



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE ACTIVITIES REPORT

2012

The HHC is an NGO founded in 1989. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defense to victims of 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 centered on monitoring the human rights performance of law enforcement agencies and the judicial system, as well as protecting the rights of asylum seekers and foreigners in need of international protection. It particularly focuses on access to justice, the conditions of detention and the effective enforcement of the right to defense and equality before the law.

Our main achievements in 2012

- Our attorneys helped 127 persons to lodge applications at the European Court of Human Rights. Complaints involve issues such as dismissals of judges as a result of lowering their mandatory retirement age, overcrowding in penitentiaries, unlawful pre-trial detention, violation of due process in criminal cases and the detention of asylum seekers.
- The European Court of Human Rights found a breach of the European Convention on Human Rights in 4 cases represented by HHC attorneys. The cases involved unlawful detention of asylum seekers, right of access to court for unlawful dismissal, and police abuse. (*K.M.C. v. Hungary*, *Réti and Fizli v. Hungary*, *Hendrin Ali Said and Aras Ali Said v. Hungary*, *Al-Tayyar Abdelhakim v. Hungary*).
- The HHC represented Palestinian asylum seekers in a case before the Court of Justice of the European Union. The Court's milestone judgment on the interpretation of European Union law on refugee status for Palestinian asylum-seekers significantly echoed the HHC attorney's line of argumentation (Case of *El Kott*, C-364/11).
- HHC attorneys and legal advisors helped 1230 persons for free regarding immigration and asylum issues, detention conditions, unjustified police measures, equal treatment, etc. Our attorneys represented 130 asylum-seekers in asylum cases and 60 percent of our asylum-seeking clients were granted international protection status by the asylum authority or courts.
- By the end of the year, the Hungarian Government substantially changed some of its strict asylum and immigration detention policies, largely due to intensive advocacy by the HHC and partner organisations. Changes meant that noticeably less asylum-seekers were held in immigration detention by December and Hungarian immigration authorities and courts accepted that Serbia cannot be regarded as a safe third country, thus asylum-seekers may not be returned there.
- The HHC warned about the decline of checks and balances in the Hungarian constitutional

framework in meetings with a range of international stakeholders, including the Venice Commission and the co-rapporteurs of the Parliamentary Assembly of the Council of Europe and the delegation of the European Parliamentary Committee on Civil Liberties, Justice and Home Affairs.

- The HHC prepared nine analyses regarding (draft) laws. The Council of Europe's Venice Commission and a related decision by the Court of Justice of the European Union confirmed the concerns we expressed about the cardinal act on the judiciary.
- We published six comprehensive studies over the year, including a study on how to reform the Hungarian criminal legal aid system as well as the national impact of the first asylum-related judgments of the Court of Justice of the European Union.
- More than 50,000 persons now use the only comprehensive online model curriculum for the study of international refugee law worldwide, The Refugee Law Reader. The HHC publishes the Reader in English, Russian, Spanish and French editions.
- Over 800 participants ranging from legal professionals (attorneys, judges) and police officers to civil servants, social workers and university students benefited from over 40 trainings held in 13 countries throughout the year.
- The HHC was covered in the domestic and international online and print media about 300 times and about 30 times on national television and radio in 2012. Our blog, which launched in January, drew over 120,000 visitors with its 58 articles, the most popular of which was read by 13,000 persons.

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1. Improving respect for human rights by law enforcement agencies

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

1.1.1. Visit to the Kalocsa High and Medium Security Prison



On 11-12 July 2012 HHC monitors visited the Kalocsa High and Medium Security Prison for women. The HHC noted that the overcrowding rate of the prison was 155%, and that the detention conditions were far below international standards, e.g. the cells are so small that two monitors could hardly enter them. (The pictures show a cell accommodating four prisoners.)

The other main problem was that the majority of female prisoners are allowed to take a shower only twice a week for 10-15 minutes per occasion. Only those working in the kitchen and in the storage facilities of the institution and in other "polluting workplaces" are allowed to take a shower on a daily basis. Detainees working for example

in the toilets under difficult conditions can take a shower only twice a week. Several detainees ("hard-to-handle detainees") were found to receive extremely high amount of sedatives; some of them were unable to meaningfully communicate with the human rights monitors due to the impact of the medication. The HHC report on the visit is currently being commented on by the National Prison Administration and will be published shortly.



1.1.2. Visit to the Nagyfa „summer prison”

On 26 September 2012, the HHC visited the newly opened prison near Szeged, publicly known as the „summer prison”, as it operates only from late spring until early autumn. The monitors' experiences were unusually positive: essentially no problems were detected concerning detention conditions. Although in some cells the free moving space is less than 4 square meters per person as recommended by the European Committee for the Prevention of Torture, 3 square meters per person is available in every cell and in general the conditions were found to be satisfactory. After comments were received from the Nagyfa penitentiary and the National Prison Administration, the HHC's final [report](#) on the visit was made available on-line.

1.2. Advocacy for ratifying OPCAT and for an OPCAT-compliant law

The HHC has been advocating for years for the implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) by putting in place an effective national preventive mechanism (NPM) to prevent human rights abuses in places of detention. In fall 2011, the Hungarian Government

ultimately decided to ratify the OPCAT and to designate the Ombudsperson to be the NPM in Hungary. The HHC welcomed the ratification of the OPCAT and the designation of the Ombudsman as the NPM, but also [found](#) that the amendments were inadequate in terms of meeting all the requirements prescribed by the OPCAT. After the ratification the HHC focused on calling for improvements that would enable the Ombudsperson to fulfill the NPM mandate.

The major aim of the related project's second phase was the implementation of a national [roundtable](#) with the participation of international experts in order to discuss what is needed for the appropriate implementation of the OPCAT and the apt operation of the NPM. The event, held in Budapest on 14 May 2012, was moderated by Thomas Hammarberg and was attended by high-level representatives of almost all the stakeholders. International experts (Malcolm Evans, chair of the Subcommittee on the Prevention of Torture; Rachel Murray, director of the Bristol University Human Rights Implementation Centre; Matthew Pringle, program officer of the Association for the Prevention of Torture; Ivan Selih, head of the NPM in Slovenia) made valuable contributions at the event. The roundtable was an excellent occasion to make stakeholders understand the *raison d'être* and the operational details of the OPCAT.



For the next day the HHC – in cooperation with the Mental Disability Advocacy Center – organized a meeting for the international experts and the key Hungarian stakeholders in order to discuss points raised at the roundtable, including more technical aspects especially regarding the legislative framework of the OPCAT and in order to outline a tentative action plan for future plans and cooperation.



As a result of the confidential meeting, in line with its recommendations the Ministry of Public Administration and Justice proposed the modification of the regulations set out in the law. Previously, it has also consulted the Ombudsperson's Office and the HHC which elaborated its [comments](#) regarding the amendments and shared with the Ministry of Public Administration and Justice.

The HHC – in cooperation with the Budapest Institute's economists – started the preparation of a comparative study, collecting the readily available information on the NPMs already operating. Information has been gathered through desk research and direct correspondence with the foreign NPM bodies. The HHC has also listed all places of deprivation of liberty including data on the type of the institution, geographical location, number of detainees and overcrowding rate. Based on these detailed data the Budapest Institute will draft a study on the budget estimate the Hungarian NPM requires for its adequate, OPCAT-compliant operation. The economic study will be the first such paper including methodological aspects, and, therefore, it will be translated into English and will be disseminated among the stakeholders.

Furthermore, on 15 November 2012, the HHC project coordinator held a lecture at the [Forth East European Conference](#) on National Preventive Mechanisms organized in Ukraine. The event was an excellent occasion for networking as well.

Selected media coverage:

- <http://www.jogiforum.hu/hirek/27693>
- <http://khisr.kharkov.ua/en/index.php?id=1353504100>

1.3. “Towards the Equality of Roma Defendants before Courts and in Penitentiaries”

Discrimination against the Roma is widespread in all fields of life in Hungary. Research shows that police officers are also highly biased against Roma – but no research has been carried out yet with regard to the approach of the staff in penitentiary institutions. No recent data is available about the treatment of Roma by criminal courts and little research was carried out into this issue in the past. At

the same time, numerous individual cases have been reported, which suggest that discrimination in the criminal justice system against Roma defendants is an acute problem.

Hence in December 2010 the HHC launched the project "*Towards the Equality of Roma Defendants before Courts and in Penitentiaries*", which aims to combat discrimination in the use of pre-trial detention, sentencing and in penitentiary institutions through research and advocacy. The research is based mainly on 400 structured, questionnaire-based interviews with detainees serving a sentence for robbery, and on related case file research.

As a kick-off, a focus group discussion was held for attorneys and NGOs regarding the issue. The standardized questionnaire used in the course of the project was prepared by the HHC and was commented on by various experts in criminal procedure, criminal law and penitentiary issues, academics, practicing lawyers and the National Prison Administration.



After identifying a research sample of 400 detainees in cooperation with the National Prison Administration, the HHC carried out interviews with these detainees in 11 penitentiary institutions and examined related penitentiary files according to the following schedule in 2011 and in 2012:

Date of visit	Name of institution	Number of interviews
8-9 and 19 December 2011	Central Transdanubian National Penitentiary Institution	26
26-28 March 2012	Pálhalma National Penitentiary Institution	32
10-12 April 2012	Balassagyarmat High and Medium Security Prison	37
23-25 April 2012	Tiszalök National Penitentiary Institution	37
9-11 May 2012	Márianosztra High and Medium Security Prison	26
22-24 May 2012	Kalocsa High and Medium Security Prison	36
4-5 June 2012	Szeged High and Medium Security Prison	22
18-20 June 2012	Sopronkőhida High and Medium Security Prison	30
3-7 July 2012	Szombathely National Penitentiary Institution	37
23-27 July 2012	Budapest High and Medium Security Prison	53
13-17 August 2012	Juvenile Penitentiary Institution, Tököl	62

The HHC is currently in the process of selecting 120 full case files from the full research sample on the basis of an initial analysis of the data gathered. These case files will be assessed in depth at courts. Furthermore, focus group discussions will be organized e.g. with members of the prison staff concerning discriminatory practices and attitudes. Finally, a research study will be prepared, summarizing research findings and providing recommendations for improving the situation, which will be discussed at a roundtable for professionals. Training materials for future prison staff and criminal judges will be produced as well.

The project will conclude in 2013 and is supported by the Open Society Institute.

1.4. Promoting the reform of pre-trial detention in CEE-FSU countries – Introducing good practices

The excessive and lengthy use of pre-trial detention continues to be a serious problem throughout the Central Eastern Europe and the former Soviet Union (CEE-FSU) region, and the practice of pre-trial detention in most countries of the region seems to be contrary to the case law of the European Court of Human Rights. Furthermore, the socioeconomic impact of excessive pre-trial detention is profound, affecting not just the individuals detained, but their families, communities, and even states. There are viable alternatives (house arrest, geographical ban, bail) to pre-trial detention set out in the legislation of most CEE-FSU countries, but statistics show that these are rarely used, with full deprivation of liberty still heavily favored in the region. Thus, there is an increasing need to build support for reforming pre-trial detention laws and practices.

In order to address the problems and needs above, in December 2011 the HHC – with the financial and professional aid of the Open Society Foundations – launched a project aiming at producing advocacy efforts to challenge pre-trial detention in countries from the CEE-FSU region, and to identify common problems and good examples in terms of legislation and practice regarding pre-trial detention and alternatives to detention throughout the region. The project also seeks to raise awareness about the need to apply alternatives to detention and to contribute to the capacity building of NGOs participating in the project.

In the first phase of the project, the HHC conducted extensive research to identify international – mainly European – good practices as well as key experts on pre-trial detention and alternative coercive measures. The HHC also prepared an overview of already existing data. An advisory board with the key international experts of the topic was established to support the work of the project staff. In 2012 the HHC collected information from 17 CEE-FSU countries (including Hungary) on their laws and practices regarding pre-trial detention and alternative coercive measures with the aim of identifying common features and shortcomings. The research was carried out based on a standardized questionnaire, which was filled in by local NGOs. The questionnaire took a holistic approach; it looked at the legislation and practice, statistics and opinions, qualitative and quantitative data, snapshot and flow statistics, and it incorporated desk research with field research. Furthermore, it was designed to point out good practices and any practices that do not live up to applicable international standards.



Based on the questionnaires received from NGOs the HHC compiled a draft study outlining the legislation and practices of countries within the CEE-FSU region, with respect to pre-trial detention and its alternatives. The HHC organized a three-day workshop building on the key findings of the research. The workshop took place in Budapest between 29 November and 1 December 2012. 41 experts participated at the workshop; the participants consisted of representatives of the NGOs that worked on the country research, members of the advisory board, other Open Society Foundations experts and staff members, and HHC staff. The event also brought together a number of international experts from the United

Kingdom. The event focused primarily on the results of the study and the research process. It drew extensively on a comparative analysis of the countries from the CEE-FSU region and also highlighted concrete examples from countries.

Beyond discussing the study and its methodology the workshop introduced the study results and analyzed those building on international standards and global practices. Discussions were initiated on the ways the results of the study can be applied. The workshop investigated ongoing debates in relation to pre-trial detention and potential avenues of NGO participation. It explored how strategic litigation and detention monitoring can be applied to promote reform, furthermore, drew on examples

of reform and ways of promoting reform in the CEE-FSU region, and globally within the framework of the Global Campaign on pre-trial detention. The workshop also served as a networking event for the participating NGOs.

Based on the study compiled and on the results of the workshop the project staff of the HHC and the advisory board will identify five to eight NGOs that show strong potential for elaborating advocacy plans and implementing these efficiently in their domestic environments, and a further "incubator-workshop" will be held for these NGOs. The HHC will also develop and contribute to further related "mini projects" and will initiate advocacy activities.

1.5. "Improving the Fairness of Disciplinary Procedures in Penitentiaries"

The Hungarian system of penitentiary disciplinary procedures is dysfunctional due to systemic and procedural reasons, as suggested by the HHC's monitoring and project experiences and information provided by lawyers as well as penitentiary staff. The rules on the disciplinary liability of the detainees are insufficient and do not ensure in practice the procedural rights of prisoners charged with a disciplinary offense. This is particularly worrying because disciplinary measures are taken into consideration by penitentiary judges when making parole decisions.

Hence in September 2012 the HHC launched the project "*Improving the Fairness of Disciplinary Procedures in Penitentiaries*", which aims to contribute to ensuring more fair and just disciplinary procedures in penitentiary institutions. In achieving this goal the HHC works closely with the National Prison Administration. The project will end in February 2014 and is funded by the Open Society Institute.

The project is based mainly on the analysis of domestic legal framework, local prison rules and regulations, a questionnaire-based case-file research of 120 disciplinary procedures and interviews with members of the penitentiary staff.

The HHC carried out the following activities in the framework of the project since its launch in September 2012:

- established contacts with the National Prison Administration and concluded an agreement for strategic cooperation;
- identified a penitentiary expert;
- conducted international research to identify best international practices in the field;
- analyzed the relevant Hungarian legal framework;
- analyzed the house rules and regulations of all 31 penitentiary institutions, just as the ones of the Forensic and Observation Psychiatric Institute and the Central Prison Hospital. The aim was to identify standards and possible patterns of the regulation of disciplinary offences and procedures with special regard to safeguards that protect the rights of the detainees;
- preparation of the questionnaire to be used in the course of the case-file research is in progress in cooperation with the penitentiary expert.

1.6. Promoting the abolishment of actual life sentence

The HHC has been paying special attention to the issue of actual life sentence in Hungary, i.e. life-long imprisonment without the possibility of parole. For example, the HHC submitted a motion to the Hungarian Constitutional Court in 2009, requesting the body to quash the legal provisions allowing actual life sentence to be imposed. (However, the Constitutional Court has never reached a decision in the case and will be unable to do so in the future, since the new Constitution of Hungary, being in force since 1 January 2012, legitimizes actual life-long imprisonment.)

On 2 March 2012, the HHC turned to the **European Court of Human Rights** and submitted a **third party intervention in the case of a detainee serving actual life sentence** (László Magyar v. Hungary, Application no. 73593/10). The HHC claimed that actual life sentence as existing in Hungary violates Article 3 of the European Convention on Human Rights, i.e. the prohibition of inhuman or degrading treatment or punishment. The case is still pending. In the autumn of 2012, the HHC also submitted a request to the European Court of Human Rights for granting the organization leave to submit another third party intervention concerning the case *Vinter and others v. The United Kingdom* (Application nos. 66069/09 and 130/10 and 3896/10), which also concerns the issue of actual life sentence. Unfortunately, the HHC was not granted leave to submit a third party intervention this time.

Furthermore, on 21 November 2012, a colleague of the HHC gave a presentation titled "The possibility of a presidential pardon and actual lifers – A Hungarian case before the European Court of Human Rights" at an international conference on the issues of life-term prisoners in Yerevan, Armenia, organized by the Helsinki Committee of Armenia.

1.7. Follow-up to the project "STEPSS – Strategies for Effective Police Stop and Search"

The STEPSS project was aimed at **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 its results, the HHC made further efforts by organizing police-community meetings in order that community members and police officers directly discuss the achievements of the police, perceptions of public safety, and the concerns of the community regarding the police. In 2012 the HHC organized three subsequent consultative meetings with various target groups: homeless, Roma people and average local citizens.

- **Meeting between homeless people and the 8th district police**

In the 8th district of Budapest the hottest issue related to the role of the police and public safety was homelessness. The aim of the consultation was to make homeless people and police patrols who meet daily in conflict situations sit to the same table and talk as equal partners. The goal of the event was also to sensitize police patrols to the problems of homeless people in order that they treat them adequately when implementing measures against them. The half-day program also aimed at the identification of problems arising from the interactions between homeless people, locals and police and at proposing solutions for the difficulties identified.



The program was organized on 22 June in Budapest. 14 homeless activists and 9 police patrols of the 8th district were present. Based on the evaluation questionnaires, both parties felt that the program was useful, they are eager to take part in similar future activities and police officers would recommend the participation at a similar event to their colleagues as well. The homeless activists are dedicated to continue the program.

- **Meeting between Roma people and the Borsod-Abaúj-Zemplén police**

The meeting between police chiefs and Roma representatives was held on 7 June 2012 at the University of Miskolc. Roma representatives attending the meeting were heads of the Hungarian Civil Liberties Union's legal aid network's local stations and/or presidents of local Roma governments. On behalf of the police, the deputy chief police captain of Borsod-Abaúj-Zemplén county, the responsible police officer for police-minority relations working group and several heads of city police headquarters were present.

Problematic issues previously selected and listed by Roma representatives were discussed in the plenary. By the end of the meeting, police officers agreed that some discrepancies may be detected within the police and they suggested that Roma people file complaints each time they experience violation of their rights or unacceptable treatment (unfair behavior, too frequent police stops and searches, disproportionate fines, etc.). Participants of the forum concluded that they will share their

personal contacts in order to make the communication direct; local police chiefs will inform and invite active Roma community members to forums discussing questions of public safety; Roma activists will approach the police with the aim of establishing viable and operational contacts with them; and that the police will support the establishment of mixed Roma and non-Roma neighborhood watch troops patrolling in the territory of the municipalities.

- **Consultation in the 6th district of Budapest**

Two consultations were held and moderated by the HHC in 2012 in the 6th district where high level police officers were present. Even though most of the participants were from municipality bodies, representatives of a few NGOs (neighborhood watch, cyclist club, women's league) and a church also took part in the consultation.



Concerning the future consultations participants agreed that the police will organize meetings with the locals, firstly with elderly people on the prevention of thefts and burglaries. The local municipality and local NGOs will get involved in the recruitment of the participants by promoting the forums directly through newspapers, information leaflets and personal meetings. The municipality offered a venue for the forums; and the police and the HHC agreed to partner in the organization of future consultations.

1.8. Promoting independent police complaint mechanisms

The HHC has continued to provide legal representation in police complaint procedures both before the police and the Independent Police Complaints Board (IPCB). Some examples are presented below.

- Seven-months pregnant Ms. H. was taken into short-term arrest by the police because she failed to appear on summons before the police officer investigating a case. (Ms. H. insists that she had received no summons at all to a hearing.) The police took her from her apartment at 12:30 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, requesting that the interrogation be held as soon as possible, but nothing happened, not even medical care was offered to her. On 16 June 2010 the IPCB concluded in the case that the complainant's fundamental rights had been violated. On 15 October 2010, the National Chief of Police adopted a decision in the case, in which he found her complaint concerning the violation of the right to liberty well-founded, but rejected the rest of the complaint. The HHC requested judicial review of the decision. The administrative court repealed the decision based on procedural grounds, thus the procedure was repeated at the National Chief of Police's Office. In the repeated procedure, the National Chief of Police took the same decision, basically citing that apart from the disproportionately long period of short-term arrest, the contradictions in the statements of the parties could not be resolved.

In the second judicial review procedure, conducted in 2012, the court brought a decision on the merits of the case (while maintaining concerns over some still-existing flaws of the procedure), ruling, among others, that the bodily search conducted in the corridor of the detention facility of the police department violated Ms. H.'s right to human dignity, and found also that a medical examination should have been performed prior to being placed in the hold-up facility, as considering her medical state it was a matter of objective necessity and not a measure subject to the request of the person held-up. Ms. H. was represented by the HHC in the course of the procedures above.

- In 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. On 10 February 2011, the National Chief of Police adopted a decision in the case, in which he rejected the complaint. The HHC requested the judicial review of the decision.

In its decision reached in 2012, while deciding on the merits of the case, the court repealed some elements of the complaint on procedural grounds for the police failed to conduct a detailed fact-finding procedure (i.e. whether he was informed about the reason of the request for identification or the reason of being taken into custody). The court established that he was taken into custody unfoundedly, since neither did he fail to identify himself (there were relatives present who could identify him) nor were there any clear references to the police measure he allegedly defied. The police lodged an appeal to the Curia of Hungary against the decision, the case is pending.

- On 9 December 2011 a hunger strike was launched in front of the Headquarters of the Hungarian National Television (HNT), protesting against the alleged censorship by the leaders of the Hungarian National Television. The hunger strike was launched by Balázs Nagy Navarro and Aranka Szávuly, vice-presidents of the Independent Trade Union of Television Workers and Film Makers, because the former president of the Supreme Court was blurred in a report of the public television on 4 December 2011. Previously the public television made a manipulated report on a press conference where Daniel Cohn-Bendit, a French MEP, was questioned by Hungarian journalists. The demonstrators requested to identify and dismiss those responsible for the manipulation of the public media. The most recent developments in the case include that the HNT's security guards tried to dissolve the demonstration in the early morning of 1 November 2012 and moved the tent of the demonstrators by force. The demonstrators called the police for help but the police arrived too late, did not protect the demonstrators and did not initiate criminal procedure against any of the security guards. The demonstrators launched a complaint procedure against the police for their inaction. The demonstrators are represented by the HHC in the complaint procedure; the procedure is pending.

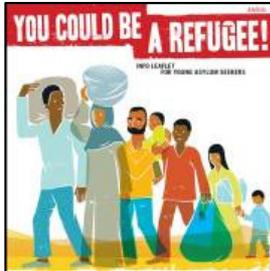
1.9. Written observations to the UN Human Rights Committee on Article 9 of the ICCPR

The UN Human Rights Committee (HRC) is in the process of preparing a General Comment on Article 9 (liberty and security of person) of the International Covenant on Civil and Political Rights. Upon the invitation of the HRC, the HHC submitted [written observations](#) on the issue in October 2012, which reflect the HHC's experience in dealing with Article 9 cases both in criminal and in immigration proceedings. Preliminary results of an extensive research project on pre-trial detention run by HHC (see Section 1.4.) were also included in the written observations, along with concrete recommendations.

2. Right to asylum, protection from refoulement

In 2012, 2157 persons applied for asylum in Hungary according to the Office of Immigration and Nationality (OIN), which constitutes a 27 percent increase compared to the same period in 2011 (1693 applicants). Out of these 2157 asylum seekers, 1266 persons applied for asylum while in immigration detention. The largest groups of applicants were from Afghanistan (880 applicants), Pakistan (327), Kosovo (226), Syria (145), Somalia (69), Algeria (59), Morocco (47) and Iran (45). The OIN granted refugee status to 68 persons (mostly Afghans and Somalis) and subsidiary protection to 240 (mainly Afghans, Somalis and Syrians), while 42 applicants (many Afghans and Syrians) were given tolerated status on the basis of the risk of *refoulement*.

2.1. Legal counseling for persons in need of international protection



The HHC continues to be the only organization that provides free legal counseling and representation to asylum seekers all over Hungary. Attorneys contracted by the HHC provide these services on a weekly basis in detention facilities (immigration jails in Békéscsaba, Nyírbátor, Kiskunhalas, Győr and the Liszt Ferenc International Airport in Budapest), while in the largest reception center in Debrecen the HHC employs a full-time legal advisor. Free legal counseling is also available at the HHC office in Budapest. In October 2012, an HHC staff attorney started to regularly provide legal counseling services at the Balassagyarmat community shelter (where mainly rejected asylum seekers are accommodated, awaiting deportation). The HHC's legal representation services are available both in the administrative and judicial review phase of the asylum procedure. The HHC distributes dedicated [information leaflets for child](#) and [adult](#) asylum seekers, available in ten languages.



In 2012, the HHC provided **legal counseling** to asylum seekers on **838 occasions**, and **legal representation** to **130 asylum seekers**. 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. It is largely due to the HHC's legal representation and training activities that the proportion of administrative asylum decisions quashed by courts raised from approximately 1% in 2006-2007 to 38% in 2012.

In addition to asylum procedures, the HHC continued to provide free legal advice and representation in **family reunification** cases that raise human rights concerns. Throughout the year, **40 family members of refugees** represented by the HHC were granted residence permits based on family reunification. The HHC also assisted the family reunification of 3 Hungarian nationals with their foreign spouse, including one case of a **same-sex couple in registered partnership**. The UNHCR and the HHC jointly drafted an **information booklet** on family reunification for beneficiaries of international protection, to be published in early 2013.

2.2. Actions against unlawful immigration detention

In February 2010, the HHC turned to the European Court of Human Rights (ECtHR) representing two asylum seekers from the Ivory Coast who had been **unlawfully detained** for almost 6 months in the Nyírbátor immigration jail. The Court issued a judgment in the case of *Lokpo and Toure v. Hungary* on 20 September 2011, finding that the asylum seekers were held in immigration detention unlawfully for 5 months and granted 10 000 EUR of compensation for each applicant. The government appealed against the judgment to the Grand Chamber of the ECtHR, but this was rejected and the judgment became final in March 2012. The judgment highlighted systemic problems concerning the detention of asylum seekers in immigration jails in Hungary, against which the HHC had already been advocating for several years.

In February 2011, the HHC filed two other complaints to the ECtHR alleging unlawful detention of Iraqi and Palestinian asylum seekers who had been unlawfully detained for more than 5 months in the Nyírbátor immigration jail. On 23 October 2012, the Court delivered its judgments in both cases (*Hendrin Ali Said and Aras Ali Said v. Hungary, Al-Tayyar Abdelhakim v. Hungary*) ruling that **the detention of the applicants was in breach of article 5** of the Convention and awarded each of them 10 000 EUR.

The HHC continued to conduct **monitoring visits to immigration jails** on a regular basis (on 23-24 February to Nyírbátor, on 12-13 March to Kiskunhalas, on 8 May to Győr, 9-10 July to Nyírbátor and on 30 November to Békéscsaba). The monitors conducted in-depth interviews with detainees and the management of each facility in order to gather information on detention conditions, allegations of verbal and physical abuse of the detainees. Together with other international and non-governmental organizations, such as the UNHCR, the IOM and the Menedék Association, the HHC is party to a working group established by the National Police Headquarters in order to elaborate and follow-up the implementation of an action plan to address and prevent ill-treatment in immigration jails, incidents of which have been reported with increasing frequency since autumn 2011. As a result of the working group's activity, the National Police Headquarters adopted in March 2012 new instructions regarding the treatment of foreigners held in immigration jails.

Following the visits to Kiskunhalas and Győr, the HHC **submitted a complaint regarding overcrowding** in these facilities (in breach of legal provisions concerning minimum moving space) to the two competent public prosecutors' office. While the Győr-Moson-Sopron County Public Prosecutor's Office partly agreed with the HHC's concerns and took action in order to change the situation, the Bács-Kiskun County Public Prosecutor's Office rejected the complaint on erroneous grounds.



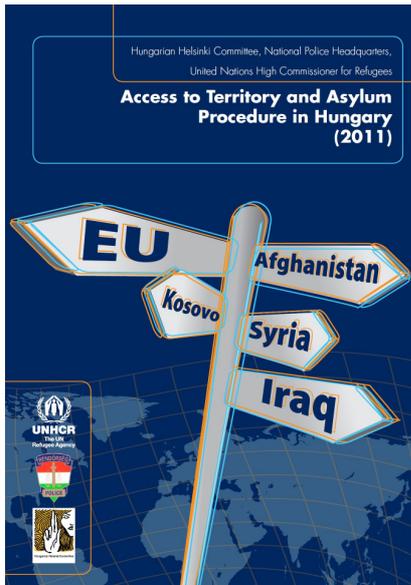
In March 2012, the HHC published its [report](#) on the two-day monitoring mission to the Kiskunhalas immigration jail (12-13 December 2011). The report focused on the alleged brutality of jail guards, the detention and expulsion of four (potentially underage) young Afghan boys and other detainees' individual complaints mostly related to medical assistance. Another [report](#) on the monitoring visit to the Nyírbátor immigration jail was published in September. The report focused on physical and verbal abuse by the guards, access to the toilet during the night, access to fresh air, problems with age-assessment and the right to communicate with the outside world. The report on the visit to the Békéscsaba immigration jail was sent to the police for comments and is awaiting publication at the time of reporting.

In the last quarter of 2012, the OIN and the police informed the HHC on several occasions about an envisaged **change in the country's immigration detention policy** due to the HHC's, the UNHCR's and the European Commission's vivid criticism, as well as the above-mentioned judgments of the European Court of Human Rights. In November and December, the Parliament adopted the amendment of various laws on immigration and asylum foreseeing that those asylum seekers who ask for asylum immediately upon being apprehended will not be detained but accommodated in an open facility. Also, those who were transferred to Hungary from another EU member state under the Dublin Regulation will not be automatically detained in case they maintain their asylum claim. These provisions only regard asylum seekers whose first asylum claim has not yet been decided on the merits. The actual implementation of these amendments remains to be monitored in 2013.

2.3. Promoting access to territory and 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 access to territory and to the asylum procedure. Being on the European Union's external border, this task gains particular importance in Hungary.

2.3.1. Promoting protection-sensitive entry systems through border monitoring



The HHC concluded a **tripartite agreement** with the UNHCR and the Border Guard in 2006, which allows the HHC to monitor practices at Hungary's land borders with Serbia and Ukraine and the Budapest Liszt Ferenc International Airport on a regular basis. The purpose of the monitoring is to **gather information** from the field on access to asylum procedures and protection, to identify individual cases of persons in need of international protection, as well as those 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 2012, conducted **two border monitoring visits per month**. 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 contacts 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, disabled, etc. The HHC prepared a short report following each visit for the cooperating parties in accordance with the Tripartite Agreement.

In the framework of the border monitoring program in 2012, the HHC found that **the submission of asylum applications still raises concerns** at certain border sections, similarly to previous years. 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 specialized 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 at land borders that may result in several months of pre-trial detention or imprisonment of later recognized refugees. (See more on this issue in Section 2.3.3). The **report** on the findings and conclusions of this activity in 2011, published in 2012, is available [here](#).

On 6 March 2012, the HHC's border monitoring project coordinator participated in a **cross-border cooperation meeting** in Belgrade with representatives of the UNHCR and NGOs from the Central Europe and the Western Balkans. The event focused on the practical application of the Schengen Border Code, including recommendations to promote respect for the right to asylum in this context. Participant organization agreed on holding further bilateral meetings and strengthening cross-border cooperation in order to be able to follow-up on individual cases of expulsion on both sides of the border. On 22-24 October 2012, the HHC's project coordinator took part in another similar cross-border cooperation meeting in Odessa that focused on the evaluation of the UNHCR's and its partners' monitoring projects at the EU's eastern borders.

2.3.2. Challenging the application of the safe third country concept

Since 2010, most asylum seekers and irregular migrants arrive in Hungary through Serbia. In September 2011, the HHC published a report [Serbia as a Safe Third Country: A Wrong Presumption](#) that summarized research findings and the experiences gathered on a field mission by the HHC to Serbia in June 2011. The 2011 Serbia Report found that:

- access to the asylum procedure and protection is limited in Serbia,
- asylum seekers returned to Serbia face a real risk of chain *refoulement*,
- asylum seekers face destitution in Serbia.

The 2011 report concluded that based on these findings, **Hungarian asylum authorities should not regard Serbia as a safe third country** for asylum seekers. As Hungary's practice of regarding Serbia as a safe third country did not change following the publication of the report, the HHC carried out a **follow-up mission to Serbia** between 2 and 4 April 2012, in order to update its 2011 report, and to complete the information gathered through desk research to this end. The report [Serbia as a Safe Country: Revisited](#) was published on the occasion of the International Refugee Day (20 June). The report maintained the HHC's previous conclusion according to which Serbia cannot be regarded as a safe country of asylum. Particular findings included:

- Serbian asylum authorities still lack sufficient resources and capacities.
- Access to the asylum procedure and to reception conditions is limited: 85% of the people who express their intention to seek asylum in Serbia fail to have their request registered. When reception centers are full, asylum claims are not processed, because the start of the procedure is tied to the availability of places in one of the centers.
- The recognition rates for refugee status remain at zero. No asylum seeker has ever been granted refugee status by Serbian authorities and only five persons have been granted subsidiary protection. In 2011, only two decisions were taken on the merits.
- Risk of chain *refoulement*: The current practice of the Hungarian authorities and the dysfunctional Serbian asylum system still pose the risk of chain *refoulement* of persons in need of international protection as their protection needs are not examined on the merits.
- The prolonged stay of unaccompanied minors in the Vaša Stajić juvenile correctional facility is highly worrying, because their freedom of movement is limited and their access to the asylum procedure is seriously delayed.
- Many migrants temporarily staying in the Vojvodina region are potential asylum seekers in need of international protection. The lack of a reception infrastructure in the region limits their access to protection and often leads to destitution.

The report has been disseminated to international partner organizations, UNHCR offices, the European Commission and it has been uploaded to leading online country information databases. The executive summary has been translated into Hungarian and was sent to Hungarian authorities and partner organizations. The report, as a unique source of country information, has been received with **great interest** and is reportedly consulted on a regular basis by NGOs and courts reviewing an order to return an asylum seeker to Hungary under the "Dublin Regulation". Examples of media appearances related to the situation in Serbia as a safe third country:

- http://index.hu/kulfold/2012/05/24/illegalis_bevandorlok_magyarorszag_kapujaban/
- http://www.delmagyar.hu/szeged_hirek/magyarorszagon_maradnak_a_menekultek/2285820/

The **Supreme Court of Hungary** (*Kúria*) issued an [official opinion](#) on 10 December 2012 in order to promote a harmonized practice at Hungarian courts regarding the application of the safe third country concept in asylum cases. The concrete reason for issuing such a guidance document was that in recent years, different Hungarian regional courts applied different approaches upon reviewing administrative decisions which deny admission to the in-merit asylum procedure based on the fact that the asylum seeker arrived in Hungary from a safe third country. This also meant a diverging evaluation of the asylum situation in Serbia (the target country of most safe third country returns of



asylum-seekers from Hungary). The Supreme Court pointed out that the position papers of the UNHCR must be taken into account when deciding on such cases. Also, the unsatisfactory functioning of an asylum system may lead to the conclusion that it cannot be considered safe for the asylum seekers in consideration. Besides constituting an important step towards a unified interpretation of the safe third country concept, the Supreme Court's guidance **largely reflects the HHC's position** on the given matter, thus representing a strategic achievement.

In the last quarter of 2012, it was repeatedly reported that the **OIN changed its policy** in light of the HHC's and the UNHCR's criticism and the guidance provided by the Supreme Court and it stopped considering Serbia as a safe third country in case of asylum seekers. The actual implementation of these amendments remains to be monitored in 2013.

In addition to its activities regarding Serbia, the HHC maintains cooperation with NGOs (NEEKA and Caritas) in **Ukraine** and obtains reliable information on potential cases of *refoulement* on an *ad hoc* basis. On 13-14 December, the HHC participated in a two-day workshop on the situation of the Ukrainian asylum system and the possibilities of further practical cooperation of various NGO stakeholders in the region.

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

As a result of its border monitoring activity in the past years, 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 continued to **act as defense counsel** in such cases at the appeal phase. Several clients are later granted a protection status in Hungary, but are 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.

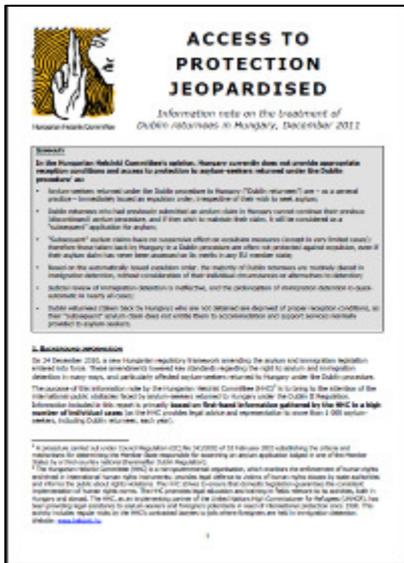
The HHC's attorneys provided **legal assistance** in several cases, including an Afghan unaccompanied minor refugee. On 4 June 2012, two recognized refugees of Somali nationality were **acquitted** in a subsequent criminal procedure. The court accepted the HHC's legal position and applied Article 31 of the 1951 Refugee Convention by not penalizing their illegal entry and the use of forged travel documents. At the time of reporting, all other cases are pending before courts of second or third instance. An HHC attorney also acts as defense counsel in the case of an Afghan family of three (including a 12-year-old girl), who are charged with the use of forged travel documents, even though they made it clear immediately upon interception by the police that they wish to seek asylum and they had use forged documents in order to be able to flee from their country of origin. The case is pending at the time of reporting.

Furthermore, it is due to the HHC's lobbying efforts that **"unlawful stay" ceased to be a criminal act** in Hungary upon the entry into force of the new Criminal Code in July 2013 (adopted by Parliament on 25 June 2012).

2.3.4. Shortcomings of the Hungarian asylum system – international advocacy activities

The HHC's 2011 report [*Access to Protection Jeopardized*](#), on the treatment of asylum seekers returned to Hungary under the EU's "Dublin Regulation" proved to be a useful advocacy tool and evidence for many refugee-assisting organizations in Europe. As a member of the European Legal Network on Asylum (ELENA), the HHC became aware of several instances where **asylum seekers' transfer to Hungary was suspended by either domestic or international courts** due to the risk of the violation of Article 3 of the European Convention on Human Rights in Hungary. The European Court of

Human Rights granted a so-called interim measure to stop a “Dublin transfer” to Hungary in at least 3 cases in 2012. The HHC is also aware of 6 German, 5 Austrian, 2 Dutch, 1 Belgian, 1 Italian, 1 Swedish and 1 Slovak case where the transfer to Hungary under the Dublin Regulation was stopped by a national court. In 2012, the HHC assisted Dutch, Slovak, Swiss, Swedish, German and Belgian NGOs in formulating their submissions in court procedures by providing up-to-date country information on Hungary.



In addition, the HHC managed to initiate a **complaint procedure before the European Commission** based on this publication. In the procedure, on-going and not yet publicly communicated at the time of reporting, the Commission is examining whether Hungary complies with its obligations under the EU asylum regulation, and it is likely that certain positive changes in legislation and policy at the end of the year were partly the result of this process.

The **UNHCR** also published a ground-breaking [critical report on the Hungarian asylum system](#) in April 2012. The report relies heavily (and explicitly) on **information provided by the HHC** and supports to the maximum extent the concerns formulated by the HHC in previous publications and communications. The UNHCR criticized a number of grave and systemic problems, among others unlawful detention, inhumane detention conditions in immigration jails and allegations of ill-treatment, indiscriminately considering Serbia as a safe third country and lack

of integration perspectives for recognized refugees. The report generated significant and unprecedented attention both by the national and international media. Examples of media coverage:

- <http://www.euronews.com/2012/04/25/un-accuses-hungary-of-locking-up-asylum-seekers/>
- <http://www.usatoday.com/news/world/story/2012-04-24/hungary-refugees-un/54501558/1>
- <http://www.foxnews.com/world/2012/04/24/un-slams-hungary-for-abuse-asylum-seekers212640/>
- <http://derstandard.at/1326249113908/Menschenrechtsgerichtshof-Strassburg-stoppt-erstmalig-Asyl-Rueckschiebung-nach-Ungarn>
- <http://www.rfi.fr/europe/20120425-hongrie-23-tous-demandeurs-asile-arrivent-hongrie-sont-places-detention>
- <http://www.origo.hu/itthon/20120423-megalazas-eroszak-rossz-ellatas-enszkorkep-a-magyar-menekulthelyzetrol.html>
- http://nol.hu/kulfold/rasszizmus_csotanyok_nyugtato_az_ensz_nekiment_a_magyar_menekultpolitik_anak
- http://hvg.hu/itthon/20120424_menekultek_jogsertes_ensz

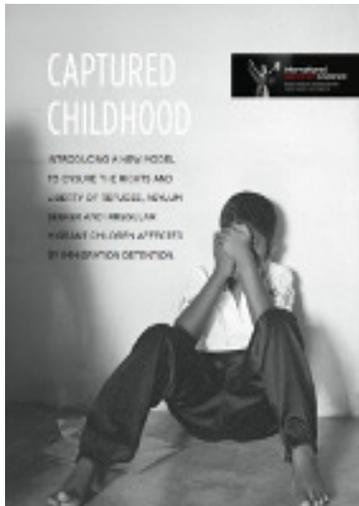
2.4. Return with respect of human rights safeguards



In March 2012, in the project “Return respecting human rights safeguards”, the HHC published [Human Rights and International Migration](#), a training manual drafted in cooperation with the police, the UNHCR and the Cordelia Foundation for the Rehabilitation of Torture Victims. The manual fills a gap by creating **user-friendly training material in Hungarian** on different issues related to border management and human rights (including refugee law, the prohibition of torture and *refoulement*, working in a multicultural environment and with traumatized and other vulnerable



the Dublin Regulation (March 2012) and country information in asylum procedures (June 2012), supporting ECRE's work on the advisory panel of the EAC. The HHC continued to act as a national coordinator for the **European Legal Network on Asylum (ELENA)**, functioning under the aegis of ECRE. The HHC staff member in charge attended the coordinators' annual meeting in Bologna on 3-4 May 2012. The HHC was also present at the regional meeting of the ELENA coordinator in Warsaw on 9 October 2012.



The HHC is also the regional focal point and an advisory board member 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 250 member organizations worldwide. In 2012, the IDC launched a global campaign aiming at ending the detention irregular migrant children. The HHC endorsed the campaign and provided comments to the policy paper [Captured Childhood](#).

In February 2012, the HHC contributed to the drafting of a **joint NGO submission** to the periodic review of the implementation by Hungary of the **UN Convention on the Rights of the Child**. The HHC addressed issues such as juvenile detention, foreign unaccompanied minors and gaps in avoidance of statelessness at

birth.

2.6.1. Transnational projects on promoting the reform of the “Dublin system”

The EU's so-called Dublin Regulation establishes a hierarchy of criteria for identifying the EU Member State responsible for processing an asylum claim, in order to avoid repeated asylum procedures and the phenomenon of “asylum shopping”. Under this system, the responsible state will usually be the state through which the asylum seeker first entered the EU. 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 use of detention to enforce transfers of asylum seekers from the state where they apply to the state deemed responsible, the separation of families, and the denial of an effective opportunity to appeal against transfers. The Dublin system also increases pressures on the border regions of the EU, where states are often less able to offer asylum seekers support and protection.

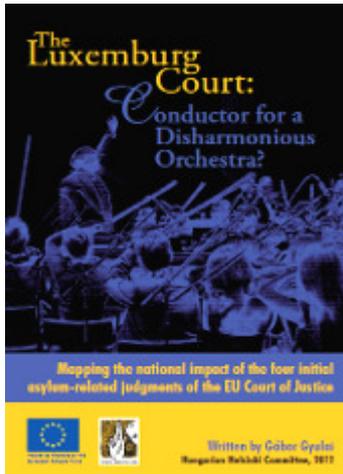
In 2012, the HHC remained very active in pan-European initiatives addressing the shortcomings of the Dublin system. This included partnership in the following **two projects** (both financed by the European Refugee Fund Community Actions):

- The second phase of the “Transnational advisory and assistance network for asylum-seekers under a Dublin process” project (coordinated by the French NGO Forum Réfugiés). The project continues to maintain **a network of NGOs** providing support to asylum seekers affected by Dublin procedures (project website: www.dublin-project.eu). In the first half of 2012, the HHC (as co-coordinator of the project) conducted **field visits** to four new countries in the network (Greece, Slovakia, Bulgaria and Germany). In the second half of 2012, the HHC developed a self-study material on the Dublin Regulation, as well as it drafted a national report on the implementation of the Dublin Regulation in Hungary. In September 2012, the HHC hosted the international legal seminar on strategic litigation, jurisprudential developments and Dublin Regulation which was attended by several asylum experts and lawyers from Europe.
- “Dublin’s Impact on Asylum Seekers’ Protection (DIASP)” project (coordinated by the Jesuit Refugee Service Europe). The main objectives of the project are to study the **enjoyment of fundamental rights** by asylum seekers under the implementation of the Dublin Regulation and

to identify and advocate for good practices in implementing Dublin procedures. Until June 2012, the HHC conducted **30 interviews** with asylum seekers awaiting their transfer or being returned under the Dublin procedure. The analysis of these interviews is on-going at the time of reporting.

2.6.2. Knowledge-based harmonization of European asylum practices

In the first half of 2012, the HHC successfully closed its 20-month project called "Knowledge-based harmonization of European asylum practices" (financed by the European Refugee Fund Community Actions). The project – among others – aimed at improving the preparedness of asylum officers, lawyers and judges on the European asylum *acquis* across Europe, particularly in regions/countries traditionally weakly or not represented in high-quality international training events for financial and linguistic barriers, using existing teaching tools such as The Refugee Law Reader. A number of particularly successful training seminars and a conference were held in 2011 to this end.



In 2012, the HHC published one of the project's major outcomes, the first **comparative study on the national impact and follow-up of the initial asylum-related judgments of the EU Court of Justice**, [*The Luxembourg Court: Conductor in a Disharmonious Orchestra?*](#). The pioneering study was widely disseminated among EU and national policy-makers, the academic and NGO world, and received outstanding feed-back, among others, from the European Commission and the

European Asylum Support Office. The study is likely to influence debates about the future Common European Asylum System in forthcoming years. The project resulted in the production of more than 200 asylum-related national jurisprudence case sheets (on three pre-selected topics), aiming at providing an input to international case-law databases.

2.6.3. CREDO – Improving credibility assessment in EU asylum procedures

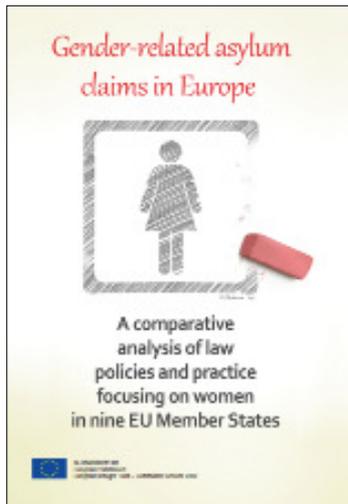
The Hungarian Helsinki Committee, in partnership with the UNHCR Bureau for Europe, the International Association of Refugee Law Judges (IARLJ) and Asylum Aid (UK), is implementing the CREDO project between September 2011 and February 2013. The overall goal of the project is to contribute to better structured, objective, high-quality and protection-oriented **credibility assessment practices in asylum procedures** conducted by EU Member States and promote a harmonized approach, reflecting relevant provisions in EU law and international standards. This goal is to be achieved by identifying exemplary practices and shortcomings in applying credibility-related guidance in EU member states' asylum practices, establishing and promoting a firm basis for **multidisciplinary training** on credibility assessment (including guidance, curriculum and methodology), accessible to all relevant target groups and raising awareness about the necessity for structured and objective credibility assessment among national decision makers and EU policy-makers, based on identified good practices.

Throughout 2012, the project conducted **comparative research** on the actual implementation of credibility-related guidance and relevant practices in the UK, the Netherlands and Belgium, on the basis of which a research report will be published in the first half of 2013. Advanced consultations were held on the envisaged **judicial guidance paper** on credibility assessment, which will be launched in the first months of 2013. In May, the HHC carried out a two-day



multidisciplinary model seminar on credibility assessment in asylum cases in Prague, for Czech and Slovak asylum officers and judges. In November, a similar event was held in Madrid with 20 participants (asylum officers, judges and UNHCR staff from Spain and Portugal, and a representative of the European Asylum Support Office). Both events were evaluated very positively and the HHC received expressions of interest to export this particular training methodology to other regions, including Eastern Europe and the Americas.

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



The GenSen project (led by the Spanish Council for Refugees, financed by the European Refugee Fund Community Actions) was initiated in response to long-standing concerns regarding the consideration of gender-based asylum claims in Europe, and the unfavorable treatment of female asylum seekers in general. The project was set up to enhance gender equality in the European asylum process and to help harmonize the implementation of the main EU legal instruments related to asylum in a gender-sensitive manner. 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 in 2011.



In 2012, the project ended with the publication of the **report** [*Gender-related asylum claims in Europe – A comparative analysis of law policies and practice focusing on women in nine EU Member States*](#). The HHC played a key role in providing information for this report, as well as in the drafting and finalization process. The HHC furthermore attended its launch at the European Parliament in May 2012. The national report [*Gender and Asylum in Hungary*](#) was published in December 2012.

In the framework of this project, the HHC held in February 2012 a half-day **workshop** for lawyers, addressing issues related to **sexual orientation and gender identity** in asylum procedures. The event was facilitated by an external expert, Tamás Dombos of the Hättér Support Society for LGBT People in Hungary.



2.6.5. Research on the legal situation of unaccompanied minors seeking asylum in Europe

The HHC participated in a **Europe-wide research project** aiming to properly assess the legal situation of separated children seeking asylum in the EU (coordinated by the French NGO France Terre d'Asile, funded by the European Commission Fundamental Rights and Citizenship program). The research focused on several areas: separated children's access to territory and the asylum procedure in various EU member states, the quality of guardianship and legal representation, detention of unaccompanied minors, decision making patterns regarding this group of vulnerable asylum seekers.

The HHC focal point for the project participated in a project meeting on 13 April 2012 in Paris and conducted **research on Hungary, Slovakia, the Czech Republic and Slovenia**.

The HHC participated in two dissemination and closing events on 17 September and 30 October 2012, where various stakeholders discussed the findings and recommendations of the [final report](#) entitled *The Right to Asylum for Unaccompanied Minors in the European Union*.

2.7. Statelessness



The HHC continued to play a leading role in advocacy efforts regarding the protection of stateless persons, and the prevention and the reduction of statelessness, both at a national and international level. The HHC is a founding member of the **European Network on Statelessness (ENS)**, established in 2011 with the participation of the Open Society Justice Initiative, the Tilburg University, Praxis (Serbia) and UK NGOs Asylum Aid and Equal Rights Trust.

The HHC's refugee program coordinator continued to perform his duties as **chair** and actively participated in strengthening the Network throughout 2012 (including various meetings, teleconferences, preparation of concept papers, identification of potential partners, fund-raising activities, etc.). The ENS and its website (www.statelessness.eu) were officially launched in June 2012 and by the end of the year the Network gained 68 associate members from more than 30 countries.

The year's main **statelessness-related events** included:

- Lecture on the protection of stateless persons to Moldovan state officers, NGO and UNHCR staff (31 January, Chisinau);
- Information session on the ENS for Brussels-based international and national NGOs, together with the ENS coordinator (25 June, Brussels);
- Several lectures at the world's first summer school dedicated entirely to statelessness (23-27 July, Tilburg);
- International expert at a roundtable organized by OSI on the Italian statelessness-specific protection regime (5 October, Florence);
- Training on the prevention of statelessness, protection of stateless persons and statelessness and asylum for 30 Serbian lawyers and NGO staff (11 October, Belgrade);
- Information session on the ENS for more than 60 European NGO representatives at the annual general conference of ECRE, together with the ENS coordinator (18 October, Dublin);
- "Addressing Statelessness in Europe" – ENS kick-off training and network-building seminar with 40 participants from all around Europe (19-21 November, Budapest);
- ENS Steering Committee meeting (22-23 November, Budapest);
- Lecture to government delegations from Bulgaria, Romania, Slovenia, Slovakia, Poland and the Czech Republic on statelessness-specific protection regimes and relevant European experiences, organized by the UNHCR Regional Representation (10 December, Budapest);
- Lectures at the symposium "International developments in the field of statelessness and the situation in the Netherlands" (13 December, Tilburg).

Furthermore, in 2012 the HHC's statelessness expert provided **comments on draft legislation** on statelessness in Hungary, Brazil and Costa Rica, **ad hoc advice** to Italian lawyers representing individual cases of stateless persons, as well as support to a **UNHCR pilot project** on improving the quality of statelessness determination procedures in Hungary. He also published an article [Statelessness in the EU Framework for International Protection](#) in issue 14(2012) of the European Journal of Migration and Law. The HHC, on behalf of the ENS, also submitted to the Budapest Regional Court of Appeal an **amicus curiae** in a case involving statelessness determination.

ENS blog entries on statelessness by the HHC:

- <http://www.statelessness.eu/blog/statelessness-tower-babel-%E2%80%93-how-do-you-say-stateless-your-language>

- <http://www.statelessness.eu/blog/access-protection-promising-newcomers>

2.8. Events on asylum and international protection

In addition to the specific training activities mentioned in previous sections, the HHC organized or participated in the following events:

- 16 January: The HHC's expert on unaccompanied minors held a training session for caretakers and guardians at the childcare facility for unaccompanied minor asylum seekers in Fót;
- 27 February: The HHC's refugee program coordinator delivered a training session on female genital mutilation (FGM) and its asylum-related aspects to a group of Hungarian NGO representatives;
- 19-20 March: The HHC's refugee program coordinator delivered a training session and a workshop in Ljubljana for the future refugee counselors, organized by the Ministry of Justice of the Republic of Slovenia;
- 20 April: Awareness-raising session for students at the Trefort Ágoston High School;
- 21 April: Participation in panel discussion on migration and integration, "Colours Festival";
- 24 April: Lecture at ELTE University on sexual orientation/gender identity and asylum;
- 26 April: Lecture on migration and asylum in Europe at the EU Academy of the Budapest Business School;
- 27 April: Awareness-raising session for students at the Leövey Klára High School;
- 23-25 May: The HHC's refugee program coordinator delivered various training sessions on asylum-related topics, for 60 Ukrainian, Russian, Belarusian and Moldovan judges in Kyiv (upon invitation by the UNHCR);
- 8-9 June: The HHC's refugee program coordinator delivered various training sessions for Italian lawyers and social workers in Rome, in the framework of an immigration law course organized by the Ius&Nomos Association;
- 14-15 June: The HHC's refugee program coordinator attended and gave lectures at the yearly seminar of Spanish researchers on migration and refugee law in Valencia, Spain;
- 5 October: the HHC's staff member participated in a meeting with the Commissioner for Human Rights of the Council of Europe, Mr Nils Muižnieks on the detention of asylum seekers, the treatment of migrant women in Europe and the protection of human rights defenders in Paris;
- 15-16 October: the HHC's project coordinator participated at a meeting organized by European Programme for Integration and Migration (EPIM) aiming at capacity building and building practical cooperation with grantees;
- 30 October: the HHC's researcher moderated the conference on the right to asylum of unaccompanied children in Europe in Budapest;
- 5-6 and 12-13 November: annual refugee law training for HHC and UNHCR staff, HHC lawyers, asylum officers and judges in Sarlópuszta;
- 9 November: the HHC's project coordinators took part in the workshop organized by the National Police Headquarters on age-assessment;
- 26 November: the HHC's project coordinator delivered a presentation on the situation of unaccompanied minor migrants and asylum seekers in Hungary at the conference organized by Kék Vonal Foundation, the Hungarian Commissioner for Fundamental Rights (Ombudsperson) and the National Police Headquarters in Budapest;
- 26 November: the HHC's co-chair and project coordinator participated in a meeting in Balassagyarmat organized by OIN aiming at finding a peaceful solution after the conflicts that arose between the foreigners and the locals in the city;
- 28 November: the HHC's project coordinators took part in an NGO forum organized by OIN on the integration of refugees;
- 5-7 December: The HHC's project coordinator participated and delivered a presentation in a conference on alternatives to detention in Central-Europe in Warsaw;
- 13-14 December: several HHC staff members participated in a two-day workshop on border monitoring in Hungary, Ukraine and Serbia in Budapest.

3. Promoting access to justice

In 2012, the HHC continued to work towards improving the efficiency of the criminal legal aid system.

3.1. “Steps Towards a Transparent Appointment System in Criminal Legal Aid”

The “Steps Towards a Transparent Appointment System in Criminal Legal Aid” project is aimed at promoting reform in the criminal legal aid appointment system in order to reduce the possibility of corruption. The HHC closely cooperated with the police and relevant bar associations in the project. The following activities were carried out in the project in 2010 and 2011:

- FOI requests were sent to police headquarters about ex officio defense counsel appointments, in order to demonstrate that the practice of having “in-house” lawyers at police headquarters is widespread. The results clearly supported the HHC’s concerns regarding the impartiality and efficiency of ex officio appointed defense counsels.
- Strategic litigation was carried out against police headquarters refusing FOI requests, with two cases ending up before the European Court of Human Rights. (The cases are pending.)
- The HHC developed and tested a “corruption-free” pilot model for a new appointment system: the former system of appointments (in which police officers are fully free to select the appointed lawyer from a list compiled by the bar association) was temporarily replaced in three pilot sites by a software developed by the HHC’s IT expert. The software was designed to select defense counsels on a random basis and was integrated into the police’s central IT system.
- Furthermore, the performance of ex officio defense counsels was evaluated on the basis of case file analysis, both with regard to cases initiated at the pilot sites before and during the pilot period. The HHC’s assumption was that the level of the ex officio defense counsel’s performance increases as a consequence of the new appointment system, which was substantiated by the research.

In the first half of 2012, the HHC concluded the project by compiling a research report which included (i) a summary of earlier researches concerning the efficiency of the ex officio appointment system, (ii) an analysis of the possible causes of deficiencies within the system and the legal background, (iii) analysis of the data on the practice of appointments, requested from police units in the course of the project, (iv) possible ways of solving problems emerging in relation to the appointment of defense counsels, (v) presentation of the pilot software tested in the course of the project, analysis of the data generated during the use of the software and the evaluation of the ex officio defense counsel’s performance at the pilot sites, (vi) a detailed proposal on introducing the model tested in the course of the project, including the identification of the core issues to be addressed by stakeholders when introducing the software.



The project’s findings and the HHC’s recommendations aimed at reforming the system were discussed at a workshop for stakeholders on 24 February 2012. The event was organized by the HHC in cooperation with the Budapest Bar Association, and was held in the chamber of the latter. Speakers of the workshop included the President of the Hungarian Bar Association and the President of the Budapest Bar Association, the co-chair of the HHC, representatives of the police and county bar associations from the three pilot sites, and the representatives of the National Police Headquarters and the Justice Service of the Ministry of Public Administration and Justice.

The altogether 40 participants included presidents of county bar associations, high-ranking

- The HHC collaborated with the European Criminal Bar Association (ECBA) in a research project on legal aid systems in the European Union. The scope of the project is to give a practitioner's perspective on the matter to the European Commission. For the purpose of this study, the HHC answered a questionnaire compiled by ECBA on the legal aid system in Hungary on the legal provisions and practice.
- In the first half of 2012 the HHC carried out the yearly update of the European e-Justice Portal's factsheets on the rights of defendants regarding Hungary under the aegis of the Council of Bars and Law Societies of Europe (CCBE).
- The Ombudsman launched an official investigation into fundamental rights issues related to attorneys at law. Upon the initiative of the staff members of the Ombudsman's office, a meeting was held on 25 April 2012, where the HHC provided them with input regarding the most problematic issues concerning legal aid in criminal proceedings.

3.3. Locus Standi: comparative study on legal standing

The HHC was the implementing partner of the Maastricht University in the project titled „Standing up for Your Right(s) in Europe, comparative study on Legal Standing (*Locus Standi*) before the EU and Member States' Courts“. The objective of the study was to provide an in-depth and objective comparative analysis of legal provisions, doctrine and case law on locus standi before civil, criminal and administrative courts of some selected legal systems, and before EU courts. The HHC drafted the national country report based on a questionnaire compiled by international experts.

4. Promoting equal treatment

4.1. Anti-discrimination Law Clinic

The Anti-discrimination Law Clinic program was launched by the HHC in 2008. The Clinic aims to sensitize law students to this special legal field and provide them with a thorough theoretical background as well as practical skills that they can use when handling anti-discrimination cases. After taking part at a course on anti-discrimination law, the law students – under the close supervision of practicing attorneys – participate in handling actual cases, which enables them to see law at work and acquire skills that they will be able to rely on after graduation.

In the spring and autumn semester of the 2011/2012 academic year, altogether 32 students participated in the Law Clinic at the Pázmány Péter Catholic University Law Faculty. They took part in fieldwork under the supervision of attorneys from the HHC, the Legal Defence Bureau for National and Ethnic Minorities (NEKI), the Kézenfogva Foundation and Háttér Support Society for LGBT People.

4.2. Select equal treatment cases

The HHC continued to provide legal aid and representation to victims of discrimination before the Equal Treatment Authority and civil courts. Cases dealt with in 2012 include the following:

- The **Budapest Police Headquarters banned the Budapest Pride 2012 march**, citing obstruction of traffic, even though the Budapest Pride was scheduled to take place on a route that is regularly permitted for the use of public rallies and demonstrations. In April 2012 the Metropolitan Tribunal overruled and repealed the decision of the police and established that there is no legal reason to prohibit the Budapest Pride. The HHC issued a [press release](#) regarding the police ban and stated, among others, that the ban not only breached marchers' right to freedom of assembly, but it also amounted to discrimination of the participants of the Budapest Pride on

the ground of sexual orientation or gender identity. (See also Section 6.3.) Accordingly, the HHC has brought a civil lawsuit on behalf of a member of the LGBTQI community, asking the Metropolitan Tribunal to establish the violation of the plaintiff's inherent personal rights, and to oblige the police to apologize and also to pay HUF 300,000 as non-pecuniary damages to the HHC's client. The case is pending.

- M., the 8-year old child of an HHC client has **special educational needs** (he has a behavioral disorder), but may be educated in an integrated manner. According to an expert opinion from 2010, he should participate at complex development sessions three times a week. However, the kindergarten did not ensure the three sessions per week for M. for a year, even though his mother asked the kindergarten several times to solve this problem. The kindergarten did not turn to the local government regarding the issue, and the situation was solved only after the local government was approached by the mother herself. According to an expert opinion dated February 2011, it was not recommended for M. to attend school, since due to the lack of an adequate treatment (and his illnesses and operations) he was still not ready for it. In June 2011 the Equal Treatment Authority established that the kindergarten violated M.'s right to equal treatment when it did not provide the necessary treatment. However, the Equal Treatment Authority concluded that the local council may not be held responsible for the failure to provide treatment to M. M.'s mother, represented by the HHC's attorney at law, submitted a claim for damages against the kindergarten and the local council.
- The HHC's client of Roma origin, X. Y., was employed by a Ministry since 1 September 2009 on the basis of a fixed term contract. On 7 July 2011 X. Y. entered into a new fixed-term employment contract with the Ministry until 31 December 2011. On 2 January 2012, the Ministry and X. Y. signed a non fixed-term contract with X. Y. with a 6-month probationary period, and, finally, X. Y. was dismissed on 27 March 2012. The HHC represents X. Y. in a procedure launched against the Ministry. It is claimed, among others, that the Ministry acted unlawfully when setting up the second fixed-term contract and left it to expire unlawfully, in order to be able to enter into a contract with X. Y. setting out a probationary period. Furthermore, it had no reason and thus it was unlawful to establish the longest probationary period possible, since X. Y. has worked for the Ministry for two and half years before the non fixed-term contract was signed. It is also argued that X. Y.'s superior did not raise any complaints regarding her work, and that **she was dismissed due to her Roma origin.**

4.3. Anti-discrimination trainings

As the national implementing partner of the Human European Consultancy and the Migration Policy Group, the HHC participated in the project titled "Awareness raising seminars in the areas of non discrimination and equality targeted at civil society organizations", funded by the European Commission. The overall purpose of the assignment was to improve the impact and effectiveness of civil society organizations (in 34 countries) with regard to the implementation of equality and non-discrimination legislation and policy. In the framework of the project the HHC carried out an extensive research study to provide up-to-date information on national policies, law and practices. Building on the mapping study two seminars of two days was organized for altogether 32 Hungarian NGO in November 2011 and February 2012. A training manual on discrimination titled "Awareness raising seminars in the areas of non-discrimination and equality targeted at civil society organizations" was compiled and will be available on the website of the European Commission in Hungarian as well.

5. Assisting victims of human rights violations

5.1. Human Rights Legal Counseling Program

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

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

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

Clients turning to the HHC receive initial legal advice from the HHC's legal advisor who in turn refers cases that fall within the HHC's profile to attorneys working with the HHC. Other clients are also given basic legal information and advice about where to seek further assistance. On average, the HHC legal advisor assists around 15-20 people per day.

Attorneys dr Tamás Fazekas, dr Gábor Gyöző, dr Barbara Pohárnok and dr Aurél Nemesszeghy continued to work as permanently contracted attorneys in 2012. HHC attorneys' workload and case docket is very high and at times results in capacity constraints.

In 2012, **538 persons received legal assistance** from the HHC's Human Rights Legal Counseling Program:

- 59 asylum cases (This is a noticeable increase compared to 2011, where 40 asylum cases were registered. The increase is mostly due to migrants accommodated at the community shelter in Balassagyarmat coming to the HHC to seek legal assistance as well as increased representation in Dublin procedures.)
- 31 alien policing cases (visas and residence permits, expulsion, family reunification);
- 101 cases relating to detention conditions;
- 20 cases of complaints against police measures;
- 22 inquiries regarding procedures before the European Court of Human Rights;
- 11 cases concerning equal treatment;
- 144 cases concerning pending or closed criminal procedures;
- 18 cases of persons remaining in the private pension funds;
- 22 civil servants contesting unjustified dismissal;
- 110 miscellaneous cases.

5.2. Applications to the European Court of Human Rights and the Constitutional Court

5.2.1. Overcrowding in prisons

In 2012 HHC submitted **5 applications to the European Court of Human Rights (ECtHR) challenging detention conditions in different Hungarian penitentiary institutions.** In all cases, the applicants were detained in prison cells where their living space was on average 2.5-3 square metres per person, therefore not reaching the minimum 4 sq.m. per person prescribed by the European Committee for the Prevention of Torture and the case law of the ECtHR. Moreover, hygienic standards have not been respected in several prisons and the privacy of the applicants could not always be guaranteed. HHC prepared the applications invoking the prohibition of torture and inhuman or degrading treatment and punishment (Article 3 of the European Convention on Human Rights) and also the right to an effective remedy (Article 13 of the Convention), as the applicants have no effective way in the Hungarian legal system to complain about overcrowding.

5.2.2. Mandatory retirement of judges

Article 12 of the Transitional Provisions of the Fundamental Law of Hungary set forth that tenure of judges who by 1 January 2012 are older than the general retirement age provided by the Fundamental Law (i.e. 62 years) shall be terminated by 30 June 2012. As a result, close to 300 senior judges were forced into retirement. This affected a significant number of the judges serving at higher courts and the majority of the the most senior judges at these higher courts.

Many of them turned to the HHC seeking legal assistance in submitting an application to the European Court of Human Rights. **The HHC decided to take the case of all the judges willing to enforce their rights at international level, and prepared and submitted the application of 105 judges to the ECtHR in June 2012.** In the application the HHC attorneys argued that the mandatory retirement violates the right to a fair trial (judges have no remedy whatsoever against their dismissal before the end of their legally established mandate), the right to property (legitimate expectations having financial value are protected as property rights) and the ban on discrimination (the mandatory rules are held discriminatory also by the European Commission). Following wide media coverage more judges turned to the HHC asking for legal representation, and three of them have already submitted their application with the help of the HHC.

Subsequently in 2012, both the Constitutional Court and the Court of Justice of the European Union established that the mandatory retirement of judges was unlawful for similar reasons as argued by the HHC. Hence, as a response to questions received by the HHC from concerned judges regarding the ongoing domestic labor law procedures, the HHC issued a [statement](#) providing information on the domestic legal situation and its possible affects on the Strasbourg applications.

5.2.3. Discrimination against private pension fund members

In late 2010, the Hungarian government effectively nationalized the private pension funds, thereby leaving members with the option of either returning to the one-tier state pension scheme or remaining in the private scheme with restricted access to state-paid pensions. Those who decided not to return to the state pension scheme from their private pension funds lost their right to a significant portion of the state pension they would have been entitled to under previous rules based on their future contributions. According to the HHC, this leads to discrimination when read in conjunction with the right to the protection of property of those who decided to remain in the private pension funds. In February 2011, the HHC prepared an actio popularis constitutional court petition and requested the Hungarian Constitutional Court to repeal the legal provisions that discriminate against private pension

scheme members. In May 2011, staff members of the HHC and 21 other clients turned to the European Court of Human Rights with a sample application written by the HHC.

At the end of 2011, the government amended the law in question. Nevertheless, the law still remained discriminatory in different aspects, as contested in the original application. The ECtHR called upon the HHC to submit whether it upholds the application and, if so, with what content; the **statement on and the reasoning for upholding the application** was submitted in February 2012. Furthermore, the HHC prepared a **sample statement for applicants, together with a sample chart showing the extent of discrimination**. (The latter [documents](#) were made available on-line.)

Finally, as of 1 August 2012, the relevant laws were amended again, and the new rules no longer discriminate private pension scheme members. Therefore, HHC staff members will withdraw their applications.

5.2.4. Unjustified dismissal of civil servants

In 2010, Parliament adopted an act allowing the dismissal of certain civil servants without any justification. Related provisions left civil servants without an effective domestic remedy, because in absence of reasoning, it is almost impossible to prove that the dismissal was ill-founded. Furthermore, courts could do nothing else than to apply the provisions in force, which made such unjustified dismissals lawful. As this violates the right to a fair trial, the HHC decided to **assist 10 civil servants to submit applications to the European Court of Human Rights**. The ECtHR communicated one case (as a leading case) to the Hungarian government, and the HHC submitted its observations to the Government's response in December 2011. In another case, the HHC decided to assist the applicant in filing a **constitutional complaint** to the Constitutional Court; the complaint was submitted in February 2012.

The ECtHR delivered its decision in the matter **on 10 July 2012**: the court established in the case of [K.M.C. v. Hungary](#) (Application no. 19554/11, Judgment of 10 July 2012) that **there has been a violation of Article 6(1)** of the Convention. The Hungarian Government requested that the case be referred to the Grand Chamber, however, this request was denied and the decision [became final](#) on 19 November 2012.

In 2012, the HHC's lawyers have submitted **eight further applications in case of those dismissed civil servants who have launched domestic labor law procedures**. These are different from the K.M.C. v. Hungary case as in the latter case the applicant did not use any domestic legal instrument to redress the situation. This is relevant because the six-month period allowed for the submission of the application to the ECtHR after exhausting all the effective domestic remedies might start from the date of the dismissal, but it is also an arguable legal position that it may not fall to the detriment of a citizen that he/she used the ordinary legal remedy trying to redress the consequences of application of an unconstitutional legal provision, therefore the six month period did not start until it became evident on 16 July 2012 that not even the Constitutional Court will exclude the possibility of applying the unconstitutional provisions in the labor disputes. Furthermore, taking into consideration the limited human resources and the tight timeframe, **the HHC also made available a sample application HHC, which was sent to further 12 affected civil servants**, belonging to the second category of victims.

5.2.5. Transfer of cases in breach of fair trial

The Transitory Provisions of the Fundamental Law of Hungary and the related cardinal acts **empowered the President of the National Judicial Office to appoint another court to proceed in a given case, which violates the right of the parties to a lawful judge**, and, thus, their right to a fair trial, as also noted by the Venice Commission, which – e.g. in its latest opinion from October 2012 on the Hungarian cardinal laws on the judiciary – stated that it strongly disagrees

with the system of transferring cases. The HHC also stated several times that the possibility of transferring cases violates the right to a lawful judge (see Section 6.1.1.). Furthermore, the HHC decided to provide **representation before the European Court of Human Rights to a client whose case had been transferred** to a countryside court from Budapest after his appeal against the transfer was rejected by the Curia. The HHC claims that the transfer of the case by the President of the National Judicial Office violates Articles 6(1) and 13 of the Convention.

5.2.6. Pre-trial detention

On 29 July 2012 the HHC submitted an application to the European Court of Human Rights in a case of a 50-year old truck driver with a clean criminal record. In 2011 the driver was assigned to carry some goods from one place to another by truck. The goods were transported and the route of the truck was registered as required by the law. However, the goods disappeared from the depot and the police started an investigation into case. In the document proving that the goods had been handed over in the depot the HHC's client wrote two characters of his name and one character of the number of his ID wrongly. After a one-year long investigation the HHC's client was identified as suspect as the police assumed that it was an intentional act to provide false personal data on the mentioned document. When the police went to the place where the client had been living for 40 years with his old parents and ill brother, the client was abroad, therefore, he could not be taken to the police station for interrogation. The police then issued an arrest warrant on account of the fact that the suspect was fleeing. Upon his arrival back to Hungary the client immediately went to the police station, made a statement and handed over all the documentation he had in relation with the investigated case. Nevertheless, the prosecution initiated ordering his pre-trial detention which was ordered by the court. The appeal against this decision was rejected. The only reason of the decision was that the suspect was caught upon an arrest warrant and he was abroad, there the danger of his fleeing is well-founded. The facts – that the suspect voluntarily went to police and was abroad before because he was working there – were not taken into account by the court. The client was detained for months before being released by the court. As from the very first moment the detention was unlawful, the HHC decided to take the case to the European Court of Human Rights. Besides a [press release](#) concerning the application, the HHC also published an extensive [blog post](#) about the case and the deficiencies of the practice of pre-trial detention in Hungary in general.

5.2.7. Police ill-treatment

The HHC's attorney represented applicants Mr. Réti and Mrs. Fizli before the European Court of Human Rights in relation to their ill-treatment by the police (Application no. 31373/11). The applicants were **ill-treated by the police** in October 2006 **after having been stopped for an identity check** while riding a motorbike in Budapest. In particular, a police officer had hit Mr. Réti repeatedly, handcuffed him and forced him to the ground; another officer had later forced his truncheon against Mr. Réti's neck, causing him to lose consciousness; and an officer had pushed Mrs. Fizli in the chest and banged her head against the ground. The applicants filed a criminal report for ill-treatment in official proceedings, but the Hungarian authorities terminated the investigation essentially with regard to the inconclusive medical evidence. The applicants' complaint against the discontinuation of the investigation was dismissed. The applicants, acting as substitute private prosecutors, filed a motion with the respective court. However, the court acquitted the accused police officers, observing inter alia that the medical evidence was inconclusive. The ECtHR concluded that the Hungarian Government has not furnished any convincing or credible arguments that would provide a basis to explain or justify the degree of force used during the operation. In particular, it has not been clarified what particular conduct on the applicants' side warranted a reaction in the course of which Mr. Réti suffered numerous haematomas, contusions and a commotion, and Mrs. Fizli sustained several haematomas and contusions as well. Since the Government has not shown the contrary, the ECtHR could not but conclude that, even assuming that the situation objectively required the use of force, the extent to which it was applied was excessive. The ECtHR also found that there had been no sufficiently adequate investigation into the applicants' allegations, capable of leading to the identification of the alleged perpetrators. For this the ECtHR concluded in its [judgment](#) delivered on 25 September 2012 that the applicants had been subjected to degrading treatment and that no adequate investigation has

been carried out into their allegations. There has, accordingly, been a breach of Article 3 of the Convention. The applicants were both awarded a just satisfaction of EUR 5,000.

5.2.8. Opposition party protests

On 23 December 2011, MPs and activists of the opposition party Politics Can be Different (Lehet Más a Politika, LMP) formed a human chain around the Parliament, chaining themselves to objects at the entrance of the building in protest against Government Bills in their view threatening democracy, due to be voted on that day. The demonstrators were detained by the police on charges of suspicion of "violation of personal liberty", a criminal offence carrying a sanction of up to 3 years of imprisonment, and may be committed by a person "who denies someone their personal liberty". The HHC shortly issued a [press release](#), claiming that criminal charges on account of "violation of personal liberty" against protesting MPs and activists run counter to human logic, and, together with the Hungarian Civil Liberties Union (HCLU), offered free legal assistance to activists detained by the Police. Criminal proceedings continued against the protesters, but on 17 February 2012, the Government proposed amnesty for the protesters. The MPs of the LMP refused the idea of amnesty alleging that they did not commit a crime, and both the HHC and the HCLU [stated](#) that instead of granting amnesty, criminal proceedings should be terminated due to the fact that no criminal offence was committed. However, on 5 March 2012 the parliamentary majority adopted Act XII of 2012 on Exercising Amnesty (Amnesty Act), which entered into force on 10 March 2012. The protesters claimed that the Amnesty Act violated their rights enshrined in the Fundamental Law of Hungary and in the European Convention on Human Rights, since the text of the Amnesty Act states that they have committed a criminal offence, even though no judicial decision was reached in their case, and, thus, violates their right to reputation and the presumption of innocence. Eleven protesters, represented by the HHC and the HCLU [submitted a constitutional complaint to the Constitutional Court of Hungary and submitted an application to the European Court of Human Rights](#).

On 14 January 2013, the Constitutional Court decided not to examine the constitutional complaints of the protesters on their merit, stating that no "fundamental constitutional question" arose in the case and that complaints were submitted late. However, in the view of the HHC and other experts, the way the Constitutional Court established the deadline runs counter to its general practice in this regard and its own Rules of Procedure do not govern the issue either. Accordingly, the HHC will seek clarification from the Constitutional Court on this issue.

5.3. Select cases at domestic courts

- During the riots in the autumn of 2006, X. Y. was **ill-treated by police officers** while being escorted to a police van after his apprehension. The case was witnessed by fellow police officers, who were charged in a supplementary private prosecution procedure (in which the prosecution was represented by HHC's lawyer) for not intervening and not informing their superior about the case. On 8 March 2012, the Metropolitan Court of Appeal ruled in its second instance decision that the police officers witnessing the ill-treatment failed to comply with their duties, such as attempting to prevent the ill-treatment, and accordingly, they were sentenced for participating in committing the crimes of assault and ill-treatment in official proceedings and were put on probation. The case continued before the Curia on the third instance. In its judgment delivered on 15 November 2012 the Curia upheld the second instance decision, thus [the conviction of the police officers became final](#).
- The HHC's client, Zs. H. was transferred two times to the Judicial and Observation Psychiatric Institute (IMEI) while in pre-trial detention, since in the respective penitentiary institution's view he was dangerous to himself. In the IMEI, Zs. H. was not examined properly. Instead, he was immediately given a large dose of extremely strong, out-of-date anti-psychotic medications, thus was heavily sedated. The case was also examined by the Ombudsman, who concluded that the medication resulted in that Zs. H. was practically unable to move and side-effects similar to the symptoms of Parkinson disease emerged. With the help of the HHC's attorney, Zs. H. submitted a

claim for damages against the IMEI. An expert opinion submitted in the course of the court proceedings stated that the inadequate medication had a permanent negative effect on the Zs. H.'s state. Furthermore, the doctor of the IMEI basically admitted in the course of the court hearing that their main aim was to "calm down" Zs. H. instead of curing him. (It should be noted that on the basis of the court procedure, sedating seems to be a common practice in the IMEI.) On 8 June 2012, **the Metropolitan Tribunal ruled in favor of the HHC's client and obliged the IMEI to pay 5 million HUF as damages** to Zs. H. The court stated that even though the IMEI is part of the penitentiary system, it is still a medical institution, thus it is obliged to provide proper medical treatment, and is not allowed to sedate "problematic" detainees. The decision of the Metropolitan Tribunal is not final.

- The HHC provides legal representation to a **detainee who spent five weeks more in prison than he should have**. The HHC's client was convicted for two criminal offences and his sentences were cumulated. After noting that the conditions for cumulating the sentences prevail, the Pest Central District Court failed to initiate the respective procedure within the shortest time possible, and also failed to reach a decision within a reasonable time. After concluding the procedure the court failed to suspend the detention of the HHC's client and sent the decision on cumulating the sentences to a wrong penitentiary institution. The Pálhalma National Penitentiary Institution, where the HHC's client was detained, also failed to initiate the procedure for cumulating the sentences and to deliver the court's sentence on cumulating the sentences to the detainee within the shortest time possible. Since, due to the omissions of the Pest Central District Court and the Pálhalma National Penitentiary Institution, the detainee spent five weeks more in prison than he should have, the HHC **submitted a civil law claim for damages against both the Pest Central District Court and the Pálhalma National Penitentiary institution**.

6. Other activities

6.1. Influencing law and policy-making

6.1.1. "Rule of Law Defenders" – Human rights NGO platform

In June 2010, the **HHC, the Hungarian Civil Liberties Union (HCLU) and the Eötvös Károly Institute (EKINT)** decided to establish an ad hoc platform to act as a more effective counterweight to the increasingly unrestricted power of the Hungarian state. The platform was initiated and is coordinated by the HHC. The activities of the platform consist of the following: a) regular scrutiny of legislative developments; b) regular and coordinated, and in certain cases joint, commenting on new bills; c) press events for domestic and international media; d) issuing individual and joint press releases to object to governmental decisions and legislative steps; e) submitting applications to the Constitutional Court, to the European Court of Human Rights and other international forums; f) advocacy using international human rights forums and other international and European institutions.

In 2012, the platform's and the HHC's related activities were the following:

- Platform members sent an [alternative response](#) to **Viviane Reding, Vice-President of the European Union**, Commissioner in charge of Justice, Fundamental Rights and Citizenship on 29 December 2011, providing detailed answers to the questions previously posed by the Commissioner to the Hungarian Government concerning the reduction of the mandatory retirement age of judges, the reorganization of the judiciary, and the termination of the Data Protection Commissioner's mandate. The alternative response was also sent to the **European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE)** on 11 January 2012, just before the Committee's meeting on the situation in Hungary.
- In the beginning of January 2012, platform members addressed **the Monitoring Committee of the Council of Europe**, asking the Monitoring Committee to request an opinion from the

Venice Commission on the newly reformed Hungarian constitutional system, with special regard to the cardinal laws adopted in the second half of 2011.

- In February 2012, members of the NGO platform prepared **9 comprehensive factsheets** in English on some of the **cardinal changes related to the rule of law and human rights in Hungary**, intending to give an overview of the legislative steps leading to the disruption of the system of checks and balances and the rule of law, with special regard to the cardinal laws adopted in the second half of 2011. The list of fact sheets is the following: (1) Overview – Disrupting the System of Checks and Balances; (2) New Rules on the Constitutional Court; (3) Administration of Courts and Standing of Judges; Nullification Law; (4) New Rules on the Prosecution Service; (5) Terminating the Mandate of the Data Protection Commissioner and the Status of the New Authority; (6) Criminal Policy; (7) Discrimination Against Members of the Private Pension Scheme; Retroactive and Discriminative Curtailment of the Pension of Former Police Officers; (8) Act on the Protection of Families; (9) The New Church Law. Factsheets were made available on-line, and were submitted to the rapporteurs of the **Venice Commission**, the co-rapporteurs of **the Parliamentary Assembly of the Council of Europe (PACE)**, and was distributed to **embassies in Hungary**, including the embassy of the United States, Norway and Sweden.
- In January and February 2012, both **the Venice Commission and co-rapporteurs of the PACE** were provided with the English versions of analyses on legislative steps, prepared by the platform members, including (i) the [analysis](#) of the new Constitutional Court Act, (ii) the letter of the platform members sent to the President of the European Commission regarding the termination of the Data Protection Commissioner's mandate, (iii) and the letter of the platform members sent to Viviane Reding, Vice-President of the European Union.
- On 10 February 2012, **Hannes Swoboda, chair of the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament** consulted members of the Hungarian civil society, including representatives of trade unions and the HHC and the HCLU. Platform members shared their concerns regarding the legislative steps aimed at the disruption of the system of checks and balances, the centralization of the administration of courts and the new church law, depriving already established churches of their status.



- On a meeting held on 16 February 2012, Kerstin Lundgren and Jana Fischerová, **co-rapporteurs of the PACE**, who were appointed to assess a request for opening a monitoring procedure with respect to setbacks of the rule of law and human rights in Hungary, met the representatives of five Hungarian NGOs: the HHC, the HCLU, the EKINT, the Legal Defence Bureau for National and Ethnic Minorities and Transparency International Hungary. NGOs participating at the meeting provided an overview of the legislative steps leading to the disruption of the system of checks

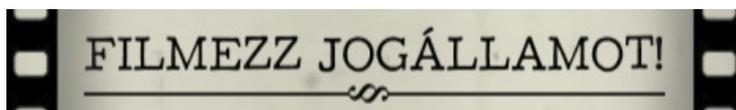
and balances and the rule of law in Hungary.

Topics covered included the Constitutional Court, legislative changes affecting the justice system, the removal of the Data Protection Commissioner, the new church law, the law on the protection of families, the Government's criminal policy (e.g. the so-called "three strikes rule", the possibility of actual life-long imprisonment enshrined in the Fundamental Law and the confinement of juveniles for petty offences). Furthermore, NGOs addressed the discrimination of private pension fund members and the curtailment of the pension of former uniformed services officers, along with the termination of the separate Ombudsman for national and ethnic minorities, as well as issues related to corruption.

- The representatives of the HHC, the HCLU, the EKINT and the Transparency International Hungary **consulted the rapporteurs of the Venice Commission** on 21 February 2012 in Budapest, after the Venice Commission was requested both by Hungarian authorities and the Monitoring Committee of the PACE to give opinions on certain Hungarian laws. Accordingly, NGOs submitted their concerns related to the recent laws on the Constitutional Court, the judiciary, the Prosecution Service, the laws on freedom of religion and the protection of families, along with concerns related to the termination of the Data Protection Commissioner's mandate.
- On 23 February 2012 the HHC and the HCLU reacted in a [press release](#) to the news that the **head of the National Judicial Office used her power to appoint a court other than the legally designated court** to proceed in certain cases. The NGOs emphasized that the rule allowing the appointment of courts to proceed in certain cases violates the right to a fair trial.
- In March 2012 the Venice Commission issued an opinion regarding the new Hungarian cardinal laws on the court system and the judiciary, stating that "the reform as a whole threatens the independence of the judiciary". The Hungarian Government has initiated an amendment of the two cardinal laws in question, apparently as a result of the Venice Commission's opinion. Platform members analyzed the proposed amendments and found that the **Government failed to provide adequate legislative response to the Venice Commission's criticism on judicial reform**: many suggestions of the Venice Commission remain without any legislative response, and the proposed amendments do not eliminate the conceptual problems of the new regulation. The analysis was prepared both in [English](#) and in [Hungarian](#) and was widely distributed in April 2012: it was sent to the Venice Commission, the embassies of Canada, Denmark, Finland, Germany, Japan, Norway, Sweden, and the United States, and to the European Association for the Defense of Human Rights (AEDH). On 17 May 2012 the HIPA organized a press meeting regarding the issue, with the participation of all platform members.
- The Venice Commission visited Hungary also while preparing the report on the new Prosecution Service Act. In the framework of the visit, on 4 April 2012, the representative of the HHC, along with the HCLU and Transparency International Hungary, met the members of **the Venice Commission** and informed them about their concerns related to the new law. The Venice Commission was also provided with the English version of the platform's [analysis](#) concerning the new system of the administration of courts, the legal status of judges and the Prosecution Service of Hungary.
- On 20 April 2012, Hungarian Minister of Justice and Public Administration and Deputy Prime Minister Tibor Navracsics submitted to the Parliament a draft Parliamentary Resolution suggesting not to execute the judgment of the European Court of Human Rights taken in the case of *Fratanoló v. Hungary*, i.e. he suggested that Hungary should not pay the just satisfaction awarded by the ECtHR to the applicant and the penal provisions condemned by the ECtHR should remain in effect. (The case concerned the Hungarian ban of using a red star publicly.) Upon the initiation of the HHC, platform members and several other NGOs and trade unions issued a [joint press release](#) on 24 April 2012, **calling upon the Government to respect the decision of the ECtHR**.
- In May 2012, the Hungarian Minister of Justice and Public Administration sent a letter to the President of the Curia in relation to the judgment in a specific criminal case (the Cozma case, where a popular handball player was killed, allegedly by Roma persons), indicating that the sanctions imposed are too light and asking the President to take all necessary measures in order to ensure that judicial judgments correspond with the expectations of society. Both the HCLU and the HHC addressed the Minister regarding the matter, claiming that his letter was aimed at **putting pressure on the judiciary**, thus threatened the independence of justice. The HHC's [open letter](#) and the Minister's response were published also in English by the HHC.
- On 24 July 2012, platform members initiated an [on-line petition](#) **for the reinstatement of judges** affected by the "forced retirement" and for re-establishing the guarantees of judicial

independence, and called upon judges and judicial organizations and associations to declare their solidarity with their dismissed fellow colleagues.

- In September 2012, an assessment of the final text of the adopted amendments to the laws on the judiciary was prepared both in [Hungarian](#) and in [English](#). The document was sent to the Venice Commission and some of the embassies seated in Hungary. The **President of the National Judicial Office reacted to the criticism and invited platform members to a meeting** held on 3 October 2012.
- In September 2012 platform members compiled an [updated set of fact sheets](#), which was also made available on-line, was submitted to the **delegation of the European Parliament's LIBE Committee**, visiting Hungary in September 2012 and to some of the **embassies** seated in Hungary. The list of the fact sheets is the following: (1) Administration of Courts; (2) Developments Concerning the Lowering of the Mandatory Retirement Age for Judges; (3) Rights of the Parliamentary Opposition; (4) New Rules on the Constitutional Court; (5) The Independence of the Hungarian Data Protection Authority; (6) Media Regulation in Hungary; (7) The New Church Law.
- On 20 September 2012, platform members met with the delegation of **the Venice Commission**, and shared **concerns regarding the latest amendments to the laws on the judiciary**. Furthermore, platform members were invited to meet the delegation of the **European Parliament's LIBE Committee** on 25 September 2012. Topics discussed on the meeting included the following: (i) rules on and the functioning of the Constitutional Court; (ii) administration of courts and the legal status of judges, including "forced retirement" of judges; (iii) concerns related to the data protection authority; (iv) media regulation; (v) freedom of religion (the new law on churches and its consequences); (vi) rights of opposition parties and the proposed rules requiring preliminary registration for voting; (vii) possibilities of NGOs to engage in the legislative process.
- On 20 September 2012, the HHC and the HCLU issued a [press release](#) regarding the **Bill requiring mandatory preliminary registration from those who want to vote**. The NGOs have criticized the fact that the Government intends to amend the Transitional Provisions of the Fundamental Law in order to make the registration constitutional. In another [public statement](#), issued by the HHC, the HCLU and the EKINT on 14 November 2012, the NGOs claimed that the preliminary and obligatory registration for voting has no legitimate aim and thus it is arbitrary and unconstitutional.
- Throughout 2012, the HHC met with representatives of several embassies seated in Hungary and informed them about developments threatening the rule of law in Hungary. Embassies included that of Canada, Denmark, Finland, Japan, Norway, Sweden, and the United States. Further advocacy meetings were concluded with the International Bar Association, French MEPs and members of the United States Congress.
- For related **strategic litigation before the Constitutional Court and the European Court of Human Rights** concerning a variety of issues, see Section 5.2.
- Call for **human rights short films**: In November 2011, the platform issued an invitation to media students and professionals to submit treatments for video animations and short films about the values of constitutional democracy and the risks of abandoning them.



Mészáros journalist and Ferenc Török film director) decided on the applications, and prizes were awarded to six treatments.

A professional jury consisting of acclaimed professionals (György Báron film critic, László Majtényi, president of the EKINT, Antónia

The films were presented and certificates were handed over to winners at a screening at Kino cinema on 28 June 2012, with the participation of the filmmakers, the jury, representatives of human rights NGOs and journalists and representatives of the Open Society Institute.



The short films and video animations were also made available on-line, through the HHC's YouTube channel:

- short film 1st prize: <http://www.youtube.com/watch?v=P2aUMvxg3Cw>;
- short film 2nd prize: <http://www.youtube.com/watch?v=IX9r0GPntvg>;
- video animation 1st prize: <http://www.youtube.com/watch?v=h85mchtPjLs>;
- video animation 2nd prize: <http://youtu.be/l2ZWr3GVuoY>;
- short film special award: <http://www.youtube.com/watch?v=XengjKpqh5Q>;
- short film special award: <http://www.youtube.com/watch?v=LXeFbFx6oS0>.

Activities of the NGO platform triggered intensive **media interest**: press releases were covered widely by the domestic media, and platform members were contacted also by foreign newspapers and radio and television channels, such as The Guardian, Le Journal de Dimanche, Rai Radio3 and the Radio Canada. In order to facilitate accessibility, a separate page was created under <http://constitutionhungary.tk/>, collecting the documents prepared by the platform members concerning the constitutional changes in Hungary since July 2010 to the present.

The NGO platform's activities were supported by the Open Society Institute Emergency Fund between September 2011 and August 2012 and since 1 December 2012 are supported by the Trust for Civil Society in Central and Eastern Europe.

6.1.2. Commenting on draft legislation

- On 9 March 2012 the HHC published a 27-page long [opinion on the new Criminal Code](#). The HHC pointed out that the Criminal Code contains professionally unfounded, non-efficient and unconstitutional measures, and that some of the provisions violate international standards as well. The HHC was a member of an NGO coalition intensively advocating for adequate hate crime legislation (see also in Section 6.2.1.) in the new Criminal Code. The NGO coalition drafted several detailed opinion on the Hungarian legislation and necessary amendments of the law.

Selected media coverage:

- <http://www.origo.hu/itthon/20120313-a-helsinki-bizottsag-velemenye-a-bunteto-torvenykonyv-btk-tervezeterol.html>
- http://www.nepszava.hu/articles/article.php?id=557602&referer_id=friss
- <http://www.jogiforum.hu/hirek/2737>
- In March 2012 the HHC has also evoked its formerly drafted opinion on **juvenile justice** and presented its [statements](#) concerning the "child friendly" measures initiated by the Government in a draft law and introduced in different laws. The HHC argued that draft law provisions do not respect the best interest of the child and criticized that deprivation of liberty of a child is possible in case of minor crimes or petty offences as well. The HHC highlighted that provisions introduced by the Government are wicked especially when referring to child-friendly justice.
- In November 2012, the HHC [commented](#) on the draft **amendments of the Ombudsman Act's** provisions referring to the National Preventive Mechanism's tasks.

6.1.3. Alternative report on the implementation of the Interlaken Declaration by Hungary

In July 2012, upon the request of the Open Society Justice Initiative (OSJI), the HHC completed a questionnaire on the implementation of the Interlaken Declaration by Hungary, covering e.g. the execution of the judgments of the European Court of Human Rights, compliance with its case law in general and increasing the awareness of national authorities regarding standards of the European Convention on Human Rights. The OSJI requested the HHC to fill in the questionnaire with the aim of incorporating the results in a shadow report containing information from civil society organizations in several key countries in the region regarding the issue. The shadow report was submitted to the Steering Committee on Human Rights (CDDH) in order to ensure that the perspectives of civil society are appropriately reflected.

6.2. Activities related to the situation of Roma in Hungary

6.2.1. Advocating for an appropriate hate crime legislation and application of law – human rights NGO coalition

In the beginning of 2012 the HHC, together with Amnesty International Hungary, Háttér Support Society for LGBT People, Hungarian Civil Liberties Union and the Legal Defence Bureau for National and Ethnic Minorities formed a coalition and jointly **called for a comprehensive reform in the new Criminal Code** with regard to hate crime. The **NGO coalition** has submitted written opinions about the draft law on two accounts ([1](#), [2](#)), participated at talks with drafters from the Ministry of Public Administration and Justice, organized a lobby meeting with representatives of the parliamentary parties, and made a verbal statement at the session of the Parliamentary Committee for Human Rights, where the NGOs also had the opportunity to discuss the topic with the state secretary and a senior official from the Ministry. Furthermore, the NGOs drafted a letter to the OSCE in order to initiate its intervention for the implementation of a compatible legislation. Some elements of the NGO coalition's proposal were taken into account by the law-maker. One such adopted recommendation was the explicit listing of disability, sexual orientation and gender identity among the groups protected by the hate crime law.

The civil society actors also **followed bias motivated acts** presented by the media and issued several press releases and also supported victims of hate crime acts (in [Nagykanizsa](#) and [Sajóhídvég](#)) by preparing reports to the police.

Members of the NGO coalition closely **monitored marches of far-right groups** in Devecser, [Miskolc](#) and Kerecsend. At the latter two scenes the civil organizations were able to intervene before the extremist demonstrations and initiated negotiations with local Roma organizations and the police. Following the Devecser events a [joint open letter](#) was sent to the National Police Chief and the Minister of Interior, posing questions regarding the inaction of the Police when the demonstration turned to verbal and physical violence. The official answer necessitated that a wide range of NGOs [reflect](#) on it, since the authorities denied that any violation happened on behalf of the police. The HHC also undertook to **provide legal representation** for two victims of the events in Devecser in the police complaint and criminal proceedings (see Section 6.2.4.). After the anti-Roma demonstration held in Cegléd in August 2012, members of the NGO coalition issued a [joint press release](#), emphasizing that there is a worrying trend of inaction of police at far-right demonstrations. As the NGOs pointed out on, despite conducts qualifying as hate crime and hate speech the police fail to dissolve demonstrations or bring any hate crime charges against the perpetrators: e.g. in the Cegléd case the police failed to properly qualify cases as racial violence, and instead of investigating racial motives it focused on simple rowdiness.



The NGO coalition carried out very active media work in order to support its advocacy. Numerous media appearances were achieved related to hate crime legislation and practices. Selected media appearances:

- http://www.nol.hu/lap/mo/20120530-buntetlen_rasszizmus
- http://index.hu/belfold/2012/03/08/erelytelen_a_btk_a_rasszista_es_homofob_buncselekmnyek_kel_szemben/
- http://nol.hu/lap/allaspont/bocsanatos_gyulolet
- http://hvg.hu/itthon.bunugy/20120601_felirat_nagykanizsa_feljelentes
- <http://www.nepszava.hu/articles/article.php?id=555789>

Members of the NGO coalition will also cooperate in the future: the coalition will advocate for a separate police unit responsible for the investigation of hate crime cases and will organize training sessions, roundtable meetings for the stakeholders. Members of the coalition will also draft an alternative commentary to the new Criminal Code's hate crime provisions.

The HHC is a partner organization of the Háttér Support Society for LGBT People and the Legal Defence Bureau for National and Ethnic Minorities in a project aiming at the establishment of an anti-hate crime action plan in Hungary.

An HHC staff member participated at a one-week training session in London on the methods of monitoring hate incidents.

6.2.2. Hate speech incident reported to Chief Public Prosecutor

In the summer of 2011 various groups of the Hungarian far right gathered for a festival called 'Magyar Sziget' (Hungarian Island). An especially outrageous lecture from the event was recorded and leaked to the public. On the tape, one could hear the leader of Betyársereg, a self-proclaimed Hungarian guerrilla group fighting for racial supremacy, discusses his vision of a future violent insurrection. Zsolt Tyirityán told his audience that they must prepare themselves for new conditions under which they should be capable of "pulling the trigger on a rifle" at the sight of someone with a "shade of a [skin] color. If perhaps it was your mother lying there cold in her blood, and a dirty Gypsy kept stabbing the knife into her, do you think you would observe the commandment not to kill?" – he continued. Then Tyirityán asked: "Are we going to have enough in ourselves to dare shoot a rotten and lousy Jew?"

It was assumed that the speech violated Hungarian law on several counts, given its genocidal content and its explicit discriminatory intent and breach of human rights. For this reason, the HHC [asked](#) the Hungarian Prosecutor's Office whether they shall start an investigation into the matter. Although an investigation was launched, it was decided to drop the matter from further prosecution. The HHC submitted a [legal complaint](#) against the latter decision, arguing that the decision of the police is a misinterpretation of the law to imply that the criminal act of "inciting to hatred" requires actual violence as its consequence. However the Prosecutor's Office [refused to continue](#) the investigation based on an evidently false interpretation of the Criminal Procedure Code (saying that the HHC is not entitled to submit a complaint against the decision on closing the investigation) but added also that should the HHC be entitled to submit the complaint the in-merit examination of the motion would have the same result. Therefore the investigation was closed, against which there is no further legal remedy.

Media coverage:

- <http://thecontrarianhungarian.wordpress.com/2011/08/12/open-letter-by-the-hungarian-helsinki-committee-asks-viktor-orban-and-pal-schmitt-to-condemn-hate/>
- http://nol.hu/belfold/magyar_sziget_a_helsinki_bizottsag_birosag_ele_vinne_az_ugyet
- <http://www.origo.hu/itthon/20110812-betyarsereg-faji-haboru-buntetojogi-kovetkezesmenyek.html>

6.2.3. Ethnic profiling practices

The Equal Treatment Authority launched an ex officio investigation on the basis of the notification of the notary of the village Rimóc (Nógrád county, Hungary), who noticed that petty offence fines for lack of mandatory accessories for bicycles (ring, headlights, reflector prisms) are almost exclusively imposed on Roma people in the area. Later on the HHC stepped into the procedure. Statistically analyzing the documentation of the fines, the HHC managed to substantiate that whereas the Roma amount to approximately 25% of the village's population, out of the 36 fines imposed for lack of accessories 35 were imposed on persons who (based on their name, mother's name and address) are likely to be of Roma origin. By going on a field trip and taking photos on the spot and through other means (e.g. going through internet advertisements of second hand bicycles) it could be demonstrated that most bicycles in the area do not meet the requirements, so it is unlikely that only Roma bikers commit transgressions in this regard.



On 26 April 2012, the case ended before the Equal Treatment Authority in a **friendly settlement** between the Nógrád County Police Chief and the HHC. The **police chief acknowledged that the practice of fines may have disproportionately affected the Roma community**, but emphasized that the police had no means to control the overall practice of a certain unit, because they were not allowed to process data of the ethnic affiliation of the individuals fined. The police undertook to delegate 20 officers to a 3-day anti-discrimination training, offered to provide the local community with necessary bike accessories free of charge, and they also undertook to provide all the data necessary for monitoring whether the disproportionate practice has continued in the following two years. This is the **first case in Hungarian legal history in which ethnic profiling has been partly substantiated by litigating parties and acknowledged by the police.**

In the second half of 2012 the HHC stayed in contact with the Nógrád Police and the Equal Treatment Authority and monitored the implementation of the obligations undertaken in the agreement.

Selected media appearances:

- <http://www.opensocietyfoundations.org/voices/fined-being-roma-while-cycling>
- http://index.hu/belfold/2012/04/26/nincs_csengo_huszezer
- <http://www.jogiforum.hu/hirek/27596>
- <http://www.oriqo.hu/itthon/20120426-rimoci-kerekparos-romak-birsagolasat-vizsgalta-az-egyenlo-banasmod-hatosag.html>

6.2.4. Hate crime

The HHC has provided lawyers to two victims of hate crime and police inaction before the domestic authorities in a criminal and a police complaint procedure. The two clients of the HHC were at their relatives house when far-right, extremist groups held a demonstration in the town of Devecser. The crowd marched along the streets mainly inhabited by Roma people, stopped at a house and threw stones to it and the approximately 12 people – including children – staying at the courtyard. One person was injured. The police failed to dissolve the demonstration nonetheless the speeches incited hatred against Roma citizens and serious crimes were committed by the leaders of the event. Moreover the police have not intervened at all when several participants seriously insulted verbally the Roma being present and then physically attacked them by bias motivation when throwing stones. The first instance decision rejected the complaint against the police, the case is currently pending before the National Police Chief. The HHC will eventually bring the case before the domestic courts and the European Court of Human Rights.

6.2.5. Advocacy against police working group addressing exclusively Romani children

The HHC – with three other human rights NGOs – was invited to participate in a working group aiming at the prevention of criminal offences committed by juveniles and victimization. The denomination of the working group was unacceptable since it exclusively concerned Roma children, suggesting that only Roma children are affected by crime. The NGOs [complained](#) about the denomination, and explained their concerns to the police and government representatives. The supervising Ministry of Interior first [refused](#) the modification of the denomination. Therefore all four NGOs got off the working group. The NGOs jointly wrote a [detailed letter](#) to the Minister of Interior and the State Secretary of Social Integration in which they outlined their opinion and disapproval concerning the denomination and the conditions of the planned activities. Finally, as a result of the strong advocacy and media work – the Ministry [modified](#) the denomination of the working group. (Later on, the working group started its operation but without inviting the human rights NGOs.)

Selected media coverage:

- <http://www.jogiforum.hu/hirek/27530>
- http://nol.hu/belfold/a_bm_szerint_csak_a_ciganygyerekekkel_van_gond
- http://index.hu/belfold/2012/04/17/jogvedok_tiltakoznak_a_bm_romaprogramja_ellen/

6.2.6. Shadow report on the National Strategy for Social Inclusion

In response to the European Commission's EU Framework for National Roma Integration Strategies, all EU Member States developed plans to improve the economic and social integration of Roma citizens, and the European Commission urged Member States to involve civil society in the implementation and monitoring of the strategies. Accordingly, civil society coalitions from the Member States were given the possibility to supplement or present alternative information to progress reports submitted by Member States to the International Steering Committee and to any reports submitted by Member State parties to the European Commission on the implementation of their National Roma Inclusion Strategies. As the **member of an NGO coalition in Hungary**, the HHC **took part in preparing the Hungarian shadow report by contributing to the chapter on antidiscrimination**, covering issues such as changes in the institutional system affecting the rights of the Roma and the possibilities to enforce their rights, the proportion of Roma employees in the military and in the police and related training and scholarship programs, public security plans, local crime prevention programs applying the means of community building and awareness raising and compliance with European Union and Council of Europe instruments. The template for shadow reporting was prepared by the Decade of Roma Inclusion Secretariat in cooperation with the Open Society Foundation's Roma Initiatives and Make the Most of EU Funds for Roma and consulting with the European Commission.

6.2.7. Meetings with the OSCE High Commissioner for National Minorities

A member of the HHC has met the **OSCE High Commissioner for National Minorities** and the representatives of his office on two accounts in 2012. The High Commissioner received information on the situation of Roma especially concerning the emerging rate of hate crimes committed against the Roma minority and the practices of the authorities and decision-makers ignoring the problem.

6.3. Activities related to the right to assembly

- On the night of 30 March 2012 **protesters blocked for about a minute two bridges in Budapest, demonstrating against President Schmitt Pál's refusal to resign** over the withdrawal of his doctorate due to plagiarism. After ID checks, many of the demonstrators

were taken into short-term arrest in middle of the night and detained for several hours and petty offence procedures were launched against them for the violation of traffic rules and in some cases for refusing to comply with a lawful police order. On the day after, the HHC issued a [press release](#), stating that the **police measures were unlawful**. The HHC held that the police failed to take into account that those blocking the bridge were exercising their freedom of assembly and dispersal of the demonstration was unlawful in light of the case law of the European Court of Human Rights and that of the Hungarian Constitutional Court. The HHC emphasized that even if the lawfulness of the demonstration could have been disputed, it was certain that taking the demonstrators into short-term arrest in the middle of the night for a minor offence was a disproportionate and consequently unlawful measure by the police.

- On 6 April 2012, the Budapest police refused for the second consecutive year the permit for the annual **Budapest Pride** due to alleged traffic disruptions. Similarly to last year, organizers challenged the police's ban at the court, which overruled the police decision. The HHC issued a [press release](#) on 8 April 2012 regarding the matter, in which it was noted that the decision of the police cited almost word by word the reasoning from last year, which has already been declared unacceptable last year by the Metropolitan Court. The HHC recalled that the approximately hundred thousand participants of the so-called Peace March (a march supporting the Government) used the same route in January 2012 as the route envisaged by the organizers of the Budapest Pride. The police raised no objection regarding the route of the Peace March, while they claimed that the mere 1,500 participants of the Budapest Pride would disrupt traffic. Because of the reasons above, **the HHC found that the police ban not only breached marchers' right to freedom of assembly, but it also amounted to discrimination of the participants of the Budapest Pride on the ground of sexual orientation or gender identity**. Accordingly, **the HHC brought a lawsuit on behalf of a member of the LGBTQI community**, asking the Metropolitan Tribunal to establish the violation of the plaintiff's inherent personal rights. (See also Section 4.2.)
- The HHC provides **legal representation to 11 opposition party protesters before the Constitutional Court and the European Court of Human Rights**, claiming that their right to reputation and the principle of the presumption of innocence were violated by and amnesty act stating that they have committed a criminal offence by chaining themselves to objects in front of the Hungarian Parliament building. (For details of the case, see Section 5.2.8.)
- As referred to in Section 6.2.1., the HHC took part in **monitoring marches of far-right groups** and strived to raise the awareness to the fact that there is a worrying trend of inaction of police at far-right demonstrations violating the law.
- On 9 December 2011 a **hunger strike** was launched **in front of the Headquarters of the Hungarian National Television (HNT)**, protesting against the alleged censorship by the leaders of the Hungarian National Television. Latest developments regarding the case include that in the early morning of 1 November 2012 the HNT's security guards tried to dissolve the demonstration and moved the tent of the demonstrators by force. Subsequently, on 19 November 2012, they tried to isolate the territory of demonstration with containers. Police stood by passively taking no action in both cases, which, as it was claimed by the [press release](#) of the HHC and the Hungarian Civil Liberties Union, amounted to **unlawful omission on behalf of the Police**. The HHC decided to represent the demonstrators before the Independent Police Complaints Board in a **complaint procedure launched for police inaction**. (See also Section 1.8.)
- Reacting to the Government's new proposal on introducing tuition fees in the Hungarian **higher education system, students and secondary school students began a series of demonstration** in December 2012. To assist the students in exercising their freedom of assembly the HHC published a **brief practical guide**, covering the rules related to organizing peaceful demonstrations and the possible steps by the police.

6.4. Human rights trainings

- On **29 May 2012**, a lawyer of the HHC held a lecture at the **Hungarian Judicial Academy on hate crime** laws, practice of the authorities, cases before the courts and deficiencies detected in the legal system. At the event approximately 25 practicing criminal law judges were present.
- On **6 June 2012** a conference was organized by the **National Public Service University** (within the framework of which the former Police College operates) with the title "Thousand-faced Police Measure" with the participation of around 50 police officers. The program coordinator of the HHC held a presentation at the event about the requirement of proportionality as a precondition to lawfulness, based on the practice of the European Court of Human Rights.
- On **15 October 2012**, the program coordinator of the HHC held a presentation for **leading police officers of the Budapest Police Headquarters** on the standards of the European Court of Human Rights regarding police measures.
- The HHC has also been active in holding human rights training sessions in educational institutions. On 6 November 2012, the program coordinator of the HHC contributed to an event organized by the Legal Sociology Department of the **Eötvös Loránd University, Faculty of Law** and the European-Hungarian Legal Sociology Educational and Research Foundation. The topic of the event was the relationship of the Roma minority and the police; further speakers included the Legal Defence Bureau for National and Ethnic Minorities and a member of the Hungarian Law Enforcement Science Society. On 5 December 2012, colleagues of the HHC held a presentation and a related training session to students working in the Roma Legal Clinic of the Eötvös Loránd University, Faculty of Law. On 11 December 2012, a training session was held at the **Eötvös Loránd University, Faculty of Social Sciences** on the HHC's activities in the field of civic control of law enforcement agencies. (The training session was held in the framework of a course focusing on the role of NGOs in human rights protection.) Colleagues of the HHC also held presentations in **secondary schools** in Budapest (Alternatív Közgazdasági Gimnázium, Leőwey Klára Gimnázium, ELTE Trefort Ágoston Gyakorlóiskola) on the HHC's activities and human rights issues throughout the year.

6.5. Reports for the EU Fundamental Rights Agency

The European Union Agency for Fundamental Rights (FRA) contracted the HHC in summer 2011 to provide country-specific information on developments in the area of the Multi-annual Framework of the FRA.

In 2012, the HHC provided the FRA with the following reports:

- Contribution to the FRA Annual Report 2012 – Hungary [report, including the following topics: (1) Asylum, immigration and integration, (2) Border control and visa policy, (3) Information society and data protection, (4) The rights of the child and protection of children, (5) Equality and non-discrimination, (6) Racism and ethnic discrimination, (7) Participation of EU citizens in the union's democratic functioning, (8) Access to efficient and independent justice, (9) Rights of victims of crime];
- Update: Contribution to the FRA Annual Report 2012 – Hungary [extensive legal thematic study, including the following topics: (1) Democratic standards of laws on elections and referenda; (2) Legislative powers of Parliament; (3) Quality of legislation, stability and reliability of laws; (4) Power of the Constitutional Court to review legislation; (5) Rights of opposition parties to be involved in legislative procedures; (6) Right to assembly, to publicly express one's opinion; (7) Independence of the judiciary; (8) Court competences and rule of law; (9) Independent monitoring of data protection and freedom of information; (10) Freedom and pluralism of media, independence, role and functioning of the broadcasting regulator; (11) State institutions, including schools, maintaining

neutrality in relation to various religious denominations, non-discrimination of persons on grounds of their religious or other convictions; (12) Rights of asylum-seekers to security, due process and to a treatment respecting fundamental rights; (13) Diversity and right to family life; (14) Legislation on retirement; (15) Right of homeless, of persons belonging to ethnic minorities and of LGBT persons to be protected against discrimination; (16) Rights of victims of bias-motivated crimes, including ethnic, racist and homophobic violence, to have efficient access to justice; (17) Other recent developments relevant to a fundamental rights assessment of current legal developments];

- Participation of children in fieldwork research (ad hoc information request);
- Children with disabilities: Targeted violence and hostility (social fieldwork research);
- Data Protection: Redress mechanisms and their use (ad hoc information request and social fieldwork research);
- Victim Support Services in the EU: An overview and assessment of victims' rights in practice (ad hoc information request and report);
- Information on research on the impact of the economic crisis on gender equality in EU Member States (ad hoc information request);
- Review service of the European Institute for Gender Equality's database of stakeholders and experts
- Surveying LGBT people and authorities: qualitative component of public authorities' research

The reports serve as background material for the FRA, and are used for its own public reports.

6.6. Communications

In 2012, the HHC continued to place increased emphasis on its communication toward the public by launching a blog and increased use of social media. The HHC's communications and presswork was assisted by a part-time press officer.

The HHC launched its **Helsinki Figyelő** blog at www.helsinkifigyelo.hvg.hu in late January 2012 on the prominent hvg.hu news portal, which is the online version of the respected HVG weekly political magazine. The blog is meant to increase public awareness of the issues the HHC is working on by providing insight and views in a more reader-friendly, "less dry" format. Our aim is to publish one or two new posts per week that are in most cases written by HHC staff members or our press officer. Over the year, the blog drew over 120,000 visitors with its 58 articles, the most popular of which was read by 13,000 persons.

The Helsinki Committee's facebook page at [facebook.com/helsinkibizottsag](https://www.facebook.com/helsinkibizottsag) continued to be updated regularly (at about every two days) and has reached over 3,400 "likes" by the end of the year. Individual posts reach about 1,000 persons (unpaid).

Budapest, 31 January 2013



Marta Pardavi
Co-chair
Hungarian Helsinki Committee