

Hungary¹

IHF FOCUS: judicial system and independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; prisons and detention facilities; national and ethnic minorities; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers, refugees and immigrants.

Progress was made in the field of anti-discrimination and access to justice. Parliament passed the long-awaited comprehensive anti-discrimination law in December, and a law reforming legal aid in non-trial civil cases was passed in October.

The European Court of Human Rights (ECtHR) passed its first judgment against Hungary where a violation of article 3 (prohibition of torture and inhuman and degrading treatment) of the European Convention on Human Rights (ECHR) was found.

Varied forms of discrimination against and social marginalization of the Roma continued. Many illegal migrants including asylum seekers, were detained, while authorities frequently granted subsidiary protection instead of full refugee status in accordance with the 1951 refugee convention.

Judicial System and Independence of the Judiciary

The new Code of Criminal Procedure entered into force on 1 July 2003 with several changes to the criminal procedure (see details in later sections). After six months of applying the new regulations, several critiques were formulated by practitioners. An amendment of the code was on the agenda of the Ministry of Justice at the year's end.

On 20 October, parliament passed a law on legal aid that substantially reformed state funded legal aid in civil matters. The law enters into force on 1 April 2004 and foresees setting up regional legal assistance bureaus, which provide legal information to clients and give grants to use legal aid service providers. Legal aid service providers (attorneys, notaries public, legal aid NGOs, university-based law clinics), following registration, will be able to receive state funds for providing legal advice, drafting legal documents and performing legal representation for indigent clients. The main positive feature of the law is that it creates a structured system for legal aid, which greatly increases transparency. A notable development was that the law will also extend legal aid to asylum seekers in asylum procedures (except for court procedures), who so far have been unable to access state funded legal aid. Furthermore, NGOs and legal clinics providing legal counselling services will also become eligible for reimbursement of related fees and expenses.

According to the law, persons whose asylum application is rejected by the competent authorities are not entitled to legal aid. However, with regard to the risk of torture, inhuman or degrading treatment they might face in their country of origin, they are protected on a humanitarian basis ("persons authorised to stay," PAS). Irregular migrants who have not applied for refugee status but cannot return to their country without being issued travel documents by the authorities of their country of origin are also not entitled to turn to legal aid service providers. These foreigners are detained in alien policing jails for a maximum of one year.²

In 2003 the operation of the judicial system and the police seemed to be affected by politics. According to the Constitution, the chief prosecutor is elected by parliament for six years, which guarantees the independence of the Prosecutors' Office from the government. The present chief

¹ Based on the report by the Hungarian Helsinki Committee to the IHF, *Human Rights in Hungary 2003*, February 2004.

² See also section on Asylum Seekers.

prosecutor, who at one time had been a candidate MP of the previous government (Fidesz – Hungarian Civic Party), was elected to the prosecutor's post during the Fidesz-led coalition government, and his political independence was doubted by many. After the 2002 elections, the new governing social-liberal coalition accused several businessmen of misuse of budgetary sources. The Prosecutors' Office terminated several criminal procedures launched by the police. In one case, the criminal procedure was terminated in the case of a man who had earlier sold several bankrupt companies to two foreigners, which allegedly belonged to the interest of the Fidesz. The aim of these fictitious transactions was to set the owners free from their considerable debts. After the new government's coming into power, the police arrested the head of a company administering budgetary sources with the charge of misuse of money. During her arrest, she was searched several times in a degrading manner. This treatment was considered by many as intentional harassment for political reasons.

On 26 June a right wing group held a demonstration against the planned closing of a hospital in Budapest. The police arrested the few demonstrators by using excessive force and accused them of breach of the peace. The court, however, acquitted and released the accused persons.

On 1 December the same group organized another demonstration where they wanted to march to the prime minister's residence. The police refused permission to hold the demonstration due to the disproportionate disturbance this would have had on traffic. The court concurred with the police, although the demonstration was planned in the evening hours when the traffic was not heavy in that particular part of the city. A non-governmental organization protested against the police decision and the president of the Hungarian Helsinki Committee (HHC) expressed his views on the unlawful police decision in a daily newspaper. These events undermined the confidence in the impartiality of the judicial system and the public administration.

Fair Trial and Detainees' Rights

The new Code of Criminal Procedure (CCP) brought no changes to the rights of persons under short-term arrest (which could last for eight hours and be prolonged to a further four hours in justified cases): they could inform their relatives or any other person of their whereabouts, but they were not entitled to contact a lawyer or receive visitors during their arrest. However, in practice the notification of the relatives was often problematic if their mobile phones were taken away upon arrest. Under the code, police are obliged to inform the relatives and the lawyer only in the case of ordering detention, which could last for 72 hours.³ Persons taken into 72-hour detention had to be released if the court did not order pre-trial detention within this time. Consequently, a person can be deprived of his/her liberty for 72 hours without a judicial decision.

The CCP lists the cases when lawyers are mandatory: if the defendant is in pre-trial detention; blind, deaf, dumb or mentally disabled; suspected of a crime which is punishable with imprisonment for more than five years or does not speak Hungarian⁴ and in the case of juvenile defendants.⁵

The new CCP provides that defendants have to be informed of their rights to retain a lawyer or request an ex officio lawyer at the beginning of the first interrogation.⁶ A positive change is that the lawyer for defendants in pre-trial detention has to be appointed prior to the first interrogation.⁷

³ Article 126(3) of the Code of Criminal Procedure (CCP) (Act XIX of 1998).

⁴ CCP, article 46.

⁵ CCP, article 450.

⁶ CCP, article 179 (3).

⁷ CCP, article 48 (1).

Torture, Ill-Treatment and Police Misconduct

The European Committee for the Prevention of Torture (CPT) paid an ad hoc visit to Hungary in June 2003. The purpose of the visit was to review the treatment of remand prisoners in police and prison establishments in Budapest. Particular attention was paid to the activities provided to remand prisoners, which was a major issue of concern to the CPT following the findings during the two previous visits to Hungary. The CPT delegation also met with the HHC in the course of its visit. The delegation carried out follow-up visits to the Police Central Holding Facility in Budapest and Budapest Remand Prison, and visited for the first time the 2nd and 4th District Police Stations of the capital. The summary report on the visit was not available at the time of writing.

On 16 December, the ECtHR found Hungary for the first time in violation of article 3 (prohibition of inhuman or degrading treatment) of the ECHR. In this case, *Kmetty v. Hungary*, the court found a violation on account of the failure to carry out an effective investigation into the applicant's allegations of ill-treatment.⁸ Mr. Kmetty was provided legal representation by a lawyer of the HHC.

The latency of police ill-treatment was difficult to estimate, but was – by all probability – very high. Tables from the unified police and prosecutorial statistics unit illustrated that still only 7–10% of the reports on the relevant criminal offenses (ill-treatment in official procedure, forced interrogation, unlawful detention) led to indictment, which did not encourage victims to come forward with complaints.⁹

Random Identity Checks by the Police

According to the law on the police,¹⁰ police officers were entitled to check anyone at any time and they could arrest persons who were unable to identify themselves with a photo ID. During the identity check, police officers were entitled to search the clothing of persons in order to seize objects that could be used to attack or which might prove that crimes or offences had been committed. The police have used this practice for decades: stopping and searching both motorists and pedestrians, especially Roma and non-white foreigners.

Many clubs visited by young people were targets of checks by the police searching for drugs. The police released only those persons who were able to identify themselves and possessed no drugs, but others were arrested and proceedings were launched against them. Several civil organizations protested against this practice in an open letter written to the minister of interior. The minister initiated an investigation into this issue. According to the police press release, the investigation proved that the practice was fully legitimate. They claimed that the police conducted 1.3 million identity checks in 2002 and only in 2,000 cases were complaints submitted against the measure with only 10% of such complaints being well-founded. The report did not clarify the reason for the police stopping and checking 13 % of the people living in Hungary, which was ten times greater than the number of perpetrators who become known.

Roma as Victims

There were a number of cases where policemen were found guilty of ill-treating Roma. In an interview given to a daily newspaper, the head of the National Police Headquarters' Department for

⁸ *Kmetty v. Hungary*, European Court of Human Rights judgment of 16 December 2003, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=309143715&Notice=0&Noticemode=&RelatedMode=0>.

⁹ *Egységes Rendőrségi és Ügyészégi Bűnügyi Statisztika (Unified Police and Prosecutorial Statistics)*, 2002.

¹⁰ Act XXXIV of 1994 on the Police.

Disciplinary and Supervisory Matters said that out of the 38 policemen sentenced for ill-treatment in 2001 that he knew, every second one was indicted for the ill-treatment of Roma victims.¹¹

- In 2002 two Nógrád County police officers were sentenced to effective imprisonment (two years four months and two years two months, respectively) for ill-treating a Roma family, gas-spraying and threatening them with guns.¹²
- The Tiszafüred Town Court (acting as a court of first instance) sentenced two policemen – along with three fisheries officials—to imprisonment (three years and three years two months, respectively) for ill-treating four Romani youths and chasing them into the River Tisza in the spring of 2001.¹³
- In February 2001 the Pest County Court sentenced the head of the Aszód police station and three other police officers to one year suspended imprisonment for forced interrogation.¹⁴

Prisons and Detention Facilities

Conditions in Police Jails

According to the Police Cell Monitoring Program of the HHC, conditions in police jails were diverse. There were some modern buildings with new equipment but in other places conditions were very bad. As regards the implementation of the rights of detainees, members of the monitoring groups found several serious problems during 2003. According to the decree of the minister of interior on the regulation of police jails¹⁵, detainees were entitled to speak on the telephone with family members if they had a telephone card and if there was a suitable telephone in the jail. Furthermore, it was compulsory to permit a personal meeting with relatives for at least 30 minutes per month. However, in some police jails police officers did not let detainees receive visitors if they had already spoken to the family members on the phone in that particular month. Members of the HHC drew the attention of the heads of these police headquarters to this problem and by the end of the year the practice had been eliminated.

Conditions in Prisons

Monitoring teams of the Prison Monitoring Program of the HHC paid approximately 20 visits to prisons during 2003 and found a number of serious problems. Most of these problems were due to the fact that prisons in Hungary were overcrowded (the estimated rate of overcrowding was 160 %). There were some cells consisting of two bunk beds for four persons with only 30 cm between them. The government had plans to support the building of new prison facilities from sources outside the governmental budget (e.g. through public-private partnerships).

Problems were also found in connection with maintaining relationships with the outside world: in some prisons, pre-trial detainees complained of the lack of physical contact with their family members (e.g. with their wife or children) during the visits, although the law restricted this right only in the case of dangerous or unpredictable detainees, or if the contact would jeopardise the success of the criminal procedure or the security of the detention facility. Several problems referred to in the IHF

¹¹ *Magyar Hírlap*, 6 November 2002.

http://www.magyarhirlap.hu/Archivum_cikk.php?cikk=58321&archiv=1&next=0.

¹² *Fehér füzet 2002. A Nemzeti és Etnikai Kisebbségi Jogvédő Iroda beszámolója*. (White Booklet 2002. Annual report of the Legal Defence Bureau for National and Ethnic Minorities) Másság Alapítvány, NEKI, Bp., 2002. pp. 72–76.

¹³ For further information, see <http://www.romacentrum.hu/aktualis/hirek/200211/rsk04.htm>.

¹⁴ *Ibid.*

¹⁵ Decree 19/1995 (XII.13.) of the Minister of Interior.

report *Human Rights in the OSCE Region, 2003*¹⁶ remained: a warm bath was only provided once a week in many prisons, physical exercise was granted only as a “reward” to inmates and those who were placed in the strictest (fourth) security regime were not permitted to use the gym at all. Inmates in the third and fourth security regimes were treated differently by the prison guards. Their rights were restricted but (contrary to the law) none of the restrictions were included in the daily regime of the prison, therefore prisoners were unaware of their rights and obligations.

Conditions in Alien Policing Jails

Conditions in alien policing jails were worse than general prison conditions but varied from place to place. Although law sets out the rules on implementing detention ordered in an alien policing procedure, detainees’ rights seemed to depend on the orders of the head of the respective Border Guard Directorate in charge of the alien policing jail. For instance, detainees in the alien policing jail in Nagykanizsa were locked in their bedrooms nearly all day, and cell doors were allegedly opened for only 15 minutes each hour during the day. In other detention facilities bedrooms were kept open, but the bars separating the detention facility from the rest of the building were kept locked.

In some alien policing jails, public payphones were placed outside the detention area and out of detainees’ reach, thus excessively limiting foreign detainees’ right to contact their family members.

Lack of foreign languages skills among jail guards and lack of permanently available interpretation hindered communication between guards, doctors/paramedics and detained foreigners.

Information on detainees’ rights and obligations and their legal situation in general was insufficient. Foreigners were frustrated by being deprived of their liberty for 12 months solely on the ground of having entered or stayed in the country illegally.¹⁷

With regard to vulnerable groups, detention was in general not applied in the case of separated children or family groups, although the HHC and the UNHCR Office in Hungary encountered a number of cases during their missions when unaccompanied minors were detained for several months, and in some cases married couples were detained in different quarters of the same detention facility.

In the detention facility in Kiskunhalas detainees complained of ill-treatment by the guards, and were aggrieved by the foul, humiliating and degrading language generally used by the guards. Foreigners felt that the guards looked down on them, black asylum seekers from Africa were said to be especially mistreated (they were on several occasions refused by the guards to hand in letters or to use the public phone) and some guards were reported to have regularly made xenophobic and racist comments.

Access to detention facilities by lawyers providing free legal assistance and representation was guaranteed on the basis of the Co-operation Agreement between the HHC and National Border Guard Headquarters. However, the HHC raised concern that at the outset of the war against Iraq, access of lawyers to the Győr detention centre was denied due to the “increased need for security arrangements.” In addition, information on the availability of lawyers providing free legal aid was often lacking.

Detainees in some jails did not have access to electricity; cutting their hairs, nails and shaving was only possible once a month or even less frequently. Basic sanitary and washing supplies were provided for detainees, although in general all these products were out of date. However, in most of the detention facilities laundry facilities were not accessible at all.

¹⁶ See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002)*, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322.

¹⁷ See also section on Asylum Seekers.

Hot food was unavailable at weekends when detainees received bread and canned meat that usually contained pork, contrary to many detainees' religious diet. Apart from the possibility of watching television from 9 a.m. to 10 p.m. and one hour of outdoor exercise (as prescribed by government decree), there were basically no activities offered to foreigners in the jails.

Furthermore, although general medical care was provided in the alien policing jails, complaints often related to this: detained foreigners rarely had access to specialist medical care when requested and were only taken to hospital in emergency cases. Usually only sleeping pills and tranquillisers were provided. Several detainees reported that in all cases of dental problems they had to have a tooth pulled out. Adequate psychological or psychiatric care was not available for those in need.

Under the Asylum Act all asylum seekers needed to pass a medical check-up and were placed in quarantine for the time of the medical screening in order to identify infectious diseases. Contrary to this provision, in practice, asylum seekers in detention were not given an adequate medical examination nor put in quarantine. Apart from questions asked by the general doctor, foreigners did not undergo specific medical examinations or laboratory tests. Reportedly, in two detention facilities certain foreigners infected by serious infectious diseases had to be removed from the jail, but only after having spent several months in the facility.

On 16 April 2003 members of the HHC visited the alien policing jail in Szombathely and noted that medical documents of all detainees had been signed by the physician with the note "no infectious disease". The doctor at the alien policing jail stated that he arrived at this conclusion by looking at the detainees and by what the foreigners told.

National and Ethnic Minorities

As in previous years, members of the Roma population continued to face the most and worst forms of discrimination in many fields, such as health care, employment, housing and especially in the field of education due to the segregation of Roma students in schools. A survey conducted by sociologists in February and March 2003¹⁸ showed a gradual increase in the estimated number of the Roma population (between 520,00 and 650,000). The survey suggested that just 16% of working-age Romani men in Hungary had regular jobs, and 56% of Romani households belonged to the poorest segments of society.

The Office for Equal Opportunities was set up in spring 2003, operating within the framework of the Prime Minister's Office and headed by the Minister without Portfolio for Equal Opportunities, Katalin Lévai. Institutional changes were expected from January 2004 when the office is placed directly under the government with the same activities.

The government submitted the bill on Equal Treatment and Promotion of Equal Opportunities (a comprehensive general anti-discrimination act) to parliament at the end of October. A few issues had been changed in the bill compared to the version adopted in spring. The last version of the bill, as of the end of November, prohibits both direct and indirect discrimination, harassment and illegal segregation. The burden of proof is not fully reversed but shared: both the alleged offender and the victim have to prove their statements. However, the originally planned Equal Treatment Committee consisting of five members will not be set up, instead, the Office for Equal Opportunities will deal

¹⁸ Kemény István – Janky Béla: "About the Roma survey in 2003". (A 2003. évi cigány felmérésről) in *Beszélő*, October 2003, at <http://beszelo.c3.hu/archivum/index.htm>.

with discrimination cases. According to human rights experts, if adopted, this solution will endanger the impartiality and independence of these procedures.¹⁹

The European Roma Rights Center (ERRC) and the Legal Defense Bureau for National and Ethnic Minorities (NEKI) filed a pre-application letter against Hungary with the European Court of Human Rights in Strasbourg in September. The submission concerned racially-motivated threats and discrimination in access to housing perpetrated by local government officials and the non-Romani residents of Gyüre, and claims violations of article 3 (freedom from inhuman and/or degrading treatment), article 8 (right to family and private life), article 1 of protocol 1 (right to peaceful enjoyment of one's possessions), article 13 (right to an effective domestic remedy) and article 14 (right to non-discrimination) of the ECHR.

- The Kahlik family and Ms. Nagy (a Roma woman), assisted by NEKI and ERRC, filed a criminal complaint and a civil complaint for damages. The criminal complaint was filed against the mayor and the notary as well as against an unknown perpetrator, respectively, for misuse of official power, infringement of constitutional rights, damage caused to the Kahlik's family house, using racist language, and finally threatening their very lives. Despite compelling evidence submitted by the applicants, including taped conversations containing threats, both lawsuits were ultimately rejected. In view of the obvious inability and/or unwillingness of the Hungarian authorities to provide Ms. Nagy and the Kahlik family with a remedy domestically, ERRC and NEKI decided to turn to the ECtHR.²⁰

A study in 2000 by the Institute for Educational Research provided convincing evidence that the degree of school segregation (concerning "normal" schools) had increased significantly during the past decade. The research concerning 192 elementary schools where the proportion of Roma pupils was over 25% or their numbers exceeded 100 in the school year 1992/93 showed that while in 1992 7.1% of Roma pupils studied in schools where they were in majority, in 2003 this percentage was at 18.1. While numbers of pupils attending the surveyed schools had fallen overall, the absolute number of Roma children had increased. In a country-wide comparison, 44% of Roma pupils studied in schools where their proportion exceeded 25% or their number exceeded 100, while only 6.3% of non-Roma children attended such schools.²¹

Enrolment of Roma children in special schools for the mentally handicapped remained a standard method of school segregation. According to the 2003 representative survey on Roma in Hungary,²² every fifth Roma child was sent to a special school. Reliable estimates place the rate of Roma students among students in special schools at 50-60%.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

A survey in 2003 by the GfK Hungaria Institute²³ among young people aged 14-24 showed that this generation was less biased against minorities than that of their parents. It was found that there was practically no difference between young skilled workers and university students or between teenagers and persons in their early twenties. The most significant difference in the level of tolerance could be discovered between youth living in the countryside and the inhabitants of the capital city: in Budapest, youth are more tolerant.

¹⁹ *Nepszabadsag*, "Nem lesz Egyenlő Bánásmód Bizottság", 23 November 2003, at <http://www.nol.hu/Default.asp?DocCollID=145990&DocID=126860#126860>.

²⁰ ERRC, "ERRC Action in Hungary Housing Discrimination Case", 1 October 2003, at http://errc.org/publications/letters/2003/hungary_oct_1_2003.shtml.

²¹ Gábor Havas, "Kitörési pont: az iskola" (Breaking point: the school), *Beszélő*, November 2000, pp 50-65

²² István Kemény and Béla Janky: On the 2003 gypsy survey, *Beszélő*, October 2003, <http://www.beszelo.hu/>.

²³ GfK Hungaria Institute, at <http://www.gfk.hu/sajtokoz/fr6.htm>.

For ten years, the Hungarian Gallup Institute conducted a survey on openly admitted prejudices against Jews and Roma within the Hungarian population. According to the survey, during the past ten years openly admitted anti-Semitic feelings decreased from 14-15% to 6-7%, and anti-Semitic attitudes were becoming less and less acceptable. Anti-Roma feelings also significantly decreased (from 42% to 37%). Altogether 7,012 adult citizens from 69 municipalities were involved in the survey; their composition (gender, age groups, types of settlements) were representative of the composition of the adult population of Hungary.²⁴

The acquittal of Calvinist pastor and far-right Hungarian Justice and Life Party (MIÉP) Deputy Chairman Lóránt Hegedüs Jr. in November led to a huge public debate concerning the legal means to curb hate speech.

- Hegedüs was charged after publishing an article in summer 2001 in *Ébresztő* (Awakening), a Budapest district paper of MIÉP, in which he described Hungarian Jews as “a horde of Galician foreigners” and advised readers to “keep them out or they will throw you out.” In December 2002, the Budapest Municipal Court, as court of first instance, sentenced Hegedüs to 18 months imprisonment suspended for three years, arguing that the article amounted to inciting hatred against a community. The editor-in-chief of the paper was fined HUF 525,000 (€ 2,035). In November 2003, however, the Budapest Appeals Court reversed the lower court ruling, arguing: “Undoubtedly, the article is offensive and demeaning to Hungarian Jews originating from Galicia, but it is not a criminal act.” Both Hegedüs and the editor were acquitted. The ruling was not subject to appeal.²⁵

Parliament passed an amendment to the Penal Code in December introducing stricter rules on hate speech which constitutes a felony offence. Opposition parties and even some members of the junior coalition partner, the Alliance of Free Democrats (SZDSZ) considered some sections of the bill unconstitutional, claiming that the combat against hatred should not be done by means of criminal law to the detriment of freedom of expression. Before signing the act, the president of the republic submitted it to the Constitutional Court for preliminary review.

Another court decision caused significant public debate in October.

- In the compensation procedure launched by two Romani brothers because of unlawful detention for 15 months in pre-trial detention, the court awarded lower compensation (1,2 million HUF or € 4,652 instead of 2 million HUF or € 7,753) to the victims in view of their “primitive personality.” The decision claimed that the victims suffered less harm during the pre-trial detention compared to a “non-primitive person.”

Politicians, journalists, public figures and private individuals criticised the decision, which was perceived by judges as an attack against the independence of judiciary. Even the Supreme Court President, Mr. Lomnici and Minority Rights Ombudsman, Mr. Kaltenbach disagreed on this issue. Lomnici accused Kaltenbach of endangering the independence of the judiciary by vocalizing his criticisms. Following a meeting in mid-November, Kaltenbach told reporters that a misunderstanding caused the spat because “nothing actually happened that endangers the independence of judges.” For his part, Lomnici said he considered his dispute with Kaltenbach closed.²⁶

Although complaints filed with the minorities ombudsman against health care providers were rather scarce, discrimination in health care received increased attention in 2003. A film recorded with

²⁴ For more information, see <http://www.gallup.hu/Gallup/release/eloitelet030919.htm>.

²⁵ *Nepszabadsag*, “A lelkeszt fölmentették,” 7 November 2003, at <http://www.nol.hu/Default.asp?DocCollID=141934&DocID=123849#123849>.

²⁶ *Nepszabadsag*, “Lomnici és Kaltenbach együttműködést ígér Az ombudsmanok tarthatnak előadást az emberi jogokról a bírónak,” 19 November 2003, at <http://www.nol.hu/Default.asp?DocCollID=144359&DocID=125724#125724>.

a concealed camera by a popular TV program showed that the Ferenc Markhot Hospital in Eger (Heves County) maintained a segregated maternity ward for pregnant Roma women. The segregation triggered fierce official denial, and the hospital's internal investigation rejected the allegations. However, in a press complaint procedure filed by the hospital against the news agency publishing the information, the first instance court found that Roma women had indeed been segregated based on their skin colour. The decision was appealed to the second instance court. The minorities ombudsman was investigating the case as of the year's end.

Asylum Seekers and Immigrants

In 2003, a total of 2,401 persons applied for refugee status in Hungary—a sharp decrease compared to previous years. In 2003, the highest number of asylum seekers came from Afghanistan, Iraq, Iran, Georgia, Chechnya and India. The number of persons recognized as refugees was 178. In accordance with the Aliens Act, the non-refoulement provision was applied and “persons authorized to stay” status (a subsidiary form of protection, PAS) was granted to 772 persons.

Mainly asylum seekers from Iraq and Afghanistan were granted PAS status, however, use of this subsidiary form of protection rather than Convention refugee status was over-frequent and in many cases was applied in place of the former.

According to UNHCR, the Office of Immigration and Nationality (OIN) applied a restrictive interpretation of the 1951 Geneva Convention's refugee definition, and decision-makers rarely applied the ground of membership of a particular social group.

Co-operation between border guard agencies with respect to the implementation of readmission agreements between Hungary and neighbouring countries (namely Ukraine, Romania) improved significantly in 2003. As a result (of also technical improvements), readmission of illegal aliens falling under the scope of these agreements became efficient and quicker. Experience showed that a significant number of asylum seekers crossing the Hungarian border illegally were denied access to Hungarian territory and to the asylum procedure. Those caught by border guards crossing the border illegally were taken into short-time custody at the nearest field unit of the border guards. The interview and administrative work was conducted within 24 hours, rapidly followed by readmission. In this initial interview, border guards frequently ignored applications for refugee status.

A further serious concern stemmed from the fact that the issue of *non-refoulement* was not examined before readmission, as Ukraine and Romania were “on the safe third country list.” This practice resulted in a significant number of Iraqi, Afghan and Iranian citizens' readmission to Ukraine during 2003. Between 26 and 29 January 2004 two members of the HHC and UNHCR accompanied by two border guards monitored the Serbian, Romanian and Slovakian border. Heads of the border directorates stated that they always tried to return third country nationals crossing the border illegally to these neighbouring countries in the framework of readmission agreements or in so-called “summary procedures.”

The Nyirbátor Border Guards Directorate returned 116 third country nationals to the Ukrainian authorities in 2003. In 41 cases they refused to take these persons who were placed in reception centers or in alien policing jails. There were 24 Iraqis, 16 Somalis, 6 Afghanis and 20 Turkish Kurds among them. According to border guard officers, the reason for the return of these foreigners was that they had not applied for refugee status, although it was more likely that their application was neglected by the authorities. According to the commander, these returned foreigners are placed in a camp close to Munkachevo where, according to his words, “conditions are like in Auschwitz.”

The daily average number of foreigners detained in alien policing jails was approximately 250. Statistical data was not available, but estimates showed that approximately 60-70 % of such detained foreigners were asylum seekers.

Detention of asylum seekers and other foreigners entering or residing in Hungary illegally was applied as a general rule in the cases of those who were apprehended by the border guards or police and belonged to certain nationalities. The length of detention was in general extended to the legal maximum of 12 months, with the exception of asylum seekers from Iraq and Afghanistan who were (despite identical factual and legal circumstances as those coming from e.g. Bangladesh, India or China), released after 30 days of detention for refusal and placed in open reception centres. The expulsion and alien policing detention of illegal foreigners seeking asylum depended on the country of origin of the applicant, which could be perceived as a discriminatory practice in light of article 3 of the 1951 Geneva Convention. Moreover, asylum seekers from countries considered as “safe countries” of origin (e.g. Bangladesh, China) had no chance of being recognized, or being granted PAS status. This indicated an attitude of presumption on the part of authorities that asylum seekers kept in detention did not deserve international protection or subsidiary forms of protection.

Judicial practice on detention remained inconsistent. Alien policing authorities were obliged to petition the courts to extend alien policing detention, and courts could be requested to review the lawfulness of detention. However, courts—following Hungary’s legal interpretation, in terms of which courts could not examine the lawfulness, justified and enforceable nature of the expulsion order—extended detention of asylum seekers to the maximum 12 months.

The situation of foreigners with family ties to Hungarian nationals (spouses or children) in Hungary remained problematic and controversial. The right to “family unity”, protected by the Constitution, the Aliens Act and relevant international human rights instruments was only taken into consideration by Hungarian laws and legal practice against expulsion if the foreign national family member was staying legally in the country. Only these foreigners were entitled to apply for family reunification visas and residence permits, which did not entitle its holder to work - working visas could only be obtained from abroad. The conditions of accommodation and maintenance suitable for the purposes of family reunification were unclear and did not seem to differ from “ordinary” immigration. Immigration officials failed to exercise their discretionary power to handle such cases in a more lenient way as provided by law (e.g. a family reunification visa can be requested in the country), whereby rejected asylum seekers and those whose stay became illegal fell out of the scope of the beneficiaries.

In September 2003, the Supreme Court ruled in a precedent-like decision that denial of visa (to spouses and partners) could be subject to judicial review. A legal remedy was not possible prior to this decision.

Authorities’ practice with regard to those granted PAS status remained unlawful in the first half of 2003. They were entitled to receive humanitarian residence permits entitling the holder to take up employment or to benefit from the support and entitlements provided by law. The OIN had provided such persons with a “certificate entitling the holder for temporary stay” issued for periods of 1-3 months. It was only in the second half of 2003, with a one and a half year delay when the OIN started to issue the proper residence permits, following a decision by the Prosecutor’s Office which found the obvious violation of the Aliens Act. The Prosecutor’s Office filed a complaint and an indication to the OIN in order to remedy the unlawful omission. However, OIN officers did not follow the lawful practice in each part of the country. The validity of such residence permits was still determined in an arbitrary manner.

With regard to authorisation to stay, the OIN’s legal practice failed to clarify the nature of the procedure for reviewing PAS status. Formal decisions were not taken on status withdrawal, and if expulsion was ordered simultaneously, it could not be legally challenged in these cases. HHC lawyers became aware of cases where the OIN Alien Policing Department had contacted the authorities of the

country of origin to explore whether the conditions serving as the basis for granting PAS status still prevailed.

In July 2003, a new NGO-operated accommodation centre for unaccompanied minor asylum seekers opened in Békéscsaba.

A pilot refugee integration project was launched and implemented in 2003 in the largest reception centre in Debrecen. NGOs and the UNHCR branch office in Hungary²⁷ found that the pilot project did not meet its objectives. Project beneficiaries were accommodated in mobile housing located on the outskirts of the reception centre. They looked towards the reception centre as a means to feel less isolated rather than outside the centre. Not one refugee participating in the project had achieved even minimum standards of self-efficiency.

In summer 2003, a pilot project initiated by the UNHCR branch office in Hungary was launched also in the Debrecen reception centre to prevent and respond to sexual and gender based violence.

In 2002, Hungary promulgated the 1954 UN Convention relating to the Status of Stateless Persons. However, by the end of 2003, national legal provisions to implement the convention had not been elaborated, and the procedure to determine statelessness and conditions on which stateless status is recognized were unclear. Consequently, the rights and entitlements connected to stateless status could neither become effective nor be exercised.

- Serious concerns were raised by the extradition to Moldova of a Moldovan citizen (suspected of criminal offences) who had alleged that he would face torture, inhuman or degrading treatment in the Bender prison in Moldova upon return. The extradition was executed despite a pending asylum procedure, and a request by the legal representative to the Hungarian Ministry of Justice not to comply with the Moldovan authorities' extradition request as it would constitute a violation of both article 3 of the ECHR and article 43 of the Aliens Act. The CPT paid a specific visit in November 2003 to the Bender prison in Moldova on account of the extremely harsh conditions there.²⁸

²⁷ UNHCR Branch Office Hungary, UNHCR Monitoring Mission in HUNGARY - 30 April to 4 July 2003, p. 7.

²⁸ Council of Europe, "Council of Europe Anti-torture Committee visits colony no. 8 in Bender" 25 November 2003, at <http://www.cpt.coe.int/documents/mda/2003-11-25-eng.htm>.