

Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary



Report on the Border Monitoring Program's
First Year in 2007



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December 2008

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This publication and the project *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary* was made possible by the support of the United Nations High Commissioner for Refugees (UNHCR).

ISBN 978-963-87757-7-1

Published by

Hungarian Helsinki Committee

Bajcsy-Zsilinszky út 36–38.

H–1054 Budapest, Hungary

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www.helsinki.hu

Design and layout: Judit Kovács | Createch Ltd.

Proofreading: Lorna Kralik

Cover photo: Vladimir Menkov | Wikimedia

Printing: Createch Ltd.

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I. Introduction

This report summarises the experiences gathered in the course of the first year, 2007, of the project “Asylum Seekers’ Access to Territory and Asylum Procedure in the Republic of Hungary” (“Border Monitoring Project” or “Project”).

The Border Monitoring Project is being implemented in the framework of a Tripartite Agreement, signed on 28 December 2006, between the Hungarian Helsinki Committee (“HHC”), the National Headquarters of the Border Guard (“Border Guard”) and the UNHCR Regional Representation for Central Europe (“UNHCR”). (See Annex 1 for the Tripartite Agreement.)

The Border Guard was integrated into the Police as of 1 January 2008. The National Police Headquarters, as general successor to the Border Guard, succeeded it as a party to the Tripartite Agreement. For ease of understanding, the Border Guard National Headquarters will be referred to as the Border Guard throughout this report.

In accordance with the Tripartite Agreement, the parties met on several occasions in 2007 in the framework of a Working Group created by Chapter V, Section 1 of the Tripartite Agreement (“Working Group”) to evaluate the Project’s experiences, which the HHC had in turn summarised in interim reports.

The aim of the present report is to summarise the first two interim reports prepared in 2007, to provide further information on activities carried out in the last quarter of 2007, and to formulate conclusions and recommendations to the parties of the Tripartite Agreement with a view to the continuation of the Border Monitoring Project and enhanced cooperation.

The conclusions and recommendations, drafted by the HHC, have been discussed and agreed in the Working Group. The Police have added supplementary remarks to the document; these are set in *bold italicised* type.

The Border Guard deemed the presence of civilian monitoring as a very important external evaluating mechanism, and was also conscious of the domestic and international significance of the Tripartite Agreement. Since the conclusion of the Tripartite Agreement, an extremely cooperative and professional working relationship has developed between the parties implementing the Agreement. Border Guard personnel have become aware of the many advantages arising from the Agreement and from analysing the experiences of monitoring visits.

After the 1 January 2008 integration of the Police and the Border Guard, the border enforcement field, including the alien-policing field, also became part of the Police. The Police, as successor to the Border Guard, continue to take part in the Tripartite Agreement.

UNHCR believes that the cooperation is a very important activity pursuant to the implementation of its 10-point plan on managing mixed migration flows within which are to be found persons in need of international protection (UNHCR 10-point Plan of Action).¹

1 For more on the 10-point Plan of Action see http://www.unhcr-budapest.org/images/stories/pdf2007/ten_point_hu.pdf

II. The Nature of Cooperation

The conclusion of the Tripartite Agreement was a precondition for implementing the border monitoring project. The Tripartite Agreement, signed in December 2006, is an excellent example of cooperation between law enforcement agencies, intergovernmental organisations and non-governmental organisations both at the national as well as the international level.

Under the Tripartite Agreement, attorneys contracted by the Hungarian Helsinki Committee monitored three sections of Hungary's borders: the Ukrainian–Hungarian border, the Serbian–Hungarian border, and the Budapest International Airport.

Hungarian legislation on immigration changed considerably from 1 July 2007, due to the entry into force of Acts I and II of 2007. The Border Guard performs its duties in the field of border protection and alien policing by virtue of these laws as well as according to the rules and guarantees set forth in international law and European Union law. (See Chapter III for a more detailed discussion of the legal changes.)

At the start of the project implementation period a few communication challenges arose between the Border Guard and the monitors concerning the actual implementation of the monitoring visits, their announcement, and the exercise of the right of access to files as set forth by the Tripartite Agreement. Later on, however, these challenges were overcome and cooperation between lawyers carrying out the monitoring activity and border guard personnel improved considerably.

In the Working Group the parties to the Tripartite Agreement perfected their cooperation. After discussing the first interim report, the parties agreed to slight changes in the project methodology and improved their communication. Hence attorneys carrying out the monitoring activities were granted unhindered access to files required for the monitoring. The interim reports produced in the course of the

project, which were all discussed and adopted by the parties, contain details about the conclusions and recommendations related to a specific project period.²

In general, border guards at all border checkpoints and field offices were consistently very cooperative with the HHC monitors. Information materials produced by the UNHCR and the HHC were regularly displayed in the UNHCR leaflet dispensers. The information dispensers also included lawyers' contact information and were displayed at visible locations in all holding facilities as well as in the waiting areas for interview rooms.

During the year under review, the HHC witnessed that the Border Guard's procedural conduct regarding foreign nationals became more transparent. Furthermore, the HHC experienced an increased willingness on the part of the Border Guards to cooperate. Border guards increasingly used the services of interpreters to interview foreigners in the alien policing procedures. This was despite the – regrettable – lack of legal provisions obliging the Border Guard to interview foreigners prior to the enforcement of a return measure, even if the foreigner had arrived from a country where the risk of persecution exists. Due to the lack of a legal obligation to carry out an interview, it cannot be fully excluded that the Border Guard may fail to become aware at the appropriate time of the risk of persecution facing the foreign national.

It is important to add that the National Headquarters of the Border Guard and the Hungarian Helsinki Committee signed a cooperation agreement already in 2002, based on which the two organisations have developed a close working relationship. Under the 2002 agreement, the HHC's attorneys can monitor and provide legal assistance in alien policing jails (since 1 July 2007, these detention facilities are called "guarded shelters").

2 In case of interest, the interim reports and its supplementary documents (minutes from the May 2007 meeting of the Working Group, comments from the Border Guards to the HHC's September 2007 report) can be obtained from the Hungarian Helsinki Committee after the members of the Tripartite Working Group have given their consent to releasing these documents.

III. Overview of Changes in Alien Policing and Asylum Laws

III.1. The legal context in 2007

For the purposes of this project, the relevant laws and regulations relating to the tasks of the Border Guard, taking into account the legal changes in 2007, are as follows:

- Act XXXI of 2001 on the entry and stay of foreigners (“2001 Aliens Act”),
- Act II of 2007 on the entry and stay of third country nationals, in force as of 1 July 2007 (“TCN Act”),
- Act CXXXIX of 1997 on asylum (“1997 Asylum Act”),
- Government decrees on the execution of the aforementioned laws, such as Government Decree no. 170/2001. (IX. 26.) on the execution of Act XXXIX of 2001 on the entry and stay of foreigners,
- Government Decree no. 114/2007. (V. 24.) on the execution of Act II of 2007 on the entry and stay of third country nationals,
- Government Decree no. 172/2201 (IX. 26.) on the detailed rules of the asylum procedure and the documents of temporary protected persons,
- Act XXXII of 1997 on protection of the borders and the Border Guard,
- Act IV of 1978 on the Penal Code,
- Act XIX of 1998 on the Penal Procedure Code,
- Act LXIX of 1999 on petty offences,
- Act CXL of 2004 on the general rules of public administrative procedures and services (“Ket.”).

In 2007 several laws governing the field of alien policing changed, and two new laws entered into force on 1 July 2007: Act I of 2007 on the entry and residence of persons with the right of free movement and residence (“Szmtv.”), and Act II of 2007 on the entry and stay of third country nationals (“TCN Act”).

The aim of Act I of 2007 was to ensure freedom of movement and residence as guaranteed by the Treaty establishing the European Community, as well as secure the equal treatment of Hungarian nationals’ family members who are not Hungarian nationals. However, as this area of law does not constitute an integral part of the legal norms governing border monitoring activities, no further discussion of Act I of 2007 is contained in this report.

The TCN Act repealed the previous 2001 Aliens Act, which was in force until 30 June 2007. The TCN Act contains several important changes, one of the most important being that the former 12-month maximum duration of alien policing detention was reduced to a maximum period of 6 months.

It should be noted that at the time of their arrival to Hungary, asylum seekers are perceived by the Border Guard as well as the Alien Policing Directorate of the Office of Immigration and Nationality (“OIN”) as primarily foreign nationals. Apart from submitting an asylum claim, these persons cannot be exempted from the application of rules regulating foreigners’ entry and stay in Hungary.

Law enforcement rules relating to the entry and stay of foreigners are applicable once the foreigner has contravened them (e.g. the authorities apprehended him/her for unlawful border crossing or stay) and if it is only afterwards that she/he states a need for international protection. In this case, where a violation of the rules on entry and stay of both the 2001 Aliens Act and the new TCN Act has occurred, the sanctions contained in the law (including detention measures) become applicable. In practice this means that a foreigner who has crossed the border unlawfully but has subsequently applied for asylum faces an alien policing procedure prior to the start of the asylum procedure.

While the number of detained asylum seekers has decreased considerably in the last years, uncertainties regarding the application of the 2001 Aliens Act and its executive Government Decree no. 170/2001 prevailed. On several occasions certain provisions of Hungarian asylum law proved to be effective tools in preventing or stopping the detention of asylum seekers. Under both the old and the new aliens policing legislation, if the foreigner signals an intention to submit an asylum application during the alien policing procedure, the alien policing authority (Border Guard) is obliged to register the application and to forward it without delay to

the refugee authority. Furthermore, the alien policing authority (Border Guard) is obliged to ensure that the asylum seeker is directed to the refugee reception centre designated by the refugee authority, or alternatively, to transport the asylum seeker there.³ According to the monitors' reports, the Border Guard's most recent practice is to transfer (transport) the foreigner within a few hours to the OIN reception centre in Békéscsaba.

The border monitoring project is aimed at examining how foreigners seeking international protection and entering or wishing to enter Hungary (lawfully or unlawfully) at the country's borders may exercise their right to seek asylum in practice. The project also considers how their other rights enshrined in international instruments and domestic law are respected.

Therefore it is important to stress that in the course of the monitoring activity, the HHC focussed on the protection of the rights of foreigners who, while presumably arriving in Hungary with the intention of seeking asylum, cannot be considered as asylum applicants in the formal sense as they have not yet submitted an asylum application. The legal background of this important distinction is that under the 1997 Asylum Act, the Border Guard registered in writing the intention to submit an asylum application, and alien policing and refugee authorities perceived the procedure as having been commenced from this point. This was in accordance with the provision of the Government Decree no. 172/2001 that regulated cooperation in asylum procedures between the concerned authorities.⁴ In contrast, due to legal changes taking effect in 2008 (as set out in detail below under Section III.2.), the asylum procedure now starts with an application submitted to the asylum authority. Consequently, the rights and legal situation of foreigners who wish to seek asylum, but who have not yet submitted an asylum application to the asylum authority, are not governed by the rather detailed rules applicable to asylum seekers. Rather, the relevant legal provisions of the Schengen Borders Code apply, based on which border control agencies may refuse entry into the country and order return.⁵

3 1997 Asylum Act Section 30 (2) (c)

4 Section 2 (1) of Government Decree no. 172/2001 (IX. 26.) on the execution of the 1997 Asylum Act: "If the foreigner expresses his/her intention to seek recognition as a refugee or a temporarily protected person in the course of an alien policing proceedings, the alien policing authority shall record in writing such declaration." The registered statement on the wish to seek recognition contained inter alia all essential personal identification data and a short description of the circumstances of flight.

5 TCN Act Section 40

The TCN Act contains very little about the legal situation of foreigners under the return procedure. The Act only provides that, in the interest of implementing return, the returned foreigner must remain in the designated area of the border area or the airport⁶, and that the authorities shall ensure basic provisions (accommodation, three meals per day, personal articles) at the premises designated for holding persons under return.⁷

Act CXL of 2004 on the general rules of public administrative procedures and services (“Ket.”) provides an additional legal framework for the alien policing law, hence foreign nationals also enjoy rights afforded by the Ket., unless specific alien policing laws provide otherwise.

Rules on the rights and responsibilities of foreigners held in alien policing detention, a measure whose purpose and basic features are similar to that of the return measure, are also considered relevant for the legal situation of foreigners under the return procedure.⁸ While the duration and consequently the nature of the deprivation of liberty in case of alien policing detention results in far more severe restrictions than the restrictions on liberty in the case of return, the essential content of the rights of foreigners in both situations of restriction of liberty should not be different.

In sum, in the course of the border monitoring activity, the HHC examined the rights guaranteed foreigners by the aforementioned laws in order to assess the respect for these rights under the return procedure.

III.2. Relevant legal changes as of 2008

While not strictly related to the experiences gained in the 2007 year of the border monitoring project, it is important to mention the adoption of the Act LXXX of 2007 (“2007 Asylum Act”), and its entry into force on 1 January 2008. This act brought about important changes with respect to the consequences of submitting an asylum application in Hungary.

6 TCN Act Section 41 (1)

7 TCN Act executive decree Sections 122 and 132

8 2001 Aliens Act Section 54 (2) and TCN Act Section 61 (3)

With the 2007 Asylum Law, Hungary transposed into national law Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (“Qualification Directive”). The 2007 Asylum Act fundamentally changed the national asylum policy, and divided the formerly uniform asylum procedure into two distinct phases: the preliminary assessment procedure and the in-merit procedure.

Another important and progressive provision of the 2007 Asylum Act pertains to the detention of asylum applicants. If the applicant is held in alien policing detention during the preliminary assessment procedure, and the refugee authority orders an in-merit procedure, the alien policing authority shall terminate the detention at the initiative of the refugee authority.⁹

A further change concerned the 2007 Asylum Act’s provision on the beginning of the asylum procedure. According to this act, the asylum procedure starts when an application for recognition as a refugee is submitted to the asylum authority.¹⁰ In the case of a written application, the application submission date is the date when the application is received by the asylum authority.¹¹ The Police shall notify without delay the asylum authority once it has registered an intention to submit as asylum application.¹² Thus the foreigner can only be considered an asylum seeker from the time he/she has submitted his/her application in oral or written form before the asylum authority.¹³

In addition to the Asylum Act’s provisions, the transfer of asylum seekers to the Office of Immigration and Nationality (OIN) is further governed by the Joint Instruction no. 57/2007 (X. 26.) of the Director General of the OIN, the National Commander of the Border Guard, and the National Police Chief. Chapter X of the

9 Section 55 (3) of the 2007 Asylum Act

10 Section 35 (1) of the 2007 Asylum Act

11 Section 62 (3) of Government Decree no. 301/2007 (XI. 9.)

12 Section 64 (2) of Government Decree no. 301/2007 (XI. 9.): “If the foreigner states his/her intention to submit an application for recognition in the course of an alien policing, petty offence or criminal procedure, the proceeding authority shall record his statement and – by simultaneously forwarding the records and the fingerprint record taken by that authority – notify without delay the asylum authority and the reception centre providing accommodation for persons under the preliminary assessment procedure.”

13 Section 35 (4) of the 2007 Asylum Act contains the obligation to appear in person: “Upon the presentation of the application for recognition, the person seeking recognition shall appear before the refugee authority in person.”

Joint Instruction concerns the cooperation of the authorities in the asylum procedure. Foreigners who present themselves to the Border Guard and state their wish to be recognised as refugees without delay shall be directed to the OIN.¹⁴ If the applicant foreigner is under a criminal procedure, the competent investigation authority shall notify the refugee authority about the asylum application without delay.¹⁵ Foreigners who are under an alien policing procedure and are detained in a guarded shelter and who state their wish to be recognised as a refugee shall be immediately released by the proceeding alien policing authority at the recommendation of the refugee authority, which should be supported by an expert opinion of a psychiatrist.¹⁶

The review of the Joint Instruction, necessitated by the organisational and legal changes, has been completed and a new instruction came into force on 30 May 2008. A key issue during the negotiations of the new instruction was the transportation of asylum seekers, as the OIN lacks the necessary conditions to perform these tasks (despite its legal duty under Section 64 (3) of the Government Decree 301/2007). Until the entry into force of the new Joint Instruction, the Police continued to carry out an overwhelming majority of these transportations without any legal obligation, but this incurred considerable costs for the Police. Based on the new Joint Instruction, in cases where it is not obliged by law to do so, the Police will continue to carry out transportations at OIN's request and the financial units of the two agencies will resolve the question of expenses arising from the transport movements in a separate agreement to be concluded at a later time.

As a result of the aforementioned legal changes and the Joint Instructions, asylum seekers are now held in alien policing detention for considerably shorter time periods, and are placed in open refugee reception centres during the course of the in-merit asylum procedure. The Hungarian Helsinki Committee welcomes all changes that result in more effective cooperation between state authorities involved in refugee matters and in prompt access to the asylum procedure for asylum seekers.

14 57/2007 (X.26.) Joint Instruction Chapter X para. 50

15 57/2007 (X.26.) Joint Instruction Chapter X para. 54

16 57/2007 (X.26.) Joint Instruction Chapter X para. 56

IV. Methodology

According to the Tripartite Agreement, the Hungarian Helsinki Committee carries out the border monitoring activity on behalf of UNHCR at the Serbian–Hungarian and Ukrainian–Hungarian border sections and at the Budapest International Airport.

The Hungarian Helsinki Committee contracted three lawyers to pay two monitoring visits per month at any time of day to the border sections. Monitors' tasks included visiting those border sections where border guard holding facilities for the short-term arrest of foreigners are located, and to review border guard statistics regarding alien policing and asylum procedures that had been carried out or were in progress. Monitoring lawyers could also interview persons detained at these holding facilities under the terms of the Tripartite Agreement. This could only be regularly accomplished at the Budapest International Airport due to the time dynamics of illegal migration. (The HHC monitor and an HHC staff member were able to meet and speak with apprehended foreigners who had crossed the Hungarian–Serbian border unlawfully on the occasion of their visit on 8 October 2007.) Monitors could also have access, in compliance with data protection law¹⁷, to anonymous official files about persons who had already been returned.

Two days prior to each monitoring visit, the HHC informed UNHCR and the Border Guard about the planned visit, specifying the venues to be visited and the time of the visit. In several cases it happened that an interpreter was also needed; in such cases, a special authorisation letter for the interpreter had to be submitted as well.

¹⁷ Act LXIII of 1992 on the protection of personal data and disclosure of information of public interest

In terms of the Tripartite Agreement, the HHC and its monitors were granted access to all short-term holding facilities of the Border Guard and could speak with foreigners detained therein. Monitoring lawyers introduced themselves and the purpose of their visit to the foreigners, and made it clear that they were not affiliated with the authorities and that foreigners may freely refuse to speak to them as the conversation was strictly voluntary.

Under the Agreement, the Border Guard ensures that monitors may have access to copies of official files of foreigners, even if the foreigners have already left Hungary, in accordance with previously specified themes and nationalities. In such cases the copies of files had been made anonymous in accordance with data protection law. This provision significantly increased the scope of files the HHC could access.

The files of former detained foreigners are transferred from the border guard field offices to the archives of regional border guard directorates. Under the Tripartite Agreement, when the HHC sends a notification about an upcoming visit, it can signal which foreigners' anonymous files it wishes to access at the particular monitoring location. In the initial project period, the HHC did not put forward any such request. During the first Working Group meeting, the parties clarified the details of accessing case files, and no further problems came to light regarding access to files.

The HHC monitors sent reports to the HHC about each monitoring visit, which the HHC then forwarded to the Border Guard and UNHCR within 15 days of the visit. The Parties to the Tripartite Agreement could make comments, remarks and suggestions to each report.

V. Description of Monitored Border Guard Facilities

The implementation of the border monitoring project in 2007 concerned three border sections (Serbian, Ukrainian and the Budapest International Airport) where three lawyers contracted by the HHC carried out border monitoring. This chapter contains a brief description of the types of border guard premises where the monitoring activity took place.

V.1. Budapest International Airport – Budapest Border Guard Directorate

The HHC monitor paid regular border monitoring visits to the following locations at the Budapest International Airport: (1) the official transit by air premises located in Terminal 2A, and (2) the premises designated for the placement of persons under the return procedure located in Terminal 2B (the so-called “small community shelter”). As provided for by the Tripartite Agreement, the lawyer also had access to files of persons under the return procedure, in accordance with data protection law, at the Alien Policing and Petty Offences Department of the Budapest Border Guard Directorate (called the Alien Policing Department of the Airport Police Directorate from 1 January 2008).

V.1.1. The official transit by air premises

According to the monitoring lawyer's experience, the Border Guard generally uses the official transit premises found in Terminal 2A when it is involved in deportations by air carried out by counterpart (European Union member state) authorities. These counterpart authorities do not cover the costs of such foreigners' transit stay in Hungary. In these cases, the Hungarian Border Guard involvement is limited to executing the removal measure ordered by other EU Member States. Furthermore, such foreigners returned are only considered to be transiting at the Budapest International Airport, and therefore are not regarded as formally present in Hungary. The Hungarian Border Guard is hence not competent to act in their case. According to the HHC's observations, the legal norms governing placement in the official transit by air premises and return are vague. For example, the Border Guard will not issue a separate, formal decision on placement in the official transit premises. It only provides assistance to counterpart authorities pursuant to Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, or based on the provisions related to official transits of bilateral readmission agreements.

Until the transformation of the airport in early 2008 due to Hungary's accession to the Schengen zone, the official transit premises of the airport was an area of about 20–25 square meters. It was found next to the passport control booths, lacked natural lighting and was separated from the rest of the transfer zone by mirrored windows. These premises could accommodate about 20 persons at a time and were furnished with benches and two tables. A public payphone and an information display with the contact information of several Budapest-based embassies and consulates, IOM and UNHCR and the Hungarian Helsinki Committee were also available in the premises. There is no adjoining toilet, so foreigners placed here have to ask the border guard personnel to escort them to the public toilets. The HHC's monitor reported that in certain cases, persons under official transits had stayed on the premises for lengthy periods of time, despite the fact there is no infrastructure appropriate to prolonged deprivations of liberty. The members of the Tripartite Working Group agreed that in this regard further discussions with the company managing the airport, Budapest International Airport Zrt., would be beneficial, as coordination and logistics issues are concerned.

Persons placed in the official transit premises have, in principle, the same right to submit an asylum application as any other foreigners coming into contact with the

Border Guards. Our findings on the respect for fundamental human rights, detailed in Chapter VI, are only reiterated here insofar as the HHC is concerned about foreigners' access to appropriate facilities for the duration of their stay in the official transit premises. As it currently stands, there is no possibility to shower, nor are there toilets. Smoking, buying food or telephone cards is only possible if the border guard personnel on duty has the capacity to escort the foreigners placed in the premises to facilities providing such services or opportunities.

In the course of official transits by air, the relevant authority (previously the Border Guard, now the Police) is obliged to receive the third country national at the airplane, and to ensure his/her supervision during the entire stay at the airport, pursuant to Council Directive 2003/110/EC, or readmission agreements. This can only be achieved in a secure manner if these persons are kept separate from general air passengers. Separation is also required as persons under transit have the right not to be seen being escorted by other passengers. Additionally, the sight of foreigners lying on benches should not irritate other regular passengers.

There are no domestic or international legal obligations for Hungarian authorities to take decisions, as they only provide assistance in enforcing another state's decision. All obligations to provide information to the foreigners are borne by the departing state.

The physical features of the airport in many cases preclude ensuring natural lighting – even for passengers or persons performing official duties at the airport.

While it is true that the premises for official transit by air lack en-suite hygienic facilities, the personnel always accommodate requests for basic needs (toilets, drinking water) immediately, or in the case of purchases or smoking, depending on how engaged they are with other official tasks.

V.1.2. The premises designated for the placement of persons under the return procedure

Designated premises, found in Terminal 2B of the airport are used for accommodating foreign nationals whose return has been ordered by the Border Guard (typically, due to the lack of valid travel documents), but whose return cannot take place on the same day as when the return order was issued.

The premises consist of two rooms, furnished with two sets of bunk beds each, and can accommodate eight persons in total. There is a small foyer between the two rooms where the guards stay if necessary. The rooms themselves are about 10 square meters each, and have no natural lighting. The small foyer between the rooms has a window that lets natural light in. Bathrooms are available in both rooms, as well as information leaflets from the Hungarian Helsinki Committee and another NGO, Menedék Association for Migrants. It is important to note that there is no public payphone found on the premises, so foreigners placed here have to ask the border guard personnel to allow them to use the telephone. Whether this request is granted depends on the availability and discretion of the border guard personnel. This is particularly worrisome as foreigners may spend up to eight days here, and the exercise of their right to maintain contact with the outside world depends on the border guard personnel's goodwill and capacity.

The airlines are responsible for providing accommodation and meals for persons under the return procedure.¹⁸ Hence, the Border Guard provides the accommodation, but the airlines are responsible for the conditions of accommodation. Persons under the return measure receive bedding, hygienic articles from the Border Guard, and in instances where they lack the financial means to provide for themselves, the carrier airline is responsible for bearing the costs of three meals per day. According to the information obtained by the HHC monitor, in most cases the Border Guards arranges this in cooperation with Malév Zrt. (the Hungarian airline).

Persons accommodated in these premises generally spend one or two nights here before they are returned.

Persons held at the premises designated for the accommodation of returned foreigners have no access to open-air exercise, despite a restriction of liberty that may last in principle up to 8 days. Due to the lack of appropriate legal rules in this area, foreigners' access to open air exercise is unregulated. (Our detailed observations about this shortcoming are found in VI.12.)

The members of the Tripartite Working Group agreed that better conditions of accommodation would be available if persons under a return measure would be accommodated at the guarded shelter of the Airport Police Directorate, as adequate detention conditions are ensured in that facility. However, this can only be achieved with the application of a legal fiction, as airlines are not currently obliged to return persons who have left the airport premises.

18 Section 69 (3) of the TCN Act

V.2. Serbian–Hungarian border section – Kiskunhalas Border Guard Directorate and Alien Policing Centre

The HHC’s monitor at the Serbian–Hungarian border section visited the following locations as part of the border monitoring activity: *Bácsalmás, Bácsbokod, Herczegszántó, Kelebia and Szeged Border Control Field Offices and related border-crossing points (Tomba, Kelebia, Bácsalmás, Röszke, Tiszasziget).*

In general, it can be said that the HHC monitor found satisfactory material conditions in all border guard facilities he visited. The only exception was the short-term holding facility in Bácsbokod. However, this facility was refurbished in 2007, along with the field office in Herczegszántó.

There is no short-term holding facility at the border crossing checkpoint at Tomba, where only a “room for securing detention” is available. Kelebia is a railway crossing checkpoint with satisfactory material conditions for short-term arrest. The Bácsalmás border crossing checkpoint may only be used by Hungarian and Serbian nationals during the daytime, similarly the border crossing checkpoint in Tiszasziget. In Röszke, despite the increased traffic since the M5 highway has been in place, there is only a small, short-term holding facility with four chairs. It serves as the holding premises for those persons apprehended at the border whose entry is deemed “problematic”. In general, the equipment and cleanliness of these short-term holding facilities is satisfactory.

Persons detained in Röszke only stay in the aforementioned short-term holding facility until the transport vehicle arrives, and are then transported to the Szeged border control field office, where the refurbished short-term holding room complies with all requirements.

Dr. Pál Juhász was an attorney who for many years contributed his legal expertise and dedication to the efforts of the Hungarian Helsinki Committee. He passed away in early 2008 after a long illness. Dr. Juhász carried on with monitoring work until late 2007, but could not complete several reports regarding visits to certain border crossing checkpoints. Information from visits to the Serbian–Hungarian border sections is therefore partially incomplete.

V.3. Ukrainian–Hungarian border section – Nyírbátor Border Guard Directorate and Alien Policing Centre

The HHC's monitor, a Budapest-based attorney, carried out border monitoring in 2007 at the Ukrainian–Hungarian border section, visiting the following locations: *Záhony, Barabás, Beregsurány, Kölcse Border Control Field Offices and related border crossing points (Záhony, Barabás, Beregsurány, Lónya, Tiszabecs).*

In preparation for accession to the Schengen area, significant refurbishment work was carried out on all the border guard facilities. In several locations completely new buildings were erected, with new short-term holding facilities, toilets, and interview rooms. Beds, chairs and tables are now fixed to the floor in all locations, and bathrooms are “vandal-proof”. In most of the premises visited, informational material provided by the UNHCR and the HHC were available in several languages. The HHC replenished the stock of leaflets on several occasions as provided for under the Tripartite Agreement.

VI. Findings of the Monitoring, with Special Attention to the Exercise of Rights Guaranteed by Law

VI.1. The legal basis of the right to seek asylum

The Border Guard cooperates with civil society organisations in accordance with Section 37 of Act XXXII of 1997 on protection of the border and the Border Guard (no longer in force since 1 January 2008). The Tripartite Agreement is a milestone in the cooperation of the Border Guard, the UNHCR and non-governmental organisations. Both the negotiations and the conclusion of the Tripartite Agreement result from the recognition of the general and universal right to asylum. The aim of the monitoring activity is to facilitate the entry of asylum seekers to the territory of the country offering protection, as well as to improve access to the asylum procedure.

The Republic of Hungary, as a state party to the United Nations Convention relating to the status of refugees, adopted on 28 July 1951 (“1951 Geneva Convention”), and the Protocol relating to the status of refugees, adopted on 31 January 1967 (“1967 Protocol”), shall respect and implement the provisions of these international instruments. The Hungarian Constitution as the paramount and basic national law, in Article 65 (1), guarantees that the Republic of Hungary shall grant the right of asylum to persons who meet the refugee definition contained in the 1951 Geneva Convention.

The EU asylum directives also state that the 1951 Geneva Convention and 1967 Protocol provide the cornerstone of the international legal regime for the protection of refugees.¹⁹

The exact content and scope of the right to be recognised as a refugee is determined by the asylum and immigration legislation as well as by their executive decrees, as discussed in Chapter III.

The first premise for the protection of persons seeking international protection is that they be allowed to enter the territory of the country where protection is available, and that they have access to the asylum procedure. With respect to persons who are not in need of international protection, the parties to the Tripartite Agreement acknowledge the legal obligation of the Border Guard to return such persons in a humane manner, respecting their human rights and dignity. The Border Guard must return such persons to the appropriate country as defined by Section 40 (1) of the TCN Act, as well as return persons whose expulsion had been ordered by the alien policing authorities or the courts – in compliance with the principle of *non-refoulement* as contained in Section 51 and 52 (1) of the TCN Act.

In the course of the border monitoring project, the HHC's monitors typically spoke with persons who were under return measures, and accessed the files of persons who had already been returned.

VI.2. Exercising the right to asylum in practice

The repealed Asylum Act's Section 31 provided that an asylum applicant may submit an application either orally or in writing. The law did not specify any minimum requirements as to the form or circumstances of the application.

It is difficult to deduce the exact circumstances of how an asylum application was made from the case files. The border guards' remarks are inconsistent in this regard, the content and length of the notes in the files varies, and the official records often do not accurately reflect what had happened when the asylum application was submitted.

This section will focus mostly on the experiences gained during monitoring visits to the Budapest International Airport, as here the monitoring lawyer was able to

¹⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 3 of the Preamble

collect extensive information about exercising the right to seek asylum. In the course of the visits to the airport, the monitor had the opportunity to meet and speak with foreigners under the return procedure. This is in contrast to other facilities, such as the Ukrainian–Hungarian border section, where no interviews with persons held in the short-term holding facilities could be realised. According to the reports of the lawyer monitoring the Serbian–Hungarian border section, interviews with persons awaiting return could only take place on one occasion.²⁰

According to the statistical data provided by the Border Guard, the number of asylum applications submitted at the Budapest International Airport was very low in the years preceding the border monitoring project, and in 2005 in particular. One of the original hypotheses of the border monitoring project was that a significant number of potential asylum seekers were unable to apply for asylum as they lacked the necessary information to do so.

According to statistical information available to the UNHCR, the number of asylum applications submitted at the Budapest International Airport in 2000–2007, with about 8 million passengers per year, was as follows:

Year	2000	2001	2002	2003	2004	2005	2006	2007
Number of asylum applications	0	0	7	12	19	8	40	47
Compared to all asylum applications (%) (total applications)	0% (7,801)	0% (9,554)	0.001% (6,412)	0.005% (2,401)	0.012% (1,600)	0.005% (1,609)	0.019% (2,117)	0.014% (3,419)

The noticeable increase seems to prove the original hypothesis: there is indeed a need for the border monitoring project. The presence of the monitoring lawyer and the information provided appear to significantly improve the chances that persons in need of international protection are able to exercise their legal right to seek asylum. Furthermore, statistics from recent years reveal that the number of asylum seekers arriving by air to Hungary is increasing.

20 Due to the serious medical condition of the HHC monitor, it was not possible to obtain continuous reports from this border section.

The Border Guard only received reports about monitoring visits to the Hungarian-Serbian border in accordance with Section IV.6. of the Tripartite Agreement in the initial project period (16 March, 30 March, 12 April, 24 April 2007). The Border Guard were notified of 11 additional visits (8 June, 14 June, 19 June, 29 June, 5 July, 19 July, 16 August, 23 August, 27–28 September, 8 October, 28–30 November 2007). Out of these visits, only the 8 October visit, where an HHC staff member also participated, resulted in a report.

In the period prior to the conclusion of the Tripartite Agreement, the number of asylum applicants was low not only at the airport, but in the country overall. With respect to the years 2000 and 2001, of the asylum applications submitted to the Budapest Border Guard Directorate, no disaggregate statistics are available as to how many were respectively submitted at the airport, at a community shelter, or at an alien policing jail.

The Hungarian Helsinki Committee does not have thorough information at its disposal as to what exactly the Border Guard considers as an adequate expression of an intention to submit an asylum application. None of the monitors were witness to a situation when a foreigner submitted an asylum application. According to information provided by a senior official of the Budapest Border Guard Directorate, several conjunctive criteria have to be met to exercise the right to seek asylum. In practice, the authority expects the potential asylum seeker to clearly express orally that he/she wishes to seek asylum, or to say that he/she is a refugee in a language that both parties understand. The potential asylum applicant must also refer to one of the grounds for persecution under the 1951 Geneva Convention. In a case where the asylum seeker does not express orally his/her wish to be recognised as a refugee, according to the senior official, the foreigner has to express in clear and obvious body language that he/she would be persecuted if returned.

Naturally this cannot be taken as defining a general practice, as success in submitting an asylum application depends on several subjective factors, including which representative of the authority the foreign applicant meets, how sensitive that particular border guard officer is to hearing the asylum claim, and that individual's professional experience in recognising the wish to seek asylum.

Already in the years prior to the conclusion of the Tripartite Agreement, the Parties placed significant emphasis on increasing awareness about refugees. Both the UNCHR and the HHC were regularly invited to trainings organised by the Border Guard. The UNHCR held several trainings for Border Guard staff working in the alien policing field. Moreover, based on Section VII.1. of the Tripartite Agreement, the HHC held trainings in March and April 2008 at the Airport Police Directorate. In May and June 2008, further trainings on inter-cultural communication and basic questions of refugee law were held for relevant personnel of the Bács–Kiskun County Police Department and the Szabolcs–Szatmár–Bereg County Police Department. In general, training participants were open and enthusiastic, and it is our understanding

that this has improved the skills of border guards trained on refugee protection issues.

The Helsinki Committee recorded a number of both positive and negative cases during the border monitoring activity, some examples of which are summarised below.

Case 1

On 15 January 2007, a four-member Iraqi family arrived to Budapest from Cyprus. One of the children required medical care in a hospital, so the mother and the two children were escorted to the Pál Heim Children's Hospital in Budapest. The next day, the father submitted an asylum claim, referring to persecution on religious grounds, and the Border Guard interviewed him. After the child's treatment in the hospital ended, the family was transferred to the OIN reception centre in Debrecen. It is important to note that, although the border guards heard the family's wish to seek asylum and took immediate action, the family told the HHC that they had been detained with their children for eight hours without food and drink, and had not been provided any food or drink in spite of their several requests. They alleged that they had immediately signalled that they would be at risk if returned. The HHC considers it positive that, in view of the condition of the ill child, the Border Guard acted promptly and registered the asylum claim and notified the OIN without delay.

The Iraqi family referred to in Case 1 possessed sufficient financial means, according to their file, to be able to provide for themselves. The Border Guard, despite overburdened personnel, duly ensured all self-catering clients of the opportunity to buy food and other articles around the usual mealtimes. The family stayed in the premises designated for holding persons under return measures, which is furnished with a bathroom; hence the provision of drinking water was not dependant on how busy border guard personnel were at the time. The Border Guard would like to note that on many occasions its staff has bought food and drinks for detained persons with their own money, or have given their own sandwiches to families with children, even when the Border Guard was not obliged by law to provide meals in such situations.

Case 2

On 9 March 2007, a male Iraqi national and his wife arrived at the Budapest International Airport with false visas. The Border Guard immediately started the return procedure, despite the couple stating, on the day of their arrival, that they wish to seek asylum as they were persecuted for their political views. On the day of their arrival, the Iraqi male contacted the Helsinki Committee's lawyer and requested legal assistance. The lawyer informed him about his right to submit an asylum application, counselled him on how to submit the application and also informed the border guard personnel on duty. The Border Guard then interviewed the couple through an Arabic interpreter, and on the following day, 10 March, transported them to the refugee reception centre in Debrecen. From here, according to the OIN, they were eventually transferred to the Bicske reception centre.

Case 3

On 23 April 2007, two Pakistani males arrived from Beijing. Their return was ordered because of having used false visas. They expressed a fear of being returned but also said that they would be ready to return home if they would be given back their travel documents. The HHC monitor informed them of the legal possibilities of seeking asylum and also informed the border guards present that the foreigners concerned might be in need of international protection. The lawyer informed the border guards that if the foreigners applied for asylum, the refugee authority would have to be notified. Nevertheless the two men were returned to Beijing, from where they telephoned the Budapest office of UNHCR on 24 April 2007, and asked for help. According to their statement, the Border Guard did not accept their asylum application. UNHCR contacted the Border Guard where it was informed that the Pakistani nationals had already returned to China. The HHC believes that the Border Guard acted in violation of the law in this case.

On 25 April, the two Pakistani men called UNHCR again, this time from Bangkok. They stated that although they had wished to seek asylum in Hungary, they were returned to Beijing, then to Bangkok. UNHCR gave them the telephone numbers of its representation in Bangkok and also contacted UNCHR in Bangkok asking them to follow the case.

As a result of this case, the parties of the Working Group agreed to summarise all information available to them concerning disputed cases and to deposit the information at the Border Guard.

The Pakistani nationals in Case 3 did not ask for recognition as refugees, in spite of being informed about the possibility to do so by the HHC lawyer. Moreover, they also met two Sri Lankan nationals who requested recognition as refugees on the same day and the Border Guard had registered their claim.

Case 4

On 11 July 2007, a Pakistani male arrived in Budapest from Beijing. His entry to Hungary was refused as his travel document was false and thus the return procedure was started. The HHC monitor met the foreigner in the small room designated for official transits, and was told by the foreigner that he had been persecuted because of his religious and political views, so he had to leave Pakistan. Following the meeting with the HHC monitor, the foreigner submitted an asylum application. He was interviewed by the Border Guard the next day with the assistance of an Urdu interpreter. The asylum seeker stated that since his arrival he had been trying all day to request help from the border guards, declaring several times that he had problems in his country. He told the HHC monitor that he had repeatedly asked, without success, to be escorted by the border guards to buy a phone card to be able to call the HHC lawyer. He expressed dissatisfaction about the lack of cooperation by the border guards even after his claim for asylum had been registered. Recognising the importance of ensuring communication means, the idea emerged to install a telephone in the official transit premises for calling the HHC free of charge (or an answering machine for out of hours calls).

The Pakistani national referred to in Case 4 arrived to the Budapest International Airport along with 4 other Pakistani nationals (a family) in the early morning hours as VIP passengers. During passport control it was established that their travel documents were stolen French passports. The border guard personnel proceeded with their official duties (examination of documents, clothing, preparation of documentation etc.) which takes about 2–3 hours. In such cases, the basic needs (toilet, drinking water) of foreigners subjected to the procedure are assisted upon request. Other requests (shopping, smoking) can only be satisfied depending on the personnel's other tasks. In September 2007, at UNHCR's request, the Border Guard examined the possibilities of installing a toll-free phone in this premises, as well as in the premises for accommodating returned foreigners. While the installation of a phone can be arranged, the costs of installation and maintenance cannot be borne by the Border Guard (Police). The Tripartite Working Group will seek a solution.

Case 5

On 9 November 2007, an Iraqi male arrived to Budapest from Damascus. He was returned because of a false visa in his travel document. Having examined his file, the HHC monitor found that the foreigner received an English-language document about the measures taken against him and also received information about his rights and responsibilities in Hungarian. He was accommodated for two days in the premises for holding persons to be returned (the decision on his placement in the premises was given to him in Hungarian). On 11 November 2007, he was returned to Damascus, and a ban of entry and stay was initiated against him. Since the ban of entry and stay was ordered against the Iraqi male, he would definitely have no more legal possibilities to seek asylum in Hungary in a lawful manner, although as an Iraqi citizen he could be presumed to be in need of international protection.

Neither the TCN Act nor the Ket. require authorities in alien policing procedures to provide documents in the client's native language or in another language that he/she understands. They are obliged however to communicate the decision orally.

The Police originally did not wish to refer to examples in this report. However, given that the following case closely relates to the monitoring activity, a description is provided to counterbalance negative examples, to reflect measures taken by the authority concerning persons under return measures, and to show that foreigners do not always make the same statements to the authorities and to the representatives of NGOs.

Case 6

On 29 November 2007, a foreigner stating he was a Polish national transited through the Budapest International Airport, from Thessaloniki en route to Dublin. During the controls it was established that his Polish passport had been falsified by switching photographs and entering text into the document. The person was ordered to return to Greece. Until the departure of the next flight (12:50 pm on 30 November 2007), he was placed in the premises for accommodating persons under return. The foreigner was adamant about his Polish citizenship and the data in the travel document, so the proceeding authority contacted the Polish consulate in the interest of clarifying the personal identity of the foreigner. The consulate confirmed that the passport indeed belonged to another Polish citizen. The HHC monitor spoke to the foreigner on 30 November 2007. About half an hour before the flight's departure, the monitor told the border guards that the person is a Kosovar Albanian and wishes to submit an asylum application. According to the border guard reports, the foreigner had not shown any such intention before that time. Nevertheless, the border control field office did not enforce return, and instead took steps to secure an interpreter. During the interview, the foreigner stated on the record that "he has not told anyone that he wants to be a refugee, because he does not want to be a refugee in Hungary, does not want to stay in this country, but also does not want to return to Greece as he has no one there and because he is an Albanian citizen, he wants to go to Albania." His own statement, written in English, supports the contents of the records: "I don't want to be a refugee. I never wanted to be a refugee. I am an Albanian citizen from Fier. I want to go back to Albania." With assistance from Malev airlines, the Border Guards obtained via telefax a copy of the person's passport; the confirmed Albanian citizen left for Tirana on the Malev flight at 1:10 pm, on 1 December 2007.

The right of asylum seekers to have access to the asylum procedure is also provided by Council Directive 2005/85/EC of 1 December 2005 on minimum standards in Member States on procedures for granting and withdrawing refugee status ("Asylum Procedures Directive"). The scope of the Asylum Procedures Directive includes asylum applications submitted in the territory of Member States, at the border, and in transit zones. According to Article 6 (2) of the Directive, Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf. Article 6 (1) allows Member States to require that applications for asylum be made in person and/or at a designated place, and Article 7 requires that applicants be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision.

The above provisions of the Asylum Procedures Directive are intended to guarantee access to the asylum procedure. In line with Section 35 of the 2007 Asylum Act, this means that foreign nationals who wish to submit an asylum application at

one of the border crossing checkpoints or at the international airport in the Republic of Hungary may do so without any legal restrictions. Recital 16 of the Asylum Procedures Directive's Preamble refers specifically to asylum procedures conducted in the transit zones of Member States, calling for existing procedures to be adapted to the specific situations of applicants at the border, with particular attention to those cases who do not meet the conditions for entry into the territory of the Member State.

VI.3. The implementation of Article 31 (1) of the 1951 Geneva Convention in Hungarian law

Article 31 (1) of the 1951 Geneva Convention provides:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

The 1951 Geneva Convention became part of domestic law by virtue of Law-decree 15/1989; hence it is directly applicable law in Hungary. This provides legal grounds for Hungarian authorities involved with asylum seekers to apply the 1951 Geneva Convention directly. Despite this fact, the HHC's experience shows that in the majority of cases criminal proceedings will be launched against foreigners arriving with false travel documents on account of forging public documents without regard being made to their need as asylum seeking refugees (Section 274 of the Penal Code).

The UNHCR's position is that Hungarian authorities fail to properly apply Article 31 (1) of the 1951 Geneva Convention because criminal liability of asylum seekers for forging public documents is established without regard to this provision of the Convention. UNHCR noted that a refugee, whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements of legal entry (possession of national passport and visa) into the country of refuge. It may happen that someone's life, physical integrity, or freedom is at risk and the refugee must make use of illegal means, such as false or forged documents, to flee his/her country of origin. Hence the use of forged documents can in many cases be an essential and unavoidable part of the flight from persecution. According to

UNHCR's position, because refugee status is declaratory, Article 31 of the 1951 Geneva Convention also includes asylum seekers whose claim has not yet been decided.

In the interest of implementing Article 31 (1) of the 1951 Geneva Convention (and similarly, rights protected by the European Convention on Human Rights) state parties have undertaken to apply concrete measures to ensure their international law obligations. Therefore, the UNHCR position is that in cases where the criteria for applying Article 31 (1) of the 1951 Geneva Convention are fulfilled, asylum seekers or refugees should be exempted from criminal procedures.

In contrast, Hungarian authorities, in applying Section 274 (1) (b) of the Hungarian Criminal Code in criminal procedures, do not apply the aforementioned provision of the 1951 Geneva Convention, nor take into account refugees' special circumstances. For Hungary to fully comply with international law obligations, the Hungarian criminal provisions on the use of forged public documents should be promptly brought in line with the 1951 Geneva Convention.

In such cases where the applicability of Article 31 (1) arises, the Hungarian authorities generally argue that they have to apply the provisions of the Penal Procedure Code, and that they are therefore obliged to report the criminal act once they notice that the foreigner has been using a false travel document. The HHC's view is that the Penal Procedure Code is in violation of the 1951 Geneva Convention; thus Hungarian authorities are not acting in line with the object and purpose of the international treaty.

According to Article 31 (1) of the 1951 Geneva Convention, states parties cannot impose penalties on persons covered by the Convention. However, the Border Guard (Police), as an investigating authority, must initiate criminal proceedings in case of a well-founded suspicion of the use of false public documents. An exception arises if the foreigner uses the false or forged travel documents, or someone else's genuine travel document, in the interest of gaining entry into the country, provided that an alien policing procedure should be carried out against the foreigner²¹; i.e. when the foreigner's return is ordered and he/she does not enter the territory of the Republic of Hungary. The Border Guard (Police) are not authorised to impose penalties. In cases where the foreigner applies for asylum before his/her return, the criminal procedure

21 Section 170 (6) of the Act XIX of 1998 on the Penal Procedure Code

may start ex officio. It will not be more difficult to exercise the right to seek asylum as a result of the criminal procedure, as the asylum authority will have been already notified of this intention.

The Border Guard (Police) cannot consider asylum seekers' unlawful entry or presence as having good cause because the asylum authority will independently consider this in the asylum procedure.

The HHC, in 2007, provided legal representation to asylum seekers who were charged with using forged public documents. Some of these criminal proceedings are still pending at the second instance, although in the meantime the foreigners have either been recognised as refugees, or were granted authorisation to stay (“befogadott”) by the Office of Immigration and Nationality. In most such cases, the penalties applied by the courts consisted of a reprimand or deferral of sentencing. However, the HHC is aware of one case where the court imposed expulsion as an auxiliary punishment against a foreigner who was later recognised as a refugee. In another case, the first instance court found the refugees (persons authorised to stay) guilty, and reprimanded them.²² The presiding judge considered the defendants' persecution in the sense of the 1951 Geneva Convention as only a mitigating circumstance. (The case was still pending at the second instance at the time of this report.)

Both the UNHCR and the Hungarian Helsinki Committee asked the Chief Prosecutor's Office to define its position concerning the application of Article 31 (1) of the 1951 Geneva Convention. According to the Chief Prosecutor, in cases where persons are later recognised as refugees or beneficiaries of subsidiary protection, culpability is excluded pursuant to Section 22(i) of the Penal Code. The nullification of culpability arises with the final recognition as a refugee or as a beneficiary of subsidiary protection. Thus, the Prosecutor's Office's position is that if the criteria contained in Article 31 (1) are fully met (“they present themselves *without delay* to the authorities and *show good cause* for their illegal entry or presence”), the criminal procedure should be suspended²³ until a final decision is taken in the asylum procedure. In the responses to UNHCR and the HHC, the Chief Prosecutor's Office stated that there are no legal reasons to extend the application of these provisions to persons who fall under the *non-refoulement* principle but are not granted refugee status or subsidiary protection.

22 Budapest XVIII and XIX district court, judgment no. 11.B.XVIII.275/2007/32

23 Section 188(1)(d) of the Criminal Procedure Code

Case 7

This case did not come to the attention of the HHC's monitoring lawyer within the framework of the border monitoring project, as he did not meet the clients in the official transit premises, or in the premises designated for the accommodation of persons under the return procedure in the airport transit zone. Nevertheless, the case is relevant for assessing the application of Article 31 (1) of the 1951 Geneva Convention.

On 16 November 2007, the HHC monitor met an Iraqi citizen in the alien policing jail of the Budapest Border Guard Directorate, near the airport, who had arrived on 23 October 2007 at the Budapest International Airport with forged documents. The Iraqi man was held in alien policing detention during preparations for the enforcement of a court-ordered expulsion. The lawyer later found out that on 27 October, four days after the foreigner's arrival, the Budapest 18–19 district court expelled him as an auxiliary punishment, on account of using forged public documents.²⁴ The Iraqi man did not refer to persecution in the course of the criminal proceedings, probably because he did not have sufficient information about the possibility of submitting an asylum application. During the monitor's visit, the foreigner read informational material published by the HHC. Following a short conversation with the lawyer, he stated that he had been shot at in Baghdad and had serious problems at home, because of which he had to flee from Iraq. He submitted an asylum application, and was first transferred to the community shelter in Nyírbátor, and then the open refugee reception centre in Debrecen. Subsequently, he was recognised as a refugee by the OIN in January 2008 – this clearly demonstrating the risk of refoulement that prosecution of refugees who carry false documents entails in Hungary.

The Iraqi national in Case 7 arrived from Damascus on 24 October 2007, and entered the territory of the Republic of Hungary. He did not signal that he had arrived to seek asylum. On the same day at 4 p.m., he wanted to board the Malév flight to Stockholm. During the controls it was established that the French Schengen visa in his passport was a copy, and he was taken to the Border Guard. In the holding facility of the Border Guard Field Office, he had access to information leaflets produced by the UNHCR and the HHC. A criminal procedure had been started, based on a well-founded suspicion of falsification of public documents. The presiding judge, in the criminal case, ordered his expulsion as an auxiliary punishment. The OIN took measures to enforce the expulsion and ordered alien policing detention. We have no information on whether, during the criminal or alien policing procedures, any circumstances arose that could have resulted in launching an asylum procedure. Although he had access to UNHCR and HHC publications from the time of his arrival at the Budapest Border Guard Directorate's guarded shelter, on 27 October 2007, he did not indicate any need for asylum protection until the visit of the HHC monitor on 16 November 2007.

The above case illustrates that even persons who are clearly in need of international protection either cannot exercise their right to seek asylum in the course of the

²⁴ Budapest XVIII and XIX district court, judgment no. 2.B.XVIII.1408/2007/2

criminal proceedings, or may only do so with great difficulties. This raises questions concerning the exercise of the right to receive information. The case discussed below shows that persons who were eventually recognised as refugees often lack the information necessary to state their wish to seek asylum at the right time and place.

The Police wish to remark that the aim of the monitoring report is to analyse the experiences of monitoring visits carried out under the Tripartite Agreement, and issues discussed in the preceding subchapter are not subject to the Agreement. In the past 5 years, out of 11,146 asylum applicants, 1,918 were granted refugee status or subsidiary protection (17 percent of all applicants). Our position is that foreigners are protected by criminal immunity only after the asylum authority's decision has been rendered, when all individual circumstances of the case are viewed in their totality. The Police have no role in this respect. The UNHCR has contacted the Office of the Chief Prosecutor regarding this matter, whose response and possible action may influence future actions.

VI.4. Respect for the principle of *non-refoulement* and Article 33 (1) of the 1951 Geneva Convention

Article 33 (1) of the 1951 Geneva Convention sets forth the general principle of non-refoulement:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

In accordance with the relevant international norms, Section 43 of the 2001 Aliens Act, and as of 1 July 2007, Section 51 of the TCN Act contains the principle of *non-refoulement* by declaring when return or the execution of expulsion is prohibited. The Border Guard is required to contact the Office of Immigration and Nationality in case of doubt concerning risks the foreigner(s) may face upon return.

However, return is generally a measure that is enforced within a relatively short period of time, and due to its special procedural characteristics, it is not preceded by an official interview. Through such an interview, it would be possible for the Border Guard to gain more accurate information about why the foreigner left his/

her country of origin. Hence the authorities are not able to assess *non-refoulement* grounds in a substantive manner in the course of the return procedure.

In 2006, 17,899 persons, and in 2007, 5,406 persons had been returned at Hungary's EU external borders. Though the Border Guard (Police) are not required by law to interview persons under return procedures, this does not equal a total lack of communication. Furthermore, in all of the premises where foreigners under return measures are held, publications by the UNHCR and the HHC are available. Foreigners therefore have the opportunity to obtain information relating to asylum, even if they do not signal a wish to seek asylum. Such information was also available to individuals referred to in Case 8.

The following cases are provided as examples when, in the HHC's view, it cannot be excluded that the principle of non-refoulement has been breached.

Case 8

As evidenced by case files examined at the Budapest International Airport in 2007, several Iraqi nationals were returned to Syria due to the lack of valid travel documents or valid visas. It could be established from the files that prior to their return to Damascus, the Border Guard did not interview these Iraqi nationals, and possession of a false travel document was sufficient ground for enforcing return. There were no remarks or notes in the files concerning the issue of the need for international protection. (For example, Iraqi nationals arrived from Damascus on 19 January 2007, 5 February and 9 November. After two days of detention, they were all returned to Syria.)

Based on the examined case files it became evident that Iraqis had in fact been returned to Syria. The HHC is of the view that such returns are in breach of the principle on *non-refoulement*, enshrined in both Hungarian domestic law and international instruments, as they could result in chain *refoulement*. Moreover, the Border Guard initiated bans of entry and stay against the returned Iraqis, which is particularly worrying given that their return was already in breach of the law.

Case 9

The HHC lawyer monitoring the Ukrainian–Hungarian border section was informed during his visit on 26 November 2007 about the return of a Bangladeshi national. The foreigner had not been interviewed, as no interpreter ready to provide an invoice for payment could be found. Due to the communication difficulties that arose during the procedure, the border guards could not establish the facts of the case or the foreigner's intentions. In turn, the Bangladeshi individual could not express the reasons for leaving his country of origin. Alarming, it was later discovered that the foreigner was an unaccompanied minor. The Border Guard appointed a case guardian for him. The Bangladeshi national was returned to the Ukraine under the readmission agreement. If the foreigner had come to Hungary wishing to seek asylum, then his return constituted a serious violation of his rights. The return of a person to the Ukraine who presumably had arrived at the Hungarian border with the aim of seeking asylum here gives rise to concerns. The UNHCR recommended in its October 2007 position on the return of asylum seekers to Ukraine²⁵ that states refrain from returning asylum seekers to Ukraine. Therefore, in light of the UNHCR's recommendation, it would be justified to review Hungary's return practices concerning third country nationals to Ukraine.

In Case 9, the Bangladeshi national could not be interviewed because there was no interpreter available at all; not because of the need to arrange for an interpreter with proper financial documents. The authority's efforts to find an interpreter during the time of the short-term arrest were unsuccessful. However, a case guardian had supervised the procedure. The foreigner showed no signs during the procedure that he did not want to return to Ukraine. Previously there had been cases where foreigners' readmission to the Ukrainian authorities could not take place because they displayed a need for protection with body language, even immediately before the readmission took place.

Case 10

On 20 July 2007 an Iraqi woman arrived at the Budapest International Airport. Her return was ordered on account of her forged documents. Rather than being returned to her original place of departure, she was instead flown to her destination, Sweden. The border guard officer on duty stated that this was because Sweden was considered safer for her, as she had originally travelled from Göteborg, Sweden to Damascus, and wished to return to Sweden (although there was no evidence to support this). She was placed for one day in the premises for returned persons located in the transit zone, before travelling back to Sweden. The HHC is of the opinion that the Border Guard acted in a very positive way, as the foreigner was returned to a clearly safe third country. This decision was particularly laudable in view of the situation in her country of origin, and that as an Iraqi woman travelling alone, she was in need of special attention. However, it cannot be established whether this was an exceptional case or whether this is standard practice in case of single women travellers, minors, and other persons with special needs.

25 UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007. Corr.. Online. UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=472f43162> [accessed 23 September 2008]

VI.5. The right to information

The right to information is a fundamental safeguard for all persons who are subject to any official procedure: proper information should be provided about the person's rights and responsibilities, particularly if the measure entails restrictions on the freedom of movement. As a part of the return procedure, a foreigner's freedom of movement may be restricted for maximum of 48 hours (under the 2001 Alien Act) or 72 hours (TCN Act) or, in case of the airport, up to 8 days. Therefore it is extremely important that the foreigner receive information from the authorities in a comprehensible manner and preferably in his/her native language about the reasons for their actions, the manner of enforcement, the availability of legal remedies, legal assistance or representation, etc.

The right to information is also very important in the interest of properly exercising rights and fulfilling responsibilities. Appropriate and clear information may contribute to reducing tensions and frustrations that naturally arise in a person who is, in practice, deprived of all freedom of movement. Access to such information also lessens the risk of possible violent behavior against the authorities.

In the relevant provisions concerning the return of foreigners, neither the 2001 Aliens Act, nor the TCN Act contain an exhaustive list regarding the rights of persons subject to the return procedure. These laws only exclude the possibility of public administrative legal remedies, i.e. appeal. As a safeguard, the 2001 Aliens Act provided that the time period of detention during the return procedure cannot exceed 48 hours, or 8 hours at the airport.²⁶ The TCN Act, in effect since 1 July 2007, increased the maximum period to 72 hours, during which time, the Border Guard may order the foreigner to stay within a designated location of the border area. The maximum period remains 8 days at the airport under the new TCN Act as well.²⁷

Notwithstanding that the relevant immigration law provisions do not contain concrete rules on the rights of foreigners under alien policing procedures, provisions of Act CXL of 2004 (on the general rules of public administrative procedures and services, hereinafter ("Ket.")), apply unless specialised legislation provides otherwise. Consequently, persons under return procedures are afforded all rights by the Ket.,

²⁶ 2001 Aliens Act Section 35 (2)

²⁷ TCN Act Section 41 (1)

unless such rights are not specifically excluded or provided differently by the 2001 Aliens Act or the TCN Act.

According to the HHC's experience gained during the monitoring activity, the Border Guard occasionally provides an information sheet on the alien policing procedure to foreign nationals subject to the return procedure. The content of the information sheets is described hereunder. It should be noted, however, that the HHC monitors at both the Ukrainian–Hungarian border section, and at the Budapest International Airport found that the foreigners concerned were often not given any information on the return process, nor about their rights and responsibilities.

At the Budapest International Airport, the Border Guard provided the HHC monitor with the *General information sheet on the fundamental rights and responsibilities of foreigners in alien policing procedures*. The information sheet emphasises that foreign clients enjoy equal treatment with Hungarian clients in procedures before Hungarian authorities, and that their cases shall be treated impartially.

The information sheet contains the following:

1. The foreigner under the procedure has the right to use his/her native language and the relevant authority is obliged to ensure the participation of an interpreter. In the interest of protecting the foreigner's personal data, he/she has to consent to the processing of his/her data.
2. The foreigner has the right to make statements during the alien policing procedure, but may also refuse this. He/she has the right to have access to the documents produced during the procedure.
3. Regarding the right to legal remedies, it can be stated that in general, unless the law excludes this, the foreigner may appeal against the decision of the first instance alien policing authority. However, as both the 2001 Aliens Act and the TCN Act exclude the possibility of appeal against the return order, the foreigner may only request a judicial review of the decision.²⁸ The request for judicial review however does not have an automatic suspensive effect on the enforcement of return.
4. The foreigner has the right to be represented in the procedure; the authorities may check the representative's power of attorney.

28 2001 Aliens Act Section 34 (3) and TCN Act Section 40 (3)

The Border Guard provides this general information to foreigners in Hungarian, English, German, French, Arabic and Chinese languages.

For persons placed in the premises designated for the accommodation of those undergoing return, located in Terminal 2B of the Budapest International Airport, a separate two-page information sheet is also given. These sheets provide that the person being subject to the procedure has the right to use his/her native language in the procedure, to make statements, and to authorise a representative. They have the right to maintain contact with their family members, and the persons or organisations (described below under VI.5 and VI.6), and their legal representative. They also have the right to freely exercise their religion, and are entitled to emergency and basic medical care. If they do not have their own funds, the foreigners have the right to receive food provided by the Border Guard. The respect for these rights is discussed in detail in sections VI.7, VI.8, and VI.9.

The members of the Tripartite Working Group agreed that it is necessary to review the information provided to foreigners under return procedures. The group also considered developing special informational material that would focus on the specific legal situation of persons under return procedures, and would not be analogous to rules pertaining to alien policing detention.

Case 11

A woman of unknown nationality, who arrived at the Budapest International Airport on 23 July 2007 with her six children, was only provided information in Hungarian according to the case file. Her return was ordered due to forged documents. On the day of arrival, she submitted an asylum application referring to persecution on religious grounds. The Border Guard interviewed the asylum seekers on the same day. The refugee status determination procedure was conducted by the OIN according to the Asylum Act and the family was transferred to the reception centre in Bicske.

Case 12

As described in the second interim monitoring report, the HHC monitor found that apprehended foreigners at the Barabás Border Guard Field Office on the Ukrainian–Hungarian border section were only given oral information about their rights and obligations, and that written information materials were only available in Hungarian.

It is important to note, however, that the HHC saw trends improve at the Airport in the provision and distribution of information materials and decisions in foreign languages. It was found that foreigners' possibilities for exercising their right to information had noticeably increased.

VI.6. The right to use one's native language

According to Section 4 (1) of the Ket., the client has the right to use his/her native language in public administrative procedures.

The border monitoring project's experiences show that foreigners who speak well-known or widely-used foreign languages generally do not experience special problems in this regard during the Border Guard's procedure. The ability to exercise the right to use one's native language becomes difficult if the Border Guard carries out a procedure against a foreigner who speaks a language that is not commonly spoken in Hungary. It often happens that finding an appropriate interpreter takes a long time (e.g. in the cases of Singhalese, Somali, Tamil languages).

In accordance with the Tripartite Agreement, the monitoring lawyer at the Serbian–Hungarian border section often used the services of a Serbian interpreter. Here the monitor did not report particular problems. The Border Guard regularly used Serbian and Albanian interpreters. The monitoring lawyer further reported that a number of border guard officers speak Serbian. As such, communication with Serb nationals whose native language is Serbian (the majority of clients), did not pose particular difficulties.

As the project progressed, the monitor at the Budapest International Airport was able to increasingly report that, according to the files, interviews were carried out with the assistance of an interpreter. Improvements were noted regarding the use of Arabic, as the Border Guard increasingly began to use interpretation over the telephone.

Case 13

During a visit to the airport on 30 November 2007, the monitor met a Syrian national who was held in the official transit premises. As the person only spoke Arabic, there was no possibility to speak in person. The border guard officer on duty informed the monitor that the Syrian national had arrived that day with the Damascus flight, and possessed a false visa. Lacking an interpreter (or an intermediate language), he using body language he communicated to the border guards that he did not want to return to Syria, as he feared that he would be killed there. The border guards subsequently telephoned an Arabic interpreter, to whom the foreigner confirmed that he did not wish to return to his country of origin, as his life would be at risk. The border guards interpreted this as an application for asylum and started the procedure (the registering of his application was scheduled to take place the same day).

The Hungarian Helsinki Committee welcomes all initiatives by the Border Guard, such as the introduction of the use of interpretation by telephone, which aim to ensure that communication with foreigners becomes comprehensive, more accurate, and is carried out in the foreigner's native language.

Although the HHC monitors did not report any concrete complaints regarding the activities of interpreters employed by the Border Guard in 2007, it should be mentioned here that in early 2008, certain asylum seekers did inform the HHC monitor that the opinion expressed by the interpreter during the procedure influenced their decision to withdraw their asylum claim. The participation of the interpreter in the procedure is an essential safeguard, and their activities may significantly alter the circumstances of the asylum procedure. Interpreters, irrespective of whether they are physically present or only providing services via the telephone, are obliged to perform their role in compliance with the law: impartially and accurately, and should be aware of their role in the alien policing procedure. It can be particularly harmful if the interpreter oversteps his/her role and potentially influences the outcome of the procedure.

VI.7. The right to legal remedies

Section 57 (5) of the Hungarian Constitution provides the right to seek legal remedies, in accordance with the provisions of the law, to judicial, administrative or other official decisions which infringe on the rights or reasonable interests of the person concerned.

The return measure, the refusal of entry and return under Section 34 of the 2001 Aliens Act, and Section 40 of the TCN Act, are ordered by the Border Guard. Once ordered, such procedures may be accompanied by restrictions on freedom of movement. Furthermore, if return measures are ordered, the law excludes legal remedies in the public administrative procedure (i.e. appeals). Notwithstanding this latter restriction, foreigners subject to the return measure have the opportunity to challenge the decision by requesting a judicial review. The Border Guard's return decision contains information about the right to seek legal remedies. It does not, however, inform the foreigner that he/she has to separately request a suspension of enforcement. Under Hungarian alien policing law, a request for a judicial review of a return decision does not automatically trigger the suspension of return procedure enforcement. (It should also be noted that on the information sheet provided to the HHC monitor, the competent court for addressing and adjudicating the request, the Pest Central District Court, is incorrect.)

The Ket. is to be applied as a background legal framework also for the judicial review of decisions ordering return. According to Section 110 of the Ket., "the submission of a claim shall not have suspensive effect on the execution of the decision, but the client may request, in the claim, the suspension of the decision's execution. The order for return cannot be executed from the time the relevant authority has become aware of the request until its adjudication." The HHC believes that foreigners lack sufficient information and legal skills to utilise this provision.

In the course of the border monitoring project in 2007, the HHC monitors did not receive information about any foreigners subject to return who had sought judicial review of their return decisions. Consequently the question arises whether the legal remedy in its present form can be considered effective, and whether, taking into consideration the jurisprudence of the European Court of Human Rights regarding Article 13 of the European Convention on Human Rights, the legal framework, and practices concerning return comply with the Convention.

The right to an effective remedy is a fundamental human right and a general principle of law. According to the case law developed around Article 13 of the European Convention on Human Rights, the contracting states respect the Convention if appropriate legal remedies are available so as to ensure that individuals can challenge decisions that they deem unlawful, and seek the effective remedies thereof. The European Court of Human Rights places particular emphasis on examining the suspensive character of legal remedies in cases where the foreigner's return poses a risk of torture, inhuman or degrading treatment, or punishment. Thus, a legal remedy may only be considered effective if a request for judicial review automatically suspends

removal in cases where the enforcement of the decision would risk breaching Article 3 of the Convention. In *Gebremedhin v. France*²⁹, the European Court of Human Rights ruled that it cannot be considered a sufficient legal safeguard if the 'practice' of the public administrative authority is to suspend the enforcement of the return decision if a legal remedy has been sought against it. Instead, in such cases, the law has to provide for the automatic suspensive effect for the remedy against removal.

Although it does not relate strictly to the right to legal remedies, the question of **detention** of persons under return at the airport cannot be forgotten. According to the jurisprudence of the European Court of Human Rights, restrictions on the freedom of movement of this duration (maximum 8 days) clearly constitute detention. Nevertheless, there is no provision in Hungarian law regarding the judicial review of the lawfulness of detention, no judicial forum to challenge this detention, nor any supervision of detention conditions by the prosecutor's office. In fact, Hungarian law does not consider the potentially eight-day long deprivation of liberty of foreigners under return measures as detention. The HHC finds the disparity between the findings of the European Court of Human Rights and Hungarian law to be highly problematic.

VI.8. The right to maintain unsupervised contact with the legal representative or representative of consular authorities

According to the information sheet provided to the lawyer monitoring the Budapest International Airport, foreigners placed in the premises for accommodating persons under return may maintain contact with the following persons and organisations:

1. the legal representative,
2. members of the agencies of the United Nations and Council of Europe mandated to protect human rights,
3. human rights organisations as defined by Hungarian law,
4. the representative of the accredited diplomatic representation of their country of origin,
5. for the purposes of exercising religion, the representatives of churches.

Foreigners under the return measure have the right to maintain unsupervised contact with the above organizations or persons, at their own cost on their own

29 European Court of Human Rights, judgment of 26 April 2007, application no. 25389/05

mobile phone or via public payphones. It should be noted that foreigners told the monitoring lawyer on several occasions that they could only use the public payphone if a border guard officer escorted them. Border guard officers told the HHC monitor that requests for using the public payphone may only be fulfilled when their official duties allow them to do so.

Under the Tripartite Agreement a monitor is entitled to speak privately (without the presence of border guard personnel and without supervision) with foreigners who are being held pursuant to a removal measures. According to the HHC monitor visiting the Budapest International Airport, it did occur that the border guard officers did not leave the room despite his several requests. In these cases, interviewed foreigners were less communicative as a result. The Border Guard did, however, make interviews possible for the monitor in all cases.

On several occasions the Border Guard asked the parties to the Tripartite Agreement to notify by telephone the chair of the Working Group whenever, during the course of the project, they become aware of information that would require his immediate action. It is important to strike a balance between the implementation of monitoring visits and compliance with security measures.

VI.9. The right to send and receive packages and correspondence, and to receive visitors

Foreigners under return measures may send and receive letters and packages at their own cost. They are also entitled to maintain contact with their family members and other visitors, but the visits have to be announced in advance, and can only take place between 8 a.m. and 4 p.m. on weekdays.

The HHC monitors did not gain information about problems or hear complaints from foreigners about the exercise of the right to receive packages and written correspondence.

VI.10. The right to exercise one's religion

According to the informational material given to the monitor visiting the Budapest International Airport, persons accommodated at the premises for foreigners under return measure may maintain contact with representatives of churches, and they may freely choose, display, and exercise their religious or personal convictions.

At the border sections visited, and at the holding area of the Budapest International Airport, there are no separate prayer rooms. The cooperation of the border guard personnel is needed to enable the free exercise of religion at the airport. Foreigners may only visit the chapel and prayer room in the terminal with a border guard escort, and this access depends on the official tasks and capacity of the officer(s) on duty. It should be noted that while the HHC did not receive complaints relating to the exercise of religion during the project year, the exercise of this right is in practice difficult given the infrastructure of the airport.

VI.11. The right to use available public education or recreational possibilities

The HHC monitors observed that there are no public education or recreational possibilities (e.g. a small library) in either the short-term holding facilities along the Ukrainian–Hungarian and Serbian–Hungarian border sections, or at the premises designated for the accommodation of persons subject to return measures at the Budapest International Airport.

The HHC welcomes the positive steps taken by the Border Guard at the Tompa border crossing checkpoint. Taking into consideration the needs of families arriving with small children, a separate room for the placement of foreigners with small children has been created, furnished with children's beds, toys and books. The room was established from funds obtained from a grant.

The Border Guard reiterated in the Trilateral Working Group that they welcome all donations and gifts. They also praised Malév airlines, which in the past had donated foreign language journals and magazines to the Border Guards and to foreigners accommodated in the official premises.

VI.12. The right to accommodation, food, wearing own clothes, and open-air exercise

According to the information material provided to the HHC monitor by the Border Guards, persons under the return measure have a right to eat three meals per day at their own cost, which they can purchase in the various cafés in the airport transit zone. If the foreigner does not have money to arrange his own meals, the Border Guard will provide three meals a day. The food comes partly from the Border Guard's own supplies (with canned food) and, according to information told to the HHC

monitor, partly through the airport management company or the catering services of Malév, the Hungarian airline.

On the Serbian–Hungarian and Ukrainian–Hungarian border sections, the Border Guard provides meals from its own supplies to the foreigners placed in the short-term holding facilities.

In contrast to the provisions for persons in alien policing detention, foreigners under return measures do not receive toiletries and have to buy such articles at their own cost.

As foreigners under return measures at the airport have arrived by air, they are typically prepared to spend a longer time in the destination country, and so they tend to be equipped with basic toiletries. In case they do not have such personal items, the presiding authority will provide or supplement these items.

The HHC monitors observed that persons accommodated in the designated premises for persons under return wore their own clothes on each monitoring visit.

As a general observation, the right to open-air exercise couldn't be accommodated during the time of the return measure. This is mostly due to the fact that the designated holding areas for the placement of persons under return are mostly holding facilities that are located in either the airport transit zone, or on the ground floors or in the basements of border guard field offices and border checkpoints. These locations have no direct access to open-air premises where foreigners could spend at least one hour per day outside, under supervision. The low number of border guard personnel and capacity shortages make this impossible.

At land border crossing checkpoints, the TCN Act in force allows the detention of persons subject to a return measure to be held for a maximum of 72 hours. The lack of open-air exercise is less of a problem, therefore, at such facilities than at the Budapest International Airport, where the TCN Act allows for a compulsory stay at the designated premises of up to 8 days.³⁰

Although foreigners have the right to human dignity and to the highest standards of health under the Hungarian Constitution, even minimal access to the open air is currently not made possible for them.

According to information from the Border Guard, pregnant woman and mothers with small children are given, in addition to the three meals per day, an additional

30 TCN Act Section 41 (1)

0.5 litres of milk. Babies are given baby formula and baby meals. This is positive, as members of groups with special needs require special attention and treatment, irrespective of the law enforcement measures carried out against them.

VI.13. The right to medical treatment

Persons subject to return are entitled to emergency and basic health care in accordance with Act CLIV of 1997 on health care ("Health Care Act"). According to Section 142 (2) of the Health Care Act, emergency medical care includes the performance of life-saving medical care, compulsory epidemic treatment, and family, gynaecological and obstetric treatment.

The HHC monitors reported several cases where foreigners needed medical treatment during the course of their detention. These cases are based on the information contained in the files of foreigners who arrived in Hungary, then were ordered to return (on account of the use of false or forged travel documents) and who later submitted asylum applications. At some point during the process, the foreigner in question required medical treatment in a hospital. In each of these cases, the Border Guard took the necessary action to secure the patient's medical examination and transportation to a hospital (for an example, see Case 2 above).

Case 14

On 18 May 2007 the HHC's monitor visited the Budapest International Airport together with UNHCR staff, where they met an Iraqi national. The Iraqi person was under return measures, and had arrived to Budapest earlier that day. At the time of the visit, he was placed in the official transit premises, and then under a doctor's supervision after having received medical treatment (due to a heart attack). An interpreter was also present. He was about to be taken to a hospital. He had submitted an asylum application and the asylum procedure was already under way. As there were no issues related to access to the asylum procedure and because of his medical condition, the monitors did not interview him.

VII. Summary of Findings and Recommendations

In general the cooperation between the Border Guard and the HHC and its monitors was very good during the course of the border-monitoring project in 2007. The Border Guards assisted the work of the monitors and tried to find solutions to problems raised by the monitors on a cooperative basis. The will of the Border Guard to cooperate was evident throughout the project implementation.

One of the most important findings of the project was that communication improved significantly between the parties to the Tripartite Agreement, with the initial uncertainty and lack of trust replaced by active cooperation as a result of continuous and accurate information sharing. Therefore the border monitoring project is considered as good practice.

A further positive result of the project is that the Border Guard procedures have become more comprehensible and transparent for outsiders. This was previously not the case at Budapest International Airport, given the inaccessibility of the foreigners held in the transit zone. Similarly, the parties became familiar with the Border Guard's statistical and case management system. As they received regular statistical information about the three border sections in the project's focus, they gained an accurate picture of migrants and asylum seekers arriving in Hungary.

The experiences gained from the project shed light on several legal shortcomings. Foreigners cannot expect to fully be able to exercise their rights due to the inadequacy of Hungarian regulations, which fail to comply with international provisions and standards.

At the regular meetings³¹ of the Tripartite Working Group (established under the Tripartite Agreement to follow the project's implementation and progress), the Parties discussed problems, clarified questions and found solutions together.

31 In 2007 the Tripartite Working Group met on 29 January, 14 and 23 May and 5 October 2007.

There was only one instance where, pursuant to a monitoring report, tensions rose. A border guard official was dissatisfied that the Border Guard senior management learned about certain shortcomings at a field office. The HHC's critical remarks regarding the conditions in short-term holding facilities were addressed, however, by the refurbishment of Border Guard facilities, including field offices.

If monitors experienced problems in the course of carrying out border monitoring activities, they could contact the chair of the Tripartite Working Group as agreed in the Working Group. Certain problems were very efficiently solved in this manner.

VII.1. General findings

The following are the general findings of the Hungarian Helsinki Committee, gathered during the course of the border monitoring project in 2007:

1. The HHC experienced a noticeable increase in the number of asylum applications submitted at the airport. This seems to justify the project's hypothesis that there is in fact a need for the border monitoring activity. The presence of the monitoring lawyer, the comprehensive information on human rights and the right to asylum can significantly contribute to ensuring that persons in need of protection become aware of the option to seek asylum, and how they can effectively exercise their right to asylum. Statistical data on the number of asylum applications in recent years shows a marked increase in the importance of the airport as an entry point for persons in need of international protection.

Without questioning that the monitoring activities called the attention of the authorities to many issues, the rise in asylum applications can also be attributed to migratory trends and changes in methods employed by foreigners.

2. One of the most important practical findings of the border monitoring activity concerns the potential consequences of the lack of an interview in the return procedure: the HHC believes that this constitutes a breach of the *non-refoulement* principle. In the interest of preventing potential breaches of law and *refoulement*, it is of utmost importance for border guard personnel to be able to identify a need for international protection. This is particularly so

when the foreigner concerned is able to speak a widely used foreign language such as English. The present situation could be improved significantly with the provision of basic foreign language courses and intercultural skills training for border guards.

In recent years the Border Guard has placed significant emphasis on foreign language training for its personnel. These trainings were completed in 2007 for the Nyírbátor and Kiskunhalas Border Guard Directorates. At the Budapest Border Guard Directorate a full-time English teacher gave language skills trainings.

3. The HHC found that, as evidenced by statistics from the Budapest International Airport, the Border Guard registered foreigners as “unknown nationals” in numerous cases where the person was subject to the return procedure. It is possible that border guard officers did not make all reasonable efforts to establish the nationality of these foreigners in order to be able to identify a need for international protection.

The Border Guard tries to establish the nationality of unknown foreigners in each case. This can be achieved if the client cooperates. In regard to return measures, the Budapest Border Guard Directorate registers those foreigners who do not cooperate during the procedure as “unknown nationals”.

4. In the interest of ensuring respect for the right to information in practice, the HHC sees a need for all foreigners held at the Budapest Airport to be given official written information on the reasons why they have to stay in the designated premises for several days (in case return cannot be carried out immediately). Due to the potentially lengthy restrictions on the freedom of movement, the foreigners concerned should be entitled to basic information about the procedure, legal remedies, and the conditions of their accommodation. Practice shows that only information that is provided in the foreigner’s native language, or through an interpreter can be considered effective. In the vast majority of cases, the foreigners cannot understand the information written in Hungarian, but they nevertheless have to comply with the procedures without substantive information about their own situation.

The Border Guard (Police) agree that foreigners’ right to information cannot be breached in the alien policing procedure. In regards to persons under

official transit by air, however, the country of departure is required to provide information, while the provision of information to asylum seekers is the task of the asylum authorities.

5. Effective respect for the right to legal remedies presupposes that a request for judicial review against return automatically suspends the removal procedure, thereby helping to prevent the *refoulement* of persons in need of international protection. Only this would ensure the prevention of torture, inhuman and degrading treatment or punishment in accordance with Article 3 of the European Convention on Human Rights, taking into consideration the jurisprudence of the European Court of Human Rights. In view of the findings described in VI.7., the right to an effective remedy – as guaranteed by Article 13 of the European Convention on Human Rights – can only be secured if any further potential breach of law (i.e. committed by the return) is prevented by having each request for judicial review automatically trigger a suspension of removal.

This is a legislative problem. Legislation in force does not provide for an automatic suspensive effect for the remedy.

6. The practice of the authorities to not return persons with special needs to countries which cannot be considered safe for them (e.g. Iraq, Afghanistan, Somalia, Sudan, etc.), but instead returning them to clearly safe countries (e.g. Sweden, as in Cases 9 and 12) is positive.
7. Through interviews with foreigners, the HHC was informed that border guard personnel failed to identify the need for international protection in a number of cases, even when the foreigners informed the proceeding border guards in English about their wish to seek asylum.

The Border Guard would like to refer to its earlier remarks concerning differences between what foreigners tell the authorities, and what they tell representatives of non-governmental organisations. Border guard personnel are aware that inappropriate practices and procedures can lead to investigations and possible disciplinary action.

VII.2. Recommendations

The members of the Tripartite Working Group have discussed the findings and recommendations of this report, based on which the Working Group adopted the following recommendations. As the recommendations concern the ongoing phases of the project, the Border Guard are referred to as the Police in this section. Supplementary remarks are presented where full agreement could not be achieved.

1. UNHCR and the HHC strongly recommend that in so-called simple cases (i.e. travelling with a false or falsified travel document or visa) at the Budapest International Airport, **the Police should interview the foreigner in the interest of ensuring that not even one person is returned who is at risk of persecution or who wishes to seek asylum in Hungary.** Without a record of a personal interview, particularly in the case of foreigners who later submit asylum applications, it becomes extremely difficult (if not impossible) to later establish the specific circumstances involved during the removal procedure. A personal interview is especially important in special-needs cases, such as families with small children, traumatised persons, and single women. These groups tend to be more vulnerable, and therefore require special attention.

The Police did not endorse this recommendation, and instead put forward the following proposal:

Based on the HHC's findings, the Tripartite Working Group should examine from which countries potential asylum seekers arrive. UNHCR should assist the work of the authorities with country of origin information and guidelines in Hungarian. The authorities should take such information into consideration during the assessment of non-refoulement. In case of doubt, the authority should interview, in particular, foreigners arriving with false or forged documents, families with children, traumatised persons, and single women.

2. The Tripartite Working Group believes that the **Police should make efforts to establish the nationality of foreigners who are undergoing removal, and not register them as “unknown nationals” in the procedure.** This is closely interlinked with respect for, and effective enforcement of, the principle of *non-refoulement*. The Tripartite Working Group recommends that in order

to prevent unlawful return, the authorities should make efforts to establish the country of origin in all cases where international protection needs arise, and to record their actions in this regards in the file.

3. The Tripartite Working Group recommends introducing **official informational materials and sample documents (sample decisions)** on return in foreign languages: in Serbian and Albanian at the Hungarian–Serbian border section, and in Russian and Ukrainian at the Ukrainian–Hungarian border section. In addition to the official European Union languages, Arabic materials should be available at the Budapest International Airport. This solution would better ensure that foreigners receive appropriate information about the procedures conducted. This would also make the process more cost-effective than using interpreters to translate, sometimes with significant delay, the written materials. The HHC welcomes the initiative of the Border Guard to translate documents on the return procedure into Arabic. Many persons who are later subjected to the return procedure arrive to the Airport from Damascus, and it is important to ensure that they receive proper information about the procedure in a language they fully understand. The Tripartite Working Group also recommends that as a future step, its members should jointly review the current system of informing foreigners and develop, if necessary, new informational materials for foreigners held at the airport under the removal procedure. These materials should be translated into frequently used foreign languages.
4. The Tripartite Working Group attaches importance to regular trainings for Police personnel performing border control tasks in the field of **foreign language, cultural and other trainings** that facilitate acceptance and understanding of customs different from those of Hungary. The Parties will assist each other in the organisation of such training events.
5. The Tripartite Working Group recommends that the Police schedule official tasks for its personnel so that the **needs of persons** under official transit by air (use of the toilets, buying food, smoking, etc.) can be met regardless of other daily tasks, and that all persons concerned have effective access to the public payphones (see Case 2).

6. So as to fully ensure respect for the principle of *non-refoulement*, the Tripartite Working Group recommends that the UNHCR and the Hungarian Helsinki Committee assist the authorities by providing **Hungarian language country of origin reports**, as well as **guidance relating to respect for the principle of *non-refoulement***.
7. The Tripartite Working Group proposes that, based on the border monitoring project's first year, the Parties should develop a "**good practices**" manual for Police personnel in order to ensure continuous training, wide-ranging awareness of, and respect for, international norms. The manual would define best practices as they relate to the treatment of persons in need of international protection.
8. In the interest of **resolving legislative problems and gaps** found in the project's first year (and summarised in the present report), the Tripartite Working Group should prepare a paper, based on which the UNHCR should initiate consultations with relevant government ministries.
9. In the interest of facilitating access to the asylum procedure, and smooth coordination between relevant state authorities, the Tripartite Working Group should contact the head of the **Office of Immigration and Nationality** and invite a representative of OIN to participate in meetings of the Tripartite Working Group. OIN's participation would be on a consultative basis, whenever the Parties deem it necessary with regard to specific questions.
10. In the interest of learning about international practices relating to the handling of cases of persons at the focus of the border monitoring project, the Tripartite Working Group should pay a visit to a jointly selected international airport, where air passenger traffic and the number of asylum seekers are high.

VIII. Annexes

VIII.1. The Tripartite Agreement

TRIPARTITE MEMORADUM OF UNDERSTANDING
ON MODALITIES OF MUTUAL CO-OPERATION AND
COORDINATION TO
SUPPORT THE ACCESS OF ASYLUM SEEKERS TO THE TERRITORY
OF,
AND THE ASYLUM PROCEDURES OF THE REPUBLIC OF HUNGARY

PREAMBLE

The Headquarters of the Border Guard of the Republic of Hungary (Border Guard), the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Poland, Slovakia and Slovenia (UNHCR) and the Hungarian Helsinki Committee (HHC), as UNHCR's duly authorised implementing partner NGO, hereafter referred to as the "Co-operating Parties",

Recognizing that the right of all persons to seek and enjoy in other countries asylum from persecution is a basic right enshrined, *inter alia*, in Article 14(1) of the 1948 Universal Declaration of Human Rights,

Recalling the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (Convention) and the Protocol Relating to the Status of Refugees adopted on 31 January 1967 which entered into force in the Republic of Hungary through the promulgation by Law Decree 15 of 1989; in particular Article 1 concerning the definition of the term refugee, Article 31 concerning

refugees unlawfully in the country of refuge and Article 33 concerning the prohibition of expulsion or return (“refoulement”) of refugees,

Recalling Article 35 of the Convention obliging contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, in particular providing in appropriate form information and statistical data requested concerning the condition of refugees, the implementation of this Convention, and law, regulations and decrees which may relate to refugees,

Recalling that the United Nations General Assembly Resolution 428(V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees, including promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States Parties to the Convention, and of seeking permanent solutions for the problems of refugees,

Recalling that the Constitution of the Republic of Hungary and in particular Article 65 which provides the right to seek asylum,

Recalling that Act CXXXIX of 1997 on Asylum and Act XXXIX of 2001 on Entry and Stay of Foreigners of the Republic of Hungary as well as their implementing decrees, outline specifically the rights of persons in need of protection in the Republic of Hungary,

Considering that ensuring access to the territory and asylum procedures, constitutes the most efficient and effective way to provide protection to refugees, asylum-seekers and others of concern (persons in need of protection), and that Conclusions 22 (Session XXXII), 81 (Session XLVIII), 82 (Session XLVIII), 71 (Session XLIV), 74 (Session XLV) of the Executive Committee of the High Commissioner’s Programme set out internationally accepted principles and standards governing the protection of refugees in this regard,

Bearing in mind the importance of the co-operation agreement signed by the People’s Republic of Hungary and UNHCR on 4 October 1989, which entered into force through the promulgation by Government Decree 23/1990. (II. 7.) and which this memorandum of understanding does not in any shape or form amend,

Recognising the need to return persons found not to be in need of international protection in a humane manner and in full respect for their human rights and dignity, without resort to excessive force and, in the case of children, taking due account of their best interests,

Referring to Section 37 of Act XXXII of 1997 on Guarding the State Border and on the Border Guards stipulating that the Border Guard shall cooperate, among others, with NGOs and recognizing the need to define the concrete procedures and modalities of mutual cooperation and coordination among the parties through an agreement which will strengthen the partnership of the cooperating parties,

Have agreed to carry out a joint activity that will be guided by the following principles and modalities:

Article I

ESTABLISHMENT OF A MONITORING FRAMEWORK

1. With due regard to the principle that the State has the primary responsibility of ensuring that persons in need of protection have access to the territory and asylum procedures, the Co-operating Parties undertake to jointly and severally monitor the facilitation by the Border Guard of the entry of persons in need of protection to the territory of, and access to the asylum procedures of the Republic of Hungary as well as their protection against *refoulement* (monitoring).
2. The Co-operating Parties will undertake the process of monitoring in an orderly, humane, safe and dignified manner as dictated by the sensitivities needed to treat persons in need of international protection.
3. In accordance with the principle of family unity, the Co-operating Parties shall make every effort to ensure that asylum-seeking families are admitted into the territory and asylum procedure as units.

Article II

RESPONSIBILITIES OF THE BORDER GUARD

1. The Border Guard undertakes to guarantee and facilitate the admission of persons in need of protection into the territory of the Republic of Hungary, and as a cooperating agency in refugee affairs, facilitates access to the asylum procedures and will take, in consultation with the UNHCR and HHC, all measures necessary to uphold these fundamental principles of international protection.

2. The Border Guard will take all measures necessary to ensure that asylum seekers are in full knowledge of facts about their right to seek asylum and their right to access legal assistance in the Republic of Hungary. It also undertakes to make available the publications of UNHCR and HHC in areas that are accessible to persons of concern under its procedures.
3. The Border Guard, with the consent of the person concerned, shall facilitate unsupervised contact among UNHCR, HHC and the person concerned to allow for the monitoring forming the subject matter of this agreement. Persons carrying out monitoring are allowed, with the consent of the persons concerned, to look into the file of the foreigner and to make photocopies of it. They are allowed to use audio, video and photographic recording equipment, except where such use would jeopardise the security or safety of the facility. The intention to use such equipment shall be communicated in advance to the Border Guard staff designated to receive and escort the monitors.
4. The Border Guard undertakes to provide access to photocopies of files of pre-designated categories (citizenship and themes), in accordance with its technical means. The photocopies of documents shall be shared with the monitors without the personal identification details of the person concerned.
5. The Border Guard undertakes to provide statistical data from its records upon the request of UNHCR or HHC concerning aliens policing and refugee matters.

Article III

RESPONSIBILITIES OF UNHCR REGIONAL REPRESENTATION

1. The UNHCR shall have free and full access to asylum seekers and persons of concern; it is entitled to examine whether or not the Border Guards facilitate entry of persons in need of protection into the territory of, and asylum procedures of the Republic of Hungary through monitoring the related activities of the Border Guard.
2. The UNHCR will undertake monitoring visits to areas and places defined in Chapter VI where persons in need of protection may be located, to examine and verify the implementation and adherence to international protection standards. In case of the need for immediate protection intervention, UNHCR will inform the local competent Senior Officer as well as the Head of the Department for Aliens Policing and Minor Offences at the Border Guard Headquarters.

3. The UNHCR shall verify Border Guard procedures to ensure those persons in need of protection with special needs, including women heads of households, unaccompanied and separated children, are protected and their fundamental rights, in particular the principle of family unity, are respected.
4. The UNHCR shall coordinate the mobilisation of funds for this project from the international community.

Article IV RESPONSIBILITIES OF HHC

1. The HHC will undertake activities to facilitate the implementation of this agreement on behalf of UNHCR and as specified in a partnership agreement with UNHCR. The said partnership agreement shall contain the terms and conditions under which HHC will conduct its activities under this agreement.
2. The HHC will proceed with a UNHCR partnership authorisation letter in its possession and will implement activities stipulated in III. 1–3. The letter of authorisation (Annex 1) valid until withdrawal will be forwarded to the Head of the Aliens Policing and Minor Offence Department of the Border Guard Headquarters for his/her countersignature.
3. The monitoring staff of the HHC shall clearly identify themselves as such to those persons of concern whom they may wish to interview during the course of implementing this agreement, and shall inform them of the purpose and voluntary nature of the interview and their right to refuse to be interviewed if they so wish. The monitoring staff shall comply with requirements related to the provision of information stipulated by Section 6 (2) of Act LXIII of 1992 on the Protection of Personal Data and Publicity of Data of Public Interest. A note shall be made on the fact that the person in need of protection was informed as well as the manner of giving his/her consent (Annex 2). The note shall be signed by the person of concern, the monitor and the interpreter, in case an interpreter was involved and included in the individual file of the person concerned.
4. HHC shall monitor the accessibility of UNHCR and HHC publications; in case of need it shall replenish the supply.
5. HHC shall inform UNHCR and the Border Guard about the monitoring visits two working days before the commencement of the visits, specifying the dates and

the locations. If an interpreter is involved, it attaches the letter of authorization as per Annex 3.

6. Reports made on the monitoring visits shall be shared with all Co-operating Parties within 15 days, and any one of them may offer comments, suggestions and clarifications for consideration and inclusion within 30 days from the date of receipt of the HHC draft report. The content of these reports may only be published after prior notification to the other Co-operating Parties, in case of a disagreement on the contents of the report to be published, the dissenting opinion or position of the relevant Co-operating Party will also be published in the same report.

Article V

TRIPARTITE WORKING GROUP

1. The Co-operating Parties establish a Tripartite Working Group (Working Group) which shall supervise the implementation of this agreement and analyse the reports made of the monitoring.
2. The Working Group shall meet at least four times a year, extraordinary sessions may be convened at the express request of one of the Co-operating Parties. It shall adopt its own Internal Rules of Procedure.
3. The chairperson of the Working Group shall be from the Border Guard; UNHCR Regional Representation shall act as secretary and may be assisted in this role by a representative of HHC. The Working Group shall be composed of representatives of the Co-operating Parties who shall be accompanied at any meeting by such number of advisors as the party represented may deem necessary. Having signed the agreement, the principals of the Co-operating Parties shall forward within 8 days the names and contact details of representatives designated to be members and principals of the Working Group.
4. Meetings of the Working Group shall be recorded in notes. The Co-operating Parties shall receive the notes within 10 working days.
5. The Working Group may undertake visits or missions to locations relevant to the project.

Article VI
SITES COVERED BY THE AGREEMENT,
THE RULES OF ENTRANCE AND STAY THERE

1. The geographical scope of the agreement shall cover all facilities administered by the Border Guard where persons in need of protection may stay (short term detention facilities, areas designated for contacts/meetings within long term detention facilities, areas where foreigners prevented to enter are to stay until departure/return in a border guard field office) and areas where the entry into the territory of foreigners is facilitated, including in the so-called transit zones of the international airports open for public.
2. When HHC announces forthcoming monitoring visits, it shall communicate the names, date of birth, place of birth and identity document numbers of both monitors and interpreters, in order to facilitate the timely preparation of entry arrangements into the facility where the monitoring will occur. Entry into such facility shall only be facilitated for holders of the UNHCR authorization letter and appropriate identity documents, after the necessary information sharing has occurred.
3. A designated Border Guard staff member shall always accompany the monitor and the interpreter. Without such escort, monitors and interpreters are not authorised to move in facilities and areas administered by the Border Guards, with the exception of interviews with persons of concern, which are not subject to supervisory control.

Article VII
FINAL PROVISIONS

1. The Co-operating Parties undertake to pursue joint educational and awareness raising activities within the framework of this Agreement, especially on monitoring, principles of refugee law and international protection that enhance the access to territory of the Republic of Hungary as well as to the asylum procedures of persons in need of international protection.
2. The Co-operating Parties undertake to participate in regional review meetings which will be organized by UNHCR to exchange experiences with other partners

and counterparts and by doing so to strengthen the implementation of the monitoring programme.

3. The present agreement is for an indefinite period. The review or the amendment of the Agreement may be initiated by the Cooperating Parties any time.
4. The Border Guard can temporarily suspend the implementation of the agreement in one or several locations covered by the agreement due to reasons of public health or any other emergency situation by providing justification.
5. The termination of the agreement can be initiated by submitting a written notice of termination by one Co-operating Party to the other two, which notice shall become effective at the end of eight (8) days from the latter date of receipt of notice by either of the other two Co-operating Parties.
6. Any question arising out of the interpretation or application of the present Agreement, or for which no provision is expressly made herein, shall be resolved amicably through consultations between the Co-operating Parties.
7. The present Agreement does not amend in any shape or form previously existing agreements between the Co-operating parties without the express and written consent of the parties concerned.
8. The present Agreement shall enter into force on date of signature by the Co-operating Parties.

In witness whereof, the authorized representatives of the Co-operating Parties have hereby signed the present Agreement.

Done at Budapest, this 28th day of December 2006 in sets of three originals in the English and Hungarian language, each set being equally authentic.

Headquarters of the Border Guard

United Nations High Commissioner
for Refugees

Hungarian Helsinki Committee

Annex 1

AUTHORIZATION

The
Regional Representation of the United Nations High Commissioner for Refugees
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes
The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee.

Done at Budapest, this _____ day of _____ 2006

UNHCR

The person designated by the Hungarian Helsinki Committee to implement this authorization:

NAME: _____

POB, DOB: _____

ID card number: _____

This authorization is valid until withdrawal.

Budapest, _____ 200 ____

Hungarian Helsinki Committee

Countersigned:

Headquarters of the Border Guard

Head of the Head of the Aliens Policing and Minor Offence Department

Annex 2

STATEMENT

NAME: _____

POB, DOB: _____

Citizenship: _____

Hereby approve that representatives of UNHCR and HHC present here:

NAME: _____

POB, DOB: _____

ID card number: _____

- Conduct an interview: yes no
- Make tape-recording: yes no
- Make photo: yes no

I approve that representative of the above organisations present have access to documents of the proceedings

- make photocopies thereof yes no

My statements can be published:

- 1) Without identifying me in any manner: yes no
- 2) With the initials of my name: yes no
- 3) With my full name: yes no

I do confirm that I have been informed about the handling of my data and my related rights.

_____, _____ 200_____

foreigner

monitor

Interpreter
(name, ID card, signature)

Annex 3

AD HOC AUTHORIZATION FOR INTERPRETERS

The
Regional Representation of the United Nations High Commissioner for Refugees
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes

The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee, and to contract an interpreter for individual occasions in the interest of implementing the above

Done at Budapest, this _____ day of _____ 2006

UNHCR

The person designated by the Hungarian Helsinki Committee to implement this *ad hoc* authorization:

NAME: _____

POB, DOB: _____

ID card number: _____

This authorization is *valid from* _____ *to* _____

Budapest, _____ 200_____

Hungarian Helsinki Committee

VIII.2. List of monitoring visits

Budapest Border Guard Directorate – Budapest International Airport:

7 February 2007 (introductory visit)
2 March 2007
26 March 2007
23 April 2007
8 May 2007
18 May 2007
11 June 2007
28 June 2007
11 July 2007
17 July 2007
23 July 2007
10 August 2007
29 August 2007
5 September 2007
26 September 2007
17 October 2007
16 November 2007
30 November 2007

Serbian–Hungarian border section:

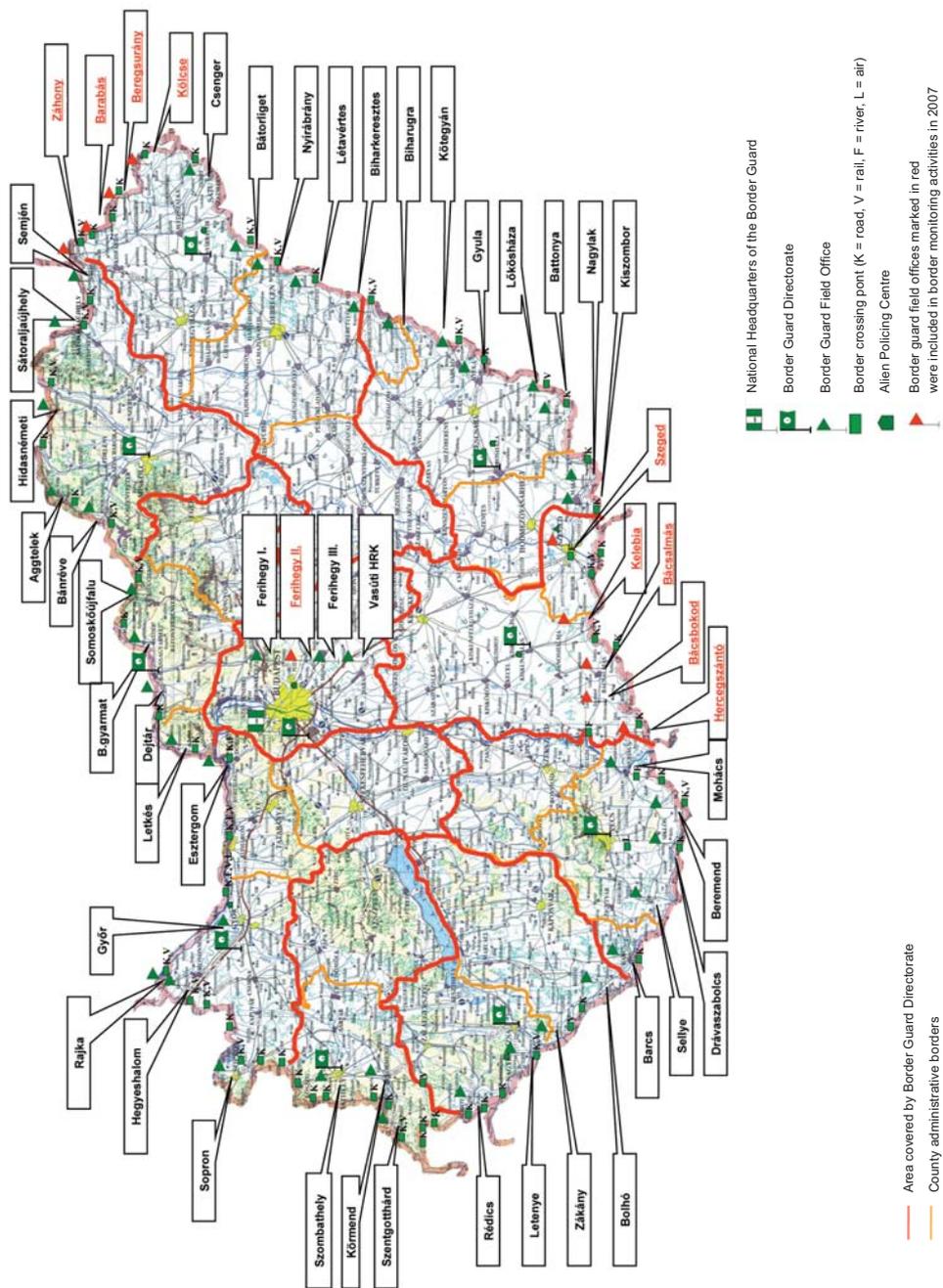
16 March 2007: Hercegszántó, Tompa, Röske
30 March 2007: Hercegszántó, Tompa, Röske
12 April 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Röske
24 April 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Röske
8 June 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Röske
14 June 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Röske
19 June 2007: Hercegszántó, Kelebia, Tompa, Bácsalmás, Tiszasziget,
Röske, Szeged
29 June 2007: Kiskunhalas
5 July 2007: Mórahalom, Tiszasziget, Röske
19 July 2007: Kiskunhalas
16 August 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Röske

- 23 August 2007: Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Rösztke, Szeged, Bácsbokod
- 27–28 September 2007: Kiskunhalas, Hercegszántó, Tompa, Bácsalmás, Tiszasziget, Rösztke, Szeged, Bácsbokod
- 8 October 2007: Szeged, Mórahalom, Rösztke
- 28–30 November 2007: Hercegszántó, Bácsbokod, Kiskunhalas, Bácsalmás, Kelebia

Ukrainian–Hungarian border section:

- 8–9 March 2007: Kölcse, Beregsurány, Barabás, Záhony
- 2 April 2007: Kölcse, Beregsurány, Barabás
- 20 July 2007: Kölcse, Beregsurány, Barabás
- 9 August 2007: Nyírbátor
- 13 August 2007: Kölcse, Beregsurány, Barabás
- 26 September 2007: Nyírbátor
- 1 October 2007: Beregsurány, Barabás, Kölcse
- 31 October 2007: Kölcse, Beregsurány,
- 26 November 2007: Beregsurány, Barabás

VIII.3. Map of border crossing checkpoints and Border Guard facilities in Hungary





Nyírbátor, 11 January 2008 – A Pakistani man is interviewed at the Nyírbátor Border Guard Directorate after the border guards found four illegal migrants in the vicinity of the stone mine in the village of Barabás. The illegal migrants, who had crossed the Hungarian–Ukrainian border unlawfully without any identification documents, stated they were refugees and that they had arrived to Hungary via Dubai and Moscow. Two of the men, who had not eaten for two days already, were minors. After the interview, the minors were transported to the reception centre in Bicske, while the others were taken to the reception centre in Békéscsaba, where their fate will be decided. (MTI)
