

Report on the Border Monitoring Program 2008–2009



HUNGARIAN HELSINKI COMMITTEE
NATIONAL POLICE HEADQUARTERS
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Report on the Border Monitoring Program 2008–2009

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1. Introduction

In 2008 and 2009, the Border Monitoring Project continued to be 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) succeeded by the National Police Headquarters (Police), and the UNHCR Regional Representation for Central Europe (UNHCR).

The comprehensive report on the Border Monitoring Program's first year was made public by the Tripartite Working Group at a press conference in February 2009 held at the National Police Headquarters. The event was hosted by the Director General for law enforcement, who is the Deputy of the National Chief of Police. The report on *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*¹ gives a detailed overview of the Tripartite Agreement's aims and the cooperation within its framework, as well as of experiences from the border monitoring. In the report the three cooperating organizations agreed to continue their cooperation in the future and made joint recommendations for improving respect for the rights of persons seeking international protection.

This report summarizes events and activities carried out jointly in 2008 and 2009 based on reports from individual border monitoring visits; furthermore, it reveals how the recommendations, jointly agreed in the 2007 report, had been realized. This report does not include an explanation of the border monitoring methodology, the rights of foreigners, or an account of the protection offered by visited police facilities, as the detailed description of these may be found in the report on the program's first year in 2007.

In accordance with the Tripartite Agreement and the practices established in 2007, the parties continued to discuss their experiences gained throughout 2008 and

¹ The report is available in English and Hungarian on the Hungarian Helsinki Committee's website:
http://helsinki.webdialog.hu/dokumentum/Border_Monitoring_Report_2007_HUN_FINAL.pdf
http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf

2009 in the Tripartite Working Group. The cooperating parties continued to consider the tripartite cooperation, which was regarded exemplary in Europe at the time of signature, to be of great importance, as well as the joint assessment of practical issues and maintenance of a professional working relationship, as it efficiently facilitates cooperation between the parties implementing the Agreement. It also results in the effective exchange of information and positively influences the practice of the collaborating parties.

The cooperation on border monitoring in Hungary has been recognized as an exemplary practice across Europe and has been cited as a positive development in several international meetings. Since the signing of the Agreement in December 2006, it has served as a basis for regulations concerning border monitoring cooperation arrangements between civil society organizations and the authorities in many European countries. Similar agreements have been concluded in Slovakia (in 2007), in Slovenia and Romania (in 2008), in Poland (2009) and the conclusion of a Tripartite Agreement is expected in Bulgaria in 2010. UNHCR headquarters organized a conference in Geneva in November 2008 to which the Regional Representation and the HHC were invited. The presentation on the experiences of the tripartite cooperation raised great interest and participants from the United Kingdom and Angola expressed their intention to adapt the Hungarian practice to their national settings.

The Parties to the Tripartite Agreement discussed the conclusions and recommendations of the 2008–2009 report, the draft of which was prepared by the Hungarian Helsinki Committee. The Police’s supplementary remarks to the findings are set in ***bold, italicized*** font.

2. Cooperation between the Parties

2.1 Methodology

The constructive working relationship among the parties to the Tripartite Agreement continued in 2008 and 2009. Police officers in service at the monitored border sections continued to be cooperative and assisted the HHC monitors' work on every occasion, and were open to discussing individual cases presented by the monitors as well as solutions to potential problems arising.

The program was carried out in 2008 and 2009 in accordance with its content as determined by the Tripartite Agreement. Attorneys contracted by the HHC to perform monitoring regularly visited short-term detention facilities for foreigners located along the Ukrainian–Hungarian border, at the Budapest International Airport—and from April 2009—at the Serbian–Hungarian border. They also contacted foreigners detained at these facilities. The monitoring lawyers had access to the (anonymous) files of foreigners in the case of persons who had already been returned from Hungary or were otherwise not present. Under the Agreement, the HHC must inform the other parties of the Working Group about the specific venues to be visited, and the time of the visit, two days in advance. Reports made on each monitoring visit are sent by the HHC to the cooperating parties within 15 days of each visit.

In 2008, HHC monitors paid 19 visits to the Budapest International Airport and visited the Ukrainian–Hungarian border section on 13 occasions. In 2009, the HHC's monitors carried out 21 visits to the airport, 23 to the Ukrainian–Hungarian border section, and 31 visits to the Serbian–Hungarian border section (For the full list of visits, see Chapter 5.)

Although preliminary plans for the 2008 border monitoring program included monitoring at the Serbian–Hungarian border section as well, due to the sudden death of the HHC's attorney based in Kiskunhalas and unsuccessful attempts to

recruit a new attorney, the border monitoring project at this border section could not be realized in 2008. The border monitoring activity at the Serbian–Hungarian border section recommenced in April 2009 after a new attorney was identified.

In 2008, the Police were unable to provide statistical data to the UNHCR and HHC in accordance with practices established in 2007—until their computer support software for administering the alien policing process had been modified in accordance with new legal and organizational conditions. Nevertheless, the HHC received statistical information from the Police in respect of particular organizational units—covering the period since the last monitoring visit—at the start of each monitoring visit, based on which the NGO could select files of interest and could also have access to these files as set forth by the Tripartite Agreement. Regular access to statistical data was resolved in 2009 in a satisfactory manner and information on persons expelled, ordered to return as well as on foreigners submitting asylum applications became again available to the cooperating parties every two weeks.

According to the Office of Immigration and Nationality (OIN), 3419 asylum applications were registered in 2007, 3118 in 2008 and 4672 in 2009. The rate of increase in asylum applications is close to 50% between 2008 and 2009. Meanwhile, the number of asylum claims submitted at the airport rose in 2008: compared to the 47 asylum claims submitted in 2007, 120 applications were registered at the Budapest Airport in 2008. In 2009, however, the number of asylum applications submitted at the airport decreased to 69 applications.

The UNHCR and the HHC are of the view that the 155 percent increase in asylum claims submitted at the Budapest Airport in 2008 once again confirms their earlier presumption that monitoring borders truly contributes both to advancing foreigners' access to the asylum procedure and also to effective cooperation between authorities and civil society. The presence and professional actions of the monitor also considerably enhanced the exercise of the right to seek asylum. Although only 69 foreigners applied for asylum in 2009 in the transit zone of the airport, this fact does not necessarily negate the above-mentioned presumption. The decrease in asylum claims at the airport is partly due to the overall gradual decrease of passengers² at the Budapest International Airport as well as partly due to changes in human smuggling routes.

2 Whereas approximately 8.3 million passengers passed through the airport in 2007, and 8,5 million in 2008, after accession to the Schengen area external traffic amounted to 2,5 million passengers, and in 2009 the overall number of passengers dropped to 8,1 million, of which only 1,7 million arrived from outside of the Schengen area.

As referred to in Chapter VII, Section 1.1. of the 2007 report, the Police continue to maintain the opinion—without questioning that monitoring activities have brought many issues to the attention of the authorities—that the rise in asylum applications can also be attributed to migratory trends and changes in methods employed by foreigners.

Our experience shows that Hungary is still not a destination country for refugees. As a consequence of Hungary's accession to the Schengen Area, border control activities on the EU's internal borders ended, creating a huge pull-factor for third country nationals (especially for those arriving illegally). In 2008, the number of third country nationals (typically from Kosovo and Afghanistan) entering our country unlawfully in the hope of an easier route to Western Europe with the end of border controls rose. Consequently, the number of apprehended foreigners at the Hungarian-Serbian and Hungarian-Ukrainian border sections rose and there was a rise in asylum claims as well. Persons arriving illegally express their protection claim after being arrested or after an alien policing decision has been taken in their case, when it becomes clear to them that they will not be able to continue their journey. It is still not typical for third country nationals who arrive in the country illegally to present themselves voluntary to the Police and express their claim for protection.

During the first five months of 2008, the number of asylum applicants at the Budapest International Airport rose significantly: typically, Egyptian and Pakistani nationals tried to transit at the airport in groups using the same method. When they failed to continue their journey, they submitted asylum applications. In some cases, they submitted claims written in Hungarian upon arrival to passport control officers. By June, group applications regarding both nationalities ended, and this resulted in a downturn in asylum applications.

On several occasions in 2008 and 2009, foreigners who were placed provisionally in the premises at the airport for holding persons to be returned contacted the UNHCR Regional Representation or the HHC by telephone for further information and to express their claim for international protection. Once initial communication difficulties had been resolved, the Airport Police Directorate cooperated fully with the HHC and its monitor, within the frameworks set forth by the Tripartite Agreement on maintaining contact.³

3 Tripartite Agreement, Article II. Section 3.

2.2 Meetings of the Tripartite Working Group

The experiences of the Border Monitoring Project are evaluated at the meetings of the Tripartite Working Group. In 2008, members of the Working Group met on three occasions: on 9 April, 30 May and 27 November. Similarly, three meetings were held in 2009: on 18 February, 30 September and 21 December.

The first Working Group meeting took place on **9 April 2008** in Kiskunhalas (Alien Policing Department, Guarded Shelter) and at the Kelebia Border Control Field Office with the participation of staff members of the Bács-Kiskun County Police Department. At the meeting, Police staff provided information on the latest migration trends at the border section, on border control cooperation activities with organizations of the European Union (e.g. FRONTEX) and other Member States, and on the nationality composition of foreigners detained in guarded shelters. County Police Department staff reported on migration trends from the southern Balkans region—primarily from Kosovo—at the Serbian-Hungarian border section. According to the Police, accession to the Schengen zone and the independence of Kosovo may presumably be the reasons behind the significantly increased number of apprehended foreigners. Almost 90 percent of foreigners apprehended at the southern border sections up to April 2008 were of Kosovar origin. Foreigners were detained in the guarded shelter for shorter periods than previously. (The average length of detention in Kiskunhalas was 20.2 days in 2006, 13.9 in 2007 and 12.4 in 2008. Afterwards, persons whose expulsion could not be executed within a short time were transferred to the Nyírbátor detention facility, due to a lack of space). The Police informed the Working Group that during the first quarter of 2008, a total of 27 asylum claims were submitted by foreign nationals on the territory under the responsibility of the Bács-Kiskun County Police Department. According to information from the Police, 503 asylum applications were submitted during police procedures conducted in the county throughout the whole year, which shows a growing trend compared to 2007 (252 asylum claims were registered on the territory of the Kiskunhalas Border Guard Directorate in 2007).

In the framework of the meeting, the Working Group visited the border crossing checkpoint in Tompa (under the competence of Kelebia Border Control Field Office), where they observed the recently refurbished short-term holding facilities, part of which functions as a short-term holding facility for children (equipped with children's beds, baby changing room, toys and children's books covered by project

funding). The Working Group also took part in a field trip where border guard patrols introduced them to their daily practices along the land border.

On 30 May 2008 the parties of the Tripartite Agreement discussed the draft of the report on the first year of the Border Monitoring Program in the framework of a Working Group meeting held at the UNHCR Regional Representation for Central Europe. As the Police informed the Working Group that at the Serbian-Hungarian border section they had run out of information materials provided to them in 2007, the Working Group arranged for an additional supply of materials in order to ensure guidance for persons potentially in need of international protection.

At its third meeting held **on 27 November 2008**, the Working Group discussed the final text of the 2007 report, experiences from the training of mid-level police personnel held on 18-19 November, activities in 2008 and plans for the year 2009. UNHCR informed the parties about the outcomes of the conference organized by the UNHCR in Geneva, which focused on protection sensitive entry practices that meet international human rights norms. The UNHCR Regional Representation for Central Europe and the Hungarian Helsinki Committee also took part at the conference, where they shared the exemplary experience of the tripartite cooperation. The presentation was met with keen interest from several delegations. The representative of the Refugee Affairs Directorate from the Office of Immigration and Nationality was also invited to attend the Working Group meeting in November, thus an opportunity presented itself to discuss the issue of asylum seekers who continue to be held in alien policing detention during the in-merit phase of the asylum procedure.

The first 2009 meeting of the Tripartite Working Group was held on **18 February 2009** at the National Police Headquarters in Budapest. This meeting aimed to discuss experiences regarding the implementation of the Agreement, especially the tasks related to the 2007–2008 annual report, as well as to review the 2009 annual plan. The parties discussed in detail the media coverage of the publication of the 2007 report (on 11 February 2009) and its positive reception within the three cooperating organizations. The HHC and the UNHCR have expressed their appreciation to the Police for the excellent preparation and organization of the event and for offering the use of their premises.

With regard to training plans in 2009, the representatives of the police informed the Working Group that a meeting with the senior management of the Police College was under preparation, in order to include relevant training materials in the curriculum in all specialized fields related to access to asylum and to the identification of

potential asylum applicants. The parties also discussed details relating to training events planned for border police personnel in 2009. Furthermore, it was agreed that they would jointly present their experiences from the project at the law enforcement conference to be held in June 2009 in Pécs.

At the Working Group meeting on **30 September 2009**, the parties reviewed the draft structure and chapters of the teaching materials to be prepared for the Police College and agreed to finalize the text in early 2010. Additionally, the Working Group agreed to consider as the 2009 annual field visit their participation at the cross-border cooperation event that was held on 19–22 October 2009 in Uzhgorod, Ukraine and the visits to the Hungarian, Slovak and Ukrainian detention facilities within the framework of this event.

The third meeting of the Tripartite Working Group took place on **21 December 2009**, when the parties discussed concerns raised by UNHCR and the HHC about the increased signals, from several sources, that asylum seekers from Ukraine have no access to the asylum procedure in Hungary and that they are returned to Ukraine without a registration of their asylum claim. In order to investigate these concerns, the Working Group agreed on an action plan: the Police will investigate whether the complainants are known to them based on their files, while the HHC will inform the parties in a separate summary about the cases in 2009.

3. Main Findings of the Border Monitoring Program

The Parties to the Tripartite Agreement gave priority in 2008 and 2009 to fulfilling the joint recommendations agreed in the report on the program's first year.

3.1 The Application of Article 33 (1) of the 1951 Geneva Convention

The border monitoring program is primarily aimed at monitoring the practice of respect for the protection of the rights of foreigners who are potentially seeking international protection. The HHC's monitors examine, among other things, if:

- i) the foreigners concerned have an actual possibility to apply for asylum in Hungary;
- ii) the authorities take into account the special needs of vulnerable foreigners during their procedures;
- iii) foreigners under alien policing and other procedures are properly informed.

During the implementation of the program in 2008 and 2009—taking into account the recommendations made in the 2007 report⁴—HHC attorneys paid particular attention to questions connected with the application of Article 33 of the 1951 Geneva Convention.

⁴ See the report on *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, Section VII.2.1., page 53

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.”

Several years of experience shows that exercising the right to seek asylum in practice is possible only if the communication between the Police and the foreigner allows the potential asylum seeker—based on the information available to him/her—to express his/her wish to submit an asylum application in a way that is comprehensible to the Police, that is, for the asylum claim to effectively reach the authorities, for them to “hear” it.

The practical importance of measures taken prior to the enforcement of a return measure⁵ is that the Police must conduct these investigations usually within a few hours, while they are under no legal obligation nor is there the practical possibility to carry out a longer and more detailed interview of the foreigner.

Regarding the practical findings collected during the implementation of a return measure and expulsion⁶, it is important to highlight the fact that HHC monitors experienced different practices at the airport and at the Ukrainian–Hungarian border section as a result of different regulations concerning the two legal institutions. While at the Budapest International Airport return orders are common, the expulsion of foreigners irregularly crossing the border is typical at the Ukrainian–Hungarian border section.

According to reports by the lawyer monitoring the **Budapest International Airport**, based on files accessed, on several occasions the Police did not request the position of the OIN unit on duty to determine if the principle of *non-refoulement* was applicable in the case, although the nationality of the foreigner in question would have justified it.

- On 21 July 2008 the Airport Police Directorate returned seven members of an Afghan family to Damascus, Syria, in the course of which—according to documents found in the files—no information request was sent to the OIN unit on duty to determine the applicability of the *non-refoulement* principle.

5 Act II of 2007 on the entry and stay of third country nationals (TCN Act), Section 40

6 TCN Act, Section 43

The Airport Police Directorate did not commit a breach of the law, since according to law⁷, consulting the OIN is only obligatory in case of doubt concerning risks the foreigner(s) may face upon return. The case shed light on the shortcomings of the legislation in force, mainly in regards to the lack of an interview for potential asylum seekers. According to the HHC, the argument of the Airport Police Directorate's colleagues—that the family was accommodated for a few hours in the premises for holding persons who are about to be returned, thus they could have accessed information on the possibilities of seeking asylum through the information materials displayed in the leaflet dispensers—is not sufficient in terms of assessing the need for international protection. In any case, the composition of the family should have been assessed with special care at least in terms of whether return to the country of origin or a third country is safe for them, as well as their special needs and possible vulnerability resulting from such needs.

Contrary to practice at the airport, the monitoring activities of HHC at the **Ukrainian-Hungarian border section** focused primarily on expulsion orders. It could be established that regarding implemented expulsion orders, the Police, in compliance with legal obligations, have consulted the OIN unit on duty in each case. In cases where the necessity of an expulsion order arose, the OIN gave the Police its country of origin information assessment—based on the registered minutes of interviews—during the assessment of the *non-refoulement* principle. The HHC's experience shows that the country information assessment carried out by the OIN and its conclusions are often too short, and fail to provide sufficient time and space for an exhaustive assessment and consideration of the specific circumstances of the case. Hence, in certain cases, OIN country information assessment is not appropriate to allow for expulsion to be ordered based on a thorough assessment of all of the relevant circumstances of a case.

Although the OIN is not a member of the Tripartite Agreement, as it plays a key role in assessing the *non-refoulement* principle, it is important to note that as an administrative authority competent in this matter, it is obliged to respond to requests from the Police based on its up-to-date country of origin information database and other professional materials, since measures taken by the Police rely upon it.

While carrying out the border monitoring project in 2008 and 2009, the Hungarian Helsinki Committee became aware, through its contracted lawyers or

7 Government Decree no. 114/2207. (V.24.) on the execution of TCN Act, Article 124 (2)

the concerned foreigners, of some cases—which are difficult to reconstruct after the fact—where the foreigners claimed that they had tried to seek asylum in Hungary, but no official data was later found in police files. There may be a number of reasons why the files did not contain this information: for example, the foreigner did not find a common language to clearly communicate his/her intention to seek asylum to the police officer. It is also possible that some expressions referring to asylum were used but the police officer did not consider them as an asylum claim.

- Since September 2008, the Hungarian Helsinki Committee has noted an increased frequency of cases where foreigners who were potentially in need of international protection due to their citizenship, personal circumstances and/or special vulnerabilities (women, children, separated minors etc.) were readmitted at the Ukrainian–Hungarian border to the Ukrainian authorities. From personal interviews carried out by Ukrainian non-governmental organizations, the Hungarian Helsinki Committee was informed that the Hungarian Police readmitted a number of Somali citizens to the Ukrainian authorities: 2 persons on 23 April, 1 person on 19 August, 2 persons on 30 September and 1 on 19 December 2008. All these Somali nationals stated that they had tried to ask for asylum in Hungary.

All third-country nationals readmitted to the Ukrainian authorities were interviewed with the participation of an interpreter; the foreigners' statements were registered in official interview records taken by the Police. Consequently, based on the available documents, it cannot be concluded with full certainty that the above-mentioned foreigners could not submit asylum applications contrary to their intentions. Prior to ordering expulsion, in all cases the Police contact the competent asylum department of the Office of Immigration and Nationality (OIN) by sending the interview record for the purpose of assessing the applicability of the non-refoulement principle. Expulsion will not be ordered to a country that the person may not be expelled to according to the OIN's opinion.

Regarding unaccompanied minors, the proceeding authority takes the necessary measures in all cases, under section 40 (5) of the Act CXL of 2004 on administrative procedures and services, to appoint a case-guardian, who will then take part in all stages of the procedure. The Police would like to note that among the clients referred to in the above examples, some had claimed to be under 18 years of age before the Hungarian authorities, hence case guardians had been appointed for the duration of the alien policing procedure. However, the same persons later

gave different personal data to the aforementioned Ukrainian NGOs, according to which they would have been considered as adults under the Hungarian law.

The competent Szabolcs-Szatmár-Bereg County Police Headquarters' Alien Policing Department and relevant border policing field units registered 555 asylum applications in the course of 2008, out of which 145 persons claimed to be Somali nationals. In April 2008, 41 asylum claims, 6 asylum claims in August, 6 asylum claims in September and 20 asylum applications in December were registered by Somali nationals, which were all forwarded to the asylum authority. In the course of the alien policing proceedings the persons referred to above did not indicate their intention to seek protection, yet the aforementioned statistics confirm that in such cases the Police act according to its obligations set out in law.

The Hungarian Helsinki Committee finds particularly worrisome the readmission of those foreigners whose compatriots are otherwise all granted some form of international protection by the OIN: Somali, Afghan, and Iraqi asylum seekers were mostly recognized as refugees or granted subsidiary protection, while in a few cases in 2008 they were granted tolerated stay. The OIN's opinion was available in all of the examined files, which stated that "in respect of Ukraine the principle of *non-refoulement* is not applicable", therefore the prohibition on return did not apply.

The OIN's practice on the examination of the principle of *non-refoulement* in respect of Ukraine appears to be contrary to the position of UNHCR on Ukraine from October 2007.⁸ Authorities are obliged to examine individually in the case of each asylum seeker if the person concerned would face torture and/or inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights in the country to which the person is to be returned. A further condition that should be examined is whether the receiving country respects the principle of *non-refoulement* and the person concerned is not sent to territories where his or her life, physical integrity or freedom would be threatened. Beyond the above negative conditions, a country can be regarded as a safe third country if international protection is available as set out in the 1951 Geneva Convention. According to the position of UNHCR and the Hungarian Helsinki Committee, realistic international protection in Ukraine is questionable, therefore in certain cases Ukraine cannot be considered as a safe third country.

8 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. Available at UNHCR's website: <http://www.unhcr.org/refworld/docid/472f43162.html>

According to the information obtained by the UNHCR and the HHC, there were no substantive changes and developments in the functioning of the Ukrainian asylum system or regarding the content of the international protection granted by Ukraine during 2008 or 2009. Colleagues from the UNHCR Regional Representation in Kyiv reported cases where asylum seekers who wished to avail themselves of legal remedies but were prevented from doing so, were forcibly removed to their country of origin in 2008. As an example, the UN documented a case of 11 asylum seekers from Sri Lanka being sent back to their country of origin on 10 March 2008.⁹

Citizens of Sri Lanka were not readmitted to Ukrainian authorities from Hungary in 2007, 2008 or 2009.

The UNHCR informed the members of the Working Group about a case from 2008 that illustrates the examination of the principle of *non-refoulement* in practice and the current situation of the Ukrainian asylum system.

- An unaccompanied minor of Somali nationality requested the UNHCR's assistance in November 2008, after failing to express his intention to seek asylum in Hungary upon his apprehension by the Hungarian police and following his readmission to Ukraine. During the alien policing interview the minor stated in English that he had fled his country of origin because of the tribal war. First he travelled to Russia and then to Ukraine, where he tried to seek assistance from UNHCR. He also said that he did not want to go back to Somalia and he wanted to remain in Europe hoping to find a better life. In compliance with its obligation set out in the Act on Third Country Nationals, the Police contacted the OIN unit on duty after the office hours were over (after 4 p.m.) to obtain information regarding the application of the principle of *non-refoulement*.¹⁰ The same day, at 6 p.m., the OIN notified the Police about the result of the examination of *non-refoulement*: the OIN established that the expulsion and removal of the Somali unaccompanied minor to the territory of Ukraine would not amount to refoulement. The Somali minor was readmitted to the Ukrainian authorities at 7:30 p.m. that day.

In his letter written to the UNHCR, the Somali minor described that after being readmitted to Ukraine he was seriously ill-treated by Ukrainian

9 UN press release: <http://www.un.org.ua/en/news/2008-03-10/>

10 Government Decree no. 114/2207. (V.24.) on the implementation of TCN Act, Section 124 (3)

authorities and detained for six months. He added that despite his efforts to seek the assistance of NGOs, he was left without help and had lived on the streets in Ukraine ever since.

In connection with the above case the UNHCR requested clarification from the Police in November 2008.

Based on a notification by local residents, a police patrol checked the person's identity—as a member of a group of six—at a bus stop. As they could not verify their personal identity and the lawfulness of their stay in Hungary, they were taken into short-term arrest under Section 67 (4) of the TCN Act. At the time of registering his personal data (based only on his statements), the Police established that the foreigner in question was an unaccompanied minor who spoke English, and appointed a case guardian and an English interpreter according to Section 40 (5) of the Act CXL of 2004 on administrative procedures and services.

The foreigner was informed about his rights and obligations and interviewed in the presence of the case guardian and the interpreter. During the interview he said that he had left Somalia in November 2007 due to the tribal war. With assistance from a Somali man, he was smuggled to Moscow for a fee, where he tried to seek assistance from the UNHCR but was told that it would be a lengthy procedure. Thereafter he traveled to Ukraine with the help of a smuggler. His travel documents were destroyed at the Russian-Ukrainian border. He again sought the UNHCR's assistance in Ukraine and he received a stay permit for two months. He travelled to Kyiv by taxi 15 days prior to being caught by the Hungarian police. A Ukrainian man who advised him to continue his journey by himself took him to the Hungarian-Ukrainian border. He met the five other intercepted foreigners in a village. He also stated that he did not want to return to Somalia and he wanted to stay in Hungary hoping to have a better life.

The Police are aware of the UNHCR's position on the asylum system in Ukraine related to the return of asylum seekers, however, according to the legal regulations in force, the examination of non-refoulement is referred to the competence of the OIN. Therefore the Police took measures to obtain information regarding the principle of non-refoulement under Section 124 (3) of the Government Decree no. 114/2207. (V.24.) on the implementation of the TCN Act. As office hours were already over, the request was sent to the On-duty Department of the OIN with the records of the interview attached. In its response, the OIN informed the Police that the expulsion and removal of the Somali person to the territory of Ukraine

would not amount to refoulement, based on the available information and the content of the interview records.

After having established that the conditions to expel and remove the foreigner to Ukraine had been met, the case was transferred to the competent Alien Policing Department of the Police, which ordered the expulsion of the person under Section 43 (2) of the TCN Act on the basis of illegal entry to the country, and the forced removal under Section 65 (1) (c) of the TCN Act. Section 48 (1) of the TCN Act sets out that expulsion has to be carried out primarily under the readmission agreements in force. The Government Decree of the TCN Act sets out in Section 114 (2) that the Police are competent in expulsion cases only if the foreigner was intercepted in a border area while the Police had been carrying out border control tasks and the expulsion may be executed only under the readmission agreement. The Police's Alien Policing Department initiated the readmission of the foreigner directly at the Ukrainian counterpart in a so-called simplified procedure under Section 7 (1) of the Ukrainian-Hungarian readmission agreement signed on 26 February 1993 in Budapest, promulgated in Hungarian law by Act XXIV of 1995, and under Section 6 (1) of the bilateral agreement implementing the former agreement, signed on 27 October 1994 in Kyiv. The Ukrainian authorities accepted the readmission of the foreigner.

In the alien policing procedure the foreigner—who had had access to information leaflets published by the UNHCR and the HHC—did not express his intention to seek asylum in Hungary, moreover he was cooperative throughout the procedure, he signed the decisions and did not avail himself of his right to seek legal remedies. The case guardian was present throughout the proceedings.

The Hungarian Helsinki Committee is of the view that the above case illustrates the vulnerable situation of unaccompanied minors who might be potential asylum seekers on the basis of their citizenship or national minority status. Section 45 (5) of the TCN Act sets out the conditions for ordering the expulsion of an unaccompanied minor: “an unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.”

The above mentioned case and its later developments clearly indicate that prior to expulsion the competent authority did not take into consideration the existence of all circumstances foreseen by the law, since the six-month-long detention in Ukraine cannot be regarded as family reunification or institutional care. The following questions hence arise: what is the basis on which the authority orders the expulsion, does

the background information refer to satisfactory conditions in Ukraine, and are the authorities in a position to follow up the case after the decision has been taken?

The above-mentioned “unaccompanied minor” later again appeared on two occasions in the Police’s view, first in August 2008 (which denies the fact of a six-month-long detention in Ukraine) and second in 2009. Since he was never in possession of valid personal identity documents and he used different identities (name, date of birth) in all of these procedures the Police only found out in 2009 that the three persons were in fact only one. In the course of the second and the third arrest he claimed to be an adult (nearly 10 years older). He expressed his intention to apply for asylum in 2009, which was registered by the Police and forwarded to the competent asylum authority of the OIN.

The present report does not aim to fully present the problem of readmissions to Ukraine; however the cooperating parties are convinced that the OIN should also be included when evaluating its country reports regarding the principle of *non-refoulement*.

The Parties to the Tripartite Agreement previously recommended in the 2007 border monitoring report¹¹ that in the interest of facilitating smooth coordination between the relevant state authorities, a representative of the OIN should be invited to participate in meetings of the Tripartite Working Group on an ad-hoc and consultative basis. Consequently the OIN was invited to the Working Group meeting held on 8 November 2008 and was represented by a staff member of the Asylum Directorate.

In 2009, NEEKA, a Ukrainian NGO, informed the HHC of about 20 readmission cases at the Ukrainian–Hungarian border. The cases of the readmission of Somali and Afghan nationals were documented in questionnaires by NEEKA containing information both on the place of interception on the Hungarian side and the place of readmission on the Ukrainian side of the border, as well as other relevant circumstances stated by the interviewees themselves. Amongst the readmitted foreigners eight persons claimed to be less than 18 years of age.

The HHC informed the UNHCR Regional Representation about the cases and contacted the Police on 4 May 2009 in connection with the readmission of five Somali nationals. The Police confirmed that they had already known all five persons and they informed the HHC that these foreigners did not claim asylum during

11 See the report on *Asylum Seekers’ Access to Territory and to the Asylum Procedure in the Republic of Hungary*, Section VII.2.9., page 55.

their alien policing interviews. Upon the request of the Police, the OIN—which is the competent body in assessing the risk of refoulement—did not establish that the readmission of these persons to Ukraine would be in breach of the principle of non-refoulement. Consequently, the Police considered that the above procedures were carried out in full compliance with legal regulations.

The increasing number of potential refoulement cases—discovered as a result of the cross-border cooperation with Ukrainian NGOs—confirm that it is necessary to further improve **the identification of and communication with persons potentially in need of international protection** to ensure that those who wish to express their intention to seek international protection are able to do so.

On 21 December 2009 the Tripartite Working Group agreed that cases concerning the readmission of potential asylum seekers to Ukraine, which the UNHCR Regional Representation in Kyiv referred to the Regional Representation in Budapest, would be investigated. Although it is only possible to compare the foreigners' statements found in official police files with the data registered by Ukrainian NGOs, and the actual situations cannot be fully reconstructed, the cooperating parties will still try to satisfactorily resolve the questions that arose from the above cases. To this end, with the consent of the foreigners concerned—who were later successful in arriving in Hungary and now are living in Hungary, the majority as recognized refugees,—the Working Group will organize personal interviews to further clarify the situation after the examination of available documentation.

3.2 The Application of Article 31 (1) of the 1951 Geneva Convention

When carrying out the border monitoring program in 2008 the application of Article 31 of the 1951 Geneva Convention came into the foreground in the course of implementing the recommendations of the 2007 border monitoring report.¹²

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

¹² Regarding the application of Article 31 of the 1951 Geneva Convention in Hungary, please see *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, Section VII.2.9., page 31.

authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

The UNHCR’s and the HHC’s position is that the Hungarian authorities fail to properly apply Article 31 (1) of the 1951 Geneva Convention because the criminal liability of asylum seekers for forging public documents is established without regard to this particular provision of the Convention. Due to the special characteristics of the right to asylum and the circumstances of flight, asylum seekers are generally not 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 in the situation when someone’s life, physical integrity, or freedom is at risk, the refugee makes use of illegal means, such as false or forged documents, to flee his/her country of origin. Hence the use of forged documents may in many cases be an essential and unavoidable part of the flight from persecution. It is important to note that according to UNHCR’s position, as refugee status is declaratory, Article 31 of the 1951 Geneva Convention also covers asylum seekers whose claim has not yet been determined. As the Hungarian Criminal Code and the 1951 Geneva Convention are both part of domestic law—the latter by virtue of Law–decree 15/1989—the 1951 Geneva Convention is applicable law in Hungary, which provides legal grounds for Hungarian prosecutorial authorities involved with refugees to refrain from criminal procedures, in compliance with the 1951 Geneva Convention.

According to the view of UNHCR, 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 legal 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 exempt from criminal procedures.

In contrast, practice shows that 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 become aware 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, state parties cannot impose penalties on persons covered by the Convention. However, the 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 entry into the country, provided that an alien policing procedure should be carried out against the foreigner¹³; 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 authorized to impose penalties. In cases where the foreigner applies for asylum before his/her return, the criminal procedure 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.

In its own procedures, the Police cannot take into account the fact that the asylum seeker had committed unlawful actions in the interest of having access to asylum, because the asylum authority will independently consider this in the asylum procedure.

In 2008, the HHC continued to provide legal representation to asylum seekers who were charged with using forged public documents.

- Iraqi asylum seekers (who were later recognized as refugees) who were provided with defense counsel by the HHC were found guilty by the XVIII and XIX district courts in Budapest, which ordered their probation on account of the forgery of official documents and other criminal offences. The second instance court (the Metropolitan Court) acquitted the principal defendant with regard to the application of Article 31 of the 1951 Geneva Convention, as a ground for exemption from culpability.¹⁴

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

14 Please see *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, page 33. Metropolitan Court, judgement no. 28.Bf.XVIII.6559/2008/17.

The appellate court accepted the arguments of the HHC's attorney that the conditions for applying Article 31 of the 1951 Geneva Convention have been met in the principal defendant's case. The second instance court found that by explaining in detail during his first interrogation his reasons for fleeing his country of origin and by not having the intention to hide from the authorities, the Iraqi citizen fulfilled the condition set out in Article 31 that requires the applicant to present him/herself without delay to the authorities. In contrast to the position taken by the first instance court, the second instance court also established that the asylum seekers would not have been granted adequate protection in Turkey, as Turkey applies a geographical limitation to the 1951 Geneva Convention and only offers protection to asylum seekers from Europe. It should be noted that although the OIN also informed the first instance court that Turkey maintains an ambiguous position towards asylum issues, this court failed to appropriately assess the refugee situation in Turkey.

In April 2008, the UNHCR sent a request to the Prosecutor General about the interpretation and application of Article 31 of the 1951 Geneva Convention. In his reply dated 18 June 2008, the head of the Department for Supervising Investigations and Preparing Charges at the Office of the Prosecutor General explained that beyond the suspension of the criminal procedure, he would only see grounds to establish exemption from culpability (Criminal Code Section 22 (i)) if the criteria laid down in Article 31 were completely fulfilled and the asylum seekers were later recognized as refugees by the asylum authority or the court. Hence, according to the interpretation of the Office of the Prosecutor General, Article 31 may not be applied in the case of foreigners who later receive authorization to stay (non-refoulement status), as they are not covered by the scope of the 1951 Geneva Convention.

The Working Group also agreed to continue discussions on the immigration, criminal and asylum law aspects of Article 31 of the 1951 Geneva Convention at the international conference of the Hungarian Society of Law Enforcement Studies and the Hungarian Society of Defense Studies that was held in Pécs in June 2009. Members of the Working Group gave presentations at the session on alien policing matters on the functioning of the Tripartite Agreement, practical experience, and the results of the border monitoring program as well as international feedback.

The number of foreigners who sought assistance from the HHC with regards to criminal cases related to Article 31 of the Geneva Conventional increased signifi-

cantly in 2009, which was a substantial change from previous years. These foreigners were placed in pre-trial detention on the basis of a well-founded suspicion of having used false public documents before they had submitted their asylum applications.

In 2009, 17 foreigners sought the HHC's assistance in such cases. The HHC's lawyers acted as defense counsel in 13 cases, and 16 cases involved representation in the asylum procedure (altogether 6 Afghans, 9 Somalis and one person from Sri Lanka were represented by the HHC). Although the courts did not prolong the pre-trial detention in every case, the 17 clients (with the exception of three Somali unaccompanied minor girls and one boy) were detained in pre-trial detention for 5–6 months on average.

- An HHC lawyer acted as defense counsel for an Afghan family of 6 persons who had been intercepted at the airport on 24 December 2008, having used forged travel documents. The parents and the father's 15-year old brother were placed under short-term (72 hour) arrest, then in pre-trial detention; the children (aged 2, 4, 6 years) were taken into custody by the Metropolitan Child Care Service in the 8th district in Budapest.¹⁵ The eldest daughter had serious muscle atrophy in the legs that had to be treated in Heim Pál (Children's) Hospital on several occasions. The father's handwritten asylum application covering all family members dated 31 December 2008 did not arrive at the OIN until February 2009, only after they had signed the power of attorney for the HHC's lawyer. The parents were only able to meet their children once a month in accordance with the general rules applying to pre-trial detainees. Although the defense counsel submitted several motions to request the termination of the clients' pre-trial detention, the court repeatedly rejected these, arguing that the Afghans would escape from the authorities if they were released. The 15-year old brother (who had been detained amongst adults for 4 months despite his age) was finally released from pre-trial detention on 24 April 2009 and the criminal procedure was also terminated in his case, with the prosecutor's reprehension order, on the very same day. By the time the parents were released to the OIN's reception centre in Békéscsaba on 22 June 2009, the young brother had already disappeared from the shelter for unaccompanied minors in Bicske. Due to the fact that

¹⁵ The case was published in a report by the weekly Magyar Narancs on 14 May 2009. It is available in Hungarian here: <http://mancs.hu/index.php?gcPage=/public/hirek/hir.php&cid=18973>

the eldest daughter did not receive proper medical treatment in the reception centre, her physical conditions worsened significantly. The family absconded from Békéscsaba on 28 July 2009. The parents were found guilty and sentenced to pay a fine in their absence.

- In the case of another Afghan family, the HHC's monitor at the airport witnessed a positive example of not ordering the pre-trial detention of the adult family members. On his visit to the airport on 19 May 2009, alien policing department staff informed the monitor that the criminal investigation department was just conducting the interrogation of an Afghan family who had been intercepted with forged travel documents when they had tried to transit at the airport. However, the Police did not initiate their pre-trial detention with special regard to their asylum application; instead, the family was transferred to Békéscsaba to the reception centre the same day. A further positive development emerged in the second half of 2009: the Police and the competent prosecutor's office seemed to have changed their practices regarding foreigners who were charged with the use of forged official documents, and the pre-trial detention of asylum seekers was initiated less frequently.
- According to the files consulted at the airport, in some cases during January and February 2009, the prospect of a criminal procedure, but mostly the pre-trial detention, significantly influenced foreigners' intentions to submit (or maintain) an asylum application. A person belonging to the Kurdish minority in Turkey had submitted an asylum application, but withdrew it after the criminal investigation department of the Police had interrogated him, because he was informed that he would be detained in a prison in Hungary. Later on he re-evaluated his situation and claimed asylum again despite the threat of pre-trial detention and imprisonment. The HHC is concerned that the practices of investigating authorities and the prosecutor's office gives asylum seekers the impression that they would be punished for seeking asylum.

The HHC initiated a meeting with the 18th and 19th district Prosecutor's Office in the spring of 2009, due to the increasing number of asylum seekers charged with having used forged official documents, and in order to discuss the application of Article 31 of the Geneva Convention and Section 274 (1) (b) of the Hungarian Criminal Code. Based on the agreement concluded at the meeting, which was even-

tually held on 11 May 2009, the HHC shared summary reports on the human rights situation in the seven most relevant countries of origin in the asylum procedures with the Prosecutor's Office in July 2009.

Asylum seekers charged with the use of forged official documents contacted the HHC in different phases of their criminal proceedings. In some cases, the HHC's monitor met the asylum seekers at the airport upon interception when the investigation was initiated, whereas in other cases (Somali, Afghan and Lebanese) asylum seekers who had already been held in pre-trial detention in the Budapest Remand Prison informed the HHC that due to communication difficulties, they could not claim asylum up until that moment.

Five of the HHC's 13 clients represented in the criminal proceedings were later recognized by the OIN as refugees, and two persons as beneficiaries of subsidiary protection. In these cases the HHC's lawyers submitted motions for applying Article 31 of the Geneva Convention in the pending criminal proceedings. It should be noted that the staff of the Airport Police Directorate were cooperative, and informed the monitor about criminal investigations initiated at the airport in all cases. At the same time, they underlined that criminal investigations are within the competence of the criminal department and not the alien policing department.

Despite the findings of the above-mentioned judgment (no. 28.Bf.XVIII.6559/2008/17) by the Metropolitan Court, jurisprudence remained incoherent in cases that raise the application of Article 31 of the Geneva Convention. Experience shows that in some cases, courts imposed fines on the asylum seekers or refugees, regardless of the fact that these persons do not have an income or assets. The first instance court also rejected the defense counsel's motion to suspend the procedure until the refugee status determination procedure finished in order to see whether Article 31 of the Geneva Convention would be applicable.

3.3 Improving Communication between the Police and Foreigners

Based on border monitoring visits paid to the Budapest Airport, the HHC's monitor reported on several occasions that police staff increasingly used the services of interpreters over the telephone in order to resolve communication difficulties with foreigners. Furthermore, the monitor at the Budapest Airport reported that in several cases foreigners under the return procedure had been given written information

about their rights and responsibilities in their native language, and that the police have started to use return decision forms in foreign languages.

- Police officers on duty used the help of an Arabic-speaking passenger during the submission of asylum claim by two Egyptian citizens on 2 January 2008.
- An Albanian citizen arrived from Tirana, Albania on 20 July 2008. The police ordered his return due to a SIS-hit (Schengen Information System). The person was given a decision and information sheet in Albanian.
- Turkish citizens who arrived on 25 March 2008 and 19 April 2009 received the decision in Turkish and an information leaflet in English.
- A Kosovar woman from Prishtina, Kosovo arrived in Budapest on 2 December 2008 and was given the decision on return in Albanian and an information leaflet in English.
- Proceeding police officers made use of phone interpretation on several occasions, for instance on 14 January 2009 when they interviewed an Iraqi asylum seeker.

The above cases confirm that communication difficulties may be resolved with a flexible and solution-oriented approach by the Police. The practice illustrated by the above examples may be considered as a positive development that facilitates the clear and comprehensive provision of information for foreigners. It also enables the third-country national to express his/her need for international protection. Furthermore, this allows the authorities to gather more precise information about foreigners subjected to alien policing procedures.

However, there were still some cases where Afghan and Iraqi citizens only received the decision and an information leaflet in English. The HHC is of the opinion that official documents written in a language that the foreigner concerned hardly understands are insufficient to fully inform these persons about their legal situation and of the available remedies.

- An Egyptian woman was returned with her two children on 25 March 2008. She only received the information sheet and the decision in English.

The Egyptian woman spoke English. It can be established from her case file that she had received the decision on return in Arabic and the information leaflet in English.

- An Afghan family of seven, who were returned to Damascus, Syria on 21 July 2008, was also provided with an English information leaflet.

The return decision was communicated by an English speaking staff member of the Police, which was approved by the signature of the foreigners in question.

- An Iraqi citizen who arrived from Damascus on 24 July 2008 was provided with the information leaflet in English before being returned to Syria. The return decision was communicated in English by an interpreter and it was signed by the Iraqi national.
- On 5 March 2009 a woman and her child arriving from Prishtina, Kosovo who had unknown nationality received the information leaflet in Hungarian.

The Police are not obliged by law to hand over decisions and information leaflets in foreign languages, and these have to be communicated orally to the client in his/her native language or in another language he/she understands. The 2007 report criticized on several occasions the fact that foreigners under return procedures only received official documents in Hungarian. Consequently, based on the recommendation in section VII.2.3. of the report, instead of using Hungarian information materials, the Police introduced official information and sample documents in foreign languages and also communicated the decisions in the client's native language (in one case above) or in a language the person understands (in the examples above the information was provided in English).

3.4 Training Sessions

According to the plans and recommendations¹⁶ of the 2007 report on border monitoring activities, training sessions for police officers working in the alien policing field were held in 2008 and 2009.

In the framework of the 2008 project, altogether 70 members of the Police personnel participated in intercultural and human rights training sessions, which were organized by the HHC and funded by the UNHCR. The trainings took place in:

¹⁶ Please see *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, page 54, Section VII.2.4.

- Ferihegy Airport on 18 March and 10 April 2008,
- Kiskunhalas on 30 May 2008,
- Nyírbátor on 30 June 2008.

The Police and the HHC jointly organized these training sessions in full cooperation.

The training agenda was elaborated by the HHC, taking into account the needs expressed by the Police. Participants acquired knowledge on essential basic questions of refugee law, the terminology of the Hungarian refugee status determination procedure, the role of country of origin information, intercultural communication skills and practical knowledge that facilitates more effective identification of potential asylum seekers, in particular:

- basic principles of international refugee law (refugee definition, five grounds set out in the Geneva Convention, principle of *non-refoulement*, statelessness determination etc.);
- access to territory and the most important principles of the asylum procedure;
- practical issues related to recognizing foreigners' intention to submit an asylum application;
- distinction between the notions of refugee status, subsidiary protection and tolerated status;
- intercultural sensitization: religious customs, clothing, and the use of first and second names.

Training sessions on psychological sensitization were organized on four occasions in the framework of the 2009 project (13 May 2009 and 3, 4, 8 June 2009), and a total number of 80 police officers that work in the border control field took part in them. The training sessions were held by the HHC's trainer colleague and with the representatives of the Cordelia Foundation for the Rehabilitation of Torture Victims and were supported by the UNHCR. Police officers having different roles at various border sections concerned by the project participated in mixed groups at the training sessions, which were held in Budapest at a venue provided by the Police.

The experiences of the training confirmed previous findings: police staff welcomed the consultation opportunities with psychologists, during which they shared

the difficulties of their job, the challenges, and thereby their level of frustration, which had accumulated due to the negative experiences encountered during their work, somewhat decreased.

Based on the positive experiences of the 2009 training sessions, the HHC plans to organize, together with the Cordelia Foundation, supervisory activities as part of the 2010 border monitoring program, which would be conducted by a psychiatrist and psychotherapist in smaller groups, once a month.

4. Recommendations and Next Steps

In February 2009, at the press conference on the report summarizing the experiences of the first year of border monitoring, the members of the Tripartite Agreement reinforced in a common statement their intention to continue cooperation in the border monitoring program and reaffirmed their commitment towards the international protection of refugees.¹⁷

Similarly to the process leading up to the 2007 report, the Tripartite Working Group jointly formulated its recommendations and future plans based on the experiences of the program's second and third year.

4.1 Interview in the so-called Simple Cases

UNHCR and the HHC continue to strongly recommend that, in order to ensure that not even one person in need of international protection is returned unlawfully; **during the alien policing procedure the Police should be obliged to interview all foreigners who belong to a vulnerable group (including citizenship as a vulnerability factor)**. A longer personal interview would be important to establish the facts of a case, particularly in the case of persons with special needs such as single women, unaccompanied minors, elderly and sick people, traumatised persons, and families with small children. Since the Police are not obliged by law to hold an interview in the so-called simple alien policing cases, currently it is up to the

17 <http://www.police.hu/sajto/sajtoszoba/090211harmasemu.html?query=helsinki%20bizotts%C3%A1g>

professionalism and personal conviction of the police officer on duty as to what information may be gathered from the foreigner.

In order to implement recommendation No. 10 of the 2007 report¹⁸ summarizing the experiences of the first year of border monitoring, the Cooperating Parties shall take concrete steps to ensure that the Tripartite Working Group visits an international airport where air passenger traffic and the number of asylum seekers is high in order to learn about good practices regarding personal interviews.

4.2 Assessment of the Principle of Non-refoulement in Practice

In the interest of transparency in the application of the law, the HHC and UNHCR recommend that the Tripartite Working Group should initiate a discussion with the Office of Immigration and Nationality (OIN) regarding the **practise of ensuring respect for the principle of non-refoulement**. The **police practice** (see section 3.1.) preceding the return order may be particularly problematic in cases of potential asylum seekers whose nationality and special vulnerability (see section 4.1.) would justify a consultation with the on-duty officer of the OIN about the destination country and whether the principle of non-refoulement would apply. Likewise, it would be advisable that the OIN provide the Police with more solid and detailed country information upon their request when deciding about the expulsion of other vulnerable persons, based on which information the Police could make a well-considered decision.

4.3 The Application of Article 31 of the 1951 Geneva Convention

With regard to the fact that while participating in the border monitoring project, HHC lawyers have also started to act as defense counsels for asylum-seekers charged with using forged official documents, based on the proposal put forward by the HHC, the Working Group would deem it useful to involve the Criminal Directorate of the National Police Headquarters in their work as necessary in order to exchange views and experiences on criminal procedures launched on account of the use of forged official documents by foreigners.

¹⁸ See *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, page 55, Section VII.2.10.

The HHC plans to raise and discuss this issue within the framework of an EU-funded project in 2010 by organizing a round-table discussion for all stakeholders involved in the above matter.

4.4 Resolving Legislative Problems

Developing a legislative background precisely defining the responsibilities of the Police is closely connected to the previous recommendation. As also mentioned among the recommendations¹⁹ of the 2007 report, in order **to resolve the legislative problems and gaps in the law** that have become evident during the project's implementation, the Tripartite Working Group will summarize in a common document its observations and recommendations and will initiate consultations with the Ministry of Justice and Law Enforcement²⁰.

4.5 Foreign Language and Cultural Training Sessions

The Tripartite Working Group welcomes the continuation of the **training series on basic human rights principles and sensitisation of border policing staff** that builds on the positive experiences of the previous years. The Working Group considers it important that the parties continue to offer mutual assistance to each other in organizing and executing these training sessions.

The members of the Tripartite Working Group also welcome that the **training sessions** organized by the UNHCR and the HHC continued in 2009, and that in the framework of these sessions 80 staff members had the opportunity to attend psychological, human rights and intercultural trainings.

Complementing the training sessions sponsored by the UNHCR, the training sessions organised by the HHC were expanded in the framework of a project supported by the European Return Fund. At the training for mid-level police managers, 26 participants discussed the human rights aspects of the principle of non-refoulement. When planning the activities for 2009, the parties agreed that during the training of mid-level police managers, the general human rights situation of neigh-

19 See *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, page 55, Section VII.2.8.

20 As of 29 May 2010 Ministry of Interior

bouring countries relevant from the point of view of illegal migration and the latest country of origin information reports will be presented as well.

In 2009, the Tripartite Working Group initiated discussions with staff of the border policing team at the Police College, who are involved in teaching subjects relevant to the Tripartite Agreement, regarding the possible extension of the alien policing and refugee law curriculum with material based on the experiences of the border monitoring project from 2010.

5. List of Monitoring Visits

Airport Police Directorate / Budapest International Airport:

21 February 2008
13 March 2008
28 March 2008
15 April 2008
29 April 2008
14 May 2008
28 May 2008
18 June 2008
30 June 2008
25 July 2008
18 August 2008
29 September 2008
19 September 2008
29 September 2008
17 October 2008
31 October 2008
21 November 2008
5 December 2008
18 December 2008

13 January 2009
12 February 2009
25 February 2009
16 March 2009

25 March 2009

14 April 2009

30 April 2009

19 May 2009

29 May 2009

19 June 2009

30 June 2009

23 July 2009

31 July 2009

6 August 2009

19 August 2009

31 August 2009

23 August 2009

30 October 2009

17 November 2009

30 November 2009

17 December 2009

Ukrainian–Hungarian border section:

27 May 2008—introductory visit by dr. Dobos József at the Beregsurány, Barabás and Záhony Border Guard Field Office

27 June 2008—Kölcse, Nyírbátor—file consultation

4 July 2008—Nyírbátor—file consultation, Beregsurány, Barabás

12 August 2008—Záhony

13 August 2008—Kölcse, Nyírbátor—file consultation

23 September 2008—Beregsurány, Barabás

24 October 2008—Kölcse

12 November 2008—Nyírbátor—file consultation

13 November 2008—Barabás

26 November 2008—Beregsurány, Nyírbátor—file consultation

5 December 2008—Záhony

10 December 2008—Nyírbátor—file consultation

29 December 2008—Nyírbátor—file consultation

16 January 2009—Kölcse

28 January 2009—Nyírbátor—file consultation

12 February 2009—Barabás

25 February 2009—Nyírbátor—file consultation

20 March 2009—Záhony

25 March 2009—Nyírbátor—file consultation

22 April 2009—Kölcse

6 March 2009—Nyírbátor—file consultation

27 May 2009—Nyírbátor—file consultation

28 May 2009—Beregsurány

17 June 2009—Beregsurány

29 June 2009—Nyírbátor—file consultation

13 July 2009—Beregsurány

26 July 2009—Nyírbátor—file consultation

4 August 2009—Nyírbátor—file consultation

26 August 2009—Kölcse

23 September 2009—Záhony

30 September 2009—Nyírbátor—file consultation

15 October 2009—Barabás

28 October 2009—Nyírbátor—file consultation

19 November 2009—Kölcse

27 November 2009—Nyírbátor—file consultation

16 December 2009—Beregsurány

Serbian–Hungarian border section:

- 16 April 2009—Csongrád County Police Department—Alien Policing Department (Szeged)—file consultation
- 17 April 2009—Bács–Kiskun County Police Dept.—introductory visit by dr. Bárkányi Gábor
- 21 April 2009—Szeged, Rösztke, Tiszasziget
- 23 April 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation, Tompa, Kelebia
- 24 April 2009—Bácsalmás, Bácsbokod, Hercegszántó
- 12 May 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 22 May 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation, Szeged, Rösztke, Tiszasziget
- 29 May 2009—Bácsalmás, Bácsbokod, Hercegszántó, Tompa, Kelebia
- 15 June 2009—Szeged, Rösztke, Tiszasziget
- 17 June 2009—Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 24 June 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation
- 25 June 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 21 July 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation, Szeged, Rösztke,
- 22 July 2009—Bácsalmás, Bácsbokod, Hercegszántó, Tompa, Kelebia
- 23 July 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 24 August 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation, Szeged, Rösztke, Tiszasziget
- 25 August 2009—Bácsalmás, Bácsbokod, Hercegszántó, Kelebia
- 26 August 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation

- 24 September 2009—Szeged, Rösztke, Tiszasziget, Mórahalom, Kelebia, Tompa, Bácsalmás, Hercegszántó
- 25 September 2009—Bácsbokod
- 28 September 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation
- 29 September 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 26 October 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation, Szeged, Rösztke, Tiszasziget
- 27 October 2009—Mórahalom, Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 28 October 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 25 November 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation, Szeged
- 26 November 2009—Tiszasziget, Rösztke, Mórahalom, Bácsalmás, Bácsbokod, Hercegszántó
- 27 November 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation
- 21 December 2009—Csongrád County Police Dept.—Alien Policing Department (Szeged)—file consultation
- 22 December 2009—Szeged, Rösztke, Mórahalom, Tiszasziget, Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 23 December 2009—Bács–Kiskun County Police Dept.—Alien Policing Department (Kiskunhalas)—file consultation

6. Asylum Applications on the Monitored Border Sections in 2008-2009²¹

2008	Asylum claims				Total
	Bács-Kiskun County Police Department	Csongrád County Police Department	Szabolcs County Police Department	Airport Police Directorate	
January	3	2	52	37	94
February	8	18	127	8	161
March	16	0	33	10	59
April	9	7	50	25	91
May	5	14	33	9	61
June	22	7	13	8	50
July	16	2	25	6	49
August	26	11	38	3	78
September	110	22	31	6	169
October	112	51	54	2	219
November	107	37	57	4	205
December	69	64	42	2	177
Total	503	235	555	120	1 413

²¹ Source: Police

2009	Asylum claims				Total
	Bács-Kiskun County Police Department	Csongrád County Police Department	Szabolcs County Police Department	Airport Police Directorate	
January	81	28	19	8	136
February	129	58	13	2	202
March	111	55	4	2	172
April	42	46	9	5	102
May	57	41	19	8	125
June	67	47	8	8	130
July	186	32	7	1	226
August	114	58	15	5	192
September	105	76	19	15	215
October	157	91	23	1	272
November	61	51	5	7	124
December	14	55	11	7	87
Total	1 124	638	152	69	1 983

