



Hungarian Helsinki Committee

## **HUNGARIAN HELSINKI COMMITTEE**

### **ACTIVITIES REPORT**

**2013**

The Hungarian Helsinki Committee (HHC) is a human rights NGO founded in 1989. It monitors the enforcement in Hungary of human rights that are 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 guarantees 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 2013**

- In 2013, the European Court of Human Rights found a breach of the European Convention on Human Rights in 3 pre-trial detention cases where the applicant was represented by the HHC's attorney; another case ended with a friendly settlement.
- In April 2013, in the first ever individual case launched before it, the UN Committee on the Rights of Persons with Disabilities decided that Hungary has failed to fulfill its obligations by failing to ensure access to banking card services for persons living with visual impairments on an equal basis with others. The applicants were represented by the HHC.
- The HHC, working closely with two other NGOs, carried out extensive international advocacy activities regarding rule of law issues in Hungary, with a particular focus on the Fourth Amendment to the Fundamental Law targeting the Council of Europe's Venice Commission and the Parliamentary Assembly of the Council of Europe.
- HHC attorneys and legal advisors gave free legal counselling to 1126 asylum seekers. The HHC's attorneys represented 129 asylum seekers in asylum cases before the asylum authority or courts, helping 82 percent of our clients to gain international protection status.
- In 566 cases, we provided free legal counselling to clients seeking advice on immigration, citizenship and statelessness issues, pre-trial detention and criminal procedures, detention conditions, health care in prisons, unjustified police measures, equal treatment or about applications to the European Court of Human Rights.

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

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

Date and facility visited	Findings
<b>29-30 April 2013</b>  <b>Bács-Kiskun County Penitentiary Institution (Kecskemét)</b>	<p>The HHC visited all units of the institution, including the penitentiary unit for juveniles (most juvenile female detainees are placed in Kecskemét) and the unit for pre-trial detainees. The HHC noted with concern that the overcrowding rate of the penitentiary institution was 271% for pre-trial detainees. Numerous anomalies were revealed in the unit for juveniles, mainly because of the insufficient number of penitentiary staff. As a follow-up to the HHC's <a href="#">report</a>, the Head of the National Prison Service instructed the head of the institution to take the steps necessary in order to avoid irregularities.</p>
<b>3-4 June 2013</b>  <b>Borsod-Abaúj-Zemplén County Penitentiary Institution (Miskolc)</b>	<p>The point of the visit was to monitor the prison conditions, with the particular aim of paying close attention to those units where pre-trial and juvenile detainees are kept and where confinement for petty offences is executed/are implemented/carried out. As a reaction to the HHC's <a href="#">report</a> on the visit, the institution abolished the practice of automatic strip searches after family visits, changed the rules on making phone calls, and the National Prison Service informed the HHC that they are considering broadening the scope of detainees entitled to school scholarships.</p>
<b>7-9 August 2013</b>  <b>Forensic Psychiatric Mental Institution (IMEI, Budapest)</b>	<p>Defendants who are found to have a mental disability are detained in the IMEI. According to the new Criminal Code, from 1 July 2013, detainees can be held in the IMEI for an indefinite, sometimes even lifelong period of time, as long as they constitute a threat to society. Those who cannot return to their family or to a public institution (mainly because of the lack of space) are hardly ever released according to the judicial practice. After the visit to the IMEI, the HHC – together with the Hungarian Civil Liberties Union – called for amending the law to end this human rights abuse. (The monitoring report on the visit is not yet public as of writing.)</p>
<b>14-15 August 2013</b>  <b>Baranya County Penitentiary Institution (Pécs)</b>	<p>The HHC visited the unit for pre-trial detainees, known to be one of the most crowded in the country, where the overcrowding rate sometimes amounts to 180-200%. The HHC witnessed a high number of triple bunk beds and the unit was highly infected with bedbugs. HHC monitors encountered a few good practices in the unit for juveniles. (The draft report on the monitoring visit is currently being commented on by the prison service.)</p>
<b>4-5 November 2013</b>  <b>Juvenile Penitentiary Institution (Tököl)</b>	<p>Among other problems, the HHC primarily noticed the bad state of toilets, which were renovated after the visit. Serious skin diseases were very common in the prison, and the situation was worsened by the lack of appropriate health care and unsatisfactory hygienic conditions. After the visit, the prison took steps to solve the problem. (The draft report on the monitoring visit is currently being commented on by the prison service.)</p>

Prison monitoring visits were co-funded by the Oak Foundation and the European Commission in the framework of the Bulgarian Helsinki Committee's project „Children Deprived of Liberty in Central and Eastern Europe” (see under 1.5.).

## ***1.2. Advocacy for an OPCAT-compliant Hungarian law***

The HHC has been advocating for years for the implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) and for putting in place an effective national preventive mechanism (NPM) to prevent human rights abuses in places of detention. In 2011, the Hungarian Government ultimately decided to ratify the OPCAT and to designate the Ombudsperson (the Commissioner for Fundamental Rights) to be the NPM in Hungary, starting to operate in 2015. The HHC welcomed this development, but also found that the related legal rules were inadequate in terms of meeting all the requirements prescribed by the OPCAT. Accordingly, in 2012 the HHC focused on calling for improvements that would enable the Ombudsperson to fulfill the NPM mandate.

In 2013, the HHC continued its activities by commissioning the [Budapest Institute](#), a think tank organization, to prepare an economic study on the possible costs of the Hungarian NPM. The idea was strongly supported by the Association for the Prevention of Torture because to date no such advocacy paper has been available and no similar underlying methodology has been used internationally. The economic study – available in [English](#) and [Hungarian](#) – discusses different budget scenarios, and also offers a methodology to be used freely by other experts and NPMs or state agencies for financial calculations. Furthermore, the HHC prepared a [sample Memorandum of Understanding](#) between the Ombudsperson's Office and NGOs under the auspices of the NPM and a [sample call for NGO applications](#) to take part in the NPM's operation, which may be used in the future if it is decided that NGOs will also be involved in the work of the NPM.

The HHC continued to advocate at the Ministry of Public Administration and Justice to consider the amendment of the relevant Hungarian legal provisions. The HHC welcomed that in October 2013 the Ministry has drafted a modification of the regulation which allows NGOs to participate in the work of the NPM. The HHC will follow-up with the Ombudsperson regarding the possibilities for future cooperation.

## ***1.3. "Towards the Equality of Roma Defendants before Courts and in Penitentiaries"***

Discrimination against the Roma is widespread throughout 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. Furthermore, no recent data is available about the treatment of Roma by criminal courts and little research has been carried out regarding this issue in the past. At the same time, numerous individual cases have been reported, suggesting that discrimination in the criminal justice system against Roma defendants is a dire problem.

The project "*Towards the Equality of Roma Defendants before Courts and in Penitentiaries*" aims to combat discrimination in the use of pre-trial detention, sentencing and in penitentiary institutions through research and advocacy. The research is based on 400 structured, questionnaire-based interviews with detainees and on related case file research conducted in 2012. In 2013, the HHC prepared a draft analysis that evaluates data on detention issues. 120 cases were also selected from the full research sample for further in-depth assessment at courts. Furthermore, focus group discussions will be organized with members of prison staff concerning discriminatory practices and attitudes. In addition, a research study will be drafted, summarizing research findings and providing recommendations for improving the situation, which will be discussed at a roundtable discussion attended by professionals. Finally, training materials for future prison staff and judges will be produced as well. The project is funded by the Open Society Foundations.

#### **1.4. *“Improving the Fairness of Disciplinary Procedures in Penitentiaries”***

The Hungarian system of establishing disciplinary liability in penitentiaries is dysfunctional due to systemic and procedural reasons. The law on disciplinary procedures against detainees does not ensure fair trial rights guaranteed by Article 6 of the European Convention on Human Rights. This is particularly worrying because disciplinary measures are taken into consideration by penitentiary judges who ultimately decide on parole. Hence, in 2012, the HHC launched the project *“Improving the Fairness of Disciplinary Procedures in Penitentiaries”*, which aims to contribute to ensuring fairer and more just disciplinary procedures for detainees. The project is based mainly on the analysis of international and domestic legal framework, local prison rules and regulations, a questionnaire-based case-file research of 120 disciplinary procedures, and interviews with prison staff and penitentiary judges. These activities were carried out by the HHC in 2013 in close cooperation with the participating penitentiary institutions. The HHC also contacted the Budapest Bar Association to provide assistance in identifying possible cases in which the HHC could provide legal representation to detainees under a disciplinary procedure, and entered into contracts with defense lawyers who have expressed their willingness to participate in the project. The project results will be summarized in a research report, to be published in 2014. The project is funded by the Open Society Foundations.

#### **1.5. *„Children Deprived of Liberty in Central and Eastern Europe”***

The HHC – together with the Romanian and Polish Helsinki Committees – is a partner in the Bulgarian Helsinki Committee’s project *„Children Deprived of Liberty in Central and Eastern Europe”*, funded by the European Commission. The primary objective of the project is to identify common problems in the region concerning the detention of children, through conducting legal research and monitoring. In the framework of the project, the HHC carries out extensive desk research into the law and practice of detaining children. Furthermore, the HHC pays special attention to the rights of children who are detained in prisons, immigration and asylum jails. The HHC gained access to correctional facilities for juveniles and special homes for children, and conducted its first visit to the correctional facility for juvenile girls in Rákospalota on 4-5 November 2013. The HHC’s activities in the framework of this project are also supported by the Oak Foundation.

## ***1.6. “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 and Eastern European and the former Soviet Union (CEE-FSU) region. The excessive use of pre-trial detention has profound socio-economic implications both for the individual concerned but also for his/her family members and for the wider society. In order to address the problems raised by pre-trial detention, in December 2011 the HHC – with the financial and professional aid of the Open Society Foundations – launched the project “*Promoting the Reform of Pre-Trial Detention in CEE-FSU Countries – Introducing Good Practices*”, aiming at producing advocacy efforts to challenge pre-trial detention in countries from the CEE-FSU region. In addition, the project helped identify common problems and good examples in terms of legislation and practice regarding pre-trial detention, as well as alternatives to detention throughout the region. As part of the framework of the project, the HHC coordinated a large-scale research project that analyzed and compared legislation and practice regarding pre-trial detention in 16 countries of the region, including Hungary. A draft report was compiled based on the research results. The HHC finalized the [research report](#) on the basis of the experiences of a conference held in 2012. The report and its [executive summary](#) were disseminated to the project partners in English and in Russian.



Cell for pre-trial detainees in the Bács-Kiskun County Prison

Based on the results of the research report, the HHC observed the need for local initiatives to be implemented in order to address some of the key issues revealed. The HHC asked its local partners to propose concrete activities in line with the project goals and invited representatives of selected NGOs to a workshop, held in Budapest in June 2013 to elaborate these proposals together with advocacy and research experts.

Studies were carried out:

- to assess the use of pre-trial detention and its alternatives with respect to investigations concerning charges of theft (Albanian Helsinki Committee),
- on legal practitioners’ attitudes with respect to pre-trial detention (Human Rights Monitoring Institute, Lithuania),
- on record keeping of pre-trial detention and its alternatives (Belgrade Centre for Human Rights),
- on the practical implications of a recently passed amendment allowing for access to case files (Helsinki Foundation for Human Rights, Poland),
- on harmonizing pre-trial detention practices and legislation with international standards (Human Rights Action, Montenegro).

The HHC also produced a training module for judges on European Court of Human Rights standards on pre-trial detention.

## ***1.7. Advocacy on pre-trial detention***

On 21 February 2013, Fair Trials International and the HHC co-organized a meeting for experts in criminal justice across Hungary to learn about pre-trial detention in Hungary in law and in practice. Participants included defense lawyers, NGO staff members, academics, judges and representatives of

the Ministry of Public Administration and Justice. The meeting was also aimed at developing recommendations in three key areas – improving minimum standards on the use of detention, alleviating excessive remand periods and identifying opportunities for law reform. The joint [communiqué](#), by Fair Trials International and the HHC, was widely distributed among Hungarian criminal justice experts and used as a basis for substantial dialogue on the issue with the Deputy Prosecutor General and the bar association.

On 10 September 2013, 22 European and international NGOs, including the HHC, submitted a [common request](#) to European Commission Vice-President Viviane Reding to urge the European Commission to table a legislative proposal that sets common minimum standards for the use of pre-trial detention in the European Union.

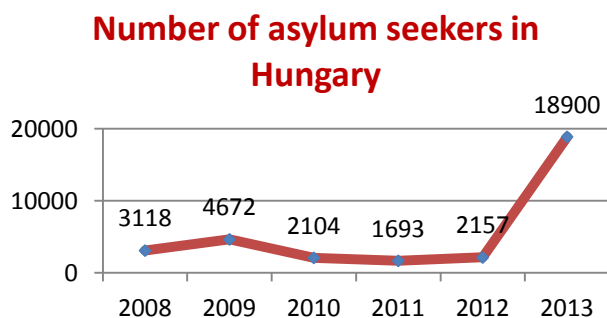
As soon as news was leaked that the Government intended to amend the Criminal Procedure Code to remove the upper time limit of pre-trial detention in cases of suspects facing up to 15 years or life-long imprisonment, the HHC made a public statement with a [website post](#) that the amendment would violate the Fundamental Law and international standards. On 9 November 2013, after the relevant Bill was submitted to the Parliament, the HHC [turned to Members of Parliament](#) calling on them not to vote for the amendment. Despite these public advocacy efforts, the amendment was adopted by the governing coalition in November.

## ***1.8. Prevention of torture and arbitrary detention (CPT and UNGWAD)***

In March 2013, the HHC prepared a [briefing paper](#) for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the CPT's periodic visits to Hungary from 3 to 12 April 2013. In the briefing paper, the HHC outlined the main problems regarding detention conditions in Hungary, including severe overcrowding, excessive length of pre-trial detention and the confinement of juveniles for petty offences. The report also covered the HHC's concerns related to detention conditions in immigration detention facilities. The CPT delegation also met with the HHC in person at the outset of their periodic visit.

The HHC assisted the delegation of the UN Working Group on Arbitrary Detention (UNWGAD) before and during its mission to Hungary in September 2013, and prepared a [briefing paper](#), discussing issues such as pre-trial detention, actual life-long imprisonment, confinement of juveniles for petty offences, access to justice and the detention of migrants. The [statement](#) of the UNWGAD issued after the visit echoed the concerns of the HHC. The UN WGAD is expected to release its report on the mission in 2014.

## **2. Right to asylum, protection from refoulement**



On 1 January 2013, a dramatic **change occurred in immigration detention policy** due to the HHC's, the UNHCR's and the European Commission's strong criticism, as well as the three recent judgments of the European Court of Human Rights condemning Hungary for the unlawful and



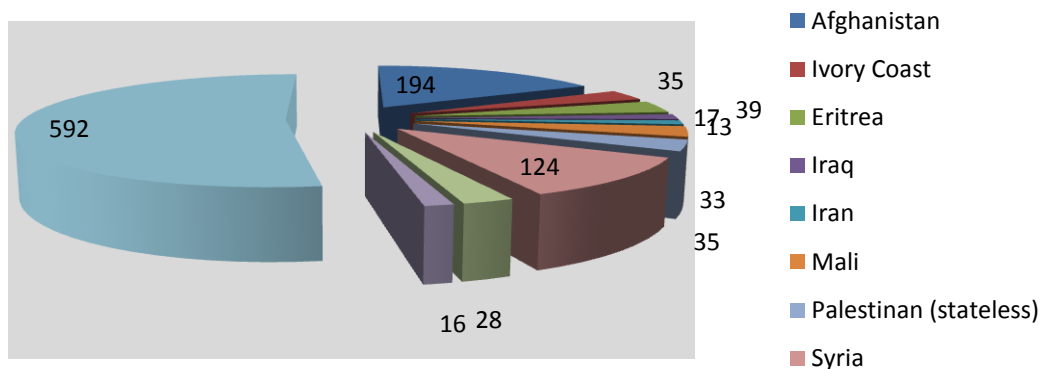
arbitrary detention of asylum seekers (*Lokpo and Touré v. Hungary*, *Hendrin Ali Said and Aras Ali Said v. Hungary*, *Al-Tayyar Abdelhakim v. Hungary*). Due to amendments of the immigration and asylum laws, which entered into force 1 January 2013, asylum seekers who entered the country in an unlawful manner and asked for asylum immediately upon being apprehended by the police were not detained in immigration detention; instead, they were accommodated in an open facility that is maintained by the Office of Immigration and Nationality (OIN). Also, those who were transferred to Hungary from another EU member state under the Dublin Regulation were not automatically detained in case they were able to maintain their asylum claim.

The above changes led to a dramatic decrease in the number of foreigners in immigration detention and also partly contributed to an **unprecedented increase in asylum applications**: the country registered nearly nine times more asylum claims than in the previous year. Top countries of origin of asylum-seekers were Afghanistan (including many unaccompanied minors), Pakistan, Kosovo, Algeria, Morocco, Mali, Syria and Côte d'Ivoire.

The high number of asylum seekers resulted in severe **overcrowding** in open reception facilities. As of 1 July 2013, a new detention regime – so-called **"asylum detention"** – was introduced. As explained in the HHC [information note](#), this amendment created new legal grounds for detaining asylum seekers as well as the establishment of new detention facilities called asylum jails, managed by the Office of Immigration and Nationality. As a consequence, approximately one-third of asylum seekers arriving in Hungary in the second half of 2013 were detained.

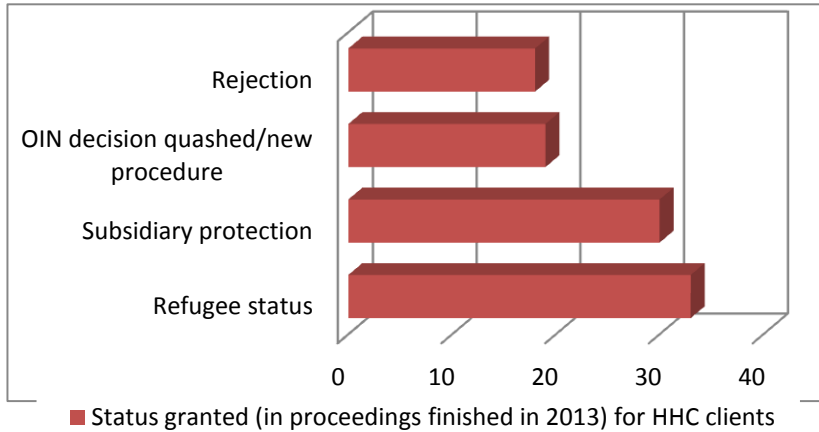
## 2.1. Legal counseling for persons in need of international protection

### Citizenship of asylum seekers assisted by HHC in 2013



The HHC continues to be the only organization with significant professional experience that provides free legal counselling and representation to asylum seekers and foreign detainees in immigration jails all over Hungary. Attorneys contracted by the HHC provide these services on a regular basis in detention facilities (weekly counselling in immigration jails in Békéscsaba, Nyírbátor, Kiskunhalas, Győr and at the Liszt Ferenc International Airport in Budapest), while in the largest reception center in Debrecen the HHC employs a full-time legal advisor. The HHC also provided regular free legal counselling in the reception centers of Vámoszabadi and Bicske as well as in the community shelter in Balassagyarmat. Free legal counselling is also available at the HHC office in Budapest on a daily basis. The HHC's legal representation services for asylum seekers are available both in the administrative and judicial review phase of the asylum procedure. The HHC distributes [information leaflets available in ten languages for child](#) and [adult](#) asylum seekers.

## Status granted (in proceedings finished in 2013) for HHC's clients



In 2013, the HHC's lawyers provided **legal assistance to 1126 asylum seekers** in 5 detention facilities and 3 open reception centers. **129** asylum seekers were given free representation in the refugee status determination procedure. Altogether **82 percent** of clients represented by the HHC's attorneys were either granted international protection by the OIN or the courts, or the contested decisions were quashed and procedures were reopened.

In addition to asylum procedures, the HHC continued to provide free legal advice and representation in **family reunification** cases. Throughout the year, **40 family members of refugees who were** represented by the HHC were granted residence permits on family reunification grounds. The UNHCR and the HHC jointly drafted an **information booklet** on family reunification for beneficiaries of international protection, to be published in 2014.

In a project funded by Pro Asyl, a German NGO, the HHC focused on assisting **asylum seekers returned under the Dublin procedure by providing legal counselling** at the Balassagyarmat community shelter. In 2013, **193** people received legal counselling in Balassagyarmat from an HHC attorney who paid regular visits to the community shelter.

In order to ensure high-quality legal assistance, the HHC also organizes professional trainings for attorneys contracted to provide legal assistance to asylum seekers:

- 28 January: annual meeting for the HHC's lawyers network (12 attorneys) and legal officers/staff members of the HHC;
- 14 June: training for the HHC staff on the identification of traumatized asylum seekers by the Cordelia Foundation;
- 10-11 December: training for asylum practitioners (HHC lawyers, OIN staff and judges) on credibility issues.

## 2.2. Assisting asylum-seekers and migrants in detention

HHC attorneys carry out **weekly visits to immigration jails** to examine detention conditions and to provide legal counselling regarding the legal procedures on detention and removal to detainees who are detained and pending removal from Hungary. In doing so, the HHC is striving to ensure that the detained migrants are able to exercise their rights and be informed about the legal ground of their detention. During the year, the HHC received complaints relating to the conditions of immigration detention for minor children (some children detained together with their parents were aged 3 or

smaller in inadequate conditions for small children). In such cases HHC attorneys submitted petitions to the authority and the court ordering and maintaining detention.

The HHC's attorneys provided legal counselling in immigration jails to **432** detainees and undertook legal representation in more than **30** cases. 8 migrants who alleged they were under 18 years of age were assisted by HHC attorneys in successfully seeking their release from detention.



The Immigration and Asylum Law Working Group of the Curia (Supreme Court) examined **judicial review practices of immigration detention with the intention of publishing guidelines for courts**. The working group examined more than 200 cases in the course of their research and focused on the lawfulness and effectiveness of judicial review as well as the quality of legal representation provided by *ex officio* appointed attorneys. **Upon the working group's request, the HHC's provided written** observations. In its guiding [opinion](#), published on 26 September 2013, the Curia concluded that the judicial review of immigration detention order is currently

ineffective, the *ex officio* appointed attorneys only play a formal role in the procedure and the local district courts are overburdened with these cases.

The HHC provided legal representation for the victims **of 2 cases of ill-treatment that occurred** in the immigration jail of Nyírbátor. One case – in which one of the defendants is a police officer and another is an armed security guard – is currently pending at the *Nyíregyháza Investigating Prosecutor's Office* (Nyíregyházi Nyomozó Ügyészség). This procedure was closed twice and the County Prosecutor's Office ordered the investigating authority to continue the case based on the petition of the HHC's attorney. The case is currently pending. In the other case of ill-treatment, the victim finally decided to withdraw his complaint and the procedure was terminated.

HHC staff paid monitoring visits to several immigration jails during the year, where they conducted in-depth interviews with detainees and the management of detention facilities in order to gather information on detention conditions as well as allegations of verbal and physical abuse of detainees.

Monitoring visits in 2013:

- 16 April: Kiskunhalas immigration jail
- 18-19 July: Békéscsaba asylum jail and Nagyfa temporary reception center
- 23-24 July: Nyírbátor asylum and immigration jail
- 28 August: Vámosszabadi reception center
- 21 November: Győr immigration jail and Vámosszabadi reception center

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

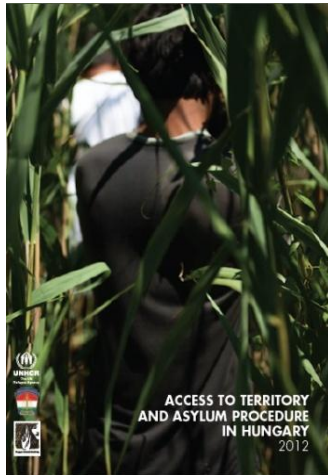
Monitoring border areas and entry points is crucial in order to ensure that the principle of *non-refoulement* is respected and that asylum seekers gain effective access to territory and to the asylum procedure. Located at the European Union's external border and at the frontier the Schengen area, this 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 external Schengen borders (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 may have been affected by measures that could amount to *refoulement*, and to **provide legal assistance** to such persons.

In the framework of the border monitoring program in 2013, the HHC conducted **24 border monitoring visits at the Serbian-Hungarian border in 2013**. The monitor, a contracted attorney, contacted detained foreigners and examined official files concerning asylum seekers, assessing whether the police respected the principle of *non-refoulement* and took adequate care of **vulnerable people** with special needs such as families, single women, disabled, etc.



This year the HHC saw important improvements in **access to the asylum procedure** as the police showed improved ability to notice asylum applications submitted by migrants entering Hungary in an irregular way without proper documents. Also, during the first half of the year, most migrants were well informed that asking for asylum would result in their placement in an open reception center. In addition, the police and the immigration office reported that a high proportion of asylum seekers left Hungary within a few days or weeks after submitting an asylum claim, resulting in many asylum procedures being terminated.

The HHC, in cooperation with the UNHCR Regional Representation for Central Europe and the National Police Headquarters, published a [report on its border monitoring activities](#) in 2012.

### 2.3.2. 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 UN 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 have been regularly charged with forgery of official documents and are taken into pre-trial detention. The HHC's attorneys continued to **act as defense counsels** in such cases during the appeal phase. Although several clients were later granted protection status in Hungary, they were nevertheless charged with a crime, and subjected to lengthy pre-trial detention 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 in the past few years, including those concerning vulnerable asylum seekers. On 24 January 2013, an Afghan family was **acquitted** after a criminal trial. The court accepted the HHC's arguments and applied Article 31 of the 1951 Refugee Convention by not penalizing their illegal entry and the use of forged travel documents. On 3 December 2013 a Somali beneficiary of subsidiary protection was **acquitted** in the repeated first instance procedure after 4.5 years of criminal proceedings. The Pest Central District Court fully accepted the arguments of the HHC and the UNHCR on the applicability of Article 31 of the 1951 Refugee Convention: the court ruled that statements the Somali applicant had made at his first interrogation regarding his flight from Somalia due to his tribal origins in themselves constituted an application for asylum. Three more criminal cases taken on by the HHC related to Article 31 of the 1951 Refugee Convention are still pending.



## 2.4. HHC-led international initiatives in the field of asylum



### 2.4.1. The Refugee Law Reader – bringing refugee law education to where it is most needed

Since its creation in 2004, the HHC has been the engine behind the world's **only comprehensive online model curriculum** for the study of international refugee law, created by some of the most renowned academic experts in the field. The [Refugee Law Reader's four language versions](#) (English, French, Spanish and Russian) have served as a basis for several refugee law courses in recent years and its user base in 2013 already exceeded **66 000 individuals worldwide**.

In 2013, the HHC embarked on a joint initiative with UNHCR's Global Learning Centre to convert the Reader into a **global capacity-building tool**, with special emphasis on the former Soviet Union region, the Middle East and North Africa and Latin America. We aim to establish **three regional networks of universities** committed to start and maintain refugee law courses, support and promote refugee law education in regions where it is yet scarcely available and to promote **the refugee law clinic method**. The HHC, with support from UNHCR's Global Learning Centre, organized a kick-off seminar based on the Refugee Law Reader in December 2013 with the participation of university teachers from the three regions of focus. The seminar – together with other network-building activities – served as the basis for regional seminars to be held in Latin America and the CIS region in 2014.



### 2.4.2. CREDO – Improving credibility assessment in asylum procedures

Most asylum claims in Europe are rejected on the grounds that the decision-maker does not believe what the asylum seeker claims. Experience shows that such decisions are taken in a non-structured manner ("gut feelings") and based on erroneous presumptions concerning human behaviour, running against up-to-date scientific knowledge. This phenomenon is currently seen as **one of the most serious flaws** in European (and other) asylum systems, affecting the life of hundreds of thousands of asylum seekers worldwide.





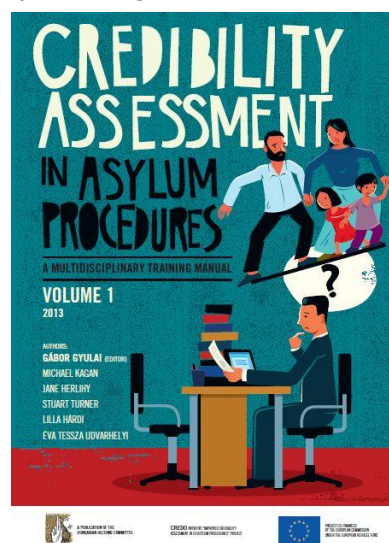
Since 2011, the HHC has been the leader of a pioneering initiative aiming at **improving credibility assessment practices**, in partnership with the UNHCR Bureau for Europe, the International Association of Refugee Law Judges (IARLJ), Asylum Aid (UK) and numerous experts from various fields and countries. The **CREDO project** (September 2011-May 2013) constructed the until now missing legal and methodological framework of credibility assessment and related guidance, introducing the innovative concept of a **multidisciplinary approach**. It also produced long-lacking empirical information about state practices and dedicated training methodologies. The **CREDO 2 – Building Credibility project** (June

2013-end of 2014) focuses on the particular issues of credibility assessment with children, as well as gender and linguistic aspects in this context. The initiative produced the following outcomes in 2013:

- A [comparative research](#) on the actual implementation of credibility-related guidance and relevant practices in the UK, the Netherlands and Belgium (May 2013);
- A [judicial guidance paper](#) on credibility assessment (March 2013);
- A multidisciplinary [training manual](#) on credibility assessment. This ground-breaking HHC publication (the first of its kind at a global level) is a practical tool, suitable for both face-to-face training and self-study, touching upon all relevant aspects of an objective and structured credibility assessment.

International professional audiences highly value the manual and the innovative CREDO methodology:

- The HHC's expert was invited to train 30 Latvian judges (April); 50 Norwegian lawyers, judges and media representatives (May); 80 Danish judges and 100 Danish asylum officers (September); as well as he was asked to address the annual pan-European seminar of the European Judicial Training Network in Vienna (December), which expressed interest in collaboration;


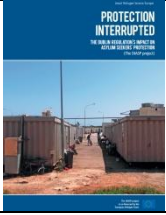



- The training methodology was presented to state representatives at the UNHCR's annual Executive Committee meeting (June, Geneva) and national asylum trainers from EU member states at the European Asylum Support Office (October, Malta) and various states (in and outside of Europe) expressed vivid interest in using the methodology and cooperating with the HHC;
- The UNHCR has selected to permanently feature the manual as a key document on refugee status determination on its global [website](#); translated the document into Hungarian and committed funds for its translation into Russian.

The closing event of the CREDO project was held in May 2013 in Brussels. It brought together 95 participants, including high-ranking representatives of asylum authorities, the European Commission, senior UNHCR staff, judges, academics and NGO practitioners. The representative of the European Commission described the initiative as **"one of the best uses of European Refugee Fund resources"**.

## ***2.5. Participation in international asylum-related projects***

Beyond its own international initiatives, the HHC continued to be **one of the most active refugee-assisting national NGOs at the international level** in 2013. The HHC continued to be an active member of the **European Council on Refugees and Exiles (ECRE)** and its Asylum System Core Group as well as contributing to the identification of policy priorities for ECRE. 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 remained 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.

Project	Leader	Objective/issues addressed	HHC activities in 2013	Donor
Transnational advisory and assistance network for asylum-seekers under a Dublin process	Forum Réfugiés-Cosi (France)	The EU's "Dublin system" (which establishes a hierarchy of criteria for identifying the Member State responsible for processing an asylum claim) has been subject to wide-spread criticism by civil society and other actors, as it leads to the separation of families and denies access to effective appeal against decision with a crucial impact on access to asylum. It also increases pressure on the border regions of the EU, where states are often less able to ensure proper protection standards. These initiatives aim to <b>challenge the Dublin system through multilevel action</b> (from assisting individual cases to pan-European advocacy action).	<p>Participation in an NGO network that provides trans-border support to asylum seekers affected by Dublin procedures;</p> <p>Drafting an on-line training module on the Dublin Regulation for lawyers, in cooperation with other project partners (available in several languages on the project <a href="#">website</a>);</p> <p>National workshop for lawyers on the Dublin Regulation, based on the training module;</p> <p>Publication of a <a href="#">national report</a> on the application of the Dublin Regulation in Hungary, contribution to the comparative <a href="#">European report</a>;</p> <p>Participation in the final conference (January, Brussels).</p> 	European Refugee Fund Community Actions
Dublin's Impact on Asylum Seekers' Protection (DIASP)	Jesuit Refugee Service Europe		 <p>30 interviews with asylum seekers awaiting their transfer or being returned under the Dublin procedure;</p> <p>Drafting a national report on Hungary (based on the analysis of the interviews);</p> <p>Contribution to the comparative report of the project <a href="#">"Protection Interrupted"</a>;</p> <p>Participation in the final conference (June, Brussels).</p>	
Access to Protection: A Human Right	Italian Council for Refugees (CIR)	The project focuses on bringing national and EU policies and practices concerning access to territory and protection in line with the obligations set out by the European instruments on human rights, and in particular the standards defined by the European Court of Human Rights in the Hirsi Jamaa and Others v. Italy case.	Contribution to a comparative research study and advocacy activities by conducting research in Hungary on access to protection and writing a research paper;	Integration for European Programme Migration (EPIM)
Asylum Information Database (AIDA)	European Council on Refugees and Exiles (ECRE)	In order to produce <b>detailed, reliable and continuously updated information on the functioning of European asylum systems</b> (often as a counterweight to reports issued by states) the project produced and published on its <a href="#">website</a> 14 national country reports in summer 2013, which will be updated every 6 months. Comparable indicators, video testimonies, advocacy resources and relevant news complete the country reports.	<p>Drafting of the Hungarian <a href="#">country report</a> (May-June), first update in November-December. The country report focuses on the legislation and practice with regards to asylum procedures, reception conditions and detention of asylum seekers.</p> 	



Project	Leader	Objective/issues addressed	HHC activities in 2013	Donor
Actors of Protection and Application of the Internal Protection Alternative (APAIPA)	European Council on Refugees and Exiles (ECRE)	The increasingly frequent reference to <b>non-state actors of protection and an internal protection alternative</b> in countries of origin is a key element of <b>tightening EU asylum policies</b> . This project tackles this phenomenon by collecting and digesting up-to-date information about national practices, identifying good practices and providing training for main stakeholders, paying special attention to the needs of vulnerable asylum seekers.	Research on how the concepts of the actors of protection and internal protection alternative is applied in Hungary; Several interviews with the asylum seekers, to gather their experience related to actors of protection and the internal protection alternative concept; Participation in a the project's kick-off meeting (February, Budapest) an advisory board meeting (November, Brussels).	European Community Fund Refugee Actions
Learning from Practice: The European Database of Asylum Law (EDAL 2)	Irish Refugee Council	Prior to this initiative no common database existed in Europe on the continuously developing European and national jurisprudence on asylum. The <a href="#">EDAL database</a> makes available in a user-friendly format and in English language over 700 case summaries prepared by national experts.	Expertise and contribution to project strategy based on the HHC's long-standing involvement in comparative research projects, cooperation with the judiciary at the European level and well-developed network in Central Europe; Acting as national expert for Hungary and Slovenia, collecting and summarizing altogether 45 cases from these countries; Direct supervision of the research in Austria, Czech Republic, Poland and Slovakia.	
Other asylum-related initiatives and events to which the HHC contributed in 2013				
<b><u>Unaccompanied minors</u></b> <ul style="list-style-type: none"><li>• Setting up a working group of six NGOs and international organizations aiming at establishing regular contact and cooperation with the Ministry of Human Resources in the field of the protection of unaccompanied minor migrants and organizing a roundtable discussion in Budapest (February);</li><li>• Roundtable discussion with childcare experts and refugee assisting NGOs on the situation of unaccompanied child asylum seekers (February);</li><li>• Roundtable discussion with the UNHCR on the protocol regarding the best interest determination (BID) of child asylum seekers (April);</li><li>• Roundtable discussion with the Ministry of Human Resources and relevant stakeholders on the situation of unaccompanied minors (April);</li><li>• Roundtable discussion with stakeholders dealing with unaccompanied minors in the framework of the UNHCR's Response to Vulnerability in Asylum (RVA) project (May);</li><li>• Training on the vulnerability of children in asylum proceedings for police personnel and child care experts, in the framework of the UNHCR's RVA project (June).</li></ul> <b><u>Vulnerable asylum seekers</u></b> <ul style="list-style-type: none"><li>• Participation as international expert in a seminar on gender-related asylum claims in Spain, convened by the Spanish Council for Refugees (CEAR) in Bilbao (March);</li><li>• Training for police officers and other stakeholders on vulnerable asylum seekers, upon invitation by the UNHCR (April and June);</li><li>• Participation in the annual series of "Age, Gender and Diversity" monitoring visits organized by the UNHCR (September).</li></ul>			<b><u>Cooperation with international networks</u></b> <ul style="list-style-type: none"><li>• Presentation of the asylum situation in Hungary and the HHC's border monitoring activities at the annual conference of the Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants – PERCO (Budapest, April) and ECRE (Prague, October);</li><li>• Participation in the annual meeting of ELENA coordinators in Amsterdam (May);</li><li>• Participation in the International Detention Coalition annual advisory board meeting in Geneva (June).</li></ul> <b><u>Other training and awareness-raising activities</u></b> <ul style="list-style-type: none"><li>• Organization and conduction of an open forum on hate crime for the residents of the Balassagyarmat community shelter (February);</li><li>• Roundtable discussion on translation and interpretation in the context of asylum and migration at the Interpreters' Training Centre of the BME University, with the participation of more than 150 interpreters, students and teachers (as the first step of a strategic cooperation initiative with the Training Centre) (February);</li><li>• Training for 25 Italian lawyers and NGO staff on evidence assessment and country information in asylum procedures (Rome, May);</li><li>• Lectures at the conference on the effects of amendments of the asylum and immigration laws, organised by the Scientific Society for Law Enforcement in Győr (June);</li><li>• Training on the socio-economic, demographic and legal framework of migration for 20 officers of the Budapest municipal authority and related offices (September).</li></ul>	

## 2.6. Statelessness

The HHC continued to play a **leading role in advocacy** efforts aimed at improving protection for 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. The HHC's statelessness expert continued to perform his duties as **chair** and actively participated in further strengthening the Network throughout 2013 (including various meetings, teleconferences, preparation of concept papers, identification of potential partners, fund-raising activities, etc.). By the end of 2013, the Network gained over 80 associate members from more than 30 countries, constituting an unprecedented awareness-raising success on this long overlooked human rights issue.



European  
Network on  
Statelessness



Throughout 2013, the HHC's statelessness expert continued to provide **support to lawyers** representing individual cases of stateless persons both in and outside Hungary. The HHC was also involved in **strategic litigation**: it intervened as expert or third party in a landmark case before various judicial instances in order to challenge the major shortcomings of the Hungarian legal system for the protection of stateless persons (the case is currently pending at the time of reporting). The HHC's statelessness expert authored a pioneering ENS [report](#) published in December 2013, which provides invaluable support for states wishing to establish a statelessness-specific protection regime by summarizing guidance, main practical issues and all existing good practices related to statelessness

determination and the protection of stateless persons at the global level.

In the second half of the year, the HHC conducted research on the avoidance of statelessness at birth in Hungary. The research project (funded by the UNHCR) managed to identify four risk groups and a number of other shortcomings in the regulatory framework which will be tackled through advocacy action in 2014. The research report will be published in February 2014 in English and Hungarian.

In addition, the HHC's statelessness expert provided **training** on this issue to various target groups:

- A training for the member organisations of the Western Balkans Legal Aid Network (Belgrade, 23 April);
- An information and training session for 20 staff members of the EU Fundamental Rights Agency on statelessness and its relation with fundamental rights (Vienna, 7 May);
- A training for 25 Italian lawyers and NGO staff on statelessness (Rome, 1 June);
- Participation (partly as lecturer) in the 2013 Annual UNHCR Consultations with NGOs, a joint UNHCR-NGO statelessness retreat and advocacy meetings with UNHCR staff, NGOs, as well as the Office of the UN High Commissioner for Human Rights (Geneva, 9-13 June);
- Lectures at the Statelessness Summer Course of the Tilburg Law School, for 25 lawyers, UNHCR and NGO staff and public administration officers (5-9 August);
- Training on statelessness determination for 17 lawyers, HHC and UNHCR staff members and social workers (Budapest, 9 September);
- ENS training for a new generation of statelessness trainers (15 persons delegated by NGOs and UNHCR offices in various European countries (Budapest, 25-27 November);
- Training and roundtable discussion on statelessness determination with representatives of various Serbian state authorities and NGOs (Belgrade, 16-17 December).

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

In 2013, the HHC continued to work towards improving the efficiency of the criminal legal aid system.

#### ***3.1. Activities related to the ex officio system of criminal legal aid***

In the framework of an earlier project that aimed at promoting reform in the criminal legal aid appointment system with a view to reducing the possibility of corruption, the HHC sent freedom of information requests 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 that had refused the HHC’s FOI requests, with two cases ending up before the European Court of Human Rights. One of the cases ([Application no. 18030/11](#)) was communicated to the Hungarian government and the HHC submitted counter-observations to the government’s observations in May 2013.

#### ***3.2. Advancing defense rights in the EU***

On 20 February 2013, Fair Trials International brought together experts in criminal justice from Austria, Bulgaria, Germany, Hungary and Romania at a meeting in Budapest to share information and develop practical strategies to improve respect for defense rights in the European Union. The objective of the meeting “Advancing Defense Rights in the EU” was to learn about how the new directives adopted under the EU Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings will help address fair trial issues in the countries listed above. The HHC’s staff member participated at the event and shared the HHC’s main concerns regarding defense rights in Hungary. The outcome of the meeting was summarized in a [communiqué](#), which was published on Fair Trials International’s website and was widely disseminated in Hungary by the HHC, serving as a basis for substantial dialogue with a bar association.

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

#### ***4.1. Equal treatment cases***

In 2013, the HHC continued to provide legal representation to victims of discrimination both before domestic and international fora as demonstrated by the following two selected cases. (See also 6.2.6. of the present report).

##### **4.1.1. Complaint to UN Committee on the Rights of Persons with Disabilities**

Hungary ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD) in May 2008. Under the Optional Protocol, individuals who believe that their rights are being violated by a state party may submit a complaint to the UN Committee on the Rights of Persons with Disabilities. The HHC submitted a complaint in March 2010 to the UN Committee on the Rights of Persons with Disabilities on behalf of two blind persons and requested the Committee to establish that Hungary had violated its obligations under the CRPD. This was the first individual case ever launched before the Committee.



Szilvia Nyusti, one of the applicants

The underlying case concerned two blind persons who signed contracts for private current account services with OTP Bank, according to which they were entitled to use bank cards. However, they were unable to use the automatic teller machines (ATM) without assistance, as the ATM keyboards were not marked with Braille fonts, and they did not provide voice assistance for bank card operations. The two blind persons had to pay an annual fee for bank card usage and transaction fees equal to those fees paid by other customers, regardless of the fact that they were unable to

use these services on a 24-hour basis unlike other, sighted customers. Accordingly, it was claimed that they received inferior quality services for the same charges. After exhausting legal remedies, they submitted a complaint to the Committee with the legal assistance of the HHC. After a lengthy procedure, on 23 April 2013 the Committee delivered its [decision](#) stating that Hungary has failed to fulfill its obligation stipulated in the CRPD by not ensuring accessibility of the banking card services for persons living with visual impairments on equal basis with others. The Committee therefore made numerous recommendations to Hungary including inter alia the following: providing remedy to the complainants; establishing minimum standards of banking services; creating a legislative framework with concrete, enforceable and time bound benchmarks; providing regular training on the scope of the CRPD to judges. So far no steps have been taken to remedy the complainants and to improve the accessibility of financial services. The lack of developments was also [pointed out](#) by the HHC.

#### 4.1.2. Inaccessibility of premises open to the public

In another case, a wheelchair-bound man parked his car at a parking space reserved for disabled persons, however, his permit allowing him to use such reserved parking places had expired a couple of days before. As a result, he was fined. When he tried to enter the office of the public parking company to pay the fine, he found that the building was not accessible, so he had to ask a security guard to arrange the payment for him. He submitted a complaint with the Equal Treatment Authority. The Equal Treatment Authority refused his complaint, against which decision he sought judicial review with the legal assistance of the HHC. The complainant and the parking company reached a friendly settlement in June 2013.



#### 4.2. Anti-discrimination Law Clinic and training

The HHC launched an anti-discrimination Law Clinic program 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 [Richárd Mátyik, HHC client](#) them to see law at work and acquire skills that they will be able to rely on after graduation. In the autumn semester of the 2013/2014 academic year, altogether 15 students participated in the Law Clinic at the Pázmány Péter Catholic University Law Faculty, who took part in fieldwork under the supervision of attorneys from the HHC.

Staff members of the HHC held two one-day training sessions in September 2013 for altogether 20 officers of the Budapest municipality and related offices on the requirement of equal treatment and anti-discrimination law, in the framework of a training organized by the Artemisszió Foundation.

## 5. Assisting victims of human rights violations

### 5.1. Human Rights Legal Counseling Program

Providing 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 fields of law:

- immigration law (visas, stay and residence permits, expulsion, deportation, family reunification),
- asylum law (granting and withdrawing refugee, subsidiary and other protection status),
- criminal procedures concerning unlawful detention, forced interrogation, abuses in 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 Győző, dr Barbara Pohárnok and dr Aurél Nemesszeghy continued to work as permanently contracted attorneys in 2013. HHC attorneys' workload and case docket is very high and at times results in capacity constraints.

In 2013, **658 persons received legal assistance** from the HHC's Human Rights Legal Counseling Program:

- 92 asylum cases (This is a noticeable increase compared to 2012, where 59 asylum cases were registered. The increase is mostly due to asylum-seekers being accommodated at the reception center in Bicske coming to the HHC to seek legal assistance.);
- 54 alien policing cases (of which 35 were cases of family reunification of refugees, while other cases concerned visas, residence permits and expulsion);
- 8 citizenship cases;
- 3 statelessness cases;
- 37 complaints regarding torture, inhumane or degrading treatment in prisons;
- 43 complaints about health care in prisons;
- 19 complaints about the lawfulness of pre-trial detention;
- 85 complaints about other detention conditions;
- 26 complaints about cumulative sanctions;
- 24 cases of complaints against police measures;
- 18 inquiries regarding procedures before the European Court of Human Rights;
- 9 cases concerning equal treatment;
- 4 complaints about petty offence procedures;
- 2 cases regarding actual life imprisonment;
- 121 cases concerning pending or closed criminal procedures;
- 113 miscellaneous cases.

Complaints relating to detention conditions and criminal procedures increased significantly in 2013. This was due to several factors: deteriorating detention conditions and overcrowding, more prison



monitoring visits in 2013 that in turn increased the number of persons turning to the HHC, and improved visibility of HHC contact information in prisons. The number of asylum cases and cases of family reunification of refugees has also increased significantly due to the large number of asylum-seekers in Hungary, many of whom were granted the refugee status and their wish to reunify with their family members staying elsewhere.

A number of selected cases in which the HHC provided legal representation are summarized in the following sections.

## ***5.2. Cases at the European Court of Human Rights***

### **5.2.1. Judges affected by lowered mandatory retirement age**

In 2012 the HHC took up the legal representation of more than a 100 judges before the European Court of Human Rights (ECtHR) who had been affected by the lowering of the mandatory retirement age for judges. In April 2013, a new law entered into force, which had important consequences on judges represented by the HHC before the ECtHR. Therefore the HHC produced a detailed information note on the recommended steps to be taken under the new circumstances and shared the note with the judges concerned. In the second half of 2013, upon the request of the ECtHR, the HHC submitted a description and clarification of the situation involving the judges in light of the above-mentioned law.

### **5.2.2. Victims of hate crime**

The HHC provided legal assistance to two victims of hate crime and police inaction. The two HHC clients were staying at their relatives' house in the village of Devecser when far-right extremist groups held a demonstration in the town in August 2012. The groups marched along streets mainly inhabited by Roma people, stopped at the house where the HHC's clients were staying and threw stones at it, as well as at the approximately 12 persons, including children, who had been staying in 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 did not intervene at all when several participants of the rally seriously verbally insulted the Roma who were present and later physically attacked them by bias motivation. With the help of the HHC, two Roma victims launched a police complaints procedure against the police inaction. This is pending at the police office after the court instructed the police to carry out a new procedure in the case. The HHC's attorney also submitted an application to the ECtHR on behalf of the two victims in February 2013, asserting that Hungary violated the rights of the victims under Article 8 of the European Convention on Human Rights, when the police failed to intervene and to launch the appropriate criminal procedures against the perpetrators of the hate crimes in due time.

### **5.2.3. Early retirement scheme of uniformed services**

After a law retroactively revoked the right of officers serving in uniformed services (police, military and prison personnel and fire fighters) to preferential early retirement, the HHC decided to assist trade unions and their members in submitting applications to the Constitutional Court and the ECtHR. A template application to be submitted to the ECtHR was produced in early 2012, which argued that the new rules violated the provisions safeguarding the right to property and the ban on discrimination under the European Convention on Human Rights. Thousands of applicants used the HHC's template application; the extremely high number of applications forced the ECtHR to introduce a special procedure for admitting and dealing with Hungarian pension cases. The case was communicated to the Hungarian government in 2013, and the HHC prepared a counter-observation as a response to the government observations in the second half of 2013.

#### 5.2.4. Pre-trial detention cases

During 2013, in 3 cases where applicants were represented by the co-chair of the HHC András Kádár, the ECtHR established a breach of the applicants' rights under Article 5 of the European Convention on Human Rights (right to liberty and security) with respect to their pre-trial detention. A friendly settlement was reached in 2013 in a fourth case that also concerned pre-trial detention and prison conditions. These decisions are important achievements of the HHC's strategic litigation efforts concerning pre-trial detention in Hungary.

- [\*X.Y. v. Hungary\*](#) (*Application no. 43888/08, Judgment of 19 March 2013*) – The applicant, X.Y., was arrested in November 2007 on charges of a series of car thefts and placed in pre-trial detention. He was released in May 2008 under the conditions of house arrest. All restrictions on his liberty were lifted in November 2009. Relying in particular on Article 5 (1) of the Convention, he alleged that his pre-trial detention from 18 February to 11 March 2008 had been unlawful under the national law on account of an error committed in an order to extend his detention. Furthermore, relying on Article 5 (3) of the Convention (entitlement to trial within a reasonable time or to release pending trial), he also alleged that the length of his pre-trial detention had been excessive, and in particular that the decisions to extend his detention had not taken into account a deterioration in his psychological health. Lastly, the applicant alleged under Article 5 (4) (right to have lawfulness of detention decided speedily by a court) that the proceedings in which he had challenged his continued detention had been unfair, as he had not had access to relevant documents in his case file. The ECtHR, in line with the arguments of the HHC's attorney, concluded that there has been a violation of Article 5 (1), (3) and (4) of the Convention.
- [\*A.B. v. Hungary\*](#) (*Application no. 33292/09, Judgment of 16 April 2013*) – The case concerned Mr. A.B.'s complaint about his pre-trial detention from January 2007 to December 2008. The applicant's detention was repeatedly prolonged due to risk of collusion and intimidation of witnesses. Relying on Article 5 (3) and (4) of the Convention, the HHC's attorney complained about the excessive length of the applicant's pre-trial detention as well as about not being able to effectively challenge his detention because he was not given access to relevant materials in the investigation on his case. The ECtHR found that the grounds for the applicant's detention – in particular when it continued after indictment – were not sufficient and concluded that there had been a violation of Article 5 (3) of the Convention. Furthermore, the ECtHR concluded that the Hungarian Government has failed to provide evidence that the requisite access was indeed made available to the applicant in terms of the case file, and it follows that the principle of "equality of arms" cannot be considered to have been respected in the case. Accordingly, the ECtHR concluded that there has also been a violation of Article 5 (4) of the Convention.
- [\*Baksza v. Hungary\*](#) (*Application no. 59196/08, Judgment of 23 April 2013*) – The applicant, István Baksza, was arrested in January 2006 on charges related to car theft, and was kept in pre-trial detention until June 2008, when he was released with a ban that prevented him from leaving his domicile. In the application it was claimed by the HHC's attorney that the pre-trial detention of Mr Baksza was of excessive length and that the decisions prolonging his detention had not been individualized or taken into account his personal circumstances, had not substantiated the risk of his absconding, collusion and re-offending or involved an assessment of the possibility of applying less stringent measures. The ECtHR found that the grounds for the applicant's detention, if relevant, were not sufficient in respect of the entire period of the pre-trial detention in question, and concluded that there has been a violation of Article 5 (3) of the Convention. Furthermore, it was claimed by the applicant that he was not able to effectively challenge his detention because he was not given access to evidence – showing that he might abscond if released – in the investigation of his case. The ECtHR concluded in this regard that the principle of "equality of arms" cannot be considered to have been respected in the case, thus there has been a violation of Article 5 (4) of the Convention.

- [\*Ferenc Tibor Zsák v. Hungary\* \(Application no. 71747/11\)](#) – The applicant, the head of an NGO working for protecting the environment, was reported for corrupt practices by a car factory in relation to a debate over environmental issues. He spent almost four months in pre-trial detention, even though he had no criminal record, cooperated with the authorities, had a solid family background and regular income. Ferenc Tibor Zsák, assisted by the HHC's co-chair, submitted an application to the ECtHR, complaining under Article 5 (4) of the Convention of the manner in which the courts dealt with his arguments challenging the detention and under Article 3 about the conditions of his detention, including overcrowding and the lack of appropriate ventilation. The Hungarian Government offered a [friendly settlement](#), and agreed to pay the applicant EUR 6,500 to cover any pecuniary and non-pecuniary damage. The ECtHR approved the friendly settlement and struck the case off its list in November 2013.

### ***5.3. Select cases before domestic authorities***

- In March 2013 a police raid took place in downtown Budapest, during a Jewish cultural festival, shortly after midnight, more than a dozen police officers entered the well-known alternative bar and club "Sirály" and claimed that they were ordered to do a "night check" – a police raid without any specific reason. (Allegedly, young political activists had carried out planning for a sit-in protest in the Fidesz governing party headquarters in the bar.) During the raid the police ordered everybody on the scene to produce identification documents. However, the police found no one under a search warrant or anyone who would have committed even a minor offence. The HHC's client was also present and was subjected to an ID check and a police search, with no incriminating results. The HHC [launched](#) a complaint procedure at the Independent Police Complaints Board (IPCB) in April 2013, arguing that the legal basis of the measure applied against our client was unconstitutional and violated the standards established in European Court of Human Rights case-law. In the complaint it was also argued that the police action's aim was not communicated, no information was provided to the HHC's client about the right to complain against the police measure, and his search was apparently ordered as a retribution for his behavior (as a lawyer, he had questioned many aspects of the measure on the spot). The IPCB [established](#) in November 2013 that the complainant's right to a fair procedure had been breached. In May 2013, the HHC also filed a constitutional complaint on behalf of the complainant, alleging that the legal basis of the raid was unconstitutional and therefore requesting the Constitutional Court to quash the related legal provisions, but the complaint was rejected. Furthermore, the HHC submitted an application to the European Court of Human Rights on behalf of the complainant, referring to Article 5, 8 and 13 of the European Convention on Human Rights, and claiming that in 2010 the ECtHR had found that a similar rule in the United Kingdom had violated the Convention.
- In July 2010, a 17-year old Roma young man was thrown onto the hood of a police car during a police action in Pécs and was made to stay there for 45-60 minutes, as a result of which he suffered serious burns. He had never been suspected of committing anything related to the case for which the police action took place. After the prosecutor's office terminated the investigation into police ill-treatment, the HHC assisted the victim to submit substitute/a second round of private charges in February 2013. The first instance court acquitted the two police officers for lack of evidence, in spite of the fact that the HHC's client had gone to the hospital shortly after his legs had been burnt. The HHC's attorney appealed against the decision; the case is still pending.
- In January 2013 the Independent Police Complaints Board established that the basic rights of a Kenyan national, represented by the HHC, had been seriously violated by the police in August 2011. The IPCB ruled that the complainant's right to a fair procedure was violated by his lengthy arrest and by the fact that he had not been interrogated by the police for 11 hours. It was established that the complainant's rights has been also violated when he could not inform anybody about his arrest, while his right to the protection of his personal data had been violated because the police would have had no right to answer his phone calls, which



they did. Finally, the IPCB established that the police measures used against the complainant were also discriminatory, because the police who arrested him only took into account the testimonies of the other persons involved in the underlying incident.

- In July 2011 a man voluntarily appeared at the local police station after a family dispute; the police patrol sent to the scene of the family dispute arrived to the police station after him. Despite the fact that he appeared at the police station voluntarily, he was taken into short-term arrest. The man submitted a complaint regarding the case to the Independent Police Complaints Board, which found that his short-term arrest was obviously unnecessary. After the National Police Chief disagreed with the IPCB's recommendation, a court procedure was launched in the case with the assistance of the HHC. In November 2013 the court [overruled](#) the National Police Chief's decision and ordered a new procedure, finding that the short term arrest of the HHC's client was disproportionate and therefore unlawful.
- In July 2013, a group of Roma persons (three men and two women) were apprehended when illegally collecting corn tassel on a corn field outside the city of Hatvan. (They received a warning for this in a petty offence procedure later.) According to them, following apprehension and handcuffing, the men were ill-treated (one of them suffered a broken rib) and humiliated (e.g. they had to lie for hours in the baking sun). The women were also threatened and humiliated verbally. The HHC is currently providing legal assistance for them in the criminal procedure, which is still pending.
- In November 2013 an African asylum-seeker in the town of Bicske was assaulted by two Hungarian men near a reception center. Throughout the assault, the two Hungarian men shouted "black man, go back to Africa" to him several times, while attacking and seriously injuring him. The attackers were apprehended and interrogated the same day, however, they were charged with hooliganism instead of a hate crime, though the victim clearly explained the content of the shouting. For a considerable time, the police refused to re-evaluate the legal classification of the crime despite several motions to do so, all which were submitted by the HHC's attorney representing the asylum-seeker. Finally, in January 2014, the classification was changed to hate crime.
- In October 2012 journalists of the [index.hu](#) (one of the biggest Hungarian online news portal) made a video report on a political demonstration where several right-wing extremists gathered without notifying the police in advance. Throughout the demonstration the demonstrators continuously shouted anti-Semitic expressions. The illegal assembly was not dissolved by the police in spite of the clear legal provisions allowing for dissolution; one of the journalists were attacked and hit three meters from the police line-up. The HHC currently represents the attacked journalist in the ongoing criminal procedure in which he is involved as a victim and provides him with legal representation in a police complaint procedure initiated because of the negligence of the police. In the latter procedure, the complaint was rejected by the police in May 2013. In December 2013 the court, in line with the HHC's arguments, [overruled](#) the Budapest Police Chief's latter decision and ordered a new procedure, claiming that the facts of the case were not clarified.
- In February 2013 a political activist organized a "flash mob" and placed a flag in front of the Parliament, with a political message on it. He was interrupted and ID checked by the Parliamentary Guard, even though they did not have the right to do so. With the help of the HHC, the activist submitted a complaint against the measures of the Parliamentary Guard. After the complaint was rejected, the HHC's lawyer requested the judicial overview of the rejection; the court procedure is pending.
- In March 2010, a young woman addicted to heroin committed suicide in the detention center of the Metropolitan Police. Beforehand, she stated that she would kill herself if she were to be arrested and expressed that she wanted to jump out of the window. However, despite her statements, she was placed alone in a cell, where she committed suicide by hanging herself. At the end of a long investigation, the Metropolitan Police concluded that the placement of the

woman was in accordance with the law and she was treated with the proper care. The lawyer of the HHC represented the woman's family during the whole procedure, and also assisted them in requesting the judicial review of the police's decision. In July 2013 the court overruled the Budapest Police Chief's decision, finding that the placement of the deceased was inappropriate due to the lack of forwarding information on the detainee's attempted suicide, and ordered a new procedure. The police suspended the execution of the judgment and turned to the Curia – the procedure is at the moment ongoing.

- In the case of Zs. H., who was transferred two times to the Forensic Psychiatric Mental Institution (IMEI), and was awarded HUF 5 million in the first instance procedure for his mistreatment there, the second instance court changed the first instance judgment and established that both treatment periods spent at the IMEI were unlawful. Beforehand, the first instance court found that only the first treatment was to be considered a violation of dignity and health of the HHC's client. The second one, which primarily aimed at treating the negative side effects such as symptoms similar to Parkinson-disease caused by the first treatment, however, was found to be lawful. In its decision of April 2013, the second instance court overruled this latter part of the judgment, while maintaining the amount of the damages awarded. The second instance court accepted the arguments of the HHC's lawyer that a treatment that had become necessary due to another, illegal treatment is also illegal, and it was also contrary to any medical reasons that at the end of the second treatment, the client was ordered back to the institute to continue the first treatment.
- A court awarded HUF 600,000 plus interest as damages to a detainee represented by the HHC who had spent an additional five weeks on top of his original sentence. This was to be paid by the responsible Pest Central District Court, which failed to conclude the procedure aimed at cumulating the detainee's sentences in due time. (Cumulation of sentences results in reducing the term to be served.) During the trial it was revealed that the penitentiary institution where the HHC's client was held did initiate the procedure for cumulating his sentences, however, it took 5 days for the institution to serve the first instance judgment on the cumulation to the HHC's client, thus he could appeal against the decision only with delay. The court in the tort case ruled that such a delay is not attributable to the penitentiary institution. The judgment, delivered in March 2013, is not final.
- In the tort case of a convicted inmate who had been ill-treated in the Budapest Maximum and Medium Security Prison by a prison guard while sentenced for solitary confinement, the first instance court awarded HUF 800,000 plus interest to the inmate, being the HHC's client, as damage compensation for the ill-treatment suffered in a decision delivered in February 2013. Both the client and the prison appealed against the verdict; the client's appeal was aimed at increasing the amount of damages (the claimed amount was set to HUF 2 million). In December 2013 the second instance court [increased](#) the amount awarded to HUF 1.2 million plus interest.

## 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.

In the first half of 2013, the platform's and the HHC's activities mainly centered on the **Fourth Amendment to the Fundamental Law of Hungary**:

- In February 2013, platform members prepared a detailed [analysis](#) in English, summarizing their main concerns regarding the Fourth Amendment to the Fundamental Law. The NGOs claimed that the Fourth Amendment undermined the rule of law in Hungary by continuing the practice of inserting provisions into the Fundamental Law which had been previously found unconstitutional by the Constitutional Court; including provisions in the Fundamental Law which violate international standards and further weaken the control exercised by the Constitutional Court over Parliament.
- On 26 February 2013, the three NGOs sent a [letter](#) to Thorbjørn Jagland, **Secretary General of the Council of Europe**, asking him to contribute to ensuring rule of law and respect for human rights in Hungary by requesting the Venice Commission to perform an analysis of the proposed Fourth Amendment. (The letter to the Secretary General was also made available in [Hungarian](#).) Viviane Reding, **European Commission Vice-President**, Commissioner in Charge of Justice, Human Rights and Citizenship, was [asked](#) by the NGOs to use the means at her disposal in order to ensure that Hungary complies with its obligations under the Treaty on the European Union. (The latter request is also available in [Hungarian](#).) Platform members sent their analysis to both addressees, along with an English [translation](#) of the draft Fourth Amendment, prepared by the platform members. The latter documents were also disseminated among **parliamentary groups of the European Parliament**.
- After the adoption of the Fourth Amendment in March 2013, platform members [updated](#) their analysis on the basis of the final text of the Fourth Amendment, along with the English [translation](#) of the text. The latter documents were also disseminated among parliamentary groups of the EP, and were sent to the Parliamentary Assembly of the Council of Europe and a number of embassies seated in Hungary. Furthermore, the analysis was translated into [Hungarian](#).
- Preceding the debate in the European Parliament on 17 April 2013 on the constitutional situation in Hungary, platform members disseminated two short background materials among parliamentary groups of the EP: a [one-page document](#) briefly outlining the main concerns arising in relation to the Fourth Amendment and a [table](#) showing how several of the Fourth Amendment's articles either insert provisions into the Fundamental Law which had previously been found unconstitutional by the Constitutional Court or which clearly contradict its case law.
- In the framework of preparing their opinion on the Fourth Amendment, a delegation of the **Venice Commission** visited Budapest on 11-12 April 2013. Members of the delegation also met with representatives of the HHC, the HCLU and the EKINT, who submitted their main concerns related to the Fourth Amendment as described in the analysis referred to above, and also provided the Venice Commission with a further [analysis](#) on how the Fourth Amendment limits the freedom of expression. On 28 June 2013, after the adoption of the opinion of the Venice Commission's opinion, platform members issued a [press release](#) and a [paper](#), criticizing the response of the Hungarian Government to the opinion of the Venice Commission.
- In April 2013, platform members approached the **UN Special Rapporteur on the Independence of Judges and Lawyers** in order to raise her attention to the problems arising in relation to the Fourth Amendment in terms of the independence of judges, and requested that the Special Rapporteur sends an urgent appeal to the Government of Hungary and makes a related public statement. A similar request was sent to the **UN Special Rapporteur on Freedom of Opinion and Expression** regarding the limitation of freedom of expression by the Fourth Amendment.
- Platform members participated at a briefing session on the Fourth Amendment for **embassies** of Scandinavian countries, Ireland, Germany and the Netherlands on 18 March 2013, and also met with the representatives of the embassies of Japan and Romania. The co-chair of the HHC shared NGO concerns regarding the Fourth Amendment and the threats to judicial independence with Thomas O. Melia, U.S. Deputy Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor on 5 June 2013, with a follow-up meeting on

17 June with another representative of the U.S. Department of State. Further advocacy meetings were concluded with a French MEP and a French senator in July and December 2013 concerning issues related to the rule of law.

- Platform members were also active at the **domestic level** in advocating against the Fourth Amendment. On 1 March 2013, the EKINT and the HHC sent an [open letter](#) to the governing coalition Members of Parliament, asking them not to vote for the Fourth Amendment. After 12 March 2013, platform members sent another [open letter](#) to the President of Hungary, asking him not to sign the Fourth Amendment; launched a campaign, urging citizens to send a similar letter to the President; and the HHC [requested](#) the Ombudsman of Hungary to initiate the review of the Fourth Amendment. (See also 6.1.3. of the present report.)
- The opinion of the Venice Commission regarding the Fourth Amendment, echoing much of the concerns voiced beforehand by platform members, was translated into Hungarian by the HHC and the [translation](#) was made public in November 2013. The document (along with the [translation](#) of the Venice Commission's earlier opinion on the amended laws on the judiciary) was also submitted to two concerned ministries, accompanied by an [open letter](#), which raised awareness to the fact that the government had failed to translate the opinion concerning the largest amendment of the constitution so far.
- After the Fundamental Law of Hungary was amended for the fifth time by the Parliament in September 2013, platform members issued an analysis (in [English](#) and in [Hungarian](#)), stating that even though the **Fifth Amendment** to the Fundamental Law was claimed by the government to be a response to international criticism, in reality the large majority of the professional and political objections raised domestically and abroad in relation to the Fundamental Law have been left unanswered by this amendment.

Platform members also carried out extensive **international advocacy activities** regarding rule of law issues in Hungary in general:

- In May 2013 the European Parliament made public a draft version of the report (the so-called **Tavares-report**) that it had instructed the European Parliament's Committee on Civil Liberties, Justice and Home Affairs to draft last year on the situation of fundamental rights and the rule of law in Hungary. After the Hungarian government issued an opinion criticizing the draft report, the HHC, the HCLU and the Standards Media Monitor compiled a [document](#) in order to correct the factual errors, misleading interpretation of facts or false statements by the Government, which was again disseminated among EP parliamentary groups. Earlier this year and in 2012, platform members also commented on three of the working documents preceding the draft report, and submitted their comments to rapporteur MEP Rui Tavares.
- Platform members remained in contact with and, upon request, provided background information on several occasions to the respective rapporteurs and to the Monitoring Department of the **Parliamentary Assembly of the Council of Europe** (PACE) in the course of the preparation of the opinion regarding the request of opening a monitoring procedure in respect of Hungary. The representatives of the HHC and the HCLU also shared their concerns personally with the representatives of the PACE at a meeting in Budapest on 27 February 2013. The HHC's efforts in this regard were publicly acknowledged in the opinion of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe.
- In the first half of 2013, the HHC provided, upon request, background information on several occasions to the researcher of the Human Rights Watch, mostly regarding the **Human Rights Watch's report** "Wrong Direction on Rights – Assessing the Impact of Hungary's New Constitution and Laws", published in May 2013.
- In December 2013, the HHC issued a [joint statement](#) with the European Association for the Defence of Human Rights (AEDH), an umbrella organization the HHC is member of, to raise international awareness about developments such as the criminalization of homelessness and

the introduction of unlimited pre-trial detention, and urging the international community to keep monitoring the situation in Hungary.

Platform members were also active in engaging in **specific rule of law issues and individual cases**:

- In March 2013, platform members submitted **a third party intervention in the case of [András Baka v. Hungary](#)** (Application no. 20261/12), which concerns the early dismissal of the former President of the Supreme Court of Hungary. In the third party intervention the NGOs argued that the individual rights violations suffered by András Baka at the same time constitute an integral part and follow the general pattern of the weakening of the system of checks and balances that has taken place in the past three years in Hungary. In the submission, the NGOs outlined the following issues: (i) legislative steps aimed at the early removal of public officials; (ii) examples of “individualized” legislation; (iii) legislation with retroactive effect; and (iv) legislative steps threatening the independence of the judiciary.
- On 22 April 2013, platform members issued a [press release](#), criticizing the fact that the Constitutional Court decided to hear the President of the National Judicial Office behind closed doors regarding a constitutional complaint filed against the decision of the President of National Judicial Office to transfer a given case from Budapest, the court of general competence in the case, to another court in the countryside. The right to transferring cases was beforehand severely criticized by the NGO platform and international stakeholders.
- On 6 May 2013, platform members, together with the Political Capital Institute and the Transparency International Hungary published a series of concrete [proposals](#) for amending the Election Procedure Law, with the aim to ensure the transparency and controllability of the national elections.
- In November 2013, as a reaction to the draft of a law setting out that the mandate of Constitutional Court judges, including the mandate of the current ones shall not terminate when they turn 70 years old, but they shall remain in their seats until the end of their 12-year term, platform members issued a joint opinion (in [English](#) and in [Hungarian](#)), claiming that it may not be justified from a constitutional perspective that essential conditions of fulfilling a judicial mandate are amended “along the way”, thus also affecting those who are currently in office. The NGOs also raised the attention to the fact that as a result of the new rule, the length of the mandate of some of the Constitutional Court judges nominated and elected with the sole support of the current governing majority will get extended considerably.
- On 27 November 2013, a group of NGOs, including the platform members, issued an [open letter](#), requesting the Minister of Interior to withdraw the draft law introducing a petty offence criminalizing homelessness as such (rough sleeping), claiming that it violates human dignity. After the law was adopted, the HHC prepared an English [summary](#) on the law and its consequences, and, together with The City is for All (a grassroots organization for homeless persons) [translated](#) the relevant provisions of the law itself into English.
- As to the activities related to providing legal representation before the European Court of Human Rights to over hundred judges affected by lowering the mandatory retirement age of judges, and the litigation efforts concerning the law revoking the right of officers of uniformed services to early retirement retroactively, see 5.2. of the present report.

The activities of the “Rule of Law Defenders” NGO platform are financed by the Trust for Civil Society in Central and Eastern Europe until the end of March 2014, and are co financed by the Open Society Initiative for Europe from December 2013 on.

### 6.1.2. Commenting on draft legislation

- In March 2013 the HHC submitted its [opinion](#) on the amendment of the law on petty offences. In its opinion, the HHC repeated its earlier arguments stating that the confinement of juveniles for petty offences violates the Convention on the Rights of the Child and also criticized the procedure for transforming non-paid fines into confinement.
- In September 2013, the HHC [commented](#) on the draft code on the execution of punishments, measures, coercive measures and confinement for petty offences.
- The HHC also commented on several occasions on draft amendments to the Asylum Act and its implementing government and ministerial decrees in April-June 2013.

### 6.1.3. Requests submitted to the Ombudsperson

Since the possibility of submitting *actio popularis* petitions for abstract constitutional review had been abolished as of 2012, the HHC is no longer able to turn directly to the Constitutional Court. Therefore, the HHC decided to pursue its goals by submitting requests to the Ombudsperson (the Commissioner for Fundamental Rights), asking him to initiate the review of problematic legal provisions by the Constitutional Court. (The Ombudsperson is allowed to initiate such a review by law.) In 2013, the HHC submitted the following requests:

- In April 2013, the HHC [requested](#) the Ombudsperson to initiate the review of the Fourth Amendment to the Fundamental Law by the Constitutional Court. (The Ombudsperson complied with the request, but in the end the Constitutional Court rejected his initiative.)
- On 18 July 2013, the HHC [requested](#) the Ombudsperson to initiate the review of the provision of the new Criminal Code referred to as the “three strikes rule”, making it obligatory for judges in certain cases to sentence perpetrators to life-long imprisonment. The HHC has claimed in its petition that the respective provisions are unconstitutional, since they exclude the possibility of sentencing on an individual basis and violate the judges’ right to discretion.
- On 29 July 2013, the HHC [requested](#) the Ombudsperson to initiate the review of the provisions entitling the heads of police units to order a so-called “increased control”, allowing police officers to ID check anyone without any reason. (This was the legal basis for the ID check of the HHC’s client in the “Sirály” case, presented under 5.3. of the present report.) In the request, the HHC has claimed that the respective provisions violate the rule of law, the right to human dignity, and the right to a fair procedure.



## 6.2. Activities related to the protection of Roma in Hungary

### 6.2.1. NGO coalition on hate crimes



GYŰLÖLET-BŰNCSELEKMÉNYEK  
ELLENI MUNKACSOPORT

In the beginning of 2012, the HHC, together with Amnesty International Hungary, Háttér Support Society for LGBT People, the Hungarian Civil Liberties Union and the Legal Defence Bureau for National and Ethnic Minorities formed a [coalition](#) advocating for an appropriate hate crime legislation and application of law. In 2012 the coalition called for a comprehensive reform in the new Criminal Code with regard to hate crime, followed up bias motivated acts and issued several related press releases, supported victims of hate crimes, and closely monitored marches of far-right groups.

In 2013 the NGO coalition continued its activities by issuing an [opinion](#) on the draft ministerial decree on the competence and jurisdiction of investigating police units. The opinion, dated 5 June 2013, stressed that it shall be ensured that the offence of preparing for a hate crime is also investigated by specialized investigators at the county police units, similarly to hate crimes committed. The decree was adopted with a text amended according to the proposal of the NGO coalition.

The NGO coalition held a workshop on the Hungarian situation regarding hate crimes on an intensive, two-week long [training](#), organized by the National University of Public Service for prospective police officers. The course took place between 11 and 22 March 2013 with Hungarian, German and Dutch participants. Representatives of the NGO coalition delivered speeches at a [meeting](#) of the Hungarian Academy of Sciences on hate crimes on 8 March 2013, and the coalition also co-organized the [conference](#) "The Theory and Practice of Hate Crime" held on 19 April 2013, together with the Hungarian Association of Police Science and the National University of Public Service.

In November 2013, the NGO coalition translated the guide of the International Association of Chiefs of Police titled "Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention" into Hungarian and prepared its modified version applicable in the Hungarian legal environment. The coalition is working on a detailed protocol for police officers, and until the finalization of this document the [guide](#) is expected to facilitate the investigation of hate crimes.

In December 2013, the coalition published an alternative commentary on the provision of the Criminal Code on "violence against a member of a community" (the Hungarian term for hate crime) in the form of an [academic paper](#) in the Journal titled Fundamentum (2013/4). A version of the commentary for the use of practitioners is to be drafted in the near future.

### 6.2.2. Creating a national hate crime strategy and action plan



who could be possible target groups of hate crimes. Furthermore, the HHC's staff member conducted

The HHC, together with Háttér Support Society for LGBT People participates as implementing partner in a project, led by the Legal Defence Bureau for National and Ethnic Minorities, aimed at preparing and promoting the adoption of a national strategy and action plan against hate crimes. In the framework of the project, the HHC held a consultation with foreigners accommodated in the open community shelter of Balassagyarmat on 13 February 2013. The objective of the roundtable was to share experiences and views and empower participants

over 20 semi-structured interviews with relevant stakeholders, including the representatives of the police, the prosecutor's office and the relevant ministries, and judges. The interviews centered on the stakeholders' experiences regarding the practice of responding to hate crimes and their ideas for actions bringing about a positive change. Both the [video recording](#) about the roundtable and the interviews will be used when preparing a study, aimed at identifying the barriers of effective persecution of hate crimes and serving as a basis for the future national strategy and action plan. The project is funded by the Trust for Civil Society in Central and Eastern Europe.

### 6.2.3. Call for advertising boycott due to anti-Roma statements

On 5 January 2013, Hungarian daily newspaper Magyar Hírlap published an op-ed by Zsolt Bayer, a journalist and co-founder of the ruling Fidesz party, which contained strong racist statements about the Roma. The HHC joined with a coalition of NGOs in [asking](#) domestic companies and Hungarian divisions of multinationals to review their advertising policies and to consider withdrawing all advertising from Magyar Hírlap until its editors explicitly condemn the op-ed, and the newspaper decides to cease publishing racist, anti-Semitic or homophobic articles. In addition, the civil organizations asked companies to explicitly inform the management of Magyar Hírlap that their decision to withdraw advertising is linked to its policy on publishing articles containing racist, anti-Semitic and discriminatory speech. The NGO request was sent to 15 companies, including Vodafone, T-Com, FedEx, IKEA and Procter and Gamble. As a [result](#) of the call for boycott, five companies stated that they will no longer place advertisements in the incriminated newspaper. The boycott was qualified as a [good practice](#) by the NGO Fund of the EEA/Norway Grants.

### 6.2.4. Legal defense of Roma persons charged with hate crimes

While offences committed against the Roma and other minority groups are often not reported or are not dealt with by the authorities as hate crimes, in two recent cases summarized below the authorities qualified attacks committed by Roma persons as "violence against member of a community", i.e. hate crime against Hungarians in a highly controversial manner. This means that the criminal law provisions originally adopted with the aim of protecting the minorities were used to punish members of the minority, and courts imposed harsh sentences on the perpetrators e.g. as compared to the sentences issued in other hate crime cases witnessed by the HHC in the course of one of its researches. Due to the above reasons the HHC, the Hungarian Civil Liberties Union and the Legal Defence Bureau for National and Ethnic Minorities (NEKI) decided to provide representation to the Roma defendants. (For representing a Roma victim of hate crime, see 5.2.2.)

- One of the cases happened in **Miskolc** in March 2009, when the series of targeted murders of Roma persons in Hungary was ongoing. The incident in question happened only three weeks after the two Roma persons were shot dead in Tatárszentgyörgy, and after members of the extreme right-wing group called the Hungarian Guard – an association later on dissolved by the Supreme Court for carrying out racist activities – were marching around in different Hungarian villages. Right before the incident, text messages were circulated among the members of the Roma community in Miskolc, alleging that skinheads were planning to attack the local Roma people. At around 1 a.m. two cars not familiar to the local Roma people turned up and drove along the homes of the Roma people several times. Finally, the car was attacked by 25-40 Roma persons, assuming that the people in the cars were skinheads or members of the Hungarian Guard. The perpetrators had no firearms, but used stones, rods, etc.; the damage caused in the car was approx. EUR 350. Eleven of the perpetrators were caught by the police and taken into pre-trial detention by the court, and remained there for two years. In October 2010 in the first instance decision the court found that all the perpetrators were guilty in hate crime, committed as an armed group.. The highest sentence imposed on them was 6 years imprisonment. The decision was appealed against, a new procedure followed on the first instance with similar results, and finally, in October 2013 the court of second instance [changed](#) the qualification of the actions to hooliganism and reduced the sentences, imposing a maximum of 2 years and 9 months. The Open Society Justice Initiative provided an amicus curiae brief during the procedure.



One of the evidences against the Roma persons included a wooden stick found in the crime scene with the sentence "Death to the Hungarians" on it, however, it has not been clarified by whom the stick was prepared or used. It was proven that at least one of the victims had Neo-Nazi ties, and the passengers carried several litres of gasoline in a can with them in the car. Furthermore, the only witness (a defendant himself), initially stating that he heard that others made "anti-Hungarian" statements during the attack, claimed that he was subject to forced interrogation by the police and made a false statement under duress, in the absence of a lawyer, and that the other defendants made no such "anti-Hungarian" statements.

- Another similar case happened in **Sajóbábony**, a small town close to Miskolc. On 14 November 2009 a public forum was organized in the town by the right-wing Jobbik party. Roma people were not allowed to enter and after the forum some of them were threatened. The next evening three out of the approximately 100 members of the New Hungarian Guard (the "successor" of the dissolved Hungarian Guard) were attacked by Roma inhabitants and one of their cars was seriously damaged by wooden sticks and axes, and passengers suffered light injuries. The passengers claimed that their Hungarian ethnicity was the cause of the attack, while Roma perpetrators stated that they wanted to protect their families from the Neo-Nazi (New) Hungarian Guard. Nine Roma suspects were placed in pre-trial detention and were accused of violence against member of a community. In May 2013, the first instance court ruled that they indeed committed a hate crime, and the perpetrators were sentenced to imprisonments between 2.5 and 4 years. The decision was appealed against, and the second instance court decided to raise the sentences imposed on almost all defendants in its decision issued on 30 September 2013. Attorneys are preparing to turn to the Curia in order to achieve that the actions of the Roma are qualified properly, i.e. as hooliganism instead of hate crime.

### 6.2.5. Mayor harasses local Roma community

In relation to a murder in Kiskunlacháza (which is currently suspected to have been committed by a non-Roma person), the mayor of the town spoke at a public demonstration about the town population having had enough of "Roma aggression" and made other statements giving the impression that in his view the murder had been committed by Roma people. The HHC argued that by doing so, the mayor had committed harassment in relation to the region's Roma population, and filed an *actio popularis* claim with the Equal Treatment Authority concerning the statements made by the mayor. In its decision of 19 January 2010, the Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation and ordered that its decision be made public. The mayor requested judicial review, and the court finally overruled the decision of the Equal Treatment Authority in 2012. However, in its decision delivered in 15 October 2013, the Curia [ruled](#) that the court procedure shall be repeated, because the lower level court failed to provide appropriate reasons for its decision. The HHC continues to act as a third party intervener in the case.

### 6.2.6. Report to the OSCE ODIHR

Andrzej Mirga, the OSCE ODIHR Senior Adviser on Roma and Sinti Issues met Hungarian officials, including the Hungarian Minister of Human Resources in February 2013 for a discussion on Roma related issues, especially about the national strategy of Hungary aimed at improving the situation of Roma. To help OSCE ODIHR in preparing the meeting, the HHC compiled a detailed analysis on anti-Roma speech and its effects in Hungary, as well as on government policies regarding employment for Roma. The HHC highlighted that perpetrators of hate speech – if identified at all – barely face criminal sanctions or even investigation in many instances.



### 6.2.7. 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 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 issues. The report titled "Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary" was finalized in the first half of 2013, and was published both in [English](#) and in [Hungarian](#). In December 2013, an [update](#) to the report was provided by the NGO coalition, including the HHC.

## 6.3. The right to assembly

After the adoption of the Fourth Amendment to the Fundamental Law, an HHC staff member announced a small demonstration to be held at the Buda Castle in a square in front of the seat of the President of Hungary. The aim of the demonstration was to call the President not to sign the Fourth Amendment. However, the demonstration was [banned](#) by the police by referring to the decision of the Anti-terrorism Headquarters which ordered that special security measures shall be applied to the square for the relevant period, thus the whole square shall be blocked by the police. The HHC submitted a request to the court, asking it to establish that the ban on the demonstration was unlawful, since the police measure was disproportionate as a response to an abstract danger. In its decision delivered on 18 March 2013, the court fully [agreed](#) with the HHC and established that the ban was unlawful. However, the police refused to provide compensation for the non-pecuniary damages caused by the unlawful restriction of the fundamental right to assembly. Therefore, the organizer of the assembly submitted an application to the European Court of Human Rights requesting to establish the violation of Article 10 of the European Convention on Human Rights. The case forms a part of the HHC's continuous efforts to improve the law and practice regarding the right to assembly in Hungary.

## 6.4. Human rights lectures

Date	Event
13 March 2013	Panel discussion titled "Hungary after the 4th Constitutional Amendment: a roundtable discussion" at the Central European University (CEU), organized for university students by the CEU Human Rights Initiative.
17 April 2013	Panel discussion on the freedom of assembly at the Eötvös Loránd University in Budapest, organized as part of the chain of events titled " <a href="#">Human Rights Road Show</a> ", taking place at law faculties of universities throughout the country.
19 April 2013	Presentation to students of Hilbert College (USA) on the HHC's experiences and work regarding law enforcement issues, ethnic profiling, and the situation of migrants and asylum seekers in Hungary.

19 May 2013	Lecture to students in Budapest at the event of Free2Choose, developed by the Anne Frank Foundation, on the relationship of human rights, terrorism and forced interrogation.
15 July 2013	Presentation on rule of law issues at the event of the Heinrich Böll Stiftung's study trip.
2 October 2013	Presentation on the voting rights of prisoners at the <a href="#">event</a> of the Association of European Election Officials and the Mathias Corvinus Collegium.
8 October 2013	Panel discussion at Eötvös Loránd University's Faculty of Law on the draft law on executing punishments.
18 October 2013	Lecture on law enforcement and human rights at the Eötvös Loránd University Faculty of Social Sciences.
14 November 2013	Panel discussion on freedom of expression and hate speech, organized by university students in the framework of the event " <a href="#">Night of Special Colleges</a> ".
19 November 2013	Panel discussion on the right to free elections at the University of Debrecen, in the framework of the Human Rights Road Show.
21 November 2013	Presentation on the activities of the HHC and the human rights problems the organization deals with for the university students of the Mathias Corvinus Collegium.
26 November 2013	Panel discussion at the Eötvös Loránd University's Faculty of Law on the confinement of juveniles for committing petty offences.
27 November 2013	Panel discussion on the right to freedom of expression and hate speech at the University of Miskolc in the framework of the Human Rights Road Show

## 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 2013, the HHC provided the FRA with the following reports and studies:

- Judgments referring to the EU Charter of Fundamental Rights (report);
- Severe forms of labour exploitation (ad-hoc information service);
- The situation of the Roma in EU Member States: Hungary (social thematic study);
- Surveying LGBT people and authorities (report);
- Freedom to conduct business (ad-hoc information service);
- Victim Support Services in the EU: An overview and assessment of victims' rights in practice, Phase 3 (report);
- Children with disabilities (ad-hoc information service);
- Gender-based violence against women - legislation and institutional aspects (ad-hoc information service);
- Indicators on political participation of persons with disabilities (ad-hoc information service);
- Countering phenomena of racism, xenophobia and related intolerance in Hungary (situation report);
- Guardianship systems for child victims of trafficking (report);
- Criminalisation of irregular migration (report);
- Mapping Data Sources on Roma (report);
- Victim Support Services in the EU: An overview and assessment of victims' rights in practice, Phase 4 (report);
- Contribution to the FRA Annual Report 2013 – Hungary [report, including the following topics: (1) Asylum, immigration and integration, (2) Border control and visa policy, (3) Information society, respect for private life and data protection, (4) Rights of the child, (5) Equality and non-discrimination, (6) Racism, xenophobia and related intolerance, (7) Roma integration, (8) Access to justice and judicial cooperation, (9) Victims of crime, including compensation of victims, (10) EU Member States and international obligations, (11) References to the EU Charter of Fundamental Rights in national jurisprudence].

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

## 6.6. Communications

In 2013, the HHC continued focusing on its communication toward the public by publishing a blog and using social media. The HHC's communications and media work was coordinated by a part-time press officer.



The HHC launched its Helsinki Figyelő blog at [www.helsinkifigyelo.hvg.hu](http://www.helsinkifigyelo.hvg.hu) in January 2012 on the prominent [hvg.hu](http://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. In 2013, altogether 47 blog posts were published by the HHC.

The HHC's Facebook page at [facebook.com/helsinkibizottsag](https://facebook.com/helsinkibizottsag) continued to be updated on a daily basis and has been steadily increasing its 'likes' to over 4,700 as of January 2014.

In April 2013, we produced a short promotional leaflet on the HHC: [http://issuu.com/hungarianhelsinkicommittee/docs/kiadvany\\_helsinki/1](http://issuu.com/hungarianhelsinkicommittee/docs/kiadvany_helsinki/1).

In May, the HHC also produced an image spot, which was used in the organization's 1 percent income tax donation campaign as well: <http://vimeo.com/65332346> and <http://youtu.be/jsOWc0uUn5I>.