

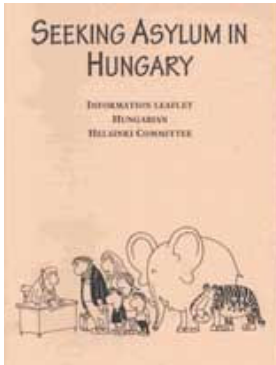
The Hungarian Helsinki Committee is the implementing partner of the UN High Commissioner for Refugees (UNHCR) in coordinating a countrywide lawyers network for asylum seekers and refugees since March 1998. A network of twelve attorneys and about 30 paralegals - mainly law students - around Hungary offer free legal advice and representation to asylum seekers in refugee determination and in aliens policing procedures. Attorneys regularly visit facilities (reception centres, community shelters and aliens policing jails) where (potential) asylum seekers are accommodated. Through the assistance of interpreters and law students, attorneys provide information about the rights and obligations and legal possibilities of asylum seekers. Furthermore, attorneys provide free legal representation to clients in asylum and aliens procedures before authorities and courts.

The program aims to ensure that asylum-seekers have access to fair, efficient and effective asylum procedures and are treated in accordance with international standards and to guarantee that refugees are afforded high standards of protection.

The above aims are to be realized through the following program objectives:

- providing asylum seekers and refugees – accommodated at refugee reception centres and open community shelters of the Office for Immigration and Nationality [OIN] and detention facilities of the border guards – with free of charge effective legal aid and improving access to the asylum procedure and legal protection in Hungary;
- challenging through legal action the widespread practice of detaining bona fide asylum-seekers;
- training and strengthening a team of legal practitioners acting in the field of asylum law;
- training and educating law students in legal clinics, who will assist lawyers in providing legal assistance to asylum seekers and refugees; building the capacity and enhancing the quality of protection offered by the legal clinics;
- monitoring and evaluating asylum related legal regulations and their implementation, with special regard to their compliance with international standards and practice; lobbying for amending norms and regulations not in compliance with international standards and monitoring the correct applications of relevant laws and regulation by competent authorities;
- promoting co-operation between NGOs in Hungary working in the field of asylum.

In 2003, the program provided free legal assistance in 438 new cases. This number does not include foreigners who were given verbal advice or verbal information about seeking asylum in Hungary, but did not require further action by the lawyers.



Additionally, the HHC produced 15,000 information leaflets for asylum seekers in five languages (English, Arabic, Russian, Chinese and Persian). Leaflets provide in a concise form and easy-to-understand language vital information for asylum seekers about the asylum procedure and related immigration procedures. The leaflets are available in refugee reception centers and through attorneys and refugee law clinics working with the Hungarian Helsinki Committee.

### **Legal Assistance through Refugee Clinics (LARC)**

LARC is a project designed to enhance the skills and knowledge of over 25 refugee law clinics in Central and Eastern Europe. With these enhanced skills and this increased knowledge, it is expected that refugee law clinics as organizations will be in a position to ever more effectively serve the needs of their clients. In order to accomplish these goals, LARC teaches professors international and regional asylum law, trains managers in effective clinic management, exposes students to lawyering skills, and prepares resource materials in legal and management issues for dissemination to the clinics. LARC also provides 'boutique' services to the refugee law clinics, responding to various individualized requests for assistance in a variety of fields.

LARC's goals are:

- to equip refugee law professors with the knowledge and skills to become better professors of asylum law;
- to equip clinic managers with tools to run the clinic in the most effective and efficient manner possible;
- to expose students to lawyering skills in order to make them effective refugee lawyers; and
- to develop a set of resource materials and concrete knowledge that can help the above-mentioned target groups to most effectively serve their asylum seeker clients.

In 2003, LARC hosted the following events:

- *Third Annual International Asylum Law Moot Court Competition*: LARC organized the Third Annual International Asylum Law Moot Court Competition on February 27 – March 2, 2003 in Brno and Olomouc, Czech Republic. This mock trial exercise was organized for students of 17 refugee law clinics from Central and Eastern Europe.
- *Representing Refugee Clients Effectively: Gender and Cultural Issues workshop*: LARC co-organized a regional training on gender and cultural sensitivity in the representation of asylum seekers and refugees. The workshop was held in Budapest on May 30 and May 31. The Columbia University Budapest Law Centre of the Public Interest Law Initiative (PILI) and the Open Society Justice Initiative partnered with HHC/LARC in the design and execution of the workshop.
- *Asylum Advocacy in Accession States – Workshop I*: twenty-eight participants from Central European countries joining the EU in 2004 attended the training, held on 28 and 29 November at Hotel Astoria, in Budapest. The participants included refugee law clinic professors and NGO affiliates. The goal of the workshop was to impart fundamental, concrete knowledge about the EU asylum acquis in order to raise awareness in the refugee assisting civil sector about the impact of EU accession on refugee protection.

### **Refugee law clinics in Hungary**

Refugee law clinics continued to operate at law faculties in Budapest, Győr and Debrecen. At the ELTE Faculty of Law in Budapest, 5 experienced law students provided assistance to the attorney by being involved in case management and paying regular visits to the reception centre in Bicske. Additionally, 8 law students were receiving weekly training on domestic legal regulation on asylum and immigration matters. At the ELTE Faculty of Law in Győr, 5 experienced students continued to participate in the program, and 4 students had been enrolled at the beginning of the academic year. In Debrecen, 8 students from the

Debrecen University Faculty of Law provided assistance to the two lawyers contracted within the legal counselling program.

In 2003, teams from the Budapest and Győr refugee law clinics participated in the Third Annual Asylum Law Moot Court Competition, organised by the HHC/LARC in late February 2003 in Brno and Olomouc in the Czech Republic. The competition, composed of a round of written submissions and oral pleadings, required both participating Hungarian teams to demonstrate a high level of understanding of international asylum law as well as excellent written and oral argumentation skills. Both teams succeeded to the semi-final rounds of the competition, and the Győr team placed 2<sup>nd</sup> in the final round of the competition. Additionally, Ms Anna Tolnai a fifth-year law student in Győr was awarded Best Oralist of the competition.

Students of all three refugee law clinics participated in both quarterly trainings of the HHC's Effective Legal Counselling for Those in Need of International Protection project, held on 11-12 April and 14-15 November 2003 in Budapest. Additionally, the HHC organised a national moot court competition (a mock trial exercise) for refugee law clinic students from Győr, Budapest and Debrecen in 18-19 October 2003.

### **Equal Treatment before the Law for Roma and Non-Roma Suspects in the Hungarian Criminal Justice System**

This project involves the development and implementation of a methodology in Hungary to examine the enforcement of the constitutional principle of equality before the law. The research project aims to demonstrate whether non-Roma defendants receive differential treatment during criminal proceedings and sentencing than their Roma counterparts. The project began in January 2000 and is based on the in-depth analysis of over 1,100 court files of Roma and non-Roma defendants charged with theft and robbery. The findings of the analysis were refined in 2003 through trial monitoring and interviews with actors in criminal procedures. The results of the research will be finalized and published in 2004.

### **Advocacy activities**

The HHC was actively involved in various national-level and international advocacy activities in 2003. The Ministry of Justice sent the HHC draft amendments or concept papers related to the HHC's field of activities on a regular basis. It was our experience that many of our comments and recommendations were taken into consideration by the Ministry. Most notably, we achieved positive results regarding the anti-discrimination law and the legal aid reform law, where a considerable number of the HHC's recommendations are reflected in the text of the promulgated law.

Our advocacy activities consisted of the following main individual activities:

- ♦ **Country report on measures to combat discrimination** – prepared for the Migration Policy Group in follow-up to the country report assessing the transposition into national law of the EU Race Directive.
- ♦ **Written comments to the draft law on anti-discrimination** – the HHC jointly with Háttér-Society for Gays and Lesbians submitted joint comments to the Ministry of Justice on the first as well as the second draft of the law. Later on during the year, the HHC continued lobbying on the anti-discrimination act with members of Parliament and the Prime Minister's Office.
- ♦ **Continued lobbying** (using both formal and informal channels) **on the bill reforming legal aid in non-trial civil cases and procedures** (January – September 2003), and written comments submitted on executive decrees in pursuant to the legal aid reform law (December 2003)
- ♦ **Written comments on the hate speech related amendment of the Penal Code** – the HHC in cooperation with Háttér-Society for Gays and Lesbians submitted comments to the proposed amendment of the Penal Code provision on incitement against a community (hate speech) (July 2003)
- ♦ **Written comments** by the Hungarian Helsinki Committee **regarding the developments following the second report on Hungary by the European Commission against Racism and Intolerance** (July 2003)
- ♦ **Written comments** to the Ministry of Justice **on the draft bill on legislation** (September 2003)
- ♦ **Written comments** to the Ministry of Justice **on the concept paper on amending legislation in the field of criminal law** (September 2003)
- ♦ **Written comments** to the Ministry of Justice **on the concept paper on the act on enforcement of punishments** (December 2003)

## CALENDAR OF ACTIVITIES – 2003

January-March: András Kádár and Lilla Farkas were trainers for Roma human rights activists in the Anti-Discrimination Training Project in the framework of the Roma Social Integration Phare Programme.

28 January: András Kádár took part in the roundtable on the concept paper of the bill on equal treatment and equal opportunity, organised by INDOK.

12-16 February: András Kádár visited the Netherlands to gain information about the Dutch legal aid system. The study visit was supported by the Royal Netherlands Embassy.

19-23 February: Edina Vinnai participated at the NGO Training on the Council of Europe's Framework Convention for the Protection of National Minorities, organised by Minority Rights Group

27-28 February: Marta Pardavi took part at the executive committee meeting of the European Council on Refugees and Exiles in London.

27-28 February: Ferenc Kószeg presented the HHC's prison monitoring program at the "Prison Monitoring in Visegrad Countries", organised by the Slovak Helsinki Committee in Nitra, Slovakia.

27 February – 1 March: The HHC's Legal Assistance through Refugee Clinics (LARC) project held the 3<sup>rd</sup> Annual International Asylum Law Moot Court Competition in Brno and Olomouc, Czech Republic.

1 March: Lilla Farkas spoke about the transposition of the EU Race Directive into national law at a training for judges organised by the European Roma Rights Center.

4 March: András Kádár gave a presentation about prison conditions in Hungary in the Budapest Central Prison at the on-site hearing of the parliamentary human rights committee.

5 March: Ferenc Kószeg took part in the policy forum meeting of the European Council on Refugees and Exiles in London.

13 March: Ferenc Kószeg, András Kádár and Edina Vinnai participated at the 65th International Regional Seminar of the International Society of Criminologists. A. Kádár described structural deficiencies in the system of Hungarian ex officio defense counsels.

14-15 March: Barbara Pohárnok participated at the workshop on Migration and Integration, organised by the Austrian League for Human Rights in Vienna.

20-21 March: Moira Smith and Marta Pardavi took part at the bi-annual meeting of the European Council on Refugees and Exiles in Bucharest.

21-22 March: Barbara Pohárnok participated at the Forum on European Citizenship, organised by the Stefan Batory Foundation in Warsaw.

4-6 April: Lilla Farkas participated at the seminar of the Criminal Justice Strategy Group, organised by the US-based International Human Rights Law Group in Geneva.

5-7 April: A. Kádár participated at the Seminar on Anti-discrimination Legislation, organised by the European Commission Directorate-General Enlargement in Brussels.

7-8 April: Marta Pardavi took part at the Regional Conference on Border Cooperation, Asylum Management and Responsibility Sharing, organised by the Office of the UN High Commission for Refugees in Prague.

11-12 April: The HHC organised the first quarterly training in the framework of its "Effective Legal Counselling for Those in Need of International Protection" project.

15-16 April: HHC staff visited the alien policing detention centers in Szombathely and Győr.

22-23 April: The HHC held an internal retreat focusing on strategic planning for 2003.

6-8 May: Workshop on research and evaluation of Country of Origin Information within the framework of refugee status determination procedure, organised by ACCORD, UNHCR and the HHC in Budapest.

8 May: Ferenc Kőszeg spoke about the challenges facing the asylum protection regime, as well as the need for budgetary contributions to NGOs assisting refugees at the conference on "The current state of asylum and challenges posed by the European Union", organized by the Ministry of Interior Office of Immigration and Nationality in Győr.

26 May: A. Kádár and L. Farkas participated at the discussion of the Roma-related elements of the National Development Plan, organised by the Prime Minister's Office.

28 May: The HHC held presentation about the state of human rights in Hungary to university students from Arizona, and law students from the Columbia Law School.

29 May: The HHC met with the delegation of the European Committee for the Prevention of Torture on the occasion of the CPT's ad hoc visit to Hungary. The HHC described its findings about the treatment of pre-trial detainees in Hungary.

30-31 May: LARC, together with PILI and the Open Society Justice Initiative organised a workshop on "Representing Refugee Clients Effectively - Gender and Cultural Issues" in Budapest.

4 June: L. Farkas described discrimination cases at the conference on equal treatment and equal opportunity, organised by the Ministry of Justice.

6 June: Barbara Pohárnok and Attila Tari took part at a roundtable discussion on the occasion of World Refugee Day. The meeting was organised by the Human Rights Students Initiative at the Central European University.

11-12 June: Marta Pardavi took part at the executive committee meeting of the European Council on Refugees and Exiles in Grosseto, Italy.

12 June: HHC staff attended the meeting of the Ministry of Interior and refugee assisting NGOs in Hungary.

17-18 June: András Kádár participated as observer at the 16<sup>th</sup> meeting of the European Monitoring Center on Racism and Xenophobia's Management Board in Vienna.

18 June: Lilla Farkas participated at the roundtable discussion on "How to make desegregation programs work in Hungary?". The meeting was organised by the Public Interest Law Initiative.

18 June: The HHC met with justice and home affairs experts from the European Commission and presented its views on the treatment of asylum cases by the Hungarian authorities and courts.

20 June: The HHC took part at the meeting of the National Border Guards Headquarters and Hungarian refugee-assisting NGOs.

21-22 June: HHC staff participated in the first training workshop organised in the framework of the project "Preventing Torture in the Closed Institutions of Central and Eastern Europe". The project meeting was organised by the Bulgarian Helsinki Committee in Sofia.

23-24 June: Lilla Farkas spoke at the Expert Meeting on Equal Pay, organised by the Dutch Equal Treatment Commission in Utrecht, the Netherlands.

27-28 June: Training on international and domestic standards on detention organised by the HHC for participants of the police cell and prison monitoring projects.

26-28 June: Marta Pardavi and Boyan Konstantinov participated at the "EU Advocacy and Project Planning" workshop, organised by ECRE in Kutna Hora, Czech Republic.

27-30 June: HHC staff working on refugee projects took part at the workshop on the role of judges in the determination of refugee status in Hungary and Romania, near Constanta, Romania. The workshop was organised by the Romanian National Council for Refugees.

24-26 September: Marta Pardavi attended the UNHCR Pre-Executive Committee meeting with NGOs in Geneva, Switzerland.

25-28 September: Marta Pardavi and Ferenc Kőszeg attended the bi-annual general meeting of the European Council on Refugees and Exiles in Geneva, Switzerland. Marta Pardavi was elected to ECRE's executive committee.

29-30 September: Barbara Pohárnok program coordinator of the asylum lawyers' network took part in the Cross-Border Cooperation/Soderkoping Process – Southern and Central Cluster Conference in Chisinau, Moldova. The conference was co-organized by the European Commission, UNHCR, IOM and the Swedish Migration Board.

10 October: Stefan Kok, European policy officer of the Dutch Refugee Council visited the HHC for a day-long consultancy focusing on advocacy on refugee issues at the national and the EU-level.

14-17 October: Marta Pardavi took part in a week-long visit to Brussels organized by ECRE for representatives of refugee assisting NGOs in Central Europe. Meetings were arranged with UNHCR Brussels, the European Commission's Directorate General Justice and Home Affairs, DG Social Affairs and ECRE's EU office as well as with the Permanent Mission of Hungary to the EU. Marta also took part in the meeting of ECRE's advocacy network, ECRAN.

18-19 October: The HHC organized the national moot competition for its three refugee law clinics.

22-23 October: Ferenc Kószeg took part in the policy forum meeting of the European Council on Refugees and Exiles in London.

24-25 October: Lilla Farkas participated at the litigation strategy meeting organized by Interights, Migration Policy Group and the European Roma Rights Center in London.

23-26 October: Barbara Pohárnok attended the ELENA training course on the nexus of the 1951 Refugee Convention and the European Convention on Human Rights, held in Strasbourg, France.

27 October – 2 November: Ferenc Kószeg was an OSCE election monitor in the presidential elections in Georgia.

30-31 October: Marta Pardavi attended the review conference on the first phase of the European Refugee Fund, organized by the European Commission in Brussels.

30-31 October: Lilla Farkas represented the HHC at the review conference of the work of the advisory committee to the Council of Europe Framework Convention on National Minorities, in Strasbourg, France.

7-10 November: András Kádár, coordinator of the prison monitoring program was invited to Bucharest for the Round Table "Enhancing the Transparency and Accountability of Police Arrests in Central and Eastern European Countries", organised by the Regional Facilitation and Negotiation Centre in partnership with the Ministry of Administration and Interior, Romania and the Independent Custody Visiting Association, Great Britain.

14-15 November: The HHC organised the second quarterly training in the framework of its "Effective Legal Counseling for Those in Need of International Protection" project.

14-16 November: Ferenc Kószeg attended the annual general assembly meeting of the International Helsinki Federation in Vienna.

17 November. Lilla Farkas attended the symposium organized by the Finnish Government in Strasbourg to discuss the reform of the European Court of Human Rights.

24-25 November: Marta Pardavi attended the ECRE executive committee meeting.

28-29 November: In the framework of the Asylum Advocacy in Accession States project, the HHC organized the first workshop for Central European refugee assisting NGOs on the EU asylum acquis in Budapest.

11-12 December: Marta Pardavi took part in the NGO-UNHCR Retreat on Protection Partnerships organized in Geneva for UNHCR and key operational agencies to forge a more consistent, common understanding of their collaboration in refugee protection.