
INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS

HONORARY CHAIRMAN
Yuri Orlov

EXECUTIVE DIRECTOR
Aaron Rhodes

DEPUTY EXECUTIVE DIRECTOR
Brigitte Dufour

ADVISORY BOARD (CHAIR)
Karl von Schwarzenberg

EXECUTIVE COMMITTEE
Holly Cartner
Björn Engesland
Krassimir Kanev
Vasilika Hysi
Ferenc Köszeg

PRESIDENT
Ulrich Fischer

VICE PRESIDENT
Srdjan Dizdarevic

TREASURER
Stein-Ivar Aarsæther

Wickenburggasse 14/7, A-1080 Vienna, Austria; Tel +43-1-408 88 22; Fax 408 88 22-50
e-mail: office@ihf-hr.org – internet: <http://www.ihf-hr.org>
Bank account: Bank Austria Creditanstalt 0221-00283/00, BLZ 12 000

Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Hungary¹

IHF FOCUS: freedom of assembly; ill-treatment and police misconduct; racism, intolerance and xenophobia; rights of homosexuals; citizenship; asylum seekers, refugees and immigrants.

Human rights concerns in Hungary in 2004 included the inconsistent enforcement of regulations regarding freedom of assembly, freedom of speech, and hate speech laws. Police conduct, consisting of treatment that resulted in death in two separate cases, was another major concern of the Hungarian Helsinki Committee (HHC).

In the area of non-discrimination, progress was made with the adoption of the Equal Treatment Act, which transposed the EU Racial Equality Directive into national law. However, further work is still needed to ensure effective enforcement of the adopted Equal Treatment Act.

The number of asylum seekers who registered in Hungary decreased significantly in 2004, mainly due to a shift in migratory routes, which were caused by the strict Hungarian detention policy, the use of readmission agreements with neighbouring countries and strengthened border control.

Hungarian legislation on asylum seekers and other foreigners underwent major changes. The 2004 amendments also provided an opportunity for some foreigners who had arrived in Hungary illegally to regularize their status.

Freedom of Assembly

Hate speech cannot be effectively persecuted or punished in Hungary unless it advocates violent acts (see the section on hate speech below). As a result, it is impossible to dissolve public assemblies or prevent them from taking place if the speakers use or are expected to use hate speech.

This legal situation led to several *contra legem* decisions by the police in 2004. According to the Law on the Right of Assembly,² an assembly must be reported to the police in advance, but the police may not examine its purpose or intention. An assembly can be banned only if it severely disturbs the work of legislative bodies, that of the courts, or if it disproportionately blocks traffic.

Taking advantage of the lack of clear legal rules, the police, backed by some court decisions, in some cases curbed freedom of speech and freedom of assembly by banning or dispersing peaceful

¹ Hungarian Helsinki Committee

² Act III of 1989 on the right of assembly.

demonstrations. Doing this the police continued the practice they had introduced in 2002 after some right-wing groups had demonstrated against the Socialist-Liberal coalition that had won the general elections in April 2002.

The Hungarian Civil Liberties Union, a liberal human rights organization, protested many times against the unlawful banning of extreme right demonstrations. For the same reason, a lawyer of the HHC took on the representation of Diána Bácsfi, leader of the extreme right group Hungarian Future, in a disciplinary procedure, as the Loránd Eötvös University of Sciences wanted to expel her from the Faculty of Arts (see below).

- A demonstration in front of the residence of Prime Minister Péter Medgyessy on 2 December 2003 was announced by the group *Lelkiismeret (Conscience) 88* (“H” is the eighth letter in the German alphabet, and 88 means "Heil Hitler" in the neo-Nazi language). The police denied registration of the assembly, as they said it would have disproportionately disturbed the traffic. Although this argumentation was evidently unfounded, the court did not object to the police decision. As some members of the group still gathered in front of the residence, the police arrested Imre Kocsis, the leader of the group. While in this case the police made a political decision, the public prosecutor failed to examine the group’s activities, even though they had regularly disturbed other demonstrations and called on their supporters to throw eggs and tomatoes at people who demonstrated for gay rights or for the liberalization of light drugs.
- The police failed to ban a demonstration organized by neo-Nazi organization “Blood and Honour” on 15 February, but they did ban a solidarity demonstration of Association for Tibet and an anti-war rally by the group called *Civilians for Peace*.
- On 25 May, police banned a demonstration of small investors who had lost money due the fraudulent maneuvers of a corporation. In this case, the police again referred to the clause of “disproportionate hindrance of traffic,” although by 1 May this wording of the Law on Assembly was no longer part of the legal regulation. According to the amended law,³ an assembly can only be prohibited if it blocks traffic, and if transportation cannot be secured in any other reasonable way. The same clause, still technically out of force, was the reason for banning another two demonstrations on 4 October and 21 November.
- A tiny extreme right group called *Hungarian Future* provoked a stormy debate, as its leader Diána Bácsfi, a university student, wanted to organize a demonstration commemorating the *coup d’état* executed by the pro-German Arrow-Cross Party on 15 October 1944. The police first did not object to the rally, but six days before the announced demonstration they arrested Bácsfi, citing the use of totalitarian symbols (the law forbids the public use of swastika, arrow-cross as well as the five-pointed red star and the hammer and sickle).⁴ As this crime cannot be punished by imprisonment, a petty offense procedure was started against Bácsfi in order to prevent her to participate in the rally. She was sentenced to ten days’ confinement because of a breach of peace. As a result, the demonstration was cancelled.

III-Treatment and Police Misconduct

Police ill-treatment remained a problematic issue in Hungary. These offenses rarely led to indictment, which did not encourage victims to report such events.

- On 29 June, the criminal procedure against a police officer who was charged with ill-treatment in June 2000, ended, and the defendant was relieved of all accusations. The decision was final and binding. The case at issue dates back to June 2000, when a police officer arrested a

³ Article 8(1) of Act III from 1989.

⁴ Article 269/B para (1) of the Penal Code.

drunken man who was pushing his bicycle in the middle of the night, unable to ride it. A civil guard had called the police thinking that the bicycle was stolen. The police officer ordered the man to identify himself and to verify that the bicycle was his. They started to argue, after which the guard and the police officer handcuffed the man and took him to the police station. Upon their arrival, the suspect was pulled out of the car by his legs, causing his trousers to slip off his body. He was then ordered to put them back on even though he was still handcuffed. The man protested against the cruel treatment, and the police reacted violently and started kicking and beating him. As a result, the man suffered serious injuries all over his body and his thumb was broken. According to the forensic medical expert, he will never be able to use it again. The man filed a report, but the investigation was refused on grounds that no crime had been committed. His appeal against this decision was dismissed as well. Finally, the HHC turned to the chief prosecutor's office, which ordered the county prosecutor's office to carry out an investigation in the controversial case. The first instance decision was negative, but as a result of the second instance, the policeman was charged with ill-treatment.⁵

- A 60-year-old American man, who gave free English lessons and organized free sport events for children in a Hungarian village, was arrested because of rumors that he was "gay" and a "pedophile." Criminal proceedings against him were initiated, and he was taken into pre-trial detention. While in custody, he made several complaints concerning the poor conditions of the detention and wrote letters to different authorities invoking his human rights. The police, citing his "troublesome" behavior, took him to another penitentiary, where he was seriously ill-treated by fellow inmates who knew with what he was charged and who spread a rumor that he was an informer. He filed a complaint, but the prosecutor's office entrusted only the head of the prison to examine the complaint. As a result, the man then had to endure even more hostile attitude from the prison guards and the other inmates. Finally, he was set free pending the final decision in his case.⁶

In 2004, there were two cases of police conduct, which resulted in death.

- On 25 July in the town of Kecskemét, a 19-year-old Roma man had left the juvenile prison without authorization but he was chased and caught by three policemen. According to information from witnesses, including the man's older brother, the policemen immediately started kicking and beating him and threw him to the ground. One official knelt on the man's back to press his face into the sand. The man begged the policeman to stop, but the officer continued, and the man eventually died. The police officers then called an ambulance and tried to revive the man. According to the report of the state forensic medical expert who carried out an autopsy, the man's death was due to stress caused by his capture and a chronic heart disease from which he had suffered. The family claimed, however, that the victim had never had any heart problems. Independent experts were not allowed to examine the body. According to a witness assigned by the state (who was also present at the autopsy),⁷ the man's coffin contained several kilos of sand, he had bruises on his eye, sand in his throat, and he also had about two deciliters of water in his brain. The head of the police department suspended the policeman but withdrew his decision after seeing the forensic report. The public prosecutor's office also launched a criminal procedure for manslaughter, but the policeman was acquitted based on the forensic statement.⁸
- The second case involved a Bulgarian man who was sentenced to five months imprisonment and expelled from Hungary after he had harassed staff and tried to get into the cockpit of an 11 June Malév flight from Amsterdam to Budapest. The man claimed that he had been going

⁵ Case description provided by János Somogyi, attorney at law, HHC.

⁶ Case description provided by János Somogyi, attorney at law, HHC.

⁷ A person appointed by the investigating authority to officially verify the events and the result of the procedure at which he/she was present.

⁸ Case description provided by Roma Press Centre (Roma Sajtóközpont).

through drug withdrawal and was scared on the plane. While in custody before the trial, he had banged his head against a wall so violently that a doctor had to be called. On the way back from the court to the detention center, he freed his hands from the handcuffs and attacked the accompanying policemen. The police car stopped, and the two officers wrestled him to the ground. Street cameras recorded the entire scene, in which it was clearly visible that more and more policemen gathered around the man. Two ambulances were also on the scene; the man died shortly after he was taken into one of them. According to the first forensic report, his death was caused by asphyxiation. The public prosecutor's office ordered a new investigation, and only months after the incident it charged the two policemen who suffocated the Bulgarian man with manslaughter. The office, citing investigation interests, refused to provide details about witnesses' statements. The refusal to give access to those statements suggested that the policemen's conduct was not in line with police regulations.

Racism, Intolerance and Xenophobia

Legal Amendments

The end of January 2004 saw the adoption of the Equal Treatment Act,⁹ which more or less correctly transposed the EU Racial Equality Directive¹⁰ into national law, providing an addition for *actio popularis*. The Equal Treatment Authority that was envisaged to enforce much of the equal treatment provisions was established on 1 January 2005. However, the authority is seriously underfunded, which may hinder the act's effective implementation, and leave it to courts to provide protection from discrimination.

School Segregation

School desegregation programs were under way, but major changes in trends were not reported. Roma were still over-represented in schools for the mentally disabled and among private students absolved from attending school. Many attend classes in normal schools where the majority of their peers were also Roma.

In one case in the town of Tiszatarján, children of different ages had been completely segregated from their peers into an unlawfully established class teaching lower curriculum. In a legal case, in which civil damages were sought for ten children with learning difficulties, all from impoverished social background, five of them being Roma, the courts found that such education can lead to moral damages, manifested in the failure to treat learning difficulties, hindrance of mental and psychological development, and stigmatization, mocking and segregation.

Rights of Homosexuals

Also in January, a new regulation was introduced by a governmental decree, which allowed married couples of the same sex to request widowhood pension under the same conditions and terms as couples of different sexes. After this amendment, a court decision, based on this article, awarded money to a homosexual man.¹¹

Some cases concerning discrimination against sexual minorities were taken to Hungarian courts.

⁹ Act CXXXV of 2003 on equal treatment and the promotion of equal opportunities.

¹⁰ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L 180/22.

¹¹ Case provided by Háttér Társaság a Melegekért, Dr. József Kárpáti, attorney at law. Case number: Fővárosi Munkaügyi Bíróság 30 M 623/2004/6.

- Based on the provisions of the new Equal Treatment Act, the first *actio popularis* (a legal action taken in the public interest) civil trial was launched by the Háttér Support Society for LGBT People (*Háttér Társaság a melegekért*) against Károli Gáspár Reformed University. The reason for suing the university was that it stated on its website that homosexuals or people popularizing homosexuality are “persona non grata” in the education of religion teachers and ministers. The Capital Court of Appeals declared in its final decision of 19 December 2004 that an *actio popularis* trial can be initiated in such an abstract case. However, at the same time, ecclesiastical autonomy entails the right of a university financed by the church to religious-based discrimination.¹²

According to the HHC, the verdict reached in the *Háttér v. Károli* case causes a serious anomaly and could establish a dangerous precedent for further similar cases.

In 2004, Hungarian parliament amended section 269 of the Penal Code on “incitement against community.” The amended law ordered to punish those who publicly offend human dignity by defaming or humiliating others because of their nationality, race, or religion. However, the amendment never came into effect as the Constitutional Court annulled the regulation on 25 May 2004, arguing that such a law would mean a disproportionate restriction of freedom of speech.¹³

The attempt to amend article 269 of the Penal Code was prompted by the acquittal by the Budapest Court of Appeal of Hegedűs Lóránt Jr., a Calvinist pastor and former member of parliament who is a member of the extreme right Hungarian Justice and Life Party (MIÉP), in November 2003. A lower court had sentenced Lóránt to 18 months imprisonment suspended for three years for delivering hate speech after he published an article inciting hatred against the Jewish community.¹⁴ The appeal court argued that inciting hatred does not exceed the limits of freedom of expression unless the incitement calls to violent actions or violence factually endangers the rights of others and as a result violent actions are directly threatening.¹⁵

Citizenship

On 5 December, Hungary held a controversial two-question referendum on whether to grant dual citizenship to ethnic Hungarians living abroad and whether the government should halt the privatization of the country's health facilities. The referendum failed since the turnout reached only 37.5%, and neither of the two questions was answered by the required minimum of eligible citizens. At least 25% of all registered voters would have had to vote one way or another for the referendum to be valid.

¹² Case provided by Háttér Társaság a Melegekért, Dr. József Kárpáti, attorney at law. Case number: Fővárosi Ítéltábla: 2Pf. 21318/2004/3.

¹³ See Constitutional Court Decision No. 18/2004. Before the draft law was submitted to parliament, the Ministry of Justice asked for the opinion of human rights organizations. HHC in its analysis stated that the proposed law might lead to severe restrictions of freedom of expression. But contrary to several liberal writers such as Aryeh Neier in US (author of the book *Defending my Enemies*) or János Kis (professor of political science at the Central European University), HHC presented the opinion that as individuals can initiate a criminal procedure against perpetrators for slander or defamation, communities should have the same rights if slander is not directed against a certain person but against members of a community because of their ethnic origin, religious conviction or sexual orientation. In such cases the criminal procedure should not be initiated by the state and represented by the public prosecutor but by any individual who identifies him/herself with the community the dignity of which was violated.

¹⁴ See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003, (Events of 2002)*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.

¹⁵ See <http://www.itelotabla.hu/hatarozat.html>.

The referendum on the citizenship issue was initiated by the World Federation of Hungarians, while the petition on the privatization issue was presented by the communist Workers' Party. Of those who voted, 51.6% were supportive of granting dual citizenship while 48.5% voted against it.

The emotionally charged referendum, particularly on the dual citizenship issue, divided the country's citizens. The ruling Socialist Party claimed that the questions pushed Hungarians towards national populism and social demagoguery and encouraged people to vote against them. In addition, the party said that the citizenship issue had not been properly researched and, in the case of an influx of people into the country, the costs would be tremendous. The opposition party Fidesz-MPP claimed that supporting both questions would not trigger additional costs, while a negative vote would build a psychological wall between Hungarians inside and outside the country. Regarding the privatization of health care, Fidesz-MPP argued that private capital would further inflate health care costs.

Migrants, Asylum Seekers and Refugees

While Hungary experienced a sharp decrease in the number of asylum seekers arriving in the country, two neighboring countries in geographic situations similar to Hungary's, the Czech Republic and Slovakia, registered a significant increase in newcomers. Moreover, the composition of asylum seekers' country of origin changed significantly: the number of asylum seekers from Afghanistan or Iraq decreased dramatically, while the number of those arriving from Georgia, the former Yugoslavia, China, Moldova, Vietnam, Turkey, and also the number of Palestinians increased. Contrary to what was experienced previously in the region, the huge number of asylum seekers from the Russian Federation, especially from Chechnya, was almost non-existent in 2004.

In 2004, the number of asylum applications remained very low and followed the trend experienced in 2003. There were 1,362 new applications (1,600 persons) filed with the Office of Immigration and Nationality (OIN). The number of persons recognized as refugees was 149 (in 103 cases). In accordance with the Aliens Act, the *non-refoulement* provision was applied and as a result "person authorized to stay" (PAS, subsidiary form of protection) status was granted to 177 persons (in 148 cases).

The decline in the number of asylum applications in Hungary can be attributed to the fact that migration (and human smuggling) routes have shifted towards Slovakia, for a number of reasons. The first reason for this shift is the detention policy of the Hungarian authorities.¹⁶ A second reason is the use or misuse of the readmission agreements with neighboring countries.¹⁷ Third, the significant efforts of the Hungarian Border Guard to strengthen Hungary's future external EU borders both personnel-wise and financially have been successful. Lastly, the rather negligent attitude of the Slovak or Czech authorities made those countries appealing.

In a media interview shortly after Hungary's accession to the EU in May, the head of the OIN, Zsuzsanna Végh, declared an expected increase of asylum applicants in 2004 as a result of the application of the Dublin II Regulation. Council Regulation (EC) No. 343/2003 established the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national. In practice, however, OIN reported between 1 May and 31 December 2004, that altogether 392 requests by other member states to take back/charge aliens were communicated to OIN's Dublin Unit, out of which in 303 cases the Hungarian party agreed to take back/charge the applicant and in 64 cases the request was rejected. As of the end of 2004, 25 cases were pending. In 71 cases the applicant was transferred to Hungary. Requests were

¹⁶ See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860.

¹⁷ See HCC, *Visit to three sections of the national border – Report of the Hungarian Helsinki Committee on the January 26-30, 2004 visits to the national border*, www.helsinki.hu.

made by Hungary in 23 cases, out of which a decision by other member states on responsibility for taking back/charge was communicated to Hungary in 11 cases.

In April 2004, in preparation for EU-accession, the Hungarian Parliament passed Act no. XXIX of 2004 “on the amendment, repeal of certain laws and determination of certain provisions relating to Hungary’s accession to the European Union.” The law was enacted on 1 May 2004. It *inter alia* contains substantial amendments to Act XXXIX of 2001 on the Entry and Stay of Foreigners (“the Aliens Act”) and to the Asylum Act no. CXXXIX of 1997 (“the Asylum Act”). Furthermore, the law provides an opportunity to regularize certain foreigners’ stays in Hungary.

Changes to the Asylum Procedure

The former four-stage asylum procedure was reduced to two phases. Formerly, it consisted of two administrative and two judicial phases. OIN is in charge of adjudicating asylum applications in the first instance, while the Metropolitan Court in Budapest has exclusive jurisdiction to review asylum cases. The court procedure has now become litigious, thus the court is obliged to hear each asylum applicant in person. The Metropolitan Court’s decision is final, with no further remedy against it possible.

The provision entitling the refugee authority to order the expulsion of a foreigner (who has been staying illegally in the country) in its decision on rejecting the asylum application or revoking refugee status was repealed. Now, the competence of the OIN is restricted to the right to initiate the expulsion procedure with the alien policing authorities once the negative decision on the asylum application becomes legally binding, i.e., if judicial review fails or is not requested by the applicant.

With a view to transpose community legislation, provisions concerning the granting, duration and termination of "temporary protection" were changed, while the right of the government to grant temporary protection status remained in the act. In addition, guided by the same obligation, the asylum seekers now have access to the labor market, according to the general rules applicable to foreigners one year from the submission of an asylum application. During the first year of the asylum procedure, asylum seekers may work only in the reception center. The amended Asylum Act provides recognized refugees the right to vote in the local government elections and local referenda. Prior to this amendment, recognized refugees did not have the right to vote at all.

The newly established OIN Dublin Unit is responsible for carrying out tasks related to the application of the Eurodac and Dublin II Regulations.¹⁸ Amendments to the Government Decree on Asylum Procedures¹⁹ have established the rules applicable to the "Dublin procedure" that precedes the refugee status determination procedure.

Changes to the Aliens Act

Contrary to the former provisions, the amendments no longer provide for administrative remedies against the expulsion order. However, judicial review of the expulsion order may be requested from the county court, which is now obliged to consider the request for review in a litigious procedure and to hold a hearing in the presence of the foreigner.

The deadline for seeking a legal remedy (judicial review) against the decision ordering alien policing detention has been reduced to five days after the date of ordering detention. Once detention is

¹⁸ Council Regulation (EC) 2725/2000 of 11 December 2000 concerning the establishment of Eurodac for comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third country national.

¹⁹ Government Decree No.172/2001 (IX.26.) On the Detailed Rules of Asylum Procedures and Documents of Temporarily Protected Persons.

extended by the court, automatic judicial review concerning the necessity of upholding detention must be carried out every 90 days. Otherwise, as a result of the amendments, there is no further possibility to appeal against a court decision ordering or prolonging detention.

The court is required to hold a hearing of the foreigner concerned, if he/she submits a request for judicial review of the decision ordering detention, or when the court considers the alien policing authority's motion to extend alien policing detention.

A detained foreigner who does not understand Hungarian and is not in a position to retain a legal representative shall be entitled to have an ad hoc case guardian (a type of *ex officio* appointed lawyer) appointed to his/her case by the court. Previously, no such form of mandatory representation for detained foreigners existed.

Unaccompanied minors are entitled to a "permit to stay for humanitarian reasons," even when the legal conditions of stay are not met.

In general, there is no legal remedy against the rejection of a visa application, either through public administration or through the court system. However, the right to judicial review of the decision rejecting an application for a residence visa (e.g. a visa issued with a view to family unification) has been introduced.

As a novelty, there is no need to obtain a residence visa for employment or for income-yielding purposes if the foreigner has been issued a residence visa or permission to stay for the purpose of ensuring family unity. However, only foreigners with a Hungarian citizen spouse will enjoy free access to the labor market, while others with other Hungarian citizen family members will not be eligible to work without a work permit.

Regularization of Illegal Migrants

The above mentioned law of April 2004 also provided an opportunity for foreigners who had arrived in Hungary prior to 1 May 2003 and did not meet the criteria for lawful stay to regularize their status in Hungary until 31 July 2004 (within 90 days from the date of entry into force). These foreigners were allowed to apply for a one-year long residence permit if they were able to verify their personal data and met at least one of the following conditions: (i) they have a spouse who is a Hungarian citizen or a non-Hungarian national lawfully resident in Hungary, or have a child who is a Hungarian, or (ii) are able to certify that they pursue income-generating activity in Hungary as an owner or executive officer of a company, or (iii) are able to handle their affairs in Hungarian, and their further stay in Hungary is justified by their cultural link to Hungary, or (iv) whose expulsion may not be enforced due to the *non-refoulement* provision.

Those granted a residence permit have the right to be issued a work permit regardless of the Hungarian labor market situation. In the case of foreigners detained in alien policing detention, detention had to be ended on the day the residence permit issued.

1,400 irregular foreigners submitted an application and 1,200 persons were issued the above residence permit.

Detention of Aliens

Although OIN's and the judiciary's implementation practice concerning aliens' detention remained unchanged,²⁰ due to the decrease in the number of asylum seekers, the number of those who were in

²⁰ For the detention of aliens, see the chapter on Hungary in IHF, *Human Right in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860.

detention throughout 2004 went down from 2003. Most of the detainees were Chinese, Bangladeshi, Indian, Ukrainian and Moldovan citizens.

- In June, a Turkish asylum seeker who had been detained in Szombathely APJ, was granted asylum. This was the first case in which an applicant who had been detained throughout the asylum procedure was finally recognized as a refugee. This happened as a result of a Network Lawyer's submission to the first instance OIN refugee authority.

Findings of the HHC's visit to Hungary's EU external borders in January 2004²¹ reaffirmed its prior concerns: the right of illegal foreigners seeking protection to have access to the asylum procedure was still not fully guaranteed at the border. The HHC found evidence of unlawful readmissions of asylum seekers and others of concern to third countries implemented by the border guard.²² The HHC approached the national border guard headquarters with a proposal aiming at jointly laying down the framework for an extended cooperation agreement²³ that would entitle the HHC to carry out border monitoring activities, including a provision of free legal counseling for aliens held in transit along the national borders. As of the end of 2004, there has been no result.

Recognized Refugees from Serbia and Montenegro

In September 2004, Minister of Interior Mónica Lamperth, "exercising equitable treatment exceptionally, on humanitarian grounds," granted refugee status to an ethnic Hungarian family from the town Subotica, Vojvodina region, Serbia and Montenegro. According to the Hungarian Asylum Act, the minister is entitled to grant refugee status in the absence of reasons for exclusion, without the refugee status determination procedure of the OIN. The family claimed to have suffered constant harassment and persecution in Vojvodina because of their Hungarian ethnicity. A member of the family was beaten on two separate occasions, and later a message was painted on their house saying "Die, Hungarians." The recognition received much media attention, mainly due to the OIN's efforts.

The above case seems to be an exceptional and peculiar one in light of the fact that the OIN, in its 9 December 2004 decision, rejected the asylum application of an ethnic Hungarian applicant from Serbia and Montenegro and declared that the prohibition of expulsion (the *non-refoulement* provision of the Aliens Act) was not applicable in this case. The applicant alleged that apart from having faced regular harassment from the Serbs who fled to Vojvodina since the war in the former Yugoslavia, six Serbs attacked him and threatened his life. They were also allegedly verbally abusive in saying that "Hungarians are the worst," and that he could choose to have his neck cut later, when they would do it for all the Hungarians.

"Persons Authorized to Stay" from Vojvodina

The HHC turned to the OIN on behalf of a group of vulnerable ethnic Hungarians from the region of Vojvodina who escaped from a conflict in their region about 15 years ago. Since that time, they have been living in refugee camps and still do not meet legal requirements for immigrating to Hungary. Now that the conflict has ended, they are threatened with the prospect of expulsion from Hungary since their PAS status was granted on the basis of war and conflict in their home country.

In the past 15 years, while residing in Hungary, they have lost all of their connections and social relationships in Vojvodina. For this reason, their expulsion from Hungary would be unjust. The HHC

²¹ See HCC, *Visit to three sections of the national border – Report of the Hungarian Helsinki Committee on the January 26-30, 2004 visits to the national border*, www.helsinki.hu.

²² For details, see IHF, *Human Right in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002)*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.

²³ The "Cooperation Agreement" between the HHC and National Border Guard Headquarters on maintaining contact with foreigners accommodated in detention facilities of the Border Guard" has been effective since September 2002 and enables the HHC and its lawyers to access detention facilities in the country, but the scope excludes border guard transit areas.

asked the minister of interior to grant them residency permits on the basis of exceptional reasons as the minister is authorized to exercise equitable treatment, as stated in article 18-d of the Aliens Act.

The minister responded positively. The OIN was ordered to let those with PAS status know about this possibility and to inform them further about the circumstances under which they can apply for residency permits. Unfortunately, the persons with PAS status were not treated justly according to the law. They were given a deadline by which to submit their applications for residence permits under exceptional circumstances. This, however, is contrary to the law, under which such requests can be made at any time.

Based on the information from OIN, until November, 118 applicants had submitted their requests and they were still under official review. These requests were expected to be successfully granted. However, PAS status has been withdrawn from some of these persons. As a result, they will not be able to apply for residence permits out of equity or on the basis of exceptional reasons.

Family Reunification

The law-making activism in the last years has harmonized the Hungarian legal framework with the European norms, but only in principle. Despite the amendment in May 2004 of immigration rules that now provide for an automatic right to work for foreign spouses holding a visa or residence permit, foreigners' right to family life with their Hungarian or integrated foreign family members remained very limited in 2004. The level of maintenance and accommodation was tested before any such family member was allowed to enter the country. Family reunification to Hungarian children was prohibited. Additionally, parents of Hungarian children were not ensured an automatic right to work. Lastly, contrary to the case law of the European Court of Human Rights, illegal foreign spouses were not given visas and could be expelled.

In 2003, a same-sex couple, of Romanian nationality, applied for a residence permit at OIN. Hungarian law regarding aliens does not acknowledge common law spouses as relatives, therefore the OIN refused to accept the statement provided by the common law spouse as proper evidence for certifying that a family member living in Hungary can provide care and livelihood to the applicant.

In 2004, the couple went to court arguing that the authority interpreted the law in a discriminating manner because they should have accepted the supporting statement as enough evidence with regards to the principle of freedom of proof. The couple's opinion was that even though they are not married, the statement is proper evidence for proving that the livelihood of the common law spouse is ensured. The court annulled the OIN's decision not for its discriminative content but for having made a procedural mistake and ordered it to restart the procedure.²⁴

²⁴ The case was provided by Háttér Társaság a Melegekért, Dr. Kárpáti József, attorney at law. Number of case: Fővárosi Bíróság: 20 K. 31264/2004/4.