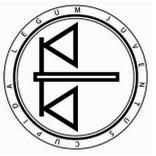




Hungarian Helsinki Committee



CRPK
PROGRAMI PER TE DREJTAT CIVILE KOSOVO
CIVIL RIGHTS PROGRAM KOSOVO
PROGRAMI GRAĐANSKIH PRAVA KOSOVA



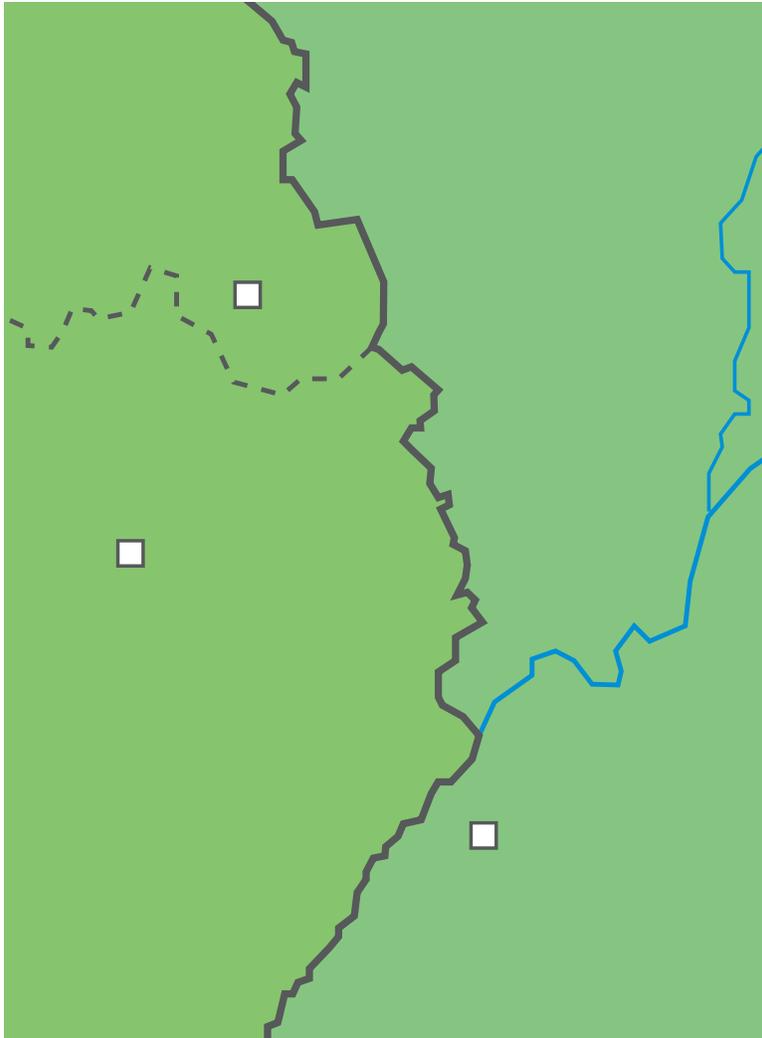
HUMAN RIGHTS LEAGUE
LIGA ZA LUDSKÉ PRÁVA

HR HELSINKI FOUNDATION
for HUMAN RIGHTS

ORGANIZACE PRO POMOC UPRCHLIKŮM



APC/CZA



APC/CZA

ASYLUM PROTECTION CENTER
CENTAR ZA ZAŠTITU I POMOĆ TRAŽIOCIAMA AZILA

CENTAR ZA ZAŠTITU I POMOĆ TRAŽIOCIAMA AZILA
ADDRESS: (Headquarters) Sime Igumanova 14, 11000 Belgrade
(Belgrade Office) Mišarska 16, 11000 Belgrade
TELEPHONE: +381 11 323 30 70- +381 63 704 70 80
E-MAIL: sediste@apc-cza.org; rados.djurovic@apc-cza.org
FACEBOOK: www.facebook.com/AziliSrbiji
TWITTER: www.twitter.com/APC_CZA

www.apc-cza.org
www.azilisrbija.rs

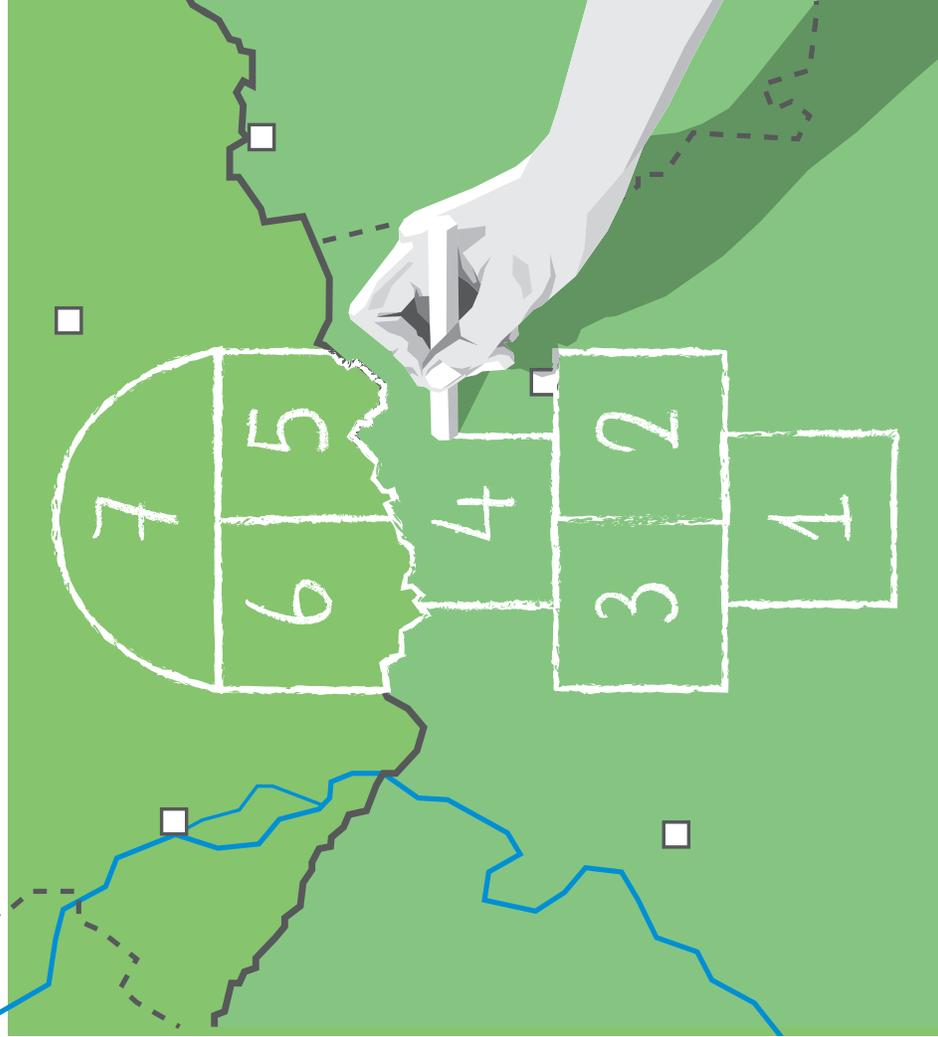
Visegrad Fund



THIS PROJECT IS FUNDED BY VISEGRAD FUND AND THE MINISTRY OF FOREIGN AFFAIRS OF SOUTH KOREA

PROTECTING THE RIGHTS OF REFUGEES IN THE VISEGRAD COUNTRIES

LESSONS LEARNED, BEST PRACTICE EXAMPLES AND EXCHANGE OF EXPERIENCE WITH THE WESTERN BALKAN COUNTRIES



APC/CZA



APC/CZA

ASYLUM PROTECTION CENTER
CENTAR ZA ZAŠTITU I POMOĆ TRAŽIOCIAMA AZILA

PROTECTING THE RIGHTS OF REFUGEES IN THE VISEGRAD COUNTRIES

PROTECTING THE RIGHTS OF REFUGEES IN THE VISEGRAD COUNTRIES

*Lessons learned, best practice examples and exchange of
experience with the Western Balkan countries*

Publisher:

**Centar za zaštitu i pomoć tražiocima azila / Asylum Protection Center
(APC/CZA)**

Authors:

Jacek Białas, Helsinki Foundation for Human Rights, Poland

András Léderer, Hungarian Helsinki Committee, Hungary

Martin Rozumek, Organization for Aid to Refugees, the Czech Republic

Barbora Meššová, Human Rights League, Slovakia

Sena Marić, Asylum Protection Center, Serbia

Editor:

Radoš Đurović, Executive Director, Asylum Protection Center, Serbia

Belgrade, 2016

CONTENTS

List of Abbreviations	5
I. Foreword	7
II. Societal & political circumstances in V4 countries in light of the “refugee crisis”	9
III. General features of V4 countries’ asylum systems	15
Hungary	15
Poland	20
Czech Republic	23
Slovakia	24
IV. Best practice examples in legal representation	29
Hungary	29
Legal Counselling	30
Legal Representation at the National Level	31
Legal Representation at the International Level	34
Legal Assistance in Family Reunification Procedures	35
Poland	36
Detention cases before ECtHR	36
Cases of compensation for arbitrary detention before national courts	38
Litigation in LGBT asylum case	39
Extradition cases of recognised refugees	39
Czech Republic	40
Right of NGO lawyers to represent asylum seekers as legal representatives up to the level of regional courts	43
Guardianship for unaccompanied minors seeking asylum in the Czech Republic	43
Inclusion of legal counsellors into the overall social services scheme	44
Cooperation with faculties of law and private law firms	45
Best practices in legal representation of asylum seekers on international level	45
Slovakia	47
Legal Aid in First Instance Asylum Procedure	47
Legal aid in Judicial Procedure	48

Centre for Legal Aid – model of ensuring state-funded legal aid	49
Looking forward	54
Capacity building	55
V. Best practice examples in raising awareness and advocacy activities	57
Hungary	57
Poland	62
Advocacy campaign – improvement of conditions in detention centres	62
Czech Republic	66
Advocacy on the governmental level	66
NGO fingers in the legislative procedure	67
Advocacy on the NGO level	68
Raising awareness activities and campaigns	69
Slovakia	73
Communication Strategy	73
Maintaining the relations with Media	75
Practical Examples of Advocacy and Public Awareness Raising Activities ..	77
Response to Refugee Crisis	79
VI. Reflections on 2015 <i>annus horribilis</i>	81
VII. Looking forward: Common challenges, humane solutions based on joint efforts	83

LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
BBC	British Broadcasting Corporation
CEAS	Common European Asylum System
CEFTA	Central European Free Trade Agreement
CSO	Civil Society Organization
DAMP	Department for Asylum and Migration Policy of the Ministry of Interior (Czech Republic)
ECRE	European council on refugees and exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
ERF	European Refugees Fund
EU	European Union
GO	Governmental Organization
HFHR	Helsinki Foundation for Human Rights
HHC	Hungarian Helsinki Committee
HRL	Human Rights League
IOM	International Organization for Migration
LOHAS	lifestyle of health and sustainability
NGO	Non Governmental Organization
OIN	Office of Immigration and Nationality
OPU	Organization for Aid to Refugees -Organizace pro pomoc uprchlákům-
PILNET	Public Interest Law Network
PR	Public Relation
RFA	Ministry of Interior's Refugee Facilities Administration (Czech Republic)
RSD	Refugee Status Determination
SIMI	Association for Integration and Migration -Sdružení pro integraci a migraci-
SWOT	Strengths, weaknesses, opportunities, and threats Analysis
UAM	Unaccompanied minors
UN CAT	United Nations - Committee Against Torture
UNHCR	United Nation High Commissioner for Refugees
US	United States
V4	Four Visegrad Countries

I.

FOREWORD

In perspective of changing their societies for the better, the Western Balkan countries have on many occasions sought and found a role model in the so-called “Visegrad group” countries – Poland, Hungary, Czech Republic and Slovakia (hereinafter: V4), the EU members for more than a decade, with invaluable experience for the countries aspiring EU membership, such as those in the Western Balkans. These countries have looked for the solutions and V4 experiences when it comes to regional integration; economic cooperation; smart use of EU available funds; etc.

In the framework of this project, the three non-governmental organisations (NGOs) from the Western Balkans (Asylum Protection Center from Serbia, Macedonian Young Lawyers Association and Civil Right Program from Kosovo) learned from the practices and best examples of the V4 partners (Helsinki Foundation for Human Rights from Poland, the Hungarian Helsinki Committee, the Organization for Aid to Refugees from the Czech Republic and the Human Rights League from Slovakia) on the topic of asylum policy. Its aim was to strengthen the capacities of civil society organizations (CSOs) in the Western Balkans to provide legal aid as well as to advocate and campaign for the rights of asylum seekers through sharing of knowledge and experience of the V4 countries on asylum issues and challenges, including with EU standards. Moreover, the objectives of the project were to improve reporting and providing information about asylum issues in the media, and to establish regional cooperation between CSOs and experts from the region that deal with asylum issues.

The realisation of this project coincided with the massive and unprecedented influx of the refugees from the Middle East, Asia and Africa to Europe over so called “Balkan route”. The ongoing “refugee crisis” has dramatically reversed the bright image that the V4 countries enjoyed in the Western Balkans in the way how they have been responding to the migration challenges. In such circumstances, it appears more than important to learn from the outstanding role that V4 partners in this project have played for the sake of defending the rights of the refugees and creating a humane atmosphere in their respective countries, fighting prejudices and highlighting the rule of law and respect of human rights; pluralism; non-discrimination; justice; and solidarity in line with EU values. The partners from the Visegrad countries that took part in this project have not only managed to cope to the extremely hostile environment back home, but also to convey their perennial expertise and experience on asylum issues and challenges to their Western Balkans counterparts,

benefiting themselves from the fresh and active Balkan project partners' approach to quickly changing and unpredictable migration and its challenges in the scope of fighting for the building of asylum systems and protection against discrimination of asylum seekers, migrants and refugees in the Balkans.

This report highlights the major best practice examples with regards to legal representation of asylum seekers before national and international courts as well as to raising awareness and advocacy activities in the Visegrad countries. In that way, the report sheds light on numerous positive initiatives from the V4 partners that could be emulated not only in the Western Balkans, but also in the countries with more developed asylum systems facing huge migration and asylum challenges. The report also reflects on the current politico-social situation in which the V4 partners operate and presents possible options in which joint regional action may be forged, bearing in mind common challenges the countries from the two regions face, such as the risk of turning into xenophobic societies, growing media pressure, abuse and violation of basic human rights, etc.

II. SOCIETAL & POLITICAL CIRCUMSTANCES IN V4 COUNTRIES IN LIGHT OF THE “REFUGEE CRISIS”

When it comes to **Poland**, until summer 2015 issue of refugees was not widely discussed, as the numbers of foreigners coming to Poland to apply for asylum is not high. But since then this issue - as in every European country - became one of the most important topic of the public and political debate. Unfortunately it divided Polish society and triggered massive hatred against refugees – and against foreigners - in public debate, especially in internet. Level of hate speech was so high that some of internet portals disabled comments under articles concerning refugee issues. Additionally at the same time political campaign before parliamentary election scheduled for autumn 2015 took place. Some of political parties decided to use „refugee crisis” issue for political purposes. They claim that relocation of refugees in Poland would change society, bring radical islamists to Poland etc. Parliamentary debate and media information were too much focused on negative and anti-refugee statements of key political leaders. In effect more and more Poles took anti-refugee stance. Unfortunately currently high rate of Polish society associated refugees with terrorist attacks in Paris and Brussels.

Previous Polish Government agreed to resettle and relocate about 10 000 of asylum seekers. But it emphasised that security reasons are important and repeated about need to distinguish “real” asylum seekers from economic migrants. But the parliamentary elections were won by main opposition party which has clear stance against relocation. According to new government representatives security reasons have a priority in Polish asylum policy and it give priority to securing borders instead providing protection to the victims of war and persecution. Under European Council decisions of September 2015 about 7000 of asylum seekers were to be relocated to Poland until September 2017. Unfortunately, until now no asylum seeker was relocated. According to the government officials this is due to impossibility to establish identity of foreigners who are to be relocated, but it seems that government’s general unwillingness towards relocation scheme also plays its role. Current Polish government openly criticises EU decisions on relocation and resettlement. It also underlines that security reasons are most important factor in taking decision on relocation. According to the draft law currently discussed in the parliament amending Law on providing protection to foreigners on territory of

Poland, the Office for Foreigners is bound by the opinion of the security services stating that foreigners create danger to security. So in case of negative opinion from the security services, the Office for Foreigners cannot agree for relocation of the asylum seeker to Poland. Additionally new government sent Polish Border Guards to support securing borders in Hungary and Macedonia. The government states that it is necessary to solve refugee problems in their countries of origin but no visible assistance of Polish state for refugees living in countries surrounding Syria is seen. The new government also claims that other EU countries which welcomed refugees (so created current crisis) should deal with refugees who come to Europe from the Middle East and Africa. The government is also against any proposed EU reform concerning solidary sharing refugees between EU countries.

Unfortunately such atmosphere has also impact on reality. Recently several attacks against foreigners with non-European appearance took place in Poland. There were also protest of the local population and local authorities against placing refugee centres in two towns in Poland. As result of that Office for Foreigners decided to revoke tender for running refugee centres in those towns. It seems that anti-refugee stance is perceived by the political parties as tool to get political support from the voters. Xenophobia became more common among Polish society and it seems that it would be really difficult to combat it.

Poland joined the Geneva Convention in 1991, and since then about 90 thousand asylum applications were lodged. In recent years approximately 6 000 – 12 000 applications are lodged a year (according to official statistics in 2015, 12 325 applications were lodged, so Poland did not experience increased number of applications; about half of applicants were women). Most of applicants are citizens of the Russian Federation of the North Caucasus origin (Chechens, Ingushetians), Georgians and Armenians. Since 2014 number of applications of citizens of Ukraine increased due to armed conflict in Lugansk and Donetsk regions and due to Crimea occupation by the Russian forces. Citizens of Ukraine are not granted protection in Poland, given that authorities state that they may benefit from internal relocation in central and western Ukraine. Recently, number of applications lodged by citizens of Tajikistan increased due to persecution of main opposition party by the government. No signs of crisis were visible in Poland since 2015. There were no massive applications of citizens of Syria, in 2015 they made only 295 applications in Poland (about 500 applications total since 2012). There were also 62 applications submitted by citizens of Iraq and 19 applications submitted by citizens of

Afghanistan in 2015¹.

Poland is a transit country for asylum seekers. Most of applicants, recognised refugees and subsidiary protection beneficiaries move to Western Europe where they may count on assistance from family members and diasporas. Also better life conditions (better work opportunities, housing, social assistance) play their role. Significant number of applicants are the ones who were transferred back to Poland under Dublin regulation.

In **Hungary**, a worrisome development of 2014 was the series of governmental attacks on the civil society of Hungary, specifically on the consortium of NGOs distributing the EEA/Norway Grants NGO Fund and NGOs receiving grants from it. The attacks included condemning public statements by high-ranking state officials (even the Prime Minister) alleging that the NGOs involved are closely linked to political parties and/or serve "foreign interests"; an illegitimate state audit by the Government Control Office into the use of the EEA/Norway Grants NGO Fund; criminal procedures launched against members of the above-mentioned consortium; a police raid of their offices (later found unlawful by the investigation judge); and the suspension of their tax numbers. The Hungarian Helsinki Committee (HHC) stepped up against the unjustified attacks both individually and with other NGOs from the outset and continued to do so in 2015, when the operational context for its refugee programme radically changed, presenting multiplied new challenges. It was in this already hostile context that in February the government initiated a publicly financed xenophobic propaganda campaign, targeting both immigrants in general and refugees/asylum-seekers in particular. This continued with the so-called "national consultation on immigration and terrorism", a politically motivated propaganda action, subject to a wide range of condemnations, including by the European Parliament. By September, the government basically dismantled the Hungarian asylum system through a number of legal amendments and non-legal measures, including the decision to erect a barbed-wire fence first along the Serbian-Hungarian, then at the Croatian-Hungarian border.

The Czech Republic belongs to the main "winners" of the current Common European Asylum System (CEAS) and benefits a lot from the implementation of the Dublin Regulation. Immediately after the Czech Republic joined the EU, the number

1 Data available at the Office for Foreigners website: <http://udsc.gov.pl/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2015-2/>

of asylum seekers dropped significantly. Refugees are well familiar with the fact that under the Dublin Regulation only one EU Member State is responsible for processing their asylum claims, and the Czech Republic is a final destination country for only a few of them. One may conclude that there is a refugee crisis present everywhere in the Czech media and politics but without refugees themselves being really present in the Czech territory.

The numbers of asylum applications in last years has been ridiculously low despite the fact that Europe is facing the largest number of refugees' arrivals after the World War II. In 2015, a total number of 1525 applications for asylum has been lodged in the Czech Republic, in 2014 a total number of 853 asylum applications, in 2013 a total number of 807 asylum applications.

It must be pointed out that the Czech Government does everything possible to make the country as unattractive for refugees as possible. There are obstacles in the access to the territory (border checks at the Czech Austrian border, refoulement from the airport) and access to the asylum procedure (short, often missed, deadlines for submitting asylum claims in detention). Detention is applied frequently without the clear end of the detention period. The length of the asylum procedure is unacceptably long in many cases of well-founded asylum applications and the quality of the 1st instance asylum decisions is very low.

Of course, there are other objective reasons why the Czech Republic is not attractive for refugees from the Middle East or Africa. There are only very small communities of refugees or immigrants from the main refugee producing countries like Syria, Iraq, Afghanistan, Iran or Eritrea in the Czech Republic, the average salaries in the country are far lower than average salaries in neighbouring countries like Austria and Germany, the integration programs are much weaker and the general public attitude towards refugees and immigrants is very unfriendly. Traditionally, refugees from former Soviet Union countries – Ukrainians, Belarusians, Armenians, Kyrgyz, Kazakhs, etc. consider more often the Czech Republic as their final destination country and they also find support from their fellow country-men already living in the Czech Republic for a long time.

On the other hand, the low numbers resulting from the above said and the advantageous geographical position of the Czech Republic leaves a lot of room for good practices, which could be well promoted in the countries of Central Europe and Western Balkans.

Above all, the recognition rate has been quite high in recent years (above 35%). There is a resettlement program in place in the Czech Republic and several smaller

groups of resettled refugees already arrived in the Czech Republic (Burmese, Uzbek, Cuban refugees). The Czech Republic has a very good system of care for unaccompanied minors seeking or not seeking asylum in the Czech Republic, a brand new state integration program for recognised refugees or beneficiaries of the subsidiary protection, a simplified procedure for family reunification of refugees and subsidiary protection holders, etc.

Even though in 2015 EU has faced unprecedented numbers of arrivals of persons seeking international protection, situation has not reflected to such an extent in **Slovakia**. Paradoxically, in 2015 Slovakia received the lowest number of asylum seekers in its entire history since 1993. It was only 181 third country nationals who applied for asylum in Slovakia in 2015, mostly from Iraq, Afghanistan and Ukraine. The rest of persons seeking asylum in Slovakia in 2015 were 149 refugees from Iraq who arrived at the end 2015 within a special programme of private-sponsored resettlement. More than 80 % of asylum procedures were closed without a decision due to voluntary departure of asylum seekers from Slovakia before completion of the 1st Instance asylum procedure. 8 persons were granted asylum and 41 subsidiary protection. Based on criteria of the Dublin III Regulation Slovakia would be responsible for examination of an asylum application provided that the person entered the territory of the EU by crossing irregularly the Slovak-Ukrainian border, or if he/she has arrived to the EU with Schengen visa granted by the Slovak embassy abroad or if his/her family members are already present on the territory of Slovakia.

Since migratory routes from Turkey through Balkans entering EU at Serbian-Hungarian border, continuing onward to Germany and other countries of western Europe, became most frequently used, the number of arrivals of irregular migrants from Ukraine to Slovakia became insignificant in comparison. Situation has been influenced partly by the current security situation in Eastern Ukraine. Human Rights League has monitored a steady decrease in numbers of irregular crossings of external border, averaging 300 in the past years. In 2015 the pressure on Slovak-Ukrainian border has continued to decrease, resulting in only 205 irregular crossings of external border.

Asylum seekers arriving through the Slovak-Ukrainian border to the EU territory often opt not to apply for international protection in the Slovak Republic, having hoped they would be able to get to other western countries of EU. If they did not apply for asylum in Slovakia they face administrative expulsion to Ukraine due to their irregular status on the territory of Slovakia. Administrative expulsion to Ukraine is executed without delay by means of speedy application of EU readmission

treaty with Ukraine and foreigners have no access to effective remedy. Usually they are returned to Ukraine within less than 24 hours. In these situations there is no legal aid available. Out of 205 irregular crossings of the external border detected by the Slovak authorities in 2015, only 12 applied for asylum after irregular arrival from Ukraine (4 Afghans, 5 Iraqis, 3 Bangladeshi) compared to 112 persons who were returned to Ukraine based on readmission treaty.

Only small numbers of asylum applications are being lodged at the airport, in 2015 out of 12 third country nationals who arrived irregularly to Slovakia via air, 9 applied for asylum (5 Afghans, 1 Ukrainian and 3 Indians).

In the context of the migratory routes in 2015, number of readmissions from Czech Republic increased 10 times compared to 2014. In 2015 Slovaks took back 376 persons (including 172 Syrians and 106 Afghans) from Czech Republic based on bilateral readmission agreement. This trend was accompanied by significant (also 10 times) increase in number of readmissions from Slovakia to Hungary. In 2015 Hungarians took back 338 persons (including 192 Syrians and 64 Afghans) based on bilateral readmission agreement. Many persons have experienced chain return from Czech Republic to Slovakia and from Slovakia to Hungary. Preferred manner of return of third country nationals from Slovakia to Hungary remained transfers based on Dublin III regulation, provided that it was possible to show that a person applied for asylum in Hungary. In 2015 there were 335 Dublin cases (including 96 Kosovars, 64 Syrians and 82 Afghans) transferred from Slovakia to Hungary, which is more than 15 times increase.

III.

GENERAL FEATURES OF V4 COUNTRIES' ASYLUM SYSTEMS

HUNGARY

The Office of Immigration and Nationality (OIN), a government agency under the Ministry of Interior, is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The OIN is also in charge of operating open reception centres and closed asylum detention facilities for asylum seekers².

The asylum procedure is a single procedure where all claims for international protection are considered. The procedure consists of two instances. The first instance is an administrative procedure carried out by the OIN. The second instance is a judicial review procedure carried out by regional Courts of Appeal, which is not specialised in asylum. There is an inadmissibility, an accelerated procedure in addition to the normal procedure as well as a special border procedure, which is a type of accelerated procedure for asylum seekers entering Hungary through the four transit zones, established on the Hungarian-Serbian (at Röszke and Tompa) and the Croatian-Serbian (at Beremend and Letenye) borders or through the airport.

Asylum may be sought at the border or in the country. If a foreigner expresses a wish to seek asylum at the border, the police authorities must contact the OIN accordingly. The asylum procedure starts with the submission of an application for asylum in person before the asylum authority.

As of 1 August 2015 there are three types of procedures:³

The Inadmissibility procedure

The inadmissibility procedure should be used if somebody is a) an EU citizen, b) has protection status from another EU member state, c) has protection from a third country and this country is willing to readmit the applicant, d) this is a subsequent application and there are no new circumstances or facts and e) travelled through a safe third country.

2 For a list and location of these facilities see HHC's map: <https://www.google.com/maps/d/viewer?mid=17E8rbbGaIT3fHuyJkk93NmtXook>

3 For more information please see the AIDA report on Hungary: <http://www.asylumineurope.org/reports/country/hungary>, esp. pp. 9-34.

The accelerated procedure

The accelerated procedure can be used if somebody a) has shared irrelevant information with the authorities regarding his/her asylum case, b) comes from a safe country of origin, c) gives false information about his/her name and country of origin, d) destroys his/her travel documents with the aim to deceive the authorities, e) provides contradictory, false and improbable information to the authorities, f) submits a subsequent application with new facts and circumstance, g) submits an application only to delay or stop his/her removal, h) enters Hungary irregularly or extends his/her stay illegally and did not ask for asylum within reasonable time although he/she would have had the chance to do so, i) does not give fingerprints and j) presents a risk to Hungary's security and order or has already had an expulsion order for this reason.

The border procedures

Apprehended irregular migrants in Hungary ⁴		Asylum claims submitted ⁵
January 2016	553	433
February 2016	2398	2175
March 2016	3412	4574
April 2016	3946	5814

Asylum seekers applying for asylum at the border have to submit their application inside the transit zones.

There are two types of border procedures: a) the so called "airport procedure" and b) procedure in transit zones. Both procedures cannot be applied in case of persons with special needs. However, given the general absence of a mechanism to properly identify vulnerability, the authorities only establish the existence of special needs for persons with clearly visible vulnerabilities, thereby leaving asylum seekers with trauma or mental health problems or victims of trafficking to be processed in the border procedure.

a) Airport procedure

The Airport procedure is regulated in Section 72 of the Asylum Act and

4 Vast majority entering through the Serbian-Hungarian border fence. Source: Police

5 Source: OIN

Section 93 of Decree 301/2007. Asylum seekers applying at the airport have to remain there until it is decided on the admissibility of their application. However, asylum seekers may not be held in the holding facility at the Budapest international airport transit zone for more than 8 calendar days. If the application is not deemed inadmissible or manifestly unfounded in the admissibility procedure or no decision has been taken after 8 days, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out. As of July 2013, applicants who have made an asylum application in the airport procedure are detained in asylum detention.

b) Procedure in the transit zones

The border procedure in transit zones is regulated in Article 71A of the Asylum Act. Four transit zones were established at the Serbian (2) and the Croatian (2) borders. The transit zone is where immigration and asylum procedures are conducted and where metal containers required for conducting such procedures and housing asylum-seekers are located. Asylum-seekers could be held there for a maximum period of 4 weeks. The chain of authorities inhabiting the linked containers starts with the police who record the flight route, then, if an asylum application is submitted, a refugee officer to accept it, and finally, a judge (or a court clerk) in a “court hearing room”, who may only be present via an internet link. After the construction of the fences, the number of asylum seekers arriving in Hungary dropped significantly but is on the rise again since January 2016.

The border procedure in transit zones has the following features:

- The border procedure is a specific type of admissibility procedure; therefore the assessment of the claim is limited to a limited set of circumstances, in most cases to the sole fact whether the applicant entered Hungary from a safe third country.
- The applicant’s actual need of international protection is not assessed at all in the border procedure.

The OIN has to deliver a decision in maximum 8 calendar days. In parallel with the inadmissibility decision, the OIN also immediately expels the rejected asylum-seeker and orders a ban on entry and stay for 1 or 2 years. This ban is entered into the Schengen Information system and prevents the person from entering the entire Schengen area in any lawful way. Those expelled are physically “accompanied” by a police officer to the entrance of the transit zones, expecting the refused persons to illegally cross the green border in the

return direction and re-enter Serbia. Such speedy decision-making gives rise to evident concerns regarding the quality and the individualisation of asylum proceedings as required by EU law⁶.

Families with children are sent to open reception facilities upon registering their asylum application.

The HHC has serious concerns regarding the legal status of the transit zones. The official government position, as communicated in the press, is that asylum-seekers admitted to the transit zone are on “no man’s land”, and persons who were admitted and later “pushed back” in the direction of Serbia or Croatia have never really entered the territory of Hungary. Consequently, such “push-backs” do not qualify as acts of forced return. This position has no legal basis: there is no “no man’s land” in international law; the concept of extraterritoriality of transit zones was clearly rejected by the European Court of Human Rights in the *Amuur* case as well.⁷ The transit zone and the fence are on Hungarian territory and even those queuing in front of the transit zone’s door are standing on Hungarian soil – as also evidenced by border stones clearly indicating the exact border between the two states.⁸

Recently the OIN has radically reduced the daily number of accepted asylum requests from the previous approximately 100 to an approximately 30. This leads to large crowds of migrants camping in front of the transit zones, partially already on Hungarian soil waiting to be let in. Single men are kept waiting for more than 20 days, while some families with children for more than 10 days. The situation there is inhumane. This is due to the absolute lack of facilities: people are stranded on empty fields below the empty sky for an unspecified time.

6 Recast Asylum Procedures Directive, Art. 10 (3) (a); Recast Qualification Directive, Art. 4 (3) (c)

7 *Amuur v. France*, application no. 19776/92, 25 June 1996, Para. 52

8 No Country for Refugees – New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary, Information Note, HHC, 18 September 2015, http://helsinki.hu/wp-content/uploads/HHC_Hungary_Info_Note_Sept_2015_No_country_for_refugees.pdf and Crossing Boundaries, The new asylum procedure at the border and restrictions to accessing protection in Hungary, ECRE, October 2015, <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1235-crossing-boundaries-ecre-mission-to-hungary-finds-worrying-barriers-to-accessing-asylum.html>

In-merit examinations

The asylum procedure begins with an assessment whether a person falls under a Dublin procedure. If this is not the case, the OIN proceeds with the examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days. If the application is not inadmissible and it will not be decided in accelerated procedure, the OIN has to make a decision on the merits within 60 days. Due to the increased number of asylum applications since 2013, there are cases where the time limits are not respected.

The asylum authority should consider whether the applicant should be recognised as a refugee, granted subsidiary protection or a tolerated stay under non-refoulement considerations. A personal interview is compulsory, unless the applicant absconds, has been expelled or become subject to the execution of extradition or renders the recording of his or her fingerprints and photograph impossible.

Appeals

The applicant may challenge the negative OIN decision by requesting judicial review from the regional Administrative and Labour Court within 8 calendar days in a regular procedure, within 7 days in accelerated and inadmissibility procedures and in 3 days in a Dublin procedure. The judicial review request will have suspensive effect on the OIN decision only in regular procedure. The court should take a decision in 60 days in the normal procedure and in 8 days in the other types of procedures. The eight-day deadline for the judge to deliver a decision is insufficient for “a full and ex nunc examination of both facts and points of law”. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter. A personal hearing of the applicant is not compulsory in appeals against Dublin decisions is even explicitly excluded. The court may uphold the OIN decision or may annul the OIN decision and order a new procedure. That the court no longer has reformatory rights, e.g. granting international protection despite the negative decision of the OIN, results in legally endless procedures. In case the court annuls the OIN decision and orders a new procedure, the OIN might arrive to the same decision after taking the same steps as previously, prompting another annulling court order upon appeals. This practice is already witnessed in a growing number of cases.

During the procedure, asylum applicants may be placed in an open reception centre or a closed asylum detention centre. Asylum detention may be ordered by

the OIN and is reviewed by the court at 2-month intervals with a maximum time-limit of 6 months; 30 days for families with children. Unaccompanied minor asylum seekers cannot be detained and are placed in a childcare facility, however the age assessment is not done properly in Hungary and the HHC has witnessed several “underage looking” minors in detention centres.

POLAND

The asylum proceeding is described in the Act of 2003 on granting protection for foreigners on the territory of the Republic of Poland. Polish asylum law was recently changed in November 2015, as a response to the necessity to implement the new EU asylum directives. The asylum application may be lodged by the foreigner to any unit of Border Guard located on the territory of Poland. But the most of asylum applications are lodged at Polish-Belarusian border crossing Brest-Terespol. For several years Polish NGOs has been receiving information that the Border Guard officers reject foreigners who wish to apply for asylum to the Polish authorities. Some foreigners claimed that they even 20-30 times tried to apply for asylum in Poland. It seems that recently such cases occurred more often.

Border Guard officer runs initial asylum interview, fingerprints and takes pictures of the applicant (and his/her family) etc. The Border Guard is also responsible for establishing applicant’s identity. Then asylum application is sent to the Office for Foreigners in Warsaw where is processed. The applicant’s passport is to be stored at the deposit of the Office for Foreigners. The applicant is also obliged to stay in Poland until the final determination of his/her asylum claim. Unaccompanied minors shall be represented by the guardian from the beginning of the asylum proceedings.

After lodging asylum application the applicant should appear in one of two reception centres. One is located in BialaPodlaska (eastern Poland – designated mainly for those applicants who lodged their applications in Terespol). Second is located in PodkowaLesna – Debak near Warsaw.

The applicant has right to social assistance during asylum proceedings. The applicant may be accommodated in one of the refugees centres where is directed from the reception centre. Meals and small amount of pocket money are also provided there. There is also possibility to live outside of the refugee centre. Then the applicant receives benefit in cash covering the cost of stay on the territory of Poland (approx. 170 EUR per person per month). When applicant is granted with such possibility then he/she must arrange accommodation and meals on their own. Although the

law provides special requirements to be granted with the possibility to live outside refugee centre, near all applicants who apply for it are granted with such possibility. This is a good practice because when applicant lives in one of the Polish cities there is better prospect of his/her integration. On the other hand, amount of benefit for foreigners living outside refugees centres is very low, and hasn't been indexed since 2005 so it might be considered as improper implementation of the EU reception directive. The children of applicants are obliged to attend the school and receive necessary school equipment. The applicant has right to free medical assistance similar to those which is provided for Polish citizens. The applicant has right to work without work permit – but only when proceedings are not concluded within 6 months.

The most important part of the asylum procedure is the interview. The interview takes place in the Office of Foreigners in Warsaw or in detention centre, if the applicant is placed there. It is conducted in language understandable by the applicant. During interview the applicant is asked about his/her experience in country of origin; travel to Poland and about reasons for fleeing country. Information obtained during interview is rather basic for taking decision in the applicant's case. In case when there is supposition that applicant was subjected to violence then psychologists' presence during interview is required. During proceedings applicant may also present other evidence like documents, press articles, photos, witnesses etc.

According to recent legislative changes asylum proceedings may last up to 6 months and may be extended maximum to 15 months. Until November 2015 there was no time limit for conducting proceedings and some proceedings last 2-3 years.

There is a possibility to detain the applicant. According to the Polish law, sole fact of lodging asylum application cannot be used as a reason of detention. The law provides several basis for detention: need to determine or verify his or her identity, to determine those elements on which the application for international protection is based, when protection of national security or public order so requires, to secure return proceedings if such is running or to secure return decision if such was already given and to secure transfer under Dublin regulation. Decision of placing foreigner in detention centre is given by the penal division of the district court. Since November 2015 alternatives to detention were introduced: regular reporting, bail and designated residence. According to the law unaccompanied minors, disabled persons, victims of violence cannot be detained. Also detention is prohibited if it may create danger to the applicant's health or life. Families with minors may be detained and it is perceived by NGOs as serious problem.

Recognition rate in Poland is rather low. About 10-15% of applicant are granted

with refugee status or subsidiary protection (in 2015 348 applicants were granted with refugee status and 167 with subsidiary protection, 122 applicant were granted with humanitarian stay; since recent legislative change possibility to be granted with humanitarian stay will be no longer considered during asylum proceedings). Decision on granting refugee status or subsidiary protection is not limited in time, but may be revoked. It happens usually in cases when the refugee returns to his/her country of origin.

In case of negative decision, the applicant may submit appeal to the Refugee Board (second instance administrative body, but some argue it's tribunal in the meaning of the asylum directives). Appeal has an suspense effect. The Refugee Board reviews case again as to the facts and as to the law. Statistics show that the Refugee Board upholds most of first instance decisions. There is also possibility to make appeal against the Refugee Board decision to the Voivode Administrative Court in Warsaw which review case only as to the law. Significant number of applications ends with decision on discontinuation of the proceedings. It's happens usually when the applicant left territory of Poland in the course of proceedings.

Legal assistance for asylum seekers and refugees is provided mainly by NGOs operating in biggest towns (Warsaw, Cracow, Lublin, Bialystok). Main organisations providing legal assistance to refugees and asylum seekers are Helsinki Foundation for Human Rights (HFHR, Warsaw), Association for Legal Intervention (Warsaw), Halina Niec Legal Aid Centre (Cracow) and Rule of Law Institute (Lublin). The NGO lawyers also visit regularly refugee centres and detention centres in order to provide legal assistance there. State funded system of legal assistance was initiated under November 2015 legislative change. The applicant may apply for such assistance only when receive negative decision in the first instance. State funded legal assistance is rendered by professional lawyers and NGOs. It covers only preparation of the appeal against first instance decision and applicant's representation in the second instance proceedings. Since it was introduced few months ago it difficult to evaluate its effectiveness.

In case of final negative decision the applicant is obliged to leave Poland within 30 days. There is also possibility to file subsequent applications. But if the application contains no new elements then the decision on proceedings discontinuation is given. First two proceedings protect from return but during third proceedings applicant may be returned to the country of origin.

Recognised refugees and subsidiary protection beneficiaries may submit an application for so-called Individual Integration Programme. It lasts one year and is implemented by the local family support centres. During implementation of

this programme limited financial assistance is provided for foreigners. They may also benefit from language courses, vocational courses etc. Poland is criticised by NGOs and by the Supreme Audit Office for poor integration assistance. Lack of proper integration system is perceived as one of the factors pushing foreigners out of Poland. Recognised refugees and subsidiary protection beneficiaries are also entitled to apply for family reunification, but it is really difficult to benefit from such opportunity.

CZECH REPUBLIC

The Czech asylum system is regulated by the Act on Asylum (No. 325/1999 of the Collection of Acts). The body responsible for the first instance decisions, as well as for the overall asylum and migration policy, integration policy, all long-term and permanent resident permits and all the national funding on integration of refugees and third country national, is the Department for Asylum and Migration Policy of the Ministry of Interior (DAMP). The DAMP's decision are of generally bad quality, influenced very much political decisions and arbitrary decision-making made by the single responsible person – the head of DAMP. The usual DAMP's practice to make the asylum system as unattractive as possible is the very lengthy procedures for many asylum applicants with strong asylum claims.

The second instance bodies are the regional courts with territorial competence based on the registered stay of the asylum seeker at the time of delivery of the first instance decision. Until the implementation of the latest changes in the EU Directives, the courts could only overrule the DAMP's decision and send the case back to the DAMP's Director, who very often rejects the application again and again. That is why some asylum seekers spend in the asylum procedures many years (the longest one 13 years and others 7, 8 years despite the period in the law for issuing the first instance decision was until recently only 3 months with possibility of extension. It remains to be seen when the first positive decision granting international protection will be issued by any of the regional courts. The quality of regional courts' decisions is varying a lot depending on the age and knowledge of international law and case law of individual judges.

An asylum seeker, in case of a negative decision made by the regional court, may submit a cessation complaint to the Supreme Administrative Court in Brno but the Court may declare the cessation complaint inadmissible based on grounds stipulated in the § 104a of the Administrative Judicial Order (Act. No 150/2002 of the Collection of Acts). The number of cessation complaints has been decreasing but the reasons could well be that the number of asylum seekers in the Czech Republic

was very low in last years. The quality of the Supreme Administrative Court's decisions is excellent and it often happened that the strong asylum case has been well assessed with references to international case law only at the last instance – the Supreme Administrative Court, which can again only send the case back to the regional court or DAMP respectively.

SLOVAKIA

The key legal regulation dealing with the protection of refugees in the Slovak Republic is the UN Convention relating to the Status of Refugees of 1951 which together with other UN and CoE human rights treaties are according to the Constitution of the Slovak Republic considered legal regulations with superiority over the domestic law. For the purpose of building a common European asylum in the European Union, the Slovak Republic has transposed all EU Asylum Directives by means of their translation directly into the domestic law. At the same time, EU regulations are directly applicable on the territory of the Slovak Republic including Dublin III Regulation.

The major elements of the asylum system are set up by the Act No. 480/2002 Coll. on Asylum and on changes and amendments to other acts as amended (Asylum Act), to certain extent also by the Act No. 404/2011 Coll. on Stay of Foreigners and on changes and amendment of other acts as amended, as well as by the Administrative Procedures Code Act No. 71/1967 Coll. which defines general principles of the administrative proceedings applicable as subsidiary rules in asylum procedure. Court review is governed by the Civil Procedures Code No.99/1963 Coll. which is to be replaced by the Judicial Code on Administrative Proceedings Act No.162/2015 Coll. as of 1st July 2016. Access to free legal aid is guaranteed by the Act No.327/2005 Coll. on provision of legal aid to persons in material need.

The Asylum Act defines the asylum procedure on the territory of the Slovak Republic. Asylum proceeding commences with the submission of the foreigner's declaration to the authorized police department of his/her intention of seeking international protection on the territory of the Slovak Republic. Such declaration constitutes an application for asylum. The police department authorized for receiving an asylum application pursuant to the Asylum Act is:

- upon entry to the territory of the Slovak Republic the police department at the location of the official border crossing point – border police departments at the Slovak-Ukrainian border in VyšnéNemecké, ČiernanadTisou, Ublá, Vel'kéSlemence,

- after entry to the territory of the Slovak Republic the police department established next to the asylum facility – the asylum police unit in Humenne,
- when arriving to the territory of the Slovak Republic via air the police department in the transit area of an international airport, or
- the police department according to the site of a special facility (e.g., police detention centre for foreigners, health care institution, institution for execution of custody pending trial or imprisonment, or facility for the social and legal protection of children and social guardianship).

If a foreigner applies for asylum at the police department other than the one authorized to receive asylum application according to the Asylum Act, this department is obliged to inform the foreigner which police department is authorized and where the asylum application may be submitted. If a foreigner applies for asylum at the police department not authorized for reception of asylum application he/she is already considered as an asylum seeker and shall be sent or transported to the asylum centre in Humenne. The police department shall provide the foreigner with a travel document that will serve as a temporary identification document with a validity of 24 hours and instruct the foreigner how to travel to the asylum facility or, if the case concerns a foreigner who is vulnerable (i.e., elderly or ill) or a family with small children, the police will escort such foreigners to the facility.

The Asylum Police Unit of the Police Forces located at the reception centre in Humenne records the asylum application on an official form and ensures a foreigner's fingerprints are collected. The foreigner is specifically informed of these facts. If the foreigner has on his/her person any personal identification documentation, such as a travel document, the police authority will retain them and issue the foreigner the certification as to such fact. The police authority will send a copy of this document along with the asylum application and other file documentation to the Migration Office of the Ministry of Interior. In case of a minor, his/her legal representative or a court-appointed guardian submits an asylum application on his/her behalf; otherwise such an act is invalid. An unaccompanied child is not placed into asylum centre, but remains in the special foster care facility throughout the duration of the asylum procedure. The police department will not collect the fingerprints of a minor foreigner under the age of 14.

Asylum seekers are normally placed in open asylum centres (first in Humenne, Eastern Slovakia, later transferred to Rohovce, western Slovakia, or Opatovska Nova Ves, southern Slovakia). The reception asylum centre in Humenne is a facility with a closed regime in which preliminary steps in asylum proceedings, such as entry

interview and medical screening are completed. After the results of the medical screening an asylum seeker is moved to an open regime. In all asylum centres asylum seekers have his/her basic needs secured. Employees of non-governmental organizations provide social and psychological counselling services free of charge in the centres through projects supported by the EU Asylum, Migration and Integration Fund.

An asylum seeker can ask for permission to leave the centre and if he/she has sufficient financial means to take care of himself/herself, asylum seeker can get permission to live anywhere in Slovakia. However, during asylum procedure they cannot leave the country. If they leave from Slovakia during asylum procedure, upon their return, Slovak police may evaluate it as indication of risk of repeated departure/absconding from Slovakia and may decide to place an asylum seeker into a closed detention centre. In exceptional cases police may decide to detain an asylum seeker and place him/her in one of the detention centres in Sečovce or Medvedov. The police department may detain an asylum seeker only for one of these reasons:

- to verify his/her identity or citizenship;
- to protect security and public order;
- until reasons of his/her asylum application are established, when police believes that as asylum seeker would not cooperate or he/she would leave the territory of the Slovak republic if placed in an open asylum centre; or
- to prepare his/her transfer to another country responsible for his/her asylum application according to Dublin III Regulation, when police strongly believes an asylum seeker would not cooperate in preparation of transfer or he/she would leave the territory of Slovak republic in order to avoid transfer if placed in an open asylum centre.

Submission of an asylum application in the detention centre it is not a reason for release to an open asylum centre. If police believes that a foreigner applied for asylum only with intention to avoid his/her expulsion/deportation from Slovakia, he/she will remain in detention. Maximum duration of detention of an asylum seeker is 6 months.

Migration Office is the administrative body responsible for reviewing the application and issuing a decision in the asylum proceedings on the territory of the Slovak Republic. In practice, asylum applications would be declared inadmissible, if another country is found to be responsible for examination of asylum application based on the criteria set by the Dublin III Regulation. Slovakia would be responsible provided that the person entered the territory of the EU by crossing irregularly

the Slovak-Ukrainian border, or if he/she has arrived to the EU with Schengen visa granted by the Slovak embassy abroad or if family members are already present on the territory of Slovakia.

The Slovak Republic will grant asylum to a foreigner who has well-founded fear of persecution for reasons of race, nationality, religion, membership of a particular social group or political opinion (pursuant to Article 1A of the 1951 Geneva Convention); and/or or who had been persecuted for the application of his/her political rights and freedoms in the country of origin. Minor single children and spouses of persons who were granted asylum under the condition that such a marriage existed at the time of the departure of a person granted asylum from the country of origin, as well as parents of a person granted asylum who is a child have the right to asylum for the purposes of family reunification. An important condition is that a family member who requests the family reunification with a person granted asylum must be present on the territory of the Slovak Republic.

If specific reasons exist which the Migration Office considers suitable for protection, it can also grant asylum for humanitarian reasons. When granting asylum for humanitarian reasons, the Migration Office mainly bases its decision on Article 7 of the Regulation of the Minister of Interior of the Slovak Republic No. 4/2003 pursuant to which asylum for humanitarian reasons can be granted to any foreigner who has not been successful in asylum proceedings and is an elderly, traumatized or seriously ill person whose return to the country of origin could represent significant physical or psychological hardship or even lead to his/her or her death. There is no legal entitlement for asylum for humanitarian reasons.

If the Migration Office decides not to grant asylum, it will examine the case for the presence of reasons to assume that a foreigner would face a real risk of serious harm if returned to the country of origin. Serious harm in this case is understood as imposition of the death penalty or its execution, torture, inhumane or degrading treatment or punishment or serious and individual threat to life or person by reasons of indiscriminate violence in situations of international or internal armed conflict. In this case the Migration Office will provide an asylum seeker with subsidiary protection.

The time limit for issuance of a decision within asylum proceedings is 90 days from the submission of an asylum application. In justified cases, the Migration Office can repeatedly extend this time limit. In the event of a negative decision, i.e., a decision not granting asylum or not providing subsidiary protection, a foreigner has the possibility to challenge the decision within 30 days from the delivery of the decision by submitting an appeal to the regional court in Bratislava or Košice. If the regional

court upholds the first Instance, a foreigner can submit an appeal to the Supreme Court of the Slovak Republic within 15 days from the delivery of the decision of the regional court. Generally, the submission of an appeal has a suspensive effect. If a court overturns a decision of the Migration Office, the case is returned to the Migration Office for new review proceedings. The Migration Office is bound by the decision of the Supreme Court. A decision not granting asylum enters into force only after the Supreme Court eventually confirms it; until then a foreigner is considered to be an asylum seeker.

IV.

BEST PRACTICE EXAMPLES IN LEGAL REPRESENTATION

HUNGARY

Currently the lawyers and legal counsels of the Hungarian Helsinki Committee are the only ones present regularly and continuously at all facilities where people of concern are accommodated or detained. These include the transit zones, the open reception facilities, the asylum detention facilities and the immigration detention facilities.

From January 2013 until the end of 2014 there existed a project whereby free legal aid for asylum seekers was provided through a project funded by the ERF National Actions scheme and ran by the Legal Aid Service of the Ministry of Public Administration and Justice. There were difficulties with the recruitment of lawyers, while the asylum seekers were not informed about the lawyers' existence. Lack of language skills among certain lawyers was also reported. In general the trust needed between lawyers and asylum seekers has not been developed. This scheme has officially failed, as the grantee (the Office of Administration and Justice) decided to cease the project due to insurmountable difficulties.

The low financial compensation for legal assistance providers is also an obstacle for lawyers and other legal assistance providers to engage effectively in the provision of legal assistance to asylum seekers. Another major issue is the lack of sustainability of legal aid funding. The fact that free legal aid is project financed means that the funding is not flexible and it cannot adapt fast to the changes on the ground.

Under these circumstances the HHC maintains a national network of contracted attorneys-at-law and legal counsels to ensure weekly or bi-weekly visits to all the relevant facilities. In 2016, six contracted attorneys-at-law and eight legal counsellors worked on asylum cases. During the second half of 2015 this task became even more difficult for various reasons: changes in both the legislative and the physical environment concerning asylum-seekers changed rapidly and without a priori briefings by the relevant authorities. This meant, among others, the shutting down of the largest open reception facility and asylum detention centre in Debrecen; the decision to consider Serbia as a safe third country; the setting up of temporary reception facilities at Körmen (closed then opened again on 2 May 2016) and Szentgotthárd (as of writing not in use); the setting up of the transit

zones and the continuously changing mechanisms applied there vis-à-vis asylum applicants, to only name a few.⁹

Total number of foreigners assisted by the HHC Refugee Program in 2015:

...among whom asylum-seekers:	1 431
...among whom migrants in an irregular situation under an expulsion procedure:	368
...among whom refugees assisted in family reunification:	94

Legal Counselling

The aim of the legal counselling is twofold: first, as noted above, apart from the HHC's legal activities, there is currently no other entity providing information to asylum-seekers on the legal framework of their procedure. Relatedly, the inefficient nature of interpretation provided by the OIN means that many applicants are not aware of the contents of the documents issued by the authorities hence they rely on the explanation provided by the HHC.

The second aim is to identify people of concern in need of legal representation. Whether free legal representation is provided is then decided at the bi-weekly held case discussion meetings in the presence of the legal counsellors and attorneys-at-law.

It is important to note that these legal counselling occasions often warrant non-legal interventions and include social assistance as well. As currently the HHC is the only NGO present at all facilities where people of concern are either accommodated or detained, in many cases the HHC staff is the first to identify applicants in dire need of psychological or other social assistance. One of the many consequences of the lack of information and trust between the applicants and their OIN case officers is that issues that normally fall out of the scope of legal assistance (such as issues of health, wellbeing, lost family members, etc.) are addressed for the first time to HHC staff. That these important issues are attended to is only possible because of the holistic approach of the HHC staff and the good working relationship that is a key characteristic of the handful of specialised NGOs working with asylum-seekers.

The HHC regularly monitors the conditions of the facilities where asylum-seekers are accommodated or detained. In 2015, this meant 17 visits to various closed reception facilities and detention centres. Although the purpose of these monitoring visits is to document and analyse the conditions in such places, without exception these occasions include basic legal counselling and sometimes warrant immediate

⁹ For a detailed discussion of the major legal changes, see: <http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>

legal intervention.

Despite the radical changes in access to territory, the HHC continued to carry out regular monitoring activities under the tripartite agreement concluded with the UNHCR and the Border Guard in 2006. In the framework of 12 monitoring visits at various facilities on the Serbian-Hungarian border section, the HHC monitor gathered first-hand information on access to asylum procedures and protection, aiming also to identify individual cases of persons in need of international protection, as well as those who may be or may have been affected by measures that could amount to refoulement, and to provide legal assistance to such persons. Based on these findings, the HHC, in cooperation with the UNHCR Regional Representation for Central Europe and the National Police Headquarters, will publish its 2015 annual report on its border monitoring project in the first half of 2016¹⁰.

It was through this cooperation that the HHC managed to gather information almost immediately about any changes of practice on the ground. This close working relationship enabled asylum-seekers to easily contest the OIN's claim that Serbia is a safe third country by distributing the HHC's special form that explained to the OIN why Serbia should not be regarded as such in the applicant's case. The distribution of this form through the national network of volunteers enabled asylum-seekers to contest the OIN's unlawful decision both in the administrative procedure and in the form of an appeal, with proper arguments, even without receiving individual legal assistance.

Legal Representation at the National Level

In order to challenge unlawful, legally incorrect or unfair practices at a strategic level, the HHC continued to provide formal legal representation to asylum-seekers in selected cases:

Asylum-seekers provided with legal representation – total number of cases:	331
...among which representation in the administrative phase of the asylum procedure:	229
...among which representation in the judicial phase of the asylum procedure:	87
...among which representation in challenging a detention order:	40
...among which representation in a criminal procedure (for illegal border-crossing):	5

10 See for example: <http://www.helsinki.hu/jelentes-a-roszkei-tranzitzonaban-tett-latogatasrol/> or <http://www.helsinki.hu/jelentes-a-szegedi-hatarrendeszeti-kirendeltsegen-es-a-roszkei-hangarban-tett-latogatasrol/>

Legal representation significantly contributed to asylum-seekers' access to the appropriate protection status. In 2015, clients represented by the HHC had three times higher chance to obtain a protection status (34%) in the administrative phase of the procedure than asylum-seekers in general (12%). In the judicial review phase, the effectiveness of legal representation by the HHC was even more spectacular: in 77% of the cases represented by the HHC the appeal against the incorrect first-instance was successful.

Impact indicators in HHC-represented asylum cases (where result is known)

Administrative phase			Court phase		
Refugee status	19	12%	Successful review – protection granted	14	30%
Subsidiary protection	35	22%	Successful review – new procedure ordered	22	47%
Rejection	106	66%	Rejection of review request	11	23%

As it transpires, one of the new strategic issues that emerged in 2016 has been the designation of Serbia as a safe third country through a government decree. Soon after it came into effect on 1 August, the OIN began to publish inadmissibility decision en masse based on this decree. The HHC successfully litigated this issue in a number of cases. For example, the Debrecen Administrative and Labour Law Court regularly overturned the OIN's decisions based on the safe third country concept, in great part due to the HHC's effective intervention.

The HHC undertook legal representation in detention procedures in more than 40 cases. In 21 HHC-assisted cases immigration or asylum detention was successfully challenged and terminated, out of which cases bail was applied on 5 occasions. Throughout the year the HHC continued to receive complaints relating to the unlawful detention of asylum-seeking unaccompanied minors detained together with adults due to wrong age assessment. Both attorneys present at the asylum jails of Nyírbátor and Békéscsaba reported that they regularly assist visibly young, underage Afghan, Syrian and Pakistani asylum-seekers in detention. Besides petitions to terminate asylum detention, HHC lawyers identified several dozens of potentially underage detainees in 2015; in 29 cases the HHC lawyers initiated an age assessment examination.

Although traditionally the HHC does not provide free legal representation in criminal proceedings, since the erection of the legal and physical barriers on the Southern

borders, such proceedings against asylum-seekers and people of concern have been initiated en masse. The HHC, together with several *pro bono* lawyers, provided legal representation for a number of the accused. Relatedly, the HHC represents three of the defendants in the notorious Rösztke riot case¹¹, where several disabled asylum-seekers are accused of instigating and participating in a violent riot that broke out at the Hungarian-Serbian border crossing on 15 September 2015. Two of HHC's clients are disabled while the third has chronic diabetes – currently all three are held in Kiskunhalas alien policing jail under house arrest.¹²

Relatedly, as the government launched its xenophobic campaign at the end of 2014, around 1,000 billboard placards were placed in public areas throughout the country in the summer of 2015, with hostile and harassing statements such as: “National consultation on migration and terrorism – If you come to Hungary, you cannot take the jobs of Hungarians.” After they were put on display in June 2015, several billboards have been damaged by citizens who disagreed with the campaign's messages. They were charged with criminal offences or petty offences. The HHC represents five such defendants from Budapest and Szeged; three procedures were already terminated on the basis that no criminal offence had been committed.

In 2015, the HHC's statelessness expert continued to provide support to lawyers representing individual cases of stateless persons both in and outside Hungary. The HHC is also involved in statelessness-related strategic litigation. The HHC has been involved for over two years as expert and later as third-party intervener in a statelessness determination case. It was in great part due to the HHC's efforts that the Budapest Administrative and Labour Law Court finally decided in June 2014 to refer the case to the Constitutional Court challenging the compliance with international legal obligations of an unreasonably restrictive provision in Hungarian law that limits relevant protection measures to stateless persons already lawfully residing in the country when applying for protection. In this case, the HHC submitted a detailed position paper to the Constitutional Court, which analyses the legal framework, the available guidance and international practices. As a major advocacy and litigation success with an international impact, the Constitutional Court ruled favourably in February 2015, quashing the provision setting the lawful stay requirement¹³.

11 <http://www.theguardian.com/world/2015/sep/16/hungarian-riot-police-use-water-cannon-against-refugees>

12 <http://www.channel4.com/news/disabled-migrants-accused-of-mass-riot-in-hungary>

13 <http://www.statelessness.eu/blog/hungarian-constitutional-court-declares-lawful-stay-requirement-statelessness-determination>

Legal Representation at the International Level

The HHC successfully represented three Somali nationals at the European Court of Human Rights (ECtHR). The case (*Nabil and others vs Hungary*, 62116/12) originated in 2012 in which the applicants alleged that their detention had been unjustified, was a situation not remedied by the adequate judicial revision. The ECtHR held that there has been a violation of Article 5 § 1 of the Convention and ordered the government to pay EUR 7500 in non-pecuniary damage to each applicant and EUR 3395 in respect of costs and expenses¹⁴.

The HHC successfully challenged the quasi automatic immigration detention of asylum-seekers in Hungary in three cases before the ECtHR: in *Lokpo and Touré v. Hungary*¹⁵, in *Abdelhakim v. Hungary*¹⁶ and in *Said v. Hungary*¹⁷. In all of these cases the Court found the systematic detention of asylum-seekers in violation of Article 5 § 1 of the Convention and ordered the government to pay EUR 10000 in non-pecuniary damage to each applicant. These decisions played an immense role in the government's decision to amend the laws regulating the detention of asylum-seekers¹⁸.

The HHC's attorneys-at-law requested two preliminary references in three cases involving Palestinian asylum-seekers' application. The *Bolbol*¹⁹ and the *El Kott and others*²⁰ strategic cases at the Court of Justice of the European Union examined the interpretation and application of Article 1D of the 1951 Refugee Convention and Article 12 (1) a) of the Qualification Directive. Two preliminary references were made in the three cases. The *El Kott and others* case laid down important factors on the assessment of Palestinian asylum claims.

14 <http://hudoc.echr.coe.int/eng?i=001-157392>

15 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/alldfiles/CASE%20OF%20LOKPO%20AND%20TOURE%20v.%20HUNGARY.pdf>

16 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/alldfiles/Original%20judgment%20-%20ALTAYAR%20ABDELHAKIM%20v.%20HUNGARY.pdf>

17 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/alldfiles/CASE%20OF%20HENDRIN%20ALI%20SAID%20AND%20ARAS%20ALI%20SAID%20v.%20HUNGARY.pdf>

18 <http://www.asylumlawdatabase.eu/en/journal/detention-asylum-seekers-hungary-exploring-impact-three-judgments-european-court-human>

19 <http://www.asylumlawdatabase.eu/en/content/cjeu-c-3109-nawras-bolbol-v-hungary-0#content>

20 <http://www.asylumlawdatabase.eu/en/content/cjeu-c-36411-mostafa-abed-el-kar-em-el-kott-chadi-amin-radi-hazem-kamel-ismail-v-bevadorlasi#content>

The HHC is currently representing two asylum-seekers at ECtHR, whose asylum applications have been declared inadmissible in the transit zone, based on safe third country grounds. The request for judicial review was rejected as well. According to testimonies of the applicants and UNHCR staff member present at the time in the transit zone, the asylum office communicated the Administrative Court's rulings to the applicants and subsequently the applicants were escorted by the police to the gate and were told to leave the transit zone in the direction of Serbia. It is important to note that the side of the fence, the part of land where the applicants were pushed out to from the transit is still Hungary. The applicants were left there on their own by the Hungarian authorities. According to the testimonies of the applicants, they did not agree to leave Hungary voluntarily and they clearly said that they did not want to go back to Serbia. They said to the asylum officers that they want to appeal against the expulsion and tried to hand over the appeal document prepared in advance, but the officers refused to take their appeal. The next day their counsel received a letter from the asylum authority, stating that the applicants left the transit voluntarily in the direction of Serbia. This is clearly contrary to the statements of the applicants and the witness.

In this case, only the continuous close cooperation between the HHC and a Serbian NGO permitted the HHC staff to follow the events and maintain contact with the clients after the two asylum-seekers were escorted to the gate of the transit zone.

This example highlights one of the major obstacles to successfully challenge the current procedures at the ECtHR: while the HHC regularly experiences difficulties in gaining access to the transit zones, asylum-seekers are "escorted" out of the facility to the southern side of the fence. For a few metres wide strip it is legally still Hungary, however physical access to that area is extremely limited for the HHC staff and from there, asylum-seekers have only one option: to walk back to Serbia. Without close international cooperation to establish the facts and to maintain contact with asylum-seekers litigation at the ECtHR is barely possible.

Legal Assistance in Family Reunification Procedures

Through representing individual cases, strategic litigation and complementing advocacy activities the HHC proactively works for a more effective, flexible and humane family reunification policy for persons who had been granted international protection.

In July 2014, the HHC submitted a formal complaint to the European Commission with detailed reference to the non-compliance of Hungarian regulation and practice with various provisions in EU law concerning family reunification. Following an

advocacy meeting with the Commission's experts in Brussels in February 2015, the HHC submitted additional information in April and continued its efforts toward an EU-level intervention on this matter. As a result of the HHC's nearly two years of advocacy efforts, the European Commission officially launched a "pilot procedure" against Hungary in December, based on an apparent breach of EU law in various aspects, in connection with family reunification rules (thus agreeing with the main legal arguments put forward in the HHC's complaint). This procedure may result in an infringement procedure in 2016, unless the Hungarian governments amends the problematic regulation or provides sufficient arguments against the Commission's legal standpoint.

The HHC continued to provide legal advice and representation in family reunification cases. In 2015, the HHC assisted 94 refugees with their family reunification. In the cases of a known result, 15 family members represented by the HHC (linked to 7 refugees) were granted a Hungarian residence permit on family reunification grounds. Due to the support received at the end of the year from the Unitarian Universalist Service Committee, the HHC has been able to provide financial and emergency assistance to those families who benefit from the HHC's legal assistance during their family reunification procedure, and whose family reunification is impeded by insurmountable financial obstacles.

POLAND

Basic activities of the Polish NGOs providing legal assistance to foreigners is the individual counselling during proceedings run before administrative authorities (asylum proceedings) and national courts (detention cases or examining appeals against negative decisions in asylum proceedings). But there are also several cases of successful examples of litigation before national and international courts which may have impact not only in individual cases but also on general situation foreigners in Poland.

Detention cases before ECtHR

One of the basic problems of detention in Poland is that European Court of Human Rights (ECtHR) jurisdiction in such cases is not used by the Polish courts. On the other hand there is no ECtHR's jurisdiction in detention cases concerning Poland, so judgments in cases brought against other countries may be not perceived by the courts as applicable to Poland. It may be presumed that ECtHR judgments on Polish cases would change the situation and standard aroused from ECtHR's jurisdiction will be taken into consideration by the Polish courts.

Until now there is only one ECtHR judgment on deprivation of liberty of foreigner by Polish authorities. In the judgment *Shamsa v. Poland* of 2003 the ECtHR stated that deprivation of liberty of foreigner in the transit zone of the airport without clear legal basis and without court judgment was unlawful²¹. This judgment had an influence into Polish law but since then Polish law changed significantly so the *Shamsa* judgment is not applicable to current legal situation in Poland.

Until now there is only one case concluded before the ECtHR on the subject of placing a foreigner in detention centre in Poland. The case concerned asylum seeker of Chechen origin who was arbitrary detained as irregular migrant. Even when she insisted to check fact that she was an asylum seeker, it wasn't taken into consideration by the courts. After exhaustion of national remedies he application to the ECtHR was submitted by the HFHR lawyers and the case was communicated by the ECtHR to the Polish authorities. In this case Polish government decided to propose friendly settlement and paid all requested compensation.²²

Another case run by the HFHR lawyers before ECtHR concerns Chechen asylum seeker who was placed in detention centre together with her 5 children. During her stay she claimed that she was subjected to violence by her husband and presented relevant documents to the courts (including psychiatric documentation), also well-being of the children wasn't taken into consideration when deciding about their detention. Despite that, she was not released from the detention centre and finally deported from Poland. The foreigner represented by a lawyer of the HFHR submitted an application in the above matter to the ECHR. In the application lawyers underlined general problems like lack of system of identification of vulnerable persons and common children detention. In October 2014, the case was communicated by the ECHR to the Polish government²³. This time Polish government decided not to settle the case but to prepare its observations on admissibility, so it is possible that this case will be decided by the ECHR as to the merits.

Since then another applications were submitted to the ECHR concerning children detention, detention of torture victims. It may be expected that in those cases the government will also prepare its observation on admissibility and merits so the judgments will be delivered by the ECtHR.

21 Available at: <http://hudoc.echr.coe.int/eng?i=001-61479>

22 Case of *Dzhabrailova v. Poland*. Decision to strike case from the list due to friendly settlement is available at: <http://hudoc.echr.coe.int/eng?i=001-146986>

23 Case of *Bilalova v. Poland*, communication available at: <http://hudoc.echr.coe.int/eng?i=001-147898>

Cases of compensation for arbitrary detention before national courts

Another practice which may have influence in general situation of foreigners in Poland are cases of compensation for unlawful detention of the asylum seekers. In several cases run by the HFHR lawyers, there were situations in which the Office for Foreigners found a asylum seeker as a vulnerable person (e.g. a person subjected to violence or disabled) and provided to him/her special treatment (asylum interview conducted in the presence of a psychologist) and finally issued positive asylum decision on that basis. On the other hand in the case of the same applicant the Border Guard and the court did not recognised him/her to be a person requiring a special care, which resulted in placing them in the detention centre. One of such case was also considered by the Supreme Court which stated that in such situations the authority responsible for asylum proceedings (Office for Foreigners) should be responsible for providing information to the authority responsible for detention (Border Guard) that respective person is vulnerable and release from detention should be considered. This conclusion may be challenged as Border Guard should have its screening system in place and identify vulnerable persons by itself. The Polish law prohibits detention of such persons and detention orders are given by the courts on the Border Guards motion.

In a several of such cases, the HFHR submitted applications for financial compensation for undoubtedly unjustified detention of a foreigner in a guarded centre to the national courts. One case concerns mother detained with her children, she experienced serious violence in the country of origin and told about it when applied for asylum during stay in the detention centre. In another case seriously disabled asylum seeker was detained shortly after his transfer from Germany. Although, his disability was recognisable at glance the court decided that there is no reasons against his detention. In those cases the courts agreed with HFHR position and decided that detention was unlawful. But amount of compensation was significantly lower than requested and granted in similar cases so the appeals were filled to courts of appeals. In our opinion besides of acknowledgement of unlawfulness of detention also amount of compensation have its significance. Proper compensation creates redress for the human rights violations experienced by the asylum seeker. It may also be perceived as deterrence from another unlawful detention, which may include financial consequences from State Treasury.

Litigation in LGBT asylum case

In most asylum cases in Poland, as elsewhere, main problem in the examination of case is the matter of establishing facts. Usually asylum seekers don't have documents or material evidence supporting their claim. So the cases are examined on the basis of their declarations. Particular problems aroused in cases where persecution due to a sexual orientation was declared as basis of the asylum application. In some countries homosexual acts are punishable by the state and LGBT persons are in danger of serious persecution. So the Office for Foreigners running such asylum cases recognise that determination of the sexual orientation of an applicant is therefore crucial for establishing facts.

In one such case run by the lawyers of the HFHR authorities of first instance and second instance assessed the declared sexual orientation of an applicant differently. During proceedings in first instance, the applicant presented certificate of a sexologist confirming his homosexuality, so the Office for Foreigners found his sexual orientation as proven. However, it refused to grant him protection because of the fact that, in its opinion, homosexuals in Uganda do not face persecution or a risk of serious harm. On the other hand the Refugee Board after examination of the case established that applicant is not homosexual. This statement was justified by incoherent and unreliable applicant's testimonies. Additionally the Refugee Board stated that medical certificate is not proper evidence in asylum proceedings. So even if the Refugee Board stated that being homosexual from Uganda is reason to be granted with protection, it decided to refuse to grant protection to the applicant.

The applicant with assistance of the HFHR lawyers filed an appeal against the decision to the Voivodship Administrative Court in Warsaw. The Court revoked the decision of the Refugee Board. In its judgment the court stated that the administrative authority is not qualified to question the opinion of an expert doctor²⁴.

Extradition cases of recognised refugees

In recent years there were several cases where national courts considered legal allowability of extradition of foreigners who were granted refugee status in Poland and in another country. Polish national law does not recognise refugee status as such as bar against extradition. There is no clear jurisprudence on that issue - there is judgement issued in 90. of the Court of Appeals in Wroclaw which referred to non-refoulement rule. On the other hand in one of its judgments Supreme Court

24 Voivodship Administrative Court in Warsaw judgement of 20 November 2012, case No V SA/Wa 1048/12, available at <http://orzeczenia.nsa.gov.pl/doc/F5E5B9C93F>

stated that refugee status obtained in another EU state and even in Poland may not be sole bar against extradition. Therefore, the Polish courts taking decision in refugees' extradition cases do not have clear indications how to assess their situation, even if the refugee status was granted by Polish authorities. Fortunately in extradition cases known to HFHR, courts usually decided that the extradition was not allowable due to risk of human rights violations as the possible effect of extradition. Anyway such a practice does not eliminate the possibility of extradition a foreigner granted with the refugee status to his/her country of origin when risk of human rights violations is not properly examined by the court (which was the case in some extradition cases but not where refugees were to be extradited).

In several cases HFHR presented its opinion in cases of extradition of foreigners granted with the refugee status. In its opinions the HFHR argued that refugee status should be a sole reason to recognise extradition as not allowable. The argument is based on the principle of non-refoulement of the Geneva Convention, which applies to any form of return such a person, including extradition. In the opinion of the HFHR, the refusal of extradition of refugees is also required by the Charter of Fundamental Rights of the European Union which guarantees the right to asylum with due respect for the principles of the Geneva Convention and the principle of not surrendering refugees to their countries of origin is one of the fundamental principles of the Convention.

Despite of above mentioned Supreme Court judgment, HFHR lawyers noticed some changes in practice of Polish courts in extradition cases. In one case, the Regional Court in Warsaw decided that extradition to the Russian Federation is not allowable as the foreigner was granted the refugee status in Ukraine. In another case the Regional Court in Gorzow Wielkopolski decided about extradition refusal of the foreigner who was granted asylum by the Belgian authorities. In both cases the courts mentioned Geneva Convention and non-refoulement rule so it's chance that the jurisdiction of the Polish courts will change towards full respect of the provisions of the Geneva Convention. Anyway, according to the HFHR Polish Code of Criminal Proceedings should also directly refer to the refugee status as an obstacle to extradition.

CZECH REPUBLIC

Access to detention centres: The Czech legislation does not directly guarantee that NGO lawyers must be able to access the places of detention and closed reception centres but as the EU Directives make sure that asylum seekers, detainees, "Dubliners" as well as holders of return decisions must be able to obtain

free legal aid, the reflexion of this right exists in the Czech legislation – namely § 35 of the Administrative Judicial Order (Act. No 150/2002 of the Collection of Acts) allows NGOs to legally represent asylum seekers, detainees etc. in the respective procedures.

In practice, NGO lawyers apply for and receive without obstacles entry permits from the Ministry of Interior's Refugee Facilities Administration - RFA (www.suz.cz) to all detention centres and reception centres. The RFA runs all detention, reception and integration centres for asylum seekers, detainees and beneficiaries of international protection in the Czech Republic and the cooperation of NGOs with RFA is generally very good. In each centre there is a visitors' room, where the legal counselling takes place.

However, the Ministry of Interior's decision from June 2015 to strictly check all transit points of refugees within the territory of the Czech Republic and detain all those apprehended on their way to the West, disclosed the weaknesses of such a system without a clear legal guarantee of access. The overcrowded detention centres with extremely poor hygienic conditions and the high tension between detainees²⁵ and police forces made suddenly the detention centres inaccessible in many cases of our attempts to enter. Furthermore, the police claimed that the detainees were not interested in seeing the OPU lawyers and later the detainees complained that they were not able to put their names on any lists indicating their interest to seeing the lawyer.

Only the criticism of the Ombudsperson and international institutions²⁶ brought the situation later back to the normal. Furthermore, after the detainees were released or deported to Hungary, Austria and Slovakia, the lesson learned facilitated even an improved environment and equipment for NGO legal counsellors in the detention centres. At the time being, no obstacles to enter the detention places exist, the social workers from RFA cooperate well in registering people for the consultations with NGO lawyers. There is even a computer and printer available for NGO lawyers in some of the detention centres. The RFA sometimes provides interpreters to detainees to be able to communicate with NGO lawyers.

In autumn 2015, the RFA signed cooperation agreements with NGOs visiting the

25 See the Ombudswoman report from her findings in the BelaJezova detention centre: <http://www.ochrance.cz/en/news/press-releases-2015/czech-ombudsman-criticises-conditions-in-refugee-facility/>

26 See the statement of the UN Human Rights Commissioner Mr. ZaidRaadHusajn from 22 October 2015 - <http://www.osn.cz/vysoky-komisar-osn-pro-lidska-prava-vyzyva-ceskou-republiku-aby-prestala-zadržovat-migranty-a-uprchlíky/>

detention centres. However, the main weakness of the legal representation system is the fact that the state does not provide any funding whatsoever to cover the costs of free legal aid. This is in breach of the obligations stipulated in the EU Directives.

Access to the closed reception first centres: As far as the access of NGO lawyers to the asylum seekers held in the closed first reception facilities in Prague airport and in Zastavka u Brna is concerned, there is no problem with the access to the centres itself provided that the lawyer receives an entry permit from the RFA. Always a visitor's room is available for legal counselling.²⁷

Access to the transit zone at the airport, to police cells and prisons: OPU's legal assistance for refugees arriving at the Prague airport remains very limited. On the basis of the cooperation with UNHCR Office in Prague and based on the permission of the Airport Administration, OPU lawyers do have special cards allowing them to enter the transit zone at Vaclav Havel airport in Prague, however, the access of lawyers to the police cells at the airport, where people are held in order to be returned on the board of the same plane as soon as possible, is limited. An intention to visit the cell must be submitted to the airport aliens police one day in advance and the police can reject the entry request if there are no people placed in the cells. Therefore, it is a sad reality that every month dozens of people get refouled on the same plane back to their departure places (Istanbul, Moscow, Cairo) and according to the police, almost no one allegedly expressed the intention to apply for asylum. No formal trilateral agreement between the Aliens Police, UNHCR and OPU has been concluded due to the lack of cooperation of the police's side. Therefore, a better access to potential asylum applicants and transparent information provision to them remains a real challenge in our work.

The access of NGO lawyers to asylum seekers in prisons is also limited (sometimes asylum seekers are imprisoned due to on-going criminal procedure of extradition or crimes like not respecting the expulsion order or other more serious crimes). A permit to visit and assist an asylum seeker in prison must be obtained from the judge handling the criminal case, which is granted sometimes with great difficulties.

As far as the open accommodation centres are concerned, NGO lawyers do have unrestricted access inside the centres based on the permit issue by RFA. OPU lawyers and social workers receive usually a one year permit to access all (two) open accommodation centres. They are not allowed to visit asylum seekers in their

27 In the past, the NGO lawyers were allowed to move freely inside the refugee centers and everyone could meet and talk to them. Now, much depends on willingness of RFA workers or Aliens Police to register detainees or asylum seekers for consultations with lawyers.

rooms but well equipped counselling rooms are available to them in the centres.

Right of NGO lawyers to represent asylum seekers as legal representatives up to the level of regional courts

As the adopted EU Directives guarantee the right of asylum seekers, detainees, as well as holders of return and Dublin decisions to obtain free legal aid, the Czech legislation (§ 35 of the Administrative Judicial Order (Act. No 150/2002 of the Collection of Acts) gives the right to NGOs to legally represent refugees and aliens in the respective judicial procedures up to the level of the regional courts. The main problem is that the costs of such legal aid are not covered by the state unless there is a specific EU funded project for it. In practice, since 1 July 2015 no funding whatsoever has been available for free legal aid to asylum seekers and detainees.

However, NGO lawyers take frequently powers of attorney, in which their NGOs are authorized to represent the asylum seekers both in the first instance RSD procedure conducted by the Department of Asylum and Migration Policy of the Interior Ministry (hereinafter DAMP) and in the second instance review conducted by different regional courts according to the place or last registered stay of the asylum seeker in the Czech territory. This allows the NGO lawyers to assist their clients even with submission of the extraordinary judicial review legal actions – so called cessation complaints to the Supreme Administrative Court. Only at the Supreme Administrative Court, an obligatory representation of licensed private attorney-at-law is required.

Guardianship for unaccompanied minors seeking asylum in the Czech Republic

Another good practice in the Czech asylum system is the guardianship for unaccompanied minors offered by specialized lawyer of the Organisation for Aid to Refugees. Guardian is representing the interests of the UAMs during the administrative procedures be it the asylum procedure or expulsion and detention procedure. The guardian has a right to accompany the UAM at the asylum interview. The guardian is usually an employee of an NGO (usually OPU), which helps refugees in the Czech Republic. This person makes sure that the rights of UAMs are respected during the asylum procedure.

There are two types of guardians for unaccompanied minors seeking asylum.

- Guardian for the asylum procedure must be present when the application for international protection is submitted. This guardian is appointed by the

Ministry of Interior and in most cases it is an employee of an NGO, which provides assistance to refugees and foreigners in the Czech Republic. This first guardian is appointed only for transitional period before the court appoints a second guardian, the so called guardian for the residency.

- Guardian for residency protects the rights of UAMs for the entire duration of their residency (stay) in the Czech Republic until the UAM reaches the age of 18. This guardian is appointed by court and in the most cases it is Child Services (Orgán sociálně-právní ochrany dětí-OSPOD) of the relevant municipality, which is responsible for protection of Czech children as well. This guardian is present at all interviews, deliveries of decisions, and he also has the authority to launch a legal action to a court, etc. Because the guardian for residency does not have special knowledge on asylum, detention or expulsion procedures, he/she turns back to the previous NGO guardian and charges him again with responsibility to represent the child in the administrative procedures.

Inclusion of legal counsellors into the overall social services scheme

As there has been no legal aid act in the Czech Republic adopted yet²⁸, the only stable source of basic funding of NGO lawyers' work is the Act on Social Services (Act. 108/2006 of the Collection of Acts) and the corresponding social services scheme operated by the Ministry of Labour and Social Affairs together with Regional Authorities in each of the 14 regions in the Czech Republic. The social services scheme includes as a registered social service called "social counselling" and "social rehabilitation". In frame of social counselling and social rehabilitation, legal counselling to beneficiaries of social aid is considered as an eligible activity funded under the social aid funding scheme. The problem is that the level of salaries of people engaged in the social services scheme corresponds to the low salaries level of social workers' jobs in the Czech Republic. However, at least some system of the state subsidies exists with clear rules, elaborated work standards and strict inspections.

28 There were several plans of the Justice Ministry to draft a legal aid act but mainly due to the lack of funding and opposition from the Czech Bar Association, no proposal has ever reached the level of the Czech Parliament. Currently, a new Legal Aid Act draft, excluding completely all other providers of legal aid from the proposed free legal aid scheme than attorneys-at-law, has been proposed by the Justice Ministry, however, the objections of other ministries and the Ombudswoman will most likely freeze also this latest draft of the Act.

Cooperation with faculties of law and private law firms

OPU has been running a refugee legal clinics since 1999 in cooperation with the Faculty of Law of the Charles University in Prague. Gradually, the faculty took over the theoretical part completely but the practice is still carried out in OPU under the supervision of OPU lawyers. Students help us to draft different legal petitions and they also accompany us to visits in the refugee and detention centres. Usually, from the former refugee legal clinics students become new counsellors – employees of the Organisation.

The cooperation with the Law Faculty in Prague students has been very helpful especially in the times of the current „refugee crisis“ when the EU funds for legal counselling have been frozen by the Czech Ministry of Interior – the voluntary work of students helped us to maintain at least some legal services operational in all refugee and detention centres in the Czech Republic.

A similar cooperation has been established with the legal clinics at the Law Faculty of the Masaryk University in Brno, where the students have also the opportunity to conduct their practice in the OPU branch office in Brno.

The critical humanitarian and hygienic situation in the Czech detention centres in summer 2015 raised also the interest of the Czech Bar Association. Some private lawyers then wanted to get somehow involved in the legal aid to detained refugees. Despite the promising start – more than 20 private attorneys-at-law gathered in OPU for the introduction and first training organized by OPU – only a very few private lawyers remain anyhow active in the field of help to asylum seekers. Some of them agreed to take occasionally pro bono cases of our clients, one of them continues to visit the detention centre in VyšňáLhoty and keeps cooperating with OPU for this purpose. A promising discussion on future cooperation is taking place with the DLA Piper law firm, which is also willing to take *pro-bono* cases and help OPU with strategic litigation cases.

Best practices in legal representation of asylum seekers on international level

OPU does not hesitate to bring cases to the European Court for Human Rights in Strasbourg. In 2015, OPU submitted together with ECRE a collective complaint regarding the inhumane and degrading conditions and treatment of refugees in summer 2015 in the Czech detention centre in Bělájezová. We are waiting now for the Court to decide on it.

In individual cases, we lodged complaints in a number of cases of expulsion and

extradition. In 2015 OPU even intervened and prevented the extradition of a Belorussian holder of subsidiary protection from the jail in Germany (Dresden). Using the interim measure tool (Article 39 of the Convention) we prevented the expulsions of clients with protection needs to several countries for example to Belarus, Georgia, etc. Since there are serious shortcomings in the Czech asylum system and poor quality of asylum decisions, refoulement must be prevented during the dysfunctional airport procedure, during the extradition procedures, etc.²⁹

As far as the in-merits cases are concerned, OPU has been successful in winning the Strasbourg cases of *Budrevich v. Czech Republic*, *Diallo v. Czech Republic*, *Buishvili v. Czech Republic*³⁰ and lately the European Court of Human Rights ordered on 27 October 2015, using the interim measure rule of Article 39, that an Afghan family cannot be placed in detention centre BelaJezova due to the conditions not meeting the needs of families with children.³¹ The Strasbourg Court ordered the release of the family with one child having frequent epileptic attacks and requested the Czech Government to provide detailed information on living and hygienic conditions in the Bela-Jezova detention centre.

In 2016 OPU filed a complaint to the UN CAT (United Nations - Committee Against Torture), in a matter of an attempted extradition of a Czech subsidiary protection holder from Belarus. During his visit of Germany, German authorities attempted to extradite him back to Belarus. The UN CAT issued an interim measure prohibiting the German authorities to extradite the man. He was subsequently able to successfully return back to the Czech Republic. The UN CAT procedure concerning the merit of the case has been pending.

29 The Czech Government almost always replies positively to extradition requests of countries with large record of violations of human rights (Russia in case of Chechens, etc.) and the asylum procedure is not fair – basically it is a political decision of one Ministry of Interior official.

30 Absence of an effective judicial review in the airport transit zone detention procedure. The man had hepatitis C and was kept in the transit reception centre - which is a prison-like facility. His health was negatively impacted by the lack of treatment in the facility. He won a domestic court appeal, but the Ministry issued a repeated negative territory entrance (detention) decision. ECHR stated this judicial review was not effective as the consequence was not releasing the man to the territory.

31 See <http://www.romea.cz/en/news/czech/czech-republic-deporting-afghan-family-whose-case-came-before-the-european-court-of-human-rights>

SLOVAKIA

In the Slovak asylum system, the model of the financing of provision of legal aid by the Centre of Legal Aid was selected as the outstanding good practice example related to legal representation. This model guarantees individual legal entitlement of an asylum seeker for the provision of free legal aid by the state. Another good practice is explicit legal recognition of NGOs as legal aid providers in asylum matters.

Legal Aid in First Instance Asylum Procedure

It has been recognized for long time that the legal aid early from the commencement of an asylum procedure contributes to more efficient results in asylum proceedings already in 1st instance, which prevents unnecessary and time consuming remedy process. Since December 2008 the Centre of Legal Aid was given responsibility to ensure provision of free legal aid in asylum matters in order to transpose the mandatory minimal requirement of the EU Asylum Procedures Directive. The minimal requirement, however, grants the right to provision of free legal aid only for the review procedure. Nevertheless, Ministry of Interior sustained the parallel system of ensuring provision of free legal aid by the NGO lawyers by means of public call for services for asylum seekers including legal services. This was true until 2016 when the Ministry of Interior changed its policy and legal aid was no longer on the list of basic and supplementary services to be provided to asylum seekers thanks to EU Asylum Migration and Integration Fund.

Section 4 par.2 of the Asylum Act regulates obligation of the Migration Office to inform an asylum seeker on his/her rights and duties, possible consequences of non-compliance or breaches of his/her duties, on access to legal representation and legal aid. The Asylum Act obliges Migration office also to inform an asylum seeker about NGOs providing services and assistance to asylum seekers and persons granted international protection. Section 17 par.1 of the Asylum Act guarantees the right to be in contacts with NGOs throughout the asylum procedure. Information is provided in written form and according to possibilities in the language which an asylum seeker can be reasonably expected to understand.

Representation in asylum procedure is regulated by the Section 17a of the Asylum Act which rules out the subsidiary norms of the general administrative procedures. Representative may be an attorney, a person with full legal capacity and the Centre for Legal Aid. In asylum matters, an asylum seeker may only appoint only one representative. Except for the Centre of Legal Aid, the representation by another legal person is not possible.

Representation is shown by the written power of attorney. If an asylum seeker appoints his/her legal representative for the whole procedure, the decision in asylum procedure shall be delivered to the representative only, or to the Centre of Legal Aid only, provided that an asylum seeker had applied for provision of legal aid by the Centre of Legal Aid. If an asylum seeker has not appointed his/her representative, Migration office is obliged to notify him/her of the content of the decision in the language understandable to an asylum seeker. If an asylum seeker appointed his/her representative, it is expected that the obligation to inform an asylum seeker about the result and the content of the decision shifts on his/her representative who shall make sure an asylum seeker fully understood.

Legal aid in Judicial Procedure

Representation in judicial proceedings is always possible by an attorney. In asylum matters it may also be the Centre for Legal Aid. According to the Civil Procedures Code any physical person may be appointed as a representative in judicial proceedings, provided that a person is in full legal capacity. Court will prevent representation if a person is evidently not in full legal capacity or if repeatedly acts as representative in different cases. Until January 2013 asylum seekers could have appointed any of the above as a representative in judicial review of asylum decisions and asylum courts would have accepted also NGO lawyers as representatives of asylum seekers at the court based on power of attorney. In January 2013 the law changed and physical person other than attorney may represent an asylum seeker at the court only if he/she has a university legal education of II degree and it is a close person of an asylum seeker.

Long-term experience in provision of legal aid by NGO lawyers and many years of building their capacities were wasted since as of January 2013 they became unable to represent their clients in court procedure. The reasoning of this change has underlined that the only official providers of legal services in accordance with the law may be attorneys. It also pointed out the lack of guarantees of quality and of responsibility for damages.

The new Judicial Code on Administrative Review which will come into force as of 1st July 2016 will finally officially recognize explicit role and expertise of NGOs in asylum, detention and administrative expulsion cases as providers of legal aid. In procedures in which courts review administrative actions in asylum matters, detention and administrative expulsion, legal regulation allows for exception from the rule of mandatory representation by the attorneys³². According to Section

32 Section 50 par.1 and 2 of the Judicial code of administrative procedures.

50 par. 2 of the Judicial Administrative Code, in asylum matters, detention and administrative expulsion, foreigner may get represented by non-governmental organization which provides legal aid to foreigners. Its member or employee with legal university education of II degree shall act in the name of non-governmental organization. The possibility to be represented by NGOs extends to all instances of judicial review, including procedure on cassation complaints. Mandatory representation by an attorney is required only in case of action for renewal of the procedure.

Particularly new element of the system which will be tested only as of 1st July 2016 is in formalization of the judicial review in asylum, detention and administrative procedures matter, which means that a foreigner is not required to have a legal representative to take the action to the court, neither he is obliged to have legal understanding of the matter, provide solid legal reasons and his/her own proposal. In these legal proceeding foreigners do not need to be represented at all, because courts shall examine the action informally and are not bound by its content, extent, legal reasons or proposals. On the contrary, judge is obliged to examine the action, decision and the preceding procedure in its wholeness for all possible legal errors which would make decision unlawful, and to choose the best suitable solution of the case (confirm or abolish the decision).

Centre for Legal Aid – model of ensuring state-funded legal aid

The basis of the good practice system of provision of the legal aid by the Centre of Legal Aid is its legal regulation by the Act No. 327/2005 Coll. on provision of legal aid to persons in material need. Provision of free legal aid is ensured by the Centre of Legal Aid, budgetary organization under the Ministry of Justice. Asylum matters are all cases when the person requesting legal aid is an asylum seeker, a beneficiary of asylum or of subsidiary protection, or a foreigner subjected to the return procedure according to the Dublin III Regulation.

The extent of the legal aid includes the judicial proceedings and proceedings in front of the Constitutional court. It does not apply to the 1st instance asylum procedure, but becomes relevant only if negative or partially negative decision is obtained in this procedure. However, if the action to the court against such decision was successful and court abolishes the asylum decision and returns it for new procedure, the legal aid by the Centre of Legal aid extends also to the renewed procedure.

Legal aid shall be understood as provision of legal services to the eligible person in order to assist with realization of his/her individual rights, including legal

counselling, assistance with extra-judicial proceedings including conflict resolution by means of mediation, representation in front of court, and execution of relevant legal steps. Importantly, provision of legal aid by the Centre of Legal aid also includes, full or partial reimbursement of the expenses related to the provision of the legal services, ensuring interpretation, if necessary and translations of the documents necessary for the decision and requested by the court or the relevant administrative body.

A person becomes eligible for provision of legal aid when 3 conditions are fulfilled at the same time as required by the law. 1. A person submitted request for legal aid, 2. a person does not have any other legal representative for the same proceedings, and 3. Migration Office issued one of the following negative or partially negative decisions: on not granting asylum, on withdrawal of asylum, on non-prolongation or on withdrawal of subsidiary protection, on rejection of asylum application as manifestly unfounded or as inadmissible, on return to another member state based on Dublin III Regulation. In practice, entitlement for provision of free legal aid starts usually at the moment when person submitted request for legal aid, after negative decision was issued, or it could also be at the moment of the issuance of the decision, provided that a person submitted the request for legal aid already in 1st instance procedure.

The fourth condition is the state of material need. In vast majority of asylum matters, material need is not examined but presumed. Material need must be, however, shown by those who have had a legal residence in the Slovak Republic in the time imminently preceding negative decision in asylum procedure. From the practical point of view, it is much more conceivable to examine the state of material need in cases of foreigners who have had already some history and stay in the Slovak Republic, compared to the newly arrived asylum seekers. The most frequently, the fourth condition may be an obstacle in accessing free legal aid for persons who were already granted some form of international protection in the Slovak Republic.

The person becomes entitled for legal aid *ex lege*, automatically based on simultaneous fulfilment of the conditions stated by the law. No decision on granting legal aid by the Centre of Legal Aid is necessary, which makes the system provision of legal aid in asylum matters very simple and accessible.

Request for legal aid is submitted at the Centre of Legal Aid or during the time of the interview in the asylum procedure or in return procedure based on Dublin III. Regulation at the Migration Office. If request for legal aid was submitted at the Migration office, this office shall inform the Centre of Legal Aid about the request without delay and send it to the Centre together with the decision, which triggered

the provision of legal aid. If the case concerns decision which does not trigger the provision of legal aid (decision on termination of the procedure), Migration Office informs the person that he/she is not entitled for provision of legal aid by the Centre in this case. If a person requests for provision of legal aid by the Centre of Legal Aid only after the decision in the asylum procedure had been already delivered to him/her, he/she must enclose the copy of this decision.

Application for the legal aid must clearly state to whom it is addressed, who is submitting it, what the goal is, must be dated and signed. It shall also contain the number of the asylum case; the applicant's address for delivery of the official documentation and declaration of honour that applicant has no other legal representative. The official form of the application also includes the form for the power of attorney for representation in the asylum procedure. In this manner, by means of the filling in the application for legal aid with the Centre of Legal Aid, the applicant at the same time grants the power of attorney to the Centre as well as to any attorney appointed by the Centre of Legal Aid for representation in his/her case. If later on an applicant chooses another legal representative for the asylum procedure as a whole, this is understood as withdrawal of the application for provision of legal aid by the Centre of Legal Aid.

The legal relation of representation starts with the decision of the Centre of legal aid on granting the entitlement for provision of legal aid or with the decision on appointment of an attorney. The Centre may provide legal aid by means of its own employees with legal education or by means of appointment of an attorney. If the Centre appoints an attorney, the legal representation is thus concluded directly between the appointed attorney and the client (applicant for legal aid), not between the Centre and the applicant. It shall be regulated by the Contract on Legal Representation between the attorney and the client. In this case the Centre for Legal Aid further fulfils merely the role of the supervisor and administrator of the reimbursement of the expenses of legal aid.

If an applicant for provision of legal aid was administratively expelled from the territory of the Slovak Republic during provision of legal aid by the Centre, the Centre for Legal Aid is authorized to withdraw the legal remedy submitted by the Centre. This possibility has never been utilized by the Centre yet.

The Centre for Legal Aid is obliged to take necessary legal steps which cannot be delayed, even if the request for legal aid is not complete. All legal steps of the Centre are considered the legal steps of the applicant. If the request is incomplete, applicant is required to submit missing information. If the missing information is not submitted to the Centre within the requested time, representation by the Centre

or by the appointed attorney is cancelled. The applicant will be notified on his/her address.

As of 1st January 2012 the Centre shall prioritize appointment of attorneys for representation in judicial proceedings. Only in justified cases it is admissible that an eligible person shall be represented by the legal employee of the Centre. Whom means shall be utilized in an individual case is based on the decision of the Centre for Legal Aid taking into account individual circumstances of the case and making sure that the rights of the eligible person are efficiently protected. For purpose of representation in asylum procedure, the Centre appoints an attorney listed by the Slovak bar Association Centrum for purpose of the provision of free legal aid, taking into account the expertise of the attorney according to the circumstances of the case. The Centre issues a decision on appointment of an attorney, which cannot be appealed by an attorney.

Until end of 2011 also the court was given the power to appoint attorneys for legal representation of persons in material need. This power is in the current system vested with the Centre of Legal Aid only. Courts are given authority to review decisions of the Centre in case the Centre rejects to provide free legal aid top a person who applied for it. If a person who is absolved from payment of the judicial fees requests the court for appointment of legal representative, the court instructs him/her to submit his/her application at the Centre for Legal Aid.

The supervision of the Centre of Legal Aid over the appointed attorney involves oversight of timely and efficient fulfilment of obligations of the appointed attorney. The attorney is obliged to inform the Centre on the result of the procedure without delay, especially about timely submission of the regular or extraordinary legal remedies. The attorney is always obliged to inform the Centre on the end of the legal representation. Upon request of the Centre the attorney is obliged to inform without delay about the current state of the procedure.

The expenses of the legal representation consist of remuneration of attorney's legal services and reimbursement of the costs incurred by the attorney in the course of the legal representation. These are regulated by the decree No. 655/2004 Coll. of the Ministry of Justice on remuneration and reimbursement of the expenses of the attorney in relation of provision of legal services. The appointed attorney is obliged to submit proposal for reimbursement of the expenses of the legal procedure including the expenses of legal representation by the defendant during the court proceedings in regular and timely manner.

If the attorney is able to secure success at the court, the court decides on obligation of the other party to the court proceedings (the defendant – Migration Office) to

reimburse to expenses of the court procedure, and rules that the reimbursement of the expenses of the legal representation shall be paid directly to the attorney instead of his/her client. Thus attorney is entitled for the reimbursement of the expenses in his own name directly from the Migration Office. For the calculation of the remuneration of the attorney's legal services the so called tariff remuneration according to the ministerial decree applies. Total remuneration of the legal representation is calculated based on the tariff prize per one legal step. The tariff prize in asylum matters is one sixth of the average monthly salary in previous year (in 2016 it is 143 EUR) and the legal steps which are recognized for the purpose of remuneration of the services of legal representation are only those which are explicitly listed by the ministerial decree (taking up the case and preparation of the representation including first counselling meeting with a client, counselling meeting with a client, written submission to the court or administrative body or the other party to the procedure related to the case, participation at the procedure in front of court or administrative body or during mediation procedure, elaboration of the legal analysis of the case, negotiation with the other party to the procedure/defendant, proposal for preliminary measure, appeal against such measure, proposal for renewal of the procedure, appeal, proposal for extraordinary appeal, preparation of the document on legal step or substantial remake). No other legal or administrative steps can be used for calculation of the total expenses of legal representation for purpose of reimbursement.

If the court does not rule on obligation of the other party to reimburse the expenses of the court procedure, the Centre of Legal Aid decides on reimbursement of the expenses incurred by the attorney and on entitlement for lump-sum remuneration of the legal representation. Lump-sum remuneration of legal representation of persons in material need is paid for by the Centre of Legal Aid and it represents 130 EUR per one instance of the procedure. In extra-challenging or factually complex cases, the Centre of Legal Aid may decide on increase of the lump-sum remuneration up to 260 EUR per one instance of the procedure.

The pre-condition of the decision of the Centre of Legal Aid on entitlement for reimbursement of the expenses of legal representation is the fact that the attorney have submitted proposal for reimbursement of the expenses of the legal representation in the judicial proceedings in timely and prescribed manner. Provided that the person was successful at the court, the primary responsibility for reimbursement of the cost of legal representation lies with the other party to the procedure/the defendant, Migration Office of the Ministry of Interior. The Centre of Legal Aid reimburses the costs and pays the remuneration to the attorney only as a subsidiary source, provided that the judicial procedure was not successful or if the

court has not ruled on the obligation of the defendant to reimburse the expenses of the legal representation.

The legal regulation of remuneration is thus formulated with the view of motivating an attorney to try to be successful and obtain settlement of the expenses of the legal representation by means of the decision of the court. In case of success, expenses of legal representation are paid for by the other party to the procedure in the amount at the level of the tariff remuneration, quite higher remuneration for provided legal services compared to lump-sum paid for by the Centre of Legal Aid. On the other hand, this construction is also motivational for the other party to the procedure, Migration Office, which is motivated to take the decisions which would be upheld by the court as lawful and fair, because otherwise it may be hurtful in terms of payment of the other party expenses in the court procedure.

If the Centre of Legal Aid paid for the reimbursement of the expenses of legal representation, an attorney is obliged to return to the Centre the part of it which has been reimbursed based on the decision of the court, which prevents double payment of the same expenses.

An attorney is also entitled for reimbursement of the costs efficiently spent by him/her in relation to the provision of legal services. The costs of legal representation would include specifically judicial and administrative fees, travel expenses, communication expenses, expenses for obtaining expert opinions, translations and interpretation. An attorney is also entitled for reimbursement of the replacement fee for the loss in time. Again, the same principle applies as with remuneration that an attorney is entitled for the reimbursement of the expenses of the legal representation only if the court did not rule on the obligation of the other party to pay for the reimbursement of the expenses of the legal representation.

Looking forward

The challenge for the future will be more detailed legal regulation of the NGOs as providers of legal services. There is no clear confidentiality principle guaranteed between NGO lawyer and a client, quality assurance, complaint mechanism and disciplinary procedure are missing. Also NGOs should explore possibilities of ensuring commercial insurance of responsibility for damages caused in the course of provision of free legal aid. NGOs should also develop transparent rules of provision of free legal aid as well as introduce the ethical codes related to provision of legal aid. One of the possible questions open is inclusion of the NGOs as providers of legal services in asylum matters who could be appointed by the Centre for legal aid for representation in an asylum case. This would substantially contribute to resolving the issue of financing of legal aid by NGOs.

Capacity building

At the beginning of 2015 the Human Rights League conducted the study on availability and content of the legal aid provided in asylum procedure at the Migration Office and at courts conducted by the Human Rights League at the beginning of 2015 thanks to project funded by the Ministry of Foreign Affairs. Study touched upon the quality standards as well as ethical standards of legal services, taking rules and procedures adopted by the Slovak Bar Association for attorneys as examples.

One of the findings in the study showed that there are almost 200 attorneys listed with special expertise in asylum law; however, in reality Human Rights League learnt only up to 5 percent of them has actually ever come into contact with a real asylum case. Another finding was the lack of learning or educational and capacity building possibilities. In the Slovak Republic, there are only few persons who engage in asylum law, there is almost no expert literature, not even expert articles are being published. Participation at the trainings and seminars abroad is very costly.

Developing programmes for basic and further capacity building and platform for exchange of experiences has become one of the goals of Human Rights League. Its activities support sharing of actual legal developments, jurisprudence and legislation introduced, developing and maintaining the network of asylum lawyers. We have developed and shared some tools which should help lawyers or attorneys who are not experienced in asylum law to orientate themselves quickly and checklists of legal steps in 1st instance asylum and court procedures. We have also developed a tool to help lawyer to prepare his client for an asylum interview and provided analysis of domestic asylum jurisprudence.

Already in 2009 the Human Rights League conducted the first training of the lawyers of the Centre of Legal Aid, when centre was given the responsibility for provision of free legal aid in asylum matters. In 2015 we have repeatedly invited the lawyers of the Centre for Legal Aid and NGO lawyers for the seminar with lecturers from Czech Republic and Slovak Supreme court. Since 2014 we try to maintain the network of lawyers and exchange of legal information. Human Rights League also supports production and publication of expert legal articles related to the asylum law.

In November 2015 Human Rights League developed and conducted training for attorneys interested in asylum and detention cases in cooperation with Foundation Pontis, the member of the PILNET network and their programme of pro bono attorney services. The programme contained theoretical lectures on asylum process, application of Dublin regulation and on detention decision making and engaged the guest speakers Arild Humlen from Norwegian Bar Association and Marek Linha from Association for Assistance to Asylum Seekers in Norway. Afternoon part involved three practical cases studies against which theoretical knowledge could

be tested. The desired outcomes of this training was initiation of the cooperation between Human Rights League and some of the attorneys who participated in the training and were willing to take up some pro bono legal representation of asylum and detention cases. As a concrete result we have engaged with the local office of the DLA Piper law firm who immediately agreed on cooperation and assisted with three cases of asylum seekers. BNT Attorney-at-Law and other attorneys also expressed interest in representing clients in asylum cases as well as elaborating legal analysis which could help us to better substantiate our advocacy efforts.

Another good practice model is combination of provision of free legal services to asylum seekers with the Asylum Law clinic for university students of law. The Human Rights League has been providing theoretical lectures, venue and supervision of the practical part of the Asylum Law Clinic in Trnava University since its establishment in 2005. Asylum clinic is one of the optional subjects within the curriculum for students of law at Legal Faculty of the Trnava University taught for students in first year of master study programme. Human Rights League started negotiations over the possibility to cooperate in clinical education also with students of law at Legal Faculty of University of PavolJozefSafarik in Kosice, where Human Rights League has opened its legal counselling office since January 2016.

Practical part of the clinic provides students with possibility to work with real live cases, including participation at the counselling meeting with a client, reading the legal documents, mainly decisions in asylum procedure, preparing their legal analysis, drafting legal submissions including remedies. Human Rights League ensures they receive training in researching of Country of Origin Information based on the blended course developed by the Austrian Red Cross ACCORD, which has been largely used also for the preparation of the COI training module of the EASO learning platform. In practical part of the clinic they receive several cases in which they are given the task to search for the COI which can be later used as evidence in the asylum procedure.

In April 2016 in cooperation with Law Faculty in Trnava University the Human Rights League organized for the second time the International Moot Court Competition for the students of the Asylum Law Clinics. Students from Belgium, Czech Republic, the Netherlands, Slovenia, Slovakia, Poland and Ukraine competed in moot asylum process. Again, students used the possibility to simulate the court hearing and to test their English in preparation of complex legal submissions and oral presentations. The case for 2016 competition required that students exchanged legal arguments on deportation of female Syrian asylum seeker from EU country to Turkey, referring to EU law concepts of “safe third country” and “first country of asylum”.

V.

BEST PRACTICE EXAMPLES IN RAISING AWARENESS AND ADVOCACY ACTIVITIES

HUNGARY

During the summer of 2015, an unprecedented wave of solidarity swept through Hungary when thousands of volunteers provided assistance to asylum-seekers at various train stations across the country. Almost without exception these volunteers lacked any previous experience working with asylum-seekers and had little or no knowledge of the functioning of the Hungarian asylum system. The HHC, while carrying out its regular duties, provided key materials³³ and basic legal training to the volunteers.

As a result of this, tens of thousands of a 2-page information leaflet describing the most basic mechanisms of the asylum procedure, translated into the seven most widely-spoken languages was distributed through the volunteers to asylum-seekers.³⁴ For the vast majority of the asylum-seekers this was the first and sole source of information about their situation and options in Hungary as the authorities failed to provide this to them during the registration procedures. Volunteers regularly referred cases to HHC's staff and assisted in several administrative issues of asylum-seekers following the guidance of the Committee. As threats and pressure from the authorities grew on volunteers as well, the HHC offered free legal assistance to those who were in need of it in relation to their volunteering work.

With the asylum crisis and the government-led multilevel attack on the Hungarian asylum system the HHC – given its unique role, expertise and access to crucial sites – has quickly become an indispensable source of information for the domestic and international media, as well as other international stakeholders, including the EU and its member states, and partner NGOs. During several months, the HHC was the primary information provider for the media, resulting in an unprecedented media

33 See for example: <http://helsinki.hu/wp-content/uploads/magyar2013.pdf> and <http://www.helsinki.hu/a-kormany-tiz-rogeszmeje-es-a-menekultugy-valosaga/> and http://helsinki.hu/wp-content/uploads/Short-information-Aug2015_HUN.pdf

34 See the English version here: http://helsinki.hu/wp-content/uploads/Short-information-Aug2015_ENG.pdf

presence for the organization. Throughout the year, the HHC appeared on Hungarian media at least 385 times in connection with asylum and migration, including regular, sometimes daily appearances on the main commercial TV channels' news programs (RTL Klub, TV2, ATV, Hír TV), the five most followed online news portals (index.hu, origo.hu, hvg.hu, hir24.hu and 444.hu), as well as several popular newspapers and government-critical radio channels. On the same topic, the HHC was interviewed at least 182 times by international media, including regular presence on globally relevant news-providers, such as the New York Times, Euronews, Aljazeera, Washington Post, BBC World, Radio France Internationale, Le Monde, EU Observer, as well as national TV, radio and online press from dozens of countries including most EU member states, the US, Canada, Australia and Japan. The HHC held 4 press conferences, attended on average by 20 journalists and press workers.

Apart from its popular Facebook-page that tends to attract lively debates, the HHC maintains its own blog. Posts on the blog are often referred to, if not entirely taken up by the mainstream online media as the HHC continues to be the sole reliable source present at all venues where asylum-seekers are accommodated or detained.

The HHC published four information notes in English during the year, providing an update in real time on the government's xenophobic campaign in March³⁵, on fundamental asylum-related legislative and policy changes in August³⁶ and in September, as well as on the criminalization of illegal entry in September³⁷. Under extreme time pressure, the HHC decided to use an innovative hybrid style for these publications, making them short, understandable and user-friendly enough for the press, but also sufficiently referenced and concrete for legal professionals. In addition, in February and October the HHC contributed to a comprehensive information update in the framework of the AIDA project (coordinated by the European Council on Refugees and Exiles) on the Hungarian asylum system. As the only sources of information on crucial changes, these publications were widely used and quoted not only by press and NGOs, but also by national courts, the UNHCR, the European Commission and the Council of Europe. The HHC was requested to personally meet and provide information to experts of the European Commission twice, the Council of Europe Commissioner for Human Rights twice, as well as several representatives of foreign embassies in Budapest on numerous occasions

35 <http://helsinki.hu/wp-content/uploads/Asylum-2015-Hungary-press-info-4March2015.pdf>

36 <http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>

37 <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>

during the year.

As a major advocacy success, the European Commission launched an infringement procedure against Hungary for the violation of asylum-related EU law in December, after a record fast preparatory process³⁸. The Commission's assessment of the situation entirely reflects the HHC's concerns and is based in great part on the information provided by the HHC. The Council of Europe Commissioner for Human Rights also issued a particularly critical report³⁹ in July, and an equally critical statement⁴⁰ in November echoing the HHC's position to a large extent. The Commissioner decided to submit a third party intervention in two cases before the ECtHR relating to the transfer of two asylum-seekers from Austria to Hungary under the Dublin III Regulation. Based on his previous visit to Hungary the Commissioner concluded, among others, that the Hungarian authorities deliberately deter asylum-seekers from entering the country and to apply for asylum there⁴¹.

In the autumn the HHC launched a series of highly attended public events entitled "Helsinki Evenings", with the participation of its staff focusing on particular elements of the Hungarian asylum-system. The events, running ever since and held at a community centre in Budapest, attract a full room of about 80 people each time, precisely because there is an extremely limited public space outside the government-influenced media to gather information about and discuss the current refugee situation in Hungary and in Europe. Each talk has a different topic (e.g. family reunification, Strasbourg cases, etc) and the HHC aims to have a (previous) client as a speaker as well to provide hands-on experience about these procedures from the applicant's perspective. Relatedly, the HHC launched a successful series of movie nights and regularly participates in public events focusing on asylum-seekers and the legal issues surrounding them.

The HHC has been invited to innumerable school events, both in Budapest and the

38 http://europa.eu/rapid/press-release_IP-15-6228_en.htm

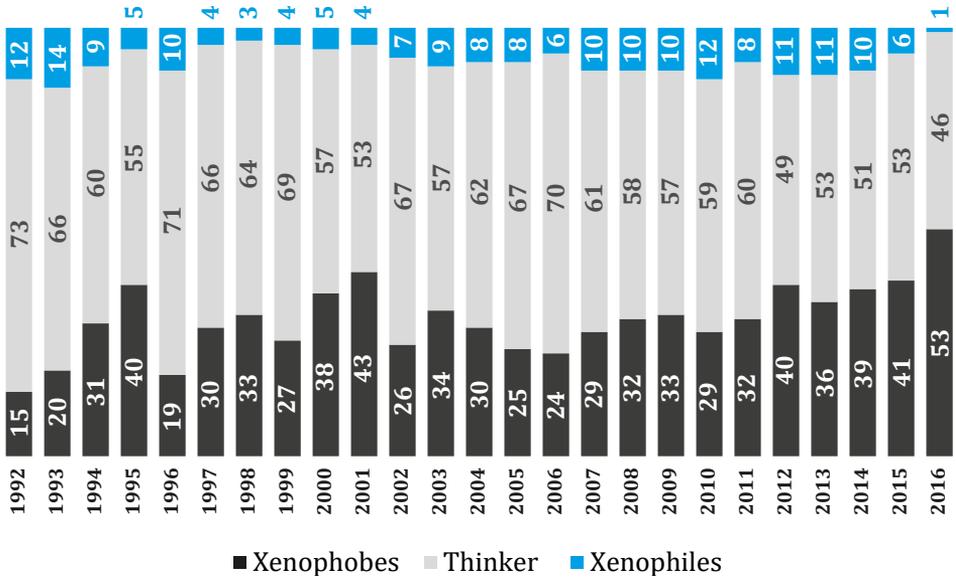
39 <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2831773&SecMode=1&DocId=2218468&Usage=2>

40 http://www.coe.int/en/web/commissioner/country-report/hungary/-/asset_publisher/hKTqZqCwoY6P/content/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fhungary%3F-p_p_id%3D101_INSTANCE_hKTqZqCwoY6P%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2

41 <http://statewatch.org/news/2016/jan/echr-human-rights-intervention-austria-hungary-returns.pdf>

countryside, both in high schools and universities to participate in discussions or hold speeches and lectures on the current situation of refugees and asylum-seekers. These experiences led to a unique cooperation between the HHC and a participatory theatre group to develop a theatrical game focusing around the plight of asylum-seekers from the point they are forced to leave their home to the OIN's decision in their case. The play, with the participation of an expert from the HHC is set to debut at the end of May 2016⁴².

The fact that according to opinion polls, xenophobia did not increase significantly in Hungary during 2015 can partially be ascribed to the HHC's communication efforts, which created an important (and sometimes lone) counter-weight to the government's propaganda machinery. Also, the HHC's outstanding presence in leading international media largely contributed to increasing international criticism. In this context, the HHC filled the gap left by the (non-extreme-right) opposition, larger churches and major charity organizations that mostly remained silent in this debate.⁴³



Most asylum claims in Europe are rejected on the grounds that the decision-maker does not believe what the asylum seeker claims about their persecution. Experience

42 <https://www.facebook.com/events/1776137595939196/>

43 http://www.tarki.hu/hu/news/2015/kitekint/20151203_refugee.pdf

shows that such decisions are taken in a non-structured manner (“gut feelings”) and based on erroneous presumptions concerning human behaviour, running against up-to-date scientific knowledge. The HHC and the UNHCR organized in January 2015 an expert roundtable in order to lay down the fundamentals for the upcoming global UNHCR guidelines on credibility assessment (expected for 2016-2017)⁴⁴. The event was attended by 33 leading experts from Europe, North America and New Zealand. Thus, as a unique opportunity for a relatively small NGO, the HHC could have important impact on future doctrine that will shape asylum policies globally.

After a number of successful training events in the previous years, as a further sign of growing global impact of this initiative, the HHC’s expert was invited in 2015 to train more than a hundred professionals in several countries.

The HHC’s multidisciplinary training manual on credibility assessment⁴⁵ was used in an increasing number of national and regional training contexts on various continents (including Africa and the Americas), as well as it was translated into Russian⁴⁶ and UNHCR in Brazil made a decision about a translation into Portuguese in December.

The HHC continued to play a leading role in advocacy efforts aimed at improving protection for stateless persons, and the prevention and the reduction of statelessness, both at a national and international level. The HHC is a founding member of the European Network on Statelessness (ENS), established in 2011. The HHC’s statelessness expert continued to perform his duties as its President and actively participated in further strengthening the Network throughout the year (including meetings, teleconferences, identification of potential partners, etc.). At the time of writing, the Network has over 100 associate members from more than 30 countries, constituting an unprecedented awareness-raising success on this long overlooked human rights issue. The HHC actively contributed to the ENS Europe-wide campaign⁴⁷ titled “None of Europe’s Children Should Be Stateless”.

44 <http://helsinki.hu/wp-content/uploads/Summary-Conclusions.pdf>

45 <http://www.refworld.org/docid/5253bd9a4.html>

46 <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=55dc79914>

47 http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Campaign_Stateless_-_None_of_Europe%27s_Children_should_be_Stateless.pdf

POLAND

Advocacy campaign – improvement of conditions in detention centres

One of the most important topics concerning human rights of foreigners in Poland is their detention. For several years Polish NGOs dealt with number of cases of unlawful detention, children detention and received information about non-suitable conditions in Polish detention centres.

On October 2012, a protest took place in four of six detention centres in Poland. Protesters contested conditions in which they were accommodated and relations between them and Border Guard officers.

On the same time two letters of detained women appeared in the biggest Polish daily. They pointed out many irregularities that occurred during they stay in those centres including improper Border Guard officers behaviour towards them, lack of proper medical assistance, harsh regime in the detention centre etc. The protest gained a lot of interest from media and public. Public figures and ordinary people show their outrage to the treatment of foreigners in Poland. In the aftermath of the protest, the Ministry of the Interior ordered inspection of the detention centres. On the same time Ministry asked two non-governmental organisations (Helsinki Foundation for Human Rights and Association for Legal Intervention) to conduct simultaneous monitoring of the detention centres. The Ministry inspection and NGOs monitoring took place between 5 and 27 November 2012. During monitoring detained foreigners and staff of the detention centres were interviewed. Also premises of the detention centres were inspected.

After, monitoring report „Migration is not a crime” with recommendations was prepared by both NGOs⁴⁸. The monitoring has not confirmed allegations of misusing power by the Border Guard officers, such as foreigners being beaten up or harassed. However, the NGOs underlined several issues which needed attention. The report stated that regime and architecture of the detention centres were oppressive and prison-like. The detention centres were surrounded with fence with barbed wire and there were bars in the windows. Very often personal inspections were conducted which violated the privacy of the foreigners. Besides that, the Border Guard officers conducted frequent rooms searches where detainees were accommodated. According to the report detainees had right only to one hour of

48 English version available at: <http://programy.hfhr.pl/uchodzczy/files/2013/03/Migration-is-not-a-crime.pdf>

activities on fresh air. The NGOs also pointed out that in cases of violation of internal rules by the detainee informal penalties were imposed (limited access to the phone, ban on outdoor walking area or shopping etc.). Also practice of calling of foreigners by numbers was underlined in the report. The report also showed patterns of unnecessary duties imposed on foreigners like duty to clean the common rooms (i.e. toilets which was perceived by many detainees as humiliating and was one of the triggers of the protest), duty to attend the meals and morning and evening assembly calls etc. The report also showed that the foreigners have no access to proper information about their legal situation and that often they were not aware about reasons of detention and their future. The NGOs proposed introduction of free-of-charge legal assistance covered by public funds. The report stated that the activities conducted by NGOs are not sufficient.

The NGOs stressed that detention was used too often and should be used only in exceptional situations and as a measure of last resort. The NGOs claimed that the priority is to make the detention period as short as possible. The NGOs stressed serious problems concerning lawfulness of detention of several groups of foreigners. First of all lack of system of identification of vulnerable foreigners (victims of violence, people suffering from PTSD, disabled persons) was underlined. Although Polish law prohibits detention of such foreigners no mechanism was introduced to prevent their detention and provide them proper assistance and treatment. In effect unknown number of torture and violence victims who flee their countries of origin were deprived their liberty what caused them additional suffering. The NGOs also stated that it's very important to provide detainees proper psychological assistance.

The NGOs also claimed that children detention is a case of serious concern. The NGOs stated that detention of children should not be allowed, irrespective of their age and regardless whether they are unaccompanied minors or accompanied with adult family members. The NGOs claimed that best interest of the child is an underlying principle which is to be respected and taken into consideration in any activities conducted by the state authorities towards children. NGOs emphasized that deprivation of freedom does never serve the best interest of the minor. Additionally, according to the report children placed in detention centres didn't receive proper education which was acknowledged by the report prepared after the inspection of the Ministry of Interior.

The report was presented at the press conference on the International Migrant's Day (18 December) and got good media coverage. The report was also translated into English published at both NGOs websites and disseminated among NGOs from Western Europe to be used by the courts in cases of transfers of foreigners to Poland

under Dublin regulation. In some cases known to the HFHR German and Belgian courts decide to not transfer foreigner to Poland and the decision was based also on mentioned NGO's report.

The public debate relating to the protests of 2012, recommendations of the NGOs report and of the Ministry of the Interior's inspection report resulted that Ministry of Interior made promise to change the legal regulations concerning detention of foreigners and to improve conditions in the detention centres. Their promises included change the design of the centres – first of all to remove bars from the windows and inside the centres, employ cleaners for common rooms etc. The Ministry of Interior also promised to improve situation of children in detention, although it still argued that complete ban of children detention cannot be introduced. Anyway according to the Ministry of Interior children detention should take place only as absolute exception and should be as short as possible. The Ministry also stated that two centres would be designated for placing children and families and properly equipped to do so.

On beginning of 2014 the Helsinki Foundation for Human Rights and the Association for Legal Intervention conducted another monitoring to evaluate how the situation in detention centres was changed and how the government's promises were fulfilled. Again both NGOs conducted visits in every detention centre. At the same time inspection of Ministry of Interior also took place. After monitoring another report („Still behind the bars”) was prepared by the NGOs⁴⁹. General improvement of situation in detention centres was noted by the NGOs. As the general architecture of the detention centres hasn't changed – according to the government representatives the bars are to be removed from windows of the rooms where foreigners are accommodated until 2017. During monitoring it appeared that foreigners are allowed to move freely within the centre so there is no designated time of outdoor activities. Informal disciplinary measures, such as a ban on walking were dropped and there were fewer restrictions on the use of phones by foreigners (they weren't allowed to use mobile phones with recording functions). Several unnecessary duties of foreigners were dropped, such as morning and evening assembly calls are no longer taking place, foreigners didn't have to appear at meals and didn't have to clean common rooms anymore. According to the report personal searches and searches in foreigners' rooms have been reduced. Besides of that access to the Internet in detention centres was provided, so foreigners may

49 Available at: http://programy.hfhr.pl/uchodzczy/files/2014/06/Wci%C4%85%C5%BC-za-kratami-_ENG_17.9.pdf erratum at <http://programy.hfhr.pl/uchodzczy/files/2014/06/errata-raport-monitoring-SOC-2014.EN18.09fin.pdf>

communicate with external world more easily.

Also some changes in law concerning detention of foreigners were introduced. According to the new Act on Foreigners adopted in December 2013 and come to the power on May 2014, a foreigner shall be placed in a detention centre for the shortest possible period. The Act introduced alternatives to detention as regular reporting to a Border Guard unit, bail, obligation to surrender travel documents or the requirement to stay in a designated place of residence. The new law still allows for children detention but minor irregular unaccompanied child may not be placed in guarded facility, unless they reached the age of 15 years old. According to the new Law a court is required to consider the interest of a child in every case when considering Border Guard's motion to place child in detention centre.

The NGOs acknowledged above mentioned improvements but underlined that some changes are still to be introduced. According to the statistics obtained during monitoring about 25% of detained foreigners were children (mostly children with families), which was serious case of concern. Besides of that schooling obligation of children placed in detention centres still has not been fulfilled. The NGOs stresses again that children should not be placed in detention centres. The NGOs also reiterated some of their previous recommendations. During monitoring NGOs ascertained that system of identification of trauma victims, foreigners suffering from PTSD and other foreigners who according to the law cannot be detained still hasn't been introduced. The NGOs urged the government to implement such system as soon as possible. According to the NGOs all foreigners who are to be placed in detention centres should be examined and such examination should be performed by the Border Guard unit which apprehended foreigner or the court during proceedings on placing foreigner in the detention centre. It must be acknowledged that recently Border Guard introduced rules of screening and treatment of vulnerable foreigners but it's too early to evaluate its effectiveness. Worrying information is that the rules allow detention of vulnerable foreigners when it's possible to provide them treatment in detention centre. It seems that such provision is inconsistent with the Law on Foreigners which prohibits detention of vulnerable foreigners regardless they may be treated in detention centre or not. It must be also noted that rules of screening of vulnerable foreigners was also recently introduced by the Office for Foreigners for purpose of providing them special treatment in the course of asylum proceedings.

NGOs also stated that it is necessary to improve psychological and psychiatric assistance for foreigners placed in detention centres. This assistance should be rendered by psychologists and psychiatrists having proper skills and being able to

diagnose and provide assistance to foreigners with traumatic experiences and to children.

Improvement of the language skills of the staff of the detention centres was also recommended improved. NGOs also underlined need of presence of the qualified interpreter in a relevant situations like during psychological consultations, accepting a foreigner in the detention centre etc.

NGOs also reiterated that a lot of foreigners are not fully aware of their legal situation. So there was need to provide them with effective access to legal assistance in frames of state-paid system as assistance provided by NGOs and private representatives was not sufficient.

To sum up – NGOs upheld opportunity which arouse in connection with protests in detention centres and public debate around it. They used it to present their recommendations to authorities which in atmosphere of public outrage decided to improve situation in detention centres. It must be noted that before protests NGOs also urged government to improve situation in detention centres and without media and public attention the government didn't paid proper consideration to those recommendations.

CZECH REPUBLIC

Advocacy on the governmental level

The Czech Government established a long time ago the Government Council for Human Rights as its advisory body on different human rights issues.⁵⁰ The Government Council for Human Rights gathers experts and respected persons in the collective decision-making body and the experts have a right to propose a motion to the Czech Government. The Minister for Human Rights then defends the motion at the cabinet sessions.

The Human Rights Council established a number of sub-committees, one of them being the Committee for the Rights of Foreigners. Again, NGO, GO and academician experts are members of the Committee, which gave an excellent opportunity for NGOs to raise their points of concern, discuss different asylum and migration issues with responsible ministerial officials and propose motions to be handed over to the Government Council for Human Rights and later dealt with by the Czech Government

50 See <http://www.vlada.cz/en/ppov/rlp/government-council-for-human-rights-50632/>

itself.⁵¹ The Council and the Committees are an excellent platform for raising the issues and discussion but the Council has a very limited practical impact due to the fact that the Human Rights Minister only rarely finds support from other ministers during the governmental sessions. On the other hand, issues like voting rights for immigrants, detention, unfair commercial health insurance scheme belong to the themes repeatedly raised by the Human Rights Minister.⁵²

Apart from the formalized proceedings of the Government Council for Human Rights and the Committee for the Rights of Foreigners, there is not much interaction and cooperation of NGOs with individual ministries on migration and asylum issues. The powerful Interior Ministry, which concentrated almost all competencies in the asylum, migration and integration agenda, held in the past consultative meetings with NGOs introducing its plans and policies but such meetings have not been organised for a couple of years any more. If there is a productive cooperation between the Interior Ministry and NGOs, it is rather a specific project based in cooperation with partners like Caritas and IOM⁵³ - actors, which are service oriented and not really vocal in defending the rights of refugees or immigrants in public or in media.

In the past, the Ministry of Labour and Social Affairs was responsible for integration issues, and the Ministry established a Committee of the Minister for Integration. This Committee was a good platform of cooperation and exchange between NGOs, governmental and municipal actors. However, after the accession of the Czech Republic to the EU, the Labour Ministry decided to hand over the integration of foreigners to the Interior Ministry and focus on the implementation of the European Social Fund in the Czech Republic and inclusion in general.

NGO fingers in the legislative procedure

Influence of NGOs on the legislative procedure is very marginal. The membership in the Human Rights Committee and the fact that the Human Rights Minister is one of the obligatory actors in the legislative procedures opens up a way for NGOs to submit their comments on each legislative proposal in the field of asylum or migration. It

51 As the work in the Committee is unpaid and consuming it is usually an NGO „volunteer“, who is elected as the head of the Committee. An OPU representative, Mr. Martin Rozumek, was in charge of leading the Committee for more than a year and currently the head of another NGO SIMI, Ms. Magda Faltova, is in charge of leading the Committee for the Foreigner’s rights.

52 See <http://thevotingnews.com/minister-proposes-foreigners-vote-in-local-elections-prague-monitor/>

53 E.g. <http://www.iom.cz/aktivity/voluntary-returns-reintegration-and-resettlement>

is then up to the Human Rights Minister staff to defend those comments during the legislative settlements of the comments between the ministries.

A similar cooperation has been established with the Ombudsman Office, who is sometimes willing to discuss our comments and reflect them in the settlement of their comments as well. Sometimes, a similar cooperation exists between OPU and UNHCR. This way, minor corrections of concrete wordings of new articles have been achieved and some legislative proposals and even some pieces of legislation were not adopted at all – for example a proposal from MPs trying to fix more advantages and incomes to powerful private actors like commercial health insurance companies, did not find its way during the legislative procedure.

However, the Interior Ministry is usually able to put in legislation and practice more and more restrictive and short-sighted policies without major obstacles or opposition from the side of NGOs, the Ombudswoman or other ministries. The basic reason for that is that the Members of Parliament are xenophobic and driven by the public polls showing the unwillingness of Czech population to accept refugees. In such an atmosphere, there is little hope to agree on any strategic vision of effective migration or any solidarity measures to be adopted by the Czech state *vis-a-vis* the current refugee situation in Europe and near Europe.

It is also worth to mention that our advocacy and awareness work towards to Members of the Czech Parliament brought some results as a group of Senators (second chamber of the Parliament) formed a platform for exchange of views on different migration and asylum issues. The Senators were able to organize joint sessions of senators with several high ranking ministries' officials and NGOs or with representatives of churches willing to help refugees in the Czech Republic.

On the other hand, the sub-committee on migration and asylum policy⁵⁴ composed of MPs from the first deputy chamber has never invited OPU experts for its sessions and the influence of the Interior Ministry's very restrictive and security oriented policy on the sub-committee members is enormous.

Advocacy on the NGO level

It is difficult as an individual NGO with the word „refugees“ in its name to gain support from politicians, decision makers and wider public for the goals of improving reception and protection of refugees and migrants in the Czech Republic. Therefore, it is necessary to unite forces both on national and the EU level and work in close cooperation and partnership with other NGOs.

54 <http://www.psp.cz/sqw/hp.sqw?k=523>

On the national level, the Czech NGOs formed a joined umbrella organisation called Consortium of Migrant Assisting NGOs in the Czech Republic. The Consortium is an umbrella organization for Czech non-profit organizations working in the field of migration. At the time being, a total number of 17 NGOs are members of the Consortium.

The member organizations provide social, legal and psychological counselling to migrants in the Czech Republic, create educational and informational materials on migration, hold public events and carry out research on a wide range of topics related to migration. The Consortium facilitates a productive exchange of ideas and good practices between member organizations, serves as a link between migrant assisting NGOs and public officials, provides constructive commentary on proposed legislature and works with the media to improve the public opinion of migrants in this country, and the conditions in which they live here.

The Consortium is an independent organisation funded by members' contributions and ad hoc projects, currently employing a coordinator and a policy officer. One of the main achievements of the Consortium's work is the joined position of the Czech NGOs on asylum and migration topics summarized in the so called Migration Manifesto⁵⁵. The Migration Manifesto analysed the main problems of the Czech migration, asylum and integration policy and also suggested solutions. The Manifesto was introduced to the public on Friday, October 2, 2015 by experts from the Consortium of NGOs working with migrants in the Czech Republic. Public presentation of the Migration Manifesto was held on the event of the second anniversary of the tragedy at the island of Lampedusa with 366 people dying in the Mediterranean Sea.

The Consortium is also active in advocacy for better integration and migration policies trying to organise meetings with politicians, support ad hoc events like to Umbrella March on the occasion of the World Refugee Day⁵⁶ or support different campaigns of member NGOs (see below).

Raising awareness activities and campaigns

Voice for Syria

Already in spring 2014, OPU and Amnesty International launched a campaign called Voice for Syria with the goal to draw attention of public and politicians towards the

55 <http://www.migracnimanifest.cz/en/index.html>

56 <http://www.opu.cz/en/article/110>

plight of Syrian refugees and internally displaced persons and persuade the Czech Government to accept one thousand Syrian refugees on voluntary basis. This way, OPU and Amnesty International joined the Europe wide action called Europe Act Now.⁵⁷

In frame of the campaign a video with famous Czech actors has been produced⁵⁸. The video has been shared during different public events and discussions. A number of discussion were organised by OPU and Amnesty International during the campaign. One of the highlights of the campaign was a light show in the centre of Prague by the Vltava River. The light show as well as the video attracted attention of hundreds of people and was also well covered by Czech media. However, the Ministry of Interior from the beginning made clear that they were not ready to accept Syrian refugees voluntarily. Instead of that, the Ministerial program of medical evacuations of people with serious sicknesses has been also opened to some Syrian families, who later arrived in the Czech Republic for surgery operations or other live saving treatment.⁵⁹

Campaign concerning the commercial health insurance of legally residing immigrants

For many years, the Czech NGOs have united their forces in the campaign for the inclusion of immigrants with long-term permits into the public health insurance scheme. The campaign has been organised under the Consortium umbrella.⁶⁰

According to the current legislation, which has been adopted by untrustworthy politicians influenced by the lobbying of private insurance companies, all immigrants with long-term permits, with exception of marginal group of workers with regular job contract, have to conclude commercial health insurance in order to have their permits granted or extended. Basically, for the first 5 years of the foreigners' legal residence in the Czech Republic, immigrants are legally obliged to pay the commercial health insurance.

Of course, the insurance companies hugely benefit from the obligatory nature of the insurance, from the endless list of exemptions from insurance, from the fact

57 <http://www.ecre.org/component/content/article/56-ecre-actions/620-europe-act-now-our-recommendations.html>

58 See the video spot here: <https://www.youtube.com/watch?v=rbG1cGiAbO4>

59 Medevac program description: <http://www.mvcr.cz/mvcren/article/medevac-programme.aspx>

60 See <http://www.konsorcium-nno.cz/cz/kategorie/2>

the immigrants rarely understand the unfavourable terms and conditions on many pages of the insurance contracts. In another words, the immigrants must pay but then very often do not receive the treatment or reimbursement of the treatment costs. This creates a lot of debts and tragedies on the side of immigrants with any unusual diagnosis. The unfair system of obligatory commercial health insurance also creates barriers for women to give births to their children in the Czech Republic, barriers to bring their children or old parents from abroad, etc. Paradoxically, even third country nationals - family members of Czech citizens, are obliged to pay the high fees of commercial health insurance companies and later find themselves stranded without the necessary treatment or with significant debts towards the hospitals.

In frame of the health insurance campaign, the Consortium members organised round tables, seminars, attended a number of public debates, lobby meetings at responsible ministries, lobby meetings with members of parliament, actively participated in the discussions of parliamentary committees dealing with a number of amendments to the existing legislation. A petition has been created and signed by many citizens, doctors, heads of hospitals, etc. In frame of the campaign, a video has been produced as well, long analysis was drafted by Consortium members' experts was disseminated, several leaflets and posters have been displaced as well. As the latest activity, a new leaflet highlighting the terrible individual cases has been distributed to decision makers in the Czech Republic.

The campaign has not improved the conditions of the health insurance for immigrants yet but it helped at least to prevent adoption of even stricter regulations in the Parliament. The campaign also contributed to the publication of several recommendations from national as well as international bodies urging the Czech Government to open the public health insurance scheme to immigrants with long-term permits. At the time being, another proposal to basically increase the fees paid the immigrants is being discussed in frame of the legislative procedure but more than 30 points of disagreements submitted by different ministries and actors in the legislative procedure will probably result in the withdrawal of the new restrictive amendment.

META's comics on refugee images

A very interesting and useful public awareness activity was the comics on refugee images called Hallo Czech Republic published by NGO META at the beginning of 2016.⁶¹ The comic was developed in cooperation with UNHCR and the Ministry of Education. The comic describes on stories to pupils at primary schools how it

61 http://www.meta-ops.cz/sites/default/files/final_komiks_web.pdf

feels to be a refugee a who is a refugee. Unfortunately, the good project became to a certain extent a scapegoat of the current heated debate about the „refugee crisis“ and the scapegoat of the desire of populist politicians to secure easy gains by being against refugees, immigrants and Muslims. After the xenophobic Czech President denounced the comics in media and other politicians followed his remarks by their own criticism of the comics, it remains to be seen whether the comics will find its way to primary schools or not. However, the comics itself is very good and professional educational tool and at least NGOs will certainly use it in their public awareness activities.

Advertisement of the NGO SIMI

An excellent example of the successful public awareness campaign was the fake advertisement of the Prague’s based NGO Association for Integration and Migration (Sdružení pro integraci a migraci – SIMI). SIMI published an advertisement offering a very cheap domestic work services basically in breach of the legislation and the rules of human dignity. A lot of potential customers reacted on the advertisement and the whole campaign very well demonstrated the current plight of immigrant women engaged in the domestic work in Czech households.

OPU campaign with ZOOT and UNHCR

OPU also benefits from the corporate social responsibility program of the company ZOOT called Dobro⁶². ZOOT is one of the largest internet shops with fashion in the Czech Republic. The program focuses on production of t-shirts and bags and the income from these products goes to public welfare purposes. One collection of the T-shirts has been dedicated to refugees and OPU and the aim of the T-shirts is to point out that before 1989 people from former Czechoslovakia were themselves refugees. The income generated out of the t-shirts and bags sells has been used for the support of the volunteer program aiming at mentoring activities and visits of volunteers in refugee camps.

The particular “refugee“ collection has been developed in cooperation with the Prague’s office of UNHCR and the PR agency Young & Rubicam. The authors of the design are well known artists Jaromír 99 and Michal Landa. This activity is part of the larger campaign supported by UNHCR called “We Were Refugees Ourselves“(My samijsmebyliuprchlíci) highlighting the fact that between 1948 and 1989 approximately 250.000 Czechs and Slovaks fled as refugees former Communist Czechoslovakia.⁶³

62 <http://www.zoot.cz/dobro>

63 <http://video.aktualne.cz/sami-jsme-byli-uprchlici-ukazuje-spot-uradu-osn/r~3c-722cd8fa7411e587030025900fea04/r~8973e4cafb2511e5be7c0025900fea04/>

SLOVAKIA

Communication Strategy

In cooperation with the Ministry of Labour, Social Affairs and Family and Ministry of Interior, HRL hired PR agency Neopublic to develop a communication strategy on positives of immigration and integration of foreigners in Slovakia. The Communication strategy was meant to be developed as a free tool for NGOs, state officials, experts, foreigners' communities etc. therefore HRL has engaged all possible stakeholders in the process in order to make its development as participatory as possible.⁶⁴ The communication strategy serves as a manual about how to work with different stakeholders – public and state officials, media, public, which tools to use and which not in certain situations.

In the process of its creation, HRL has collaborated with 6 other NGOs and migrant association representatives (Afghan journalist and activist). The strategy analysed that in order to achieve sustainable change in society, HRL has to work with influential stakeholders (aiming at increasing their low interest in the topic) and with children and young people. The change in the society HRL would like to influence can be defined as acceptance of immigration as natural process and perception of presence of foreigners as a normal part of society. Another goal of the communication strategy were fighting against stereotypes and mainstreaming of positive examples and increasing the tolerance.

In the process of preparation of the communication strategy HRL has prepared first of all the analysis of the situation in Slovakia, such as stakeholder analysis, desk research of available policy and expert documentation and gathered the list of successful PR communication instruments, events or examples. The Neopublic agency prepared the SWOT analysis and Human Rights League in collaboration of its closest NGO partners named the greatest communication challenges, such as readiness for negative reactions and for opposition, involvement of third parties as allies, supporters, ambassadors, creation of quality and comprehensive info material for media ready to use. Among other issues, HRL has agreed that the way how media communicate is greatly dependent on the level of knowledge and awareness of journalists on migration and integration.

The Neopublic agency conducted media analysis on how media reported about

64 The shorter version of the strategy can be downloaded in our website, http://www.hrl.sk/sites/default/files/publications/hrl_komunikacna_strategia_skratena_verzia_web.pdf. Upon request the longer version is available as well.

migration and foreigners in Slovakia. The results showed that Slovaks are not aware of positive aspects of immigration; on the contrary, they are influenced by a number of stereotypes and false information. Another finding was that the negative discussions and information in media and public sphere greatly prevailed. Unfortunately, negative messaging has been facilitated also by the state: e.g. Ministry of Interior or police would inform on numbers of people detained at the border, but not on positive information, such as eg. on number of person granted asylum, citizenship.

The Communication Strategy aims at increasing the engagement of state institutions in supporting positive views on immigrants in media and cultural plurality. The future vision of Slovakia it supports is Slovakia where immigrant are living as a part of society and the positive effects including positive economic impact of migration are recognized thanks to positive examples which people are aware of.

The main target audience which should be influenced directly is media and state officials and other public-opinion influencers. Indirect target group is basically general public, specifically group of „LOHAS“ - “lifestyle of health and sustainability“, youth and children. Communication strategy advises to choose target group and the details of communication strategy adjust to the selected target group. It advises against losing time with trying to target the public as a whole or to lose time with the so called „unchangeable“ group. Each focus group can be analysed further based on distribution of power, legitimacy and importance amongst various target groups in order to select methods of the most effective communication. In order to choose the most effective methods, motivations of target group must be examined.

PR agency further elaborated on the details of the suggested strategy and communication plan, introduced key communication messages and suitable communication tools, such as establishment of the committee for rights of foreigners which would provide umbrella for all the communication and ensure legitimacy through broad participation including government and migrant communities. Another communication tools were workshops, social media, public outreach and education programs.

Possible communication channels or media can be divided into three groups: paid, free (owned) media and obtained media. Publication in your own media is for free, but your may not be able to create so much attention as the paid media can. When you place your messages to the public through the paid media, you are buying your medial space and you are fully in control of your content. The third category of obtained media space is, however, also interesting. It is for free, but the public space has to be earned in some other manner, eg. by maintaining solid relationship

with your media contacts and you are not fully in control of your messaging. It is necessary to do the outreach, including towards different human rights groups not only refugee or migrant related. It is advisable to try to use and influence existing mainstream channels and not to create alternative or parallel media or channels.

At the end communication strategy elaborated on a time plan and evaluation tools. In a form of a public memorandum, Human Rights League handed the communication strategy over to its partners and other stakeholders. HRL has also introduced it at the meeting of the inter-ministerial Commission to the Policy on Integration of Migrants into Society in the Slovak Republic at the Ministry of Labor, Social Affairs and Family.

Maintaining the relations with Media

Communication strategy elaborates also on the development of relationship with media, but the real best examples of maintaining mutually beneficial relations with media have been derived from HRL's practical experience. Until June 2015 migration and refugee problems were the theme rather uninteresting and on the margin of the attention of the media as well as of the public. This has, however, changed significantly with the massive increase in number of arrivals of refugees and migrants to the EU and with the increased visibility of the issue in media.

Having seen the response of the public, politicians have played the topic as one the main themes for the upcoming parliamentary election in March 2016. At the certain point 95 percent of population and the whole political spectrum were refusing quotas. Unfortunately, refusal of quotas was quickly understood as refusal of refugees. **Dehumanization and securitization of the debate, portraying migrants as a mere security threat and reinforcing fear of unknown dominated the debate.** With the lack of reasonable political leadership, messages about migration as a public concern became simplified and limited to threats, risks and challenges. There was only little or no space for associating migration with positive impact or opportunity or at least understanding migration as an inevitable and neutral phenomenon. Public discussion has been as ill-balanced in favour of negative aspects related to migration as never.

Since June 2015 HRL has progressively built the position as a reliable and credible source of information for media partners. The increased attention and interest of media gave it a lot of opportunities to test its communication strategy, communication goals, try different channels and develop its communication skills. Media may have various impact on HRL's advocacy efforts or campaigns. HRL messages in media may be viewed as confrontative, neutral, even harmonious or

supportive. HRL would like to avoid confrontational and polarizing communication, and contribute to more balanced public debate. Therefore, when using media, one must always think multiple times about the target audience, impact and goal. In order for its information which goes public to be correct, objective and its statements well-balanced, especially in situation when the size of the team requires regular coordination and at the same time HRL has no communication or public relation experts on team, HRL should have a pro-active strategy on how our public information is prepared and messages are formulated.

Identification of the target group and of the key stakeholder/s is crucial in planning of a change process. One should start with an analysis of their interests and the way in which these interests are likely to affect the process. If one correctly determines and understands the level of participation (the role in receiving information, or in passive gathering of information, role in consultation, collaboration or self-mobilization), then the choice of communication strategy, messages and channels will be well-suited. One should work on its capacities in team, by strengthening position in partnerships or alliances, including various engaged experts in its team making them multi-professional uniting lawyers, journalists, academia, politicians, artists, psychologists, social workers, cultural mediators etc..

As HRL does care about protection of individual rights of our clients and their privacy, HRL shall disclose information about individual stories to the extent in which clients are not identifiable or only with their explicit consent. HRL provides their contacts to media, only if it has their previous clear consent and HRL educates them about how they should communicate with the media and how they should protect themselves. Written communication of rules in the Code of conduct would be desirable.

Media is an important partner in HRL's efforts to influence public opinion, therefore maintaining good and productive relationships with them is crucial. Based on planned results, media can be used at the beginning (awareness raising), constantly (campaigning) or at the end (to increase pressure) of one's advocacy or campaign. The timing is of course crucial for the desired effects. Journalists do not like to be educated or trained, but they are happy if you provide them with accessible and easily understandable explanations, handy materials such as migration and refugee glossary or ten-steps government should do, or 5-point explanation of the complex new legislation or 3 main concerns over its content.

If you are using the media for advocacy or campaign, you have to constantly work with them and make yourself available at any time. You have to make sure they understand your mission and your message. In this case it is worth to

keep in mind that less is sometimes more. With the higher number of messages and with increasing complexity of their content, the risk of their disruption or misinterpretation rises. Journalists should be constantly informed about your work, events, or your evaluation of trends. It is useful to maintain and update the contact list and send regular press release about your activities. In general, for successful communication strategy, you need to update your website regularly, use social media (with caution) and learn how to write and talk shortly and simply e.g. how to deliver your message effectively. In this sense the feedback of PR professionals, but also of the random representatives of general public, provides useful guidance and lessons to learn. In general, with public exposure it is inevitable that you also become more visible for those who do not agree or like your messages, be prepared for negative or even hateful reactions (hate emails, etc.). HRL reports to the police such hateful messages which reach the level of criminal offence.

Practical Examples of Advocacy and Public Awareness Raising Activities

HRL organized a series of Integration Forums which should serve as a platform for meeting and exchange of information and experiences of all stakeholders in the field of migration. This type of activity serves well for awareness raising as well as advocacy tool. It should also allow for bringing external expertise. The goal was the behavioural change. The experts will realize the positive aspects and benefits of immigration and use the arguments in their work. Target group are experts from government, NGOs, academia and community leaders who are invited to participate at the Integration Forum. Last Integration Forum HRL have collected recommendations for development of the state Integration Programme and submitted them to Ministry of Interior.

HRL also use advocacy tools on community level to support the immigrant communities' leaders and build their capacities with the aim to promote and support their political participation. The goal of these activities was to build capacities and increase awareness of municipalities about immigration and immigrants in their towns. This project was organized in collaboration between Municipality association and NGOs targeting mayors, local council members, municipalities and their employees.⁶⁵

Targeting youth is well placed in music festival. HRL attended the festival Pohoda several times, where HRL participated in the market of NGOs. With the goal of raising awareness raising about refugees and increase of their acceptance into society, HRL

65 More information can be found here www.projektbuk.sk

has chosen Pohoda festival, which is largely visited (about 30.000 visitors), has internationally recognized reputation, the organizers like to engage for a good cause and itself it has an atmosphere of a multicultural event and tolerance. The tools HRL would use were selected with criteria of fun, attractiveness and visibility. HRL would use stickers, pins, self-made T-shirts. HRL engaged young refugee leaders who helped us organize informational and educational activities and participated in discussions which HRL held in another attraction – original UNHCR refugee tent. Several clients who participated in the festival activities with us continued in their attending the festival as volunteers with other organizations in following years.

Another experience is statelessness campaign which HRL have organized within the Network against Statelessness with goal of raising awareness among public about statelessness. At the same time HRL has engaged in lobbying for residence permits in individual stateless cases. In order to achieve HRL's goals the following tools were used: public campaign, media articles, individual stories (in videos), video in collaboration with artists⁶⁶ and individual lobbying meetings with authorities (granting the residence permit), collaboration with public figures. Well-respected Catholic priest Srholec accommodated some stateless persons in his shelter for homeless people and became one of our so called ambassadors in the campaign. Different tools were supposed to reach different target groups. As a result, all 3 clients received their status; one of them is already a Slovak citizen.

Close collaboration with Czech partners enables HRL to exchange ideas and experience during regular Czech- Slovak NGOs coffee-table meetings. We have learnt a lot about the process of establishment their collaboration of Consortium of NGOs working with migrants in Czech Republic and also from their public communication and outreach activities. HRL engaged in many activities with the aim to make refugee problems more visible, such as Restaurant Days, Pohoda festival, Sunday Parades in Old Market House, Exhibition of Art of refugees, Refugee Day, PechaKucha Nights etc. In order to raise awareness and to make positive examples of refugees more visible HRL organized a visit of the President of the Slovak Republic in his office with our client refugees.

Some public communication tools can be quite unexpected, such as the following one which communicates through verses of a poem written by our migrant client from Uzbekistan in Slovakia.⁶⁷

66 Please see: <http://www.statelessness.eu/issues/films>

67 Please see: <http://migrationtothecentre.migrationonline.cz/en/poems-daughter-my-country>

Response to Refugee Crisis

Reflecting on the increasing urgency of the refugee problems worldwide, specifically HRL has already in summer 2014 sent a letter advocating for resettlement of Syrian refugees from countries in Middle East, such as Jordan, Lebanon and Turkey, to Slovakia. It was a letter signed by the Human Rights League and 2 of our closest partner NGOs, Foundation of Milan Simecka and Centre for Research of Ethnicity and Culture. A letter undisclosed to the public was addressed to the Minister of Interior, the Minister of Foreign Affairs and the President of the Slovak Republic. Letter received their minimal attention, since both ministers replied that they believed that Syrian refugee crisis is irrelevant for Slovakia and that Slovakia plays sufficient part in international burden sharing of reception of refugees by means of temporarily hosting refugees in Emergency Transit Centre in Humenne.

In June 2015, however, as a reaction to public attention to tragedies of number of people drowning in the Mediterranean sea on their route to Italy or Greece and because of very negative rejection of system of quotas, which quickly translated into the overall rejection of refugees in summer 2015, HRL prepared a public statement “Mediterranean Sea is also our Sea” and introduced it to our closest partners with the idea of the joint initiative. The letter was addressed to the Prime Minister challenging him to be more cautious and balanced in his communication with the public and requested him to publically acknowledge the terrible fate of refugees. It has also requested him to say yes to reception of refugees including through quotas for relocation, but merely and primarily by means of admission through resettlement. The main theme of the statement was the fact that even though the Mediterranean Sea is not at our border, we should not just look at it as a popular destination for our summer vacation, but also as of our concern if people are drowning there. It maintained that even if government rejected quotas, it cannot steer away from its obligation to accept refugees. It was encouraging the government to introduce legal schemes for arrival of refugees by means of granting them humanitarian visa or absolving them from visa obligation, granting university scholarships and facilitating family reunification.

The letter was disseminated widely with request for support and at the end signed by 70 NGOs and more than 80 persons of Slovak public life. In a coalition of major NGOs, HRL called for a press conference and introduced our initiative, disseminated information materials briefings on EU agenda on migration, explaining about relocation and resettlement. The press conference was attended by more than 30 different media and received a wide coverage. As a result, prime minister assigned the minister of foreign affairs as the contact person to meet with the initiative. In coalition of NGOs and church organizations HRL was invited to the meeting at the

Ministry of Foreign Affairs and also for the meeting at the Migration Office, where the response of Slovak Republic was discussed.

As beginners HRL was able to utilize the media attention in order to present substantial number of messages about positive impact or benefits of migration, on the other hand HRL was unable to obtain attention of the prime minister to whom the letter was addressed. Similarly, like HRL's initiative, in August 2015 several individuals met and formulated the so called Plea for humanity as a reaction of death of around 70 Syrian refugees in the locked truck on the Austrian highway. The Plea for humanity was open to public for support as distinct opposite to the hateful internet messages which appeared as a reaction to the tragedy. Simply wording of Plea for Humanity which was supported by more than 11.000 individuals within a week resulted in what we were unable to achieve with our "Mediterranean Sea" initiative. With substantial support of certain portion of public, representatives of Plea for Humanity were able to meet in public TV debate with prime minister and later on to persuade him for private meeting to discuss our proposals. The Human Rights League has informed the advocacy activities within the Plea of Humanity, on the other hand we have learnt a lot about communication by cooperation with experienced communicators. Through Plea for Humanity HRL was able to secure a significant position at the negotiation table with the stakeholders of high influence over the public opinion.

At the moment Slovakia is preparing for the first ever Slovak Presidency of the EU Council. HRL plans to engage in informal advocacy activities with the Prime Minister in order to seek alliance in communication towards public. Plea for Humanity remains an important platform for further advocacy for legal routes for refugees, for state funded refugee integration programme and for introduction of the resettlement scheme and for at least symbolic voluntary relocation. HRL would like to prepare 10 recommendations of NGOs from V4 countries to the Slovak Presidency and use it as advocacy tool to promote legal passages for refugees and incentives for prevention of secondary movements of refugees within EU. One of its main goals is to send message to V4 countries that they have to shift from this self-perception as transit countries, because concept of transit country has no place in the functioning common European asylum system.

VI.

REFLECTIONS ON 2015 ANNUS *HORRIBILIS*

NGOs in **Poland** have been working two different contexts: first - before summer 2015 and the second - after so-called refugee crisis and recent parliamentary elections. In reality, before refugee crisis constant pressure on government and picking up opportunities on the right time (like public debate after protest in detention centres on autumn 2012) allowed NGOs to undertake effective advocacy actions and make change in law and government policy towards refugees and migrants. Currently, when refugee problem is high on political agenda and widely discussed in society new strategies should be developed by the civil society to address refugees' problems and to influence society and government.

Definitely much more efforts should be concentrated on education of society and counteracting growing xenophobia. It is also very important to contest the statements by the government and the political parties who use anti-refugee stereotypes for political purposes. On the other hand, there is also need to mobilise those parts of the Polish society and public figures who have positive attitude towards refugees and use their potential to create change.

The example of good practices from the **Czech Republic** shows that despite a lot of efforts from the side civil society organisations, it is very difficult to achieve any positive results leading to acknowledging more rights to asylum seekers and refugees and better integration of refugees, if the country strictly pursues the policy of deterrence and burden shifting to other countries in Europe.

The main improvements have been achieved as a result of pre-accession and after-accession to the EU measures or as a result of obligatory implementation of the EU Directives. The latter being the case of by law guaranteed access of NGOs to asylum seekers and detainees placed in different facilities restricting their freedom of movement or a favourable treatment of unaccompanied minors seeking asylum in the Czech Republic. It has been always useful to refer in our recommendations and proposals to the EU legislation and good practices from other EU Member States.

The large number of public awareness activities and campaigns would have probably brought better results in the "normal" environment, which we had had until autumn 2014. The Lampedusa tragedy, the events in the Middle East, the terrorist attacks in Europe, the arrival of record high numbers of refugees via the Balkan route in 2015 created a very unfriendly environment for refugees, in which the basic cornerstones of democracy and rule of law are at stake in Central Europe.

Despite the extremely hostile political climate in **Hungary**, the drastically growing numbers of asylum seekers and that the number of HHC staff largely remained the same throughout the year, the HHC successfully represented its clients at both the national and international level. The HHC's contracted attorneys-at-law significantly contributed to asylum-seekers' access to the appropriate protection status. In 2015, clients represented by the HHC had three times higher chance to obtain protection in the administrative phase of the procedure than asylum-seekers in general and in 77% of the cases represented by the HHC the appeal against the incorrect first-instance was successful. The HHC also assisted 94 refugees in their family reunification procedure.

Besides the HHC's core legal activities, the organization arduously rebutted the government's xenophobic propaganda and advocated successfully for several key issues on the European stage. Throughout 2015, an increasing number of concerned citizens aided financially the HHC and attended its various newly launched public events.

In **Slovakia**, HRL hopes to benefit from the recognized position of NGOs as providers of legal representation in judicial proceedings, which will enable us to better protect the rights of our clients. Looking forward HRL will need to come up with the transparent processes on provision of legal aid, rights and obligations of client and NGO as a legal representative, complaint mechanism, insurance of responsibility for caused damages. HRL sees an opportunity in possible inclusion of NGOs into the system of the provision of free legal aid by the Centre of Legal Aid as the third possible form of ensuring legal aid – by means of appointment of an NGO.

At the moment, the greatest communication challenge remains HRL's current campaign which aims at elimination of detention of families with children in Slovakia. The issue is highly interesting, may raise empathy, on the other hand the choice of communication messages shall be done sensitively in order not to alienate our police counterparts who hold significant power over the systemic changes in the treatment of the undocumented families with children.

Having in mind the erosion of democratic principles in Poland or Hungary, it must be now the common task of all V4 countries to defend not only the rights of refugees but also the rights of its citizens and societies. These countries must not become autocratic regimes of one strong party again restricting the freedoms of expression, freedom of association, the independence of judiciary or the guarantees of international obligations including the rights of refugees in the 1951 Geneva Convention and the European Convention on Human Rights and Fundamental Freedoms.

VII.

LOOKING FORWARD: COMMON CHALLENGES, HUMANE SOLUTIONS BASED ON JOINT EFFORTS

Massive influx of refugees to Europe over Balkan migrant/refugee route that occurred in 2015 requires prompt, humane response and mobilisation of both the citizens, local organizations and the political elites. Lack of EU uniform reaction to the arrival of refugees, questions of interaction, integration, security, where many of its member states had different views, has entirely blurred the fault line between being an EU and non-EU member. Namely, this unfortunate phenomenon has posed the same challenge to all European countries on the refugee Balkan route, which is to respect the international treaties and conventions and uphold to the common European values that these countries defined themselves in the aftermath of the Second World War, and approved in the process of EU accession, such as the unconditional respect of basic human rights of persons seeking asylum escaping horrors and atrocities raging in the countries of the Third world.

In such context, it seems more than important to exchange experiences and learn from positive practices from one another. This project was valuable as it allowed the partners from the Western Balkans to understand possible development of chronic local refugee protection problems and deepen their legal, advocacy expertise based on positive legal, advocacy and raising awareness practices of the V4 partners that they conveyed during the joint meetings, workshops and study visits. On the other side, experiences and information on the refugee crisis situation on the “Balkan route” served V4 partners to better understand situation and build future plans and strategies of their own actions in line with predictions and future possible refugee protection developments on EU scale. These exchanges and lessons learned will indirectly improve the functioning of the entire Western Balkan countries’ asylum systems, since additionally improved legal practice based on summarized asylum seekers/refugee protection problem evolving perspective will force the asylum decision makers to make more substantial and evidence-based decisions. At the same time, the project allowed the partners from both regions to exchange information and experiences in relation to their advocacy activities, which were numerous in the previous years and successful in sensitising the societies about the situation with the refugees from the first hand creating joint network and regional cooperation for exchange information and experiences in the future.

The partners came to a conclusion that the issues this project addressed will continue to be pertinent in the future, especially the challenges for the local systems to secure enjoyment of rights of asylum seekers/refugees without discrimination, as well as necessity to raise awareness in local receiving communities to fight xenophobia among the general population. In light of worrying developments about respect of refugee rights, the media freedoms in both regions, it seems essential to increase the efforts to protect asylum seekers and refugees and to monitor existing asylum practice, to educate the journalists to investigate and report in asylum issues in an ethical and impartial manner. The linkage between the CSOs and the media needs to be stronger, therefore the new options for forging the partnerships should be sought and pursued in the framework of the future cooperation.

In parallel to that, volunteering local groups and networks in local receiving communities should be further strengthened in the future. The experiences from 2015 have shown that the citizens were willing and motivated to take part in humanitarian aid distribution and generally to provide any kind of help to the refugees transiting through the Balkans. Their personal experiences as volunteers, where they are in a direct contact with the persons fleeing war and persecution, can have a spill-over effect to the general population, since it generates better understanding about the extent and features of the “refugee crisis”. Mobilising the citizens further by expanding the volunteering networks is an efficient way to combat prejudice and xenophobia among the local population and protect the asylum population from their vulnerable position. The entire continent needs new ideas and energy. In the absence of a humane and pro-active approach from the political elites, new narratives should be sought and advocated for from the “bottom-up” perspective, i.e. from the well-informed and engaged citizens and the CSOs.

PARTICIPANT ORGANIZATIONS



Hungarian Helsinki Committee

The Hungarian Helsinki Committee is a non-governmental watchdog organization that protects human dignity and the rule of law through legal and public advocacy methods. We provide help to refugees, detainees and victims of law enforcement violence.



HELSINKI FOUNDATION
for HUMAN RIGHTS

Originally established to carry out human rights research and education activities, **The Helsinki Foundation for Human Rights** now functions as an independent human rights research and policy institute and is regarded as one of the most experienced and professional non-governmental organizations involved in the protection of human rights in Europe.



human rights and dignity.

Human Rights League is a civic association established in 2005 by lawyers and attorneys dedicated to providing legal assistance to foreigners and refugees in Slovakia. Our aspiration is to support building of transparent and responsible immigration, asylum and integration policies respecting



Organization for Aid to Refugees (OPU) has been helping refugees and foreigners in the Czech Republic for 25 years. OPU's main activities include providing free legal and social counselling to applicants for international protection and to other foreigners in the Czech Republic, organizing training programmes for both professionals and the general public, and other activities aimed at promoting integration of foreigners.



are in trouble of migrating.

Asylum Protection Center (APC/CZA) is an independent, non-profit, but professional and skilled organization that provides legal, psychosocial and other support and protection to asylum seekers, refugees, displaced persons and any other persons who



The Civil Rights Program in Kosovo (CRP/K) was founded by The Norwegian Refugee Council (NRC) 1999. CRP/K continued with its activities under this framework until 2004 when from 1 December of the respective year it has functioned as an independent non-governmental organization. CRP/K conducts its activities as non-governmental human rights based organization and it is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), in implementation of the projects related to free legal assistance in the territory of Kosovo.



Macedonian Young Lawyers Association (MYLA) is nongovernmental, nonprofit and nonpolitical organization founded in 2004 as a professional NGO established with free association of citizens with aim to implement actions for full implementation of the rule of law principle, and enforcement of the contribution of young lawyers in the development of the legal profession in Macedonia through projects and activities.