

*Hungary*

**REPORT**  
**on the Free Movement of Workers**  
**in Hungary in 2005**

Rapporteur: Dr. Judit Tóth

September 2006

## Executive summary<sup>1</sup>

In 2005 there was no change in reciprocity and 12 months rule of employment of EEA nationals in Hungary. It means that *restrictive* implementation of labour authorisation on not-opened states' citizens has also remained. Hungarian legal norms on access to employment are successfully intending to implement the Accession Treaty. Moreover, gate for employment in public sector has not become wider not being in harmony with Community law and interpretation of the ECJ on public power.

However, it seems that the obligation following from EC law to provide for free access to the labour market for workers *performing a service contract* in terms of freedom to provide services – with exception of Austria and Germany – is not expressly regulated. Regarding the implementation of the Accession Treaty in terms of service provision, Hungarian law lays down that every service contract between a foreign and Hungarian company whose performance in Hungary requires the taking up of employment of workers other than Hungarian nationals is subject to authorisation by the Office for Authorisation *if* there are restrictions sides the state of the foreign company on the basis of point 13 of Annex X of the Treaty of Accession. Accordingly, Hungary applies reciprocity, keeps under control the economic activity of Austrian and German companies wishing to pursue economic activity in the sectors mentioned in point (13).<sup>2</sup> It seems, however, that this provision rather aims at authorising the *contract* itself, not the employment of the workers.

As regards the implementation of the *principle of equal treatment*, it is effectively regulated in the rules on employment (prohibition of both covert and direct discrimination), concerning the access to housing, and on the entitlements to social advantages. In the latter category express legal provisions apply to migrant workers and their family members regarding access to social assistance benefits, disabled benefits, housing-related state subsidies and to advantages in public passenger transport. An interesting legal question of general importance occurs whether it is practically possible to apply Article 7 (2) of Reg. 1612/68/EEC when Articles 1-6 are suspended. Seemingly, Hungarian law only awards social advantages to those persons who are able to fall within the personal scope of that Regulation. It would be interesting to comparatively see this issue in the Member States.

The special status of *Turkish nationals* (as envisaged by the Association agreement and Association Council decision 1/80) is not expressly appearing in Hungarian law, either.<sup>3</sup> It also seems, that the rules on access to employment of family members are not clearly constructed, and the categories of EEA- and third-country nationals related cases somehow merge.

Similarly, *transposition of athletes' free movement* into the internal rules on racing by national sport federations have not been happened, so special guarantees cannot be observed in professional sport.

*Transposition of the directive of free movement of EU nationals and family members* has already started but in absence of genuine integration policy and statistics on migratory and labour movements it faces too much trouble.

The *transposition of long term residents' directive*, partly due to complexity of migration and labour law, partly to short mandate of the legislation in the year of general elections, has not provided yet. We have to add that this reluctance is explained by a contradiction of the Community law: preferences given for third country nationals settled in the EU and national regime implementing towards new member states' national. Hungary is looking for the proper legislation *how to balance* the almost free employment of ten million long-term permit holders in member states with the limitation of nationals of new Member States in labour (and service providing) inside the whole territory of the EU. The temporary provisions coincide with first years of transposition of *acquis* on migrants from third countries. The Accession Treaty provides advantage in employment of citizens from new Member

---

1 This report cannot be prepared without valuable assistance of Dr. Éva Lukács and Ágnes Hárs whose advices as well as experience on research in migratory movements meant the fundament to my work. Acknowledgement for their contribution is more than pure politeness.

2 There is no public information whether the notification to the Commission has been effectuated or not.

3 A general clause referring to exceptions under international agreements is included, however, it is not clear and transparent enough (the addressees of the norm can not be required to know what "international agreements" are dealt with under the general clause).

## *Hungary*

States in comparison with third country nationals but temporary restrictions on labourers from new Member States will be maintained also after May 2006.

Regrettably, it seems that the *relevant case law of the ECJ is only rarely observed* in Hungarian legislation. As regards social security and free movement of workers, an issue today is the connection between the transition period and Reg. 1408/71/EEC. The Accession Treaty envisages a transition phase during which certain EC law norms are suspended. Very importantly, Reg. 1408/71/EEC is not suspended meaning that the obligations following from that Regulation must be fulfilled by the Member States. The debated point is a borderline question. Reg. 1408/71/EEC foresees the right for *unemployed persons* to export their benefits to other Member States in order to search for work there. However, Articles 1-6 of Reg. 1612/68/EEC are suspended, out of which Article 5 regulates the right to search for work. On the one hand, there is a right to benefit export and search for work, on the other hand, there are restrictions for that right. Some Member States (mostly the EU-15) strictly oppose to except unemployed persons intending to make use out of the provisions of Reg. 1408/71/EEC, some (mostly the new Member States, but Austria as well), however, accept these unemployed. It seems that this question is that of principle, and is not sorted out properly.

## Chapter I

### Entry, residence and departure

#### *Regulation in force*

- 2001. évi XXIX. törvény a külföldiek magyarországi beutazásáról és tartózkodásáról [Act XXIX of 2001 on Entry and Stay of Foreigners (AlienA) that was modified by Act I of 2005, Act XLVI of 2005 and Act LXXXIII of 2005];
- 170/2001.(IX.26.) Korm. rendelet a 2001. évi XXIX. törvény végrehajtásáról [Executive Decree of the Government on AlienA No. 170 of 2001, September 26 (AlienD) that was modified by Government Decree No.119 of 2005, April 28];
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történő csatlakozást követően alkalmazandó munkaerőpiaci viszonzóság és védintézkedés szabályairól [Government Decree on the rules of labour market reciprocity and the safeguard measure to be applied following the accession of the Republic of Hungary to the European Union]
- 48/2001. (XII. 27.) EüM rendelet a külföldiek magyarországi tartózkodásának engedélyezésével összefüggő közegészséget veszélyeztető betegségekről, valamint az egészségügyi ellátás fedezetének igazolásáról [Decree issued by the Minister of Health Care on Disease Endangering Public Health relating to the Authorisation of Foreigners' Residence and on Evidence of Material Cover on Health Care]

AlienA together with AlienD was modified more times in 2005 for basically practical and domestic political reasons, while transposition of directives on long-term residents' status and on EU nationals' movement has not happened at all. The AlienA can be divided into general rules on foreigners' entry, residence and departure and into specific provisions on EEA citizens and their family members. We have to underline that term of "EEA national" includes Hungarian citizens without their exclusion<sup>4</sup>. This contradiction on personal scope due to a presumption<sup>5</sup> is embarrassing, in particular toward family members of EEA citizens.

What is the relation between the general and specific rules?

1. Three chapters of the AlienA shall be implemented to EEA nationals and family members (its personal scope is wider including spouse, dependant descendant, adopted child, child of spouse, dependant ancestor of any spouse, minor's parent) in the context of entry and residence, of alien policing and registration of aliens *in general but with some exceptions*.
2. A separate chapter defines *further specific provisions* on EEA nationals and family members under own personal scope. The clear circle of specific provisions cannot be exhaustively described due to the broad entitlement written in AlienA given to the Government.<sup>6</sup> Its executive Decree contains a provision referring back to 38 various Sections that "shall be implemented on EEA nationals in a proper way"<sup>7</sup>. It is out of rule-of-law.

We have to draw the attention to inconsistent terminology of "settlement", "right to settlement" (letelepedési jog). In certain context it means only staying, right to stay, in other cases it refers on long term residence or the possession of a settlement permit issued in an separate authorisation (not in the meaning of Dir. 2004/38/EC). In the following pages references are not translated word by word but in substantial.

The most important provisions on EEA citizens' entry, residence and departure are summarised as follows according to AlienA and AlienD:

- 
- 4 Art.2 (1) c. of the AlienA says: "[in implementation of this Act] National of the EEA state: who is in possession of any member state of the EEA".
  - 5 Individual shall be considered as foreigner if s/he has not registered address in Hungary and s/he identifies by using valid certificate, identity document issued by another state. In case of verified Hungarian citizenship alien policing procedure shall be terminated but provisions on taking passport away from him/her shall be applied (AlienA, Art.2 (2)).
  - 6 Art.30 (5) says: "Further conditions for residence of EEA national and his/her third country family member may be defined in Government Decree."
  - 7 Section 126 of AlienD.

## Entry

- a. Ban on entry and residence shall not be ordered regarding EEA national.
- b. Refusal of EEA entry at the border shall not be ordered.
- c. His/her entry is allowed in possession of valid passport or identity document.

## Residence

- a. Without authorisation residence of EEA nationals is ensured up to 90 days.
- b. Lawful residence in Hungary shall be proved by *EEA residence permit* issued by the regional immigration authority after period of 90 days. It is valid for five years and it may be prolonged. Data of EEA permits are forwarded to the central immigration authority (Office for Immigration and Nationality Affairs, Ministry of the Interior) that keeps up the central data-base of EEA nationals and family members. Application for EEA residence permit shall be submitted up to the 75<sup>th</sup> days of residence personally on a form to the competent immigration office.
- c. Applicant shall meet to requirement of proper material cover on residence and of medical insurance in all extent unless
  - i. s/he is a worker (“employed out of the public power position”),
  - ii. s/he is a self-employed person, entrepreneur, owner or a member of the top management of a company certified by a proper document,
  - iii. s/he is a documented job-seeker in the circle of i. or ii. point, and s/he has well-founded chance to find it within 6 months,
  - iv. s/he was a self-employed person at least for 12 months whose activity ceased, and s/he obtains right to old-age pension or s/he is 65 years old, and previously s/he was spending continuously at least three years in Hungary,
  - v. s/he was a self-employed person but his/her economic activity ceased due to persistent inability to work, and previously s/he was staying continuously at least for two years, or
  - vi. s/he was a self-employed person and have been residing at least for three years, and keeping on economic activity in another EEA country s/he has been living in Hungary as a commuter who returns weekly and daily to Hungary.
- d. Students have to be in possession of proper material cover on residence and of medical insurance in all extent, moreover accession to a Hungarian institution of higher education shall be proved. Student’s EEA residence permit shall be renewed yearly with submission of the enrolment document.
- e. Address of the residence shall be notified together in application for EEA residence permit giving numerous personal data. Right related to the apartment (ownership, tenancy) shall be documented (e.g. contract of rental and the form of the application has to be signed by the owner of the apartment/house). A certificate is issued on the base of notification of the address unless it is refused together with EEA residence permit in a written decision.
- f. The changed data on address of EEA national shall be notified within 30 days in local mayor document office, and certificate is exchanged. Alteration of data in EEA residence permit shall be notified *without delay*, and it is also exchanged.
- g. Validity of the EEA residence permit may be limited in harmony with validity of labour permit issued on the base of RecipD (it is valid up to 12 months).
- h. The following documents shall be presented in authorisation (issuing and prolongation) process:
  - i. Valid passport or identity card,
  - ii. Evidence on resource of finance (e.g. residence is covered by old-age pension, bank deposit, bank guarantee, allowance for necessities, own assets) and health care with exception of case defined in point d. while its fulfilment has also to be proved (for instance, contract on employment, labour permit or the necessary certificate for self-employment or entrepreneurship),
  - iii. Student has to present the document of accession to the higher education or actual enrolment.

## Hungary

Application for EEA residence permit shall be rejected or permit shall be withdrawn, if

- i. Stay of the permit holder endangers on national security or violates public order,
- ii. EEA national has been suffered from legally defined disease endangering public health since his/her entry.  
Public health is endangered by the following diseases, or in being of the pathogen condition of
  - tuberculosis,
  - HIV-infection,<sup>8</sup>
  - leprosy,
  - lues,
  - typhoid or paratyphoid in pathogen condition.
- iii. Labour permit issued on the base of RecipD is ceased or employment is ceased (for instance, labour inspector may control lawful employment and fine shall be imposed for illegal labour of EEA national by the immigration office),
- iv. It becomes invalid for other reasons, such as the permit expired, its data *have altered*<sup>9</sup>, the permit is not eligible to certify its content (due to falsification or demolishing), permit holder died or s/he has acquired Hungarian nationality.

### Departure

- a. In case of refused issue or withdrawal of EEA residence permit EEA national has to leave the country within 30 days, or gross violation of public order its length may be 15 days. It is decided in written decision.
- b. Appeal is excluded but judicial review of the decision may be submitted (without pending effect, upon request of claimant court may adopt a suspension).
- c. Expulsion of the EEA permit holder including family members (spouse, dependant descendant, minor of the spouse, parent of minor, dependant ascendant) is ordered if s/he voluntarily has not left the country despite of this obligation, and
  - i. s/he is released from imprisonment for intentionally committed offence, or
  - ii. s/he is engaged in activities jeopardizing the constitutional order or security of Hungary, or member of an organisation is engaged in such activities, or
  - iii. s/he is a member of a terrorist organisation, or is engaged in a smuggling of arms, explosive, radioactive substances or narcotic drugs or is a member or accomplice of an organisation engaged in such, or actively participated in the illegal trading and/or materials used for the production of weapons of mass destruction, furthermore, manufactured or possessed drugs, narcotic or psychotropic substances,
  - iv. s/he organises, assists the illegal entry or exit (crossing the border) or residence of a person or a group, or is engaged in the smuggling of illegal aliens, or
  - v. s/he suffers from any disease - specified in legal provisions - that represents a potential danger to public health and this disease has already existed at the time of entering the country.
- d. Expulsion order is registered in the immigration data base, and issue of order means automatic withdrawal of EEA residence permit.
- e. Detention of EEA national may be ordered as a guarantee of execution of expulsion order, if
  - i. s/he is hiding from the authorities or is obstructing the execution of the expulsion in some other way,
  - ii. s/he has refused to leave the country or based on other substantiated reasons, is allegedly delaying or preventing the execution of expulsion,
  - iii. s/he is released from imprisonment for intentionally committed offence.
- f. EEA national can leave the country in possession of valid passport or identity card.

---

8 Since mid-90s human rights organisations have criticized the HIV-infection and AIDS for being treated as usual, traditional epidemiological appearance in public law in Hungary. [www.tasz.hu](http://www.tasz.hu).

9 This automatism, regardless of personal circumstances, would be incompatible with EC law; however, changes shall be notified without delay (see in point f).

## Hungary

As it can be seen, legal entitlements of expulsion and detention, withdrawal or rejection of residence permit is overlapping. Due to weak statistic neither number of EEA nationals, nor reasons of expulsion or detention can be detected.

The Ministry of the Interior and of Justice is working on a *completely separate Act on EEA nationals' legal status*. The Bill is due to submitted to the Parliament in September 2006. It is very probable that a *package of Bills on pending transposition of directives on migration*<sup>10</sup> will be prepared and offered to the newly elected legislation<sup>11</sup>.

### Literature

- Tóth, Judit, A személyek szabad mozgása, idegenrendészet, menekültügy az Európai Unióban. In: Sallai János (szerk.) *Az EU, mint a szabadság, biztonság és jog térsége* (222 kérdés és 222 válasz a bel-és igazságügyi együttműködésről). Budapest, 2004. 31-68.old.
- Oltalomkeresők – Migrációs Hírlevél (Menedék – Migránsokat Segítő Egyesület) 2005.évi számai [www.refugee.hu](http://www.refugee.hu).
- Illés, Sándor, *Foreigners in Hungary: Migration from the European Union*, Hungarian Central Statistical Office, Demographic Research Institute, Working Papers on Population, Family and Welfare, No. 5. 2004.

---

10 It means the transposition of the directives on family unification, students and volunteers, long-term migrant's status, free movement of EEA nationals and their family members.

11 Announcement from Director dr. Maria Lado, Ministry of Employment Policy and Labour (Bruxinfo 23 January 2006) [www.bruxinfo.hu](http://www.bruxinfo.hu).

## Chapter II

### Access to employment

#### Regulation in force

- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act on Equal Treatment and Promotion of Equal Opportunities]
- 2002. évi XXII. törvény a Munka Törvénykönyve [Act XXII of 1992 on Labour Code]
- 1994. évi LV. törvény a termőföldről [Act LV of 1994 on Arable Land, amended by Act XXXVI of 2004]
- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséről [Government Decree on Acquisition of Real Estate by Foreign Residents]
- 2001. évi C. törvény a külföldi diplomák és oklevelek elismeréséről [Act on Recognition of Foreign Diplomas and Qualifications]
- 31/2004. (IV. 26.) ESzCsM rendelet az egészségügyi, szociális és gyermekvédelmi tevékenység végzéséhez szükséges oklevelek, bizonyítványok és a képzés megszerzéséről szóló egyéb tanúsítványok elismeréséről, továbbá az ideiglenes működési nyilvántartásba vétel, valamint az oklevelek, bizonyítványok és egyéb tanúsítványok külföldi elismertetéséhez szükséges igazolások kiadásának egyes eljárási szabályairól [Ministerial Decree on the Procedural Rules of Recognition of Diplomas, Qualifications in the Health and Social Sector, and of Interim Registration and of Issuing the Certificates Necessary for the Recognition of Diplomas and Qualifications abroad]
- 26/2000. (VIII. 31.) OM rendelet a külföldön kiállított, idegennyelv-tudást igazoló nyelvvizsgabizonyítványok Magyarországon történő honosításáról [Ministerial Decree on recognition of language examinations taken abroad in Hungary]
- 8/1999. (XI.10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Ministerial Decree on foreign labourers' authorisation on employment] amended by 12/2005. (VII.29.) FMM rendelet
- 2004. évi I. törvény a sportról [Act on Sport]
- 15/2001. (IV. 27.) KöViM rendelet a hajózási képesítésekről [Ministerial Decree on qualification on water vehicles board]

Reg. 1612/68/EEC enumerates the following, described rights standing on the basis of the equal treatment principle:

1. non – discrimination in employment (membership of trade unions);
2. matters of housing, including ownership of the housing; and
3. implementation of language requirement.

These issues are dealt with separately in the following paragraphs.

#### Non-discrimination in employment

Regardless accession the constitutional rule-of-law requires respect for equality of citizens in all types of legal conditions, such in the labour issues. Three provisions shall be underlined as relevant guarantees to non-discrimination in employment:

- The Republic of Hungary shall respect *the human rights and civil rights* of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.
- The Republic of Hungary shall ensure the equality of *men and women* in all civil, political, *economic*, social and cultural rights.
- The law shall provide for strict *punishment* of discrimination on the basis of upper restriction. Moreover, the state shall endeavour to implement equal rights for everyone through *measures that create fair opportunities* for all.



The Constitution decides direction, methods of major non-discrimination policy and legislation. Labour Code, Act on Labour Control or Penal Code as well as other provisions, action plans together intend to provide equal accession to remunerating work.

As it has been outlined at the outset, the most important pillar of Hungarian law as regards the principle of equal treatment is – as an implementation of the Constitutional ban on discrimination in Art.70/A – the Act CXXV of 2003 on equal treatment and promotion of equal opportunities (EqualA). Not only the EqualA contains provisions on non – discrimination in employment, but the Act XXII of 1992 (hereinafter referred to as Labour Code) as well. First the provisions of the Labour Code, than those of the EqualA are scrutinised here.

The principle of equal treatment enshrines *expressis verbis* in the Labour Code in three main areas. First, the principle of equal treatment is laid down in general terms, Section 5 of the Code states that in connection with employment relations the principle of equal treatment must be strictly observed and any consequences of the breach of the principle of equal treatment shall be properly remedied; the remedy shall not result in any violation of or harm to the rights of another worker.

It is worthy noting that the principle of *non - discrimination (both direct and covert)* was inserted into the Labour Code – in compliance with Dir. 97/80/EC, Dir. 2000/43/EC, Dir. 2000/78/EC – already in 2001.<sup>12</sup> The wording of the law has been much broader stating – inter alia – that negative discrimination was prohibited in the legal employment relationship based on the sex, age, civil or familiar status, ethnic origin, race, religion, political attitude of the worker. The Labour Code also gave a definition for covert discrimination stating that hidden discrimination occurs if the operation of law, albeit neutrally worded, negatively affects a certain group of persons. The possibility to assert covert discrimination was extended to the recruitment part as well. The Labour Code gave legal basis for positive actions, and regulated the burden of proof as well. These provisions, however, have been reworded (shortened) by the EqualA, hence the general approach of Hungarian law on equal treatment necessitated the common wording of the most important features of non – discrimination in that Act.<sup>13</sup> The detailed rules of the definition specified in the EqualA, evidently, apply for employment relations in entirety.

Secondly, there is an initiative to set up *equal opportunities programmes* with the employers aiming at drawing up analysis and reports on the situation with the employer regarding the situation of certain groups of persons. Art. 70/A (2) of the Code states that the program of equal opportunities of an employer shall contain an analysis of the work conditions of workers considered disadvantaged, such as women, workers over the age of forty, workers of Roma origin, workers with some degree of handicap, and working parents with two or more children under the age of ten and single parents with children under the age of ten. The analysis shall address the wages, career advancement and the training of such workers, and the allowances available to them to reconcile their occupational and family obligations, as well as the employer's goals set for the year to ensure equal opportunities and the means designated to facilitate the achievement of these goals, such as in particular, programmes related to training and occupational safety, and any other program or programs introduced in connection with any other aspect of employment. Art. 36 of the EqualA complements this provision by stating that public employers and legal entities of state majority ownership with more than 50 employees are obliged to pass an equal opportunity plan.

As third, the Labour Code expressly deals with the equal treatment principle in terms of *remuneration for work*. Already the Constitution – Art.70/B – requires equality in work.<sup>14</sup> Art. 142/A (1) of the Labour Code states the principle of equal pay by determining that in respect of the remuneration of employees for the same work or for work to which equal value is attributed the principle of equal treatment must be observed.<sup>15</sup> Paragraph (2) states that “The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of work, its quality and quan-

---

12 By the modifying Act XVI of 2001, Section 3 of the Amendment. It entered into force 1 July 2001.

13 Art. 41 of the EqualA reworded the Labour Code by adopting sections 8-9 for the definition.

14 (1) In the Republic of Hungary everyone has the right to work and to freely choose his job and profession.  
(2) *Everyone has the right to equal compensation for equal work, without any discrimination whatsoever.*  
(3) All persons who work have the right to an income that corresponds to the amount and quality of work they carry out.

15 This section can be regarded as the implementation of Dir. 75/117/EEC.

tity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities".<sup>16</sup> Pursuant to paragraph (4) the wages of employees - whether based on the nature or category of the work or on performance - shall be determined in compliance with the principle of equal treatment as enshrined in Art 5. It must be stressed that this section of the Labour Code has also been adopted in 2001 (Art.17). This provision has not been changed by the adoption of the EqualA.

Chapter III of the EqualA (Art. 21-23) expressly refers *to employment*. It is considered a particular violation of the principle of equal treatment if the employer inflicts direct or indirect negative discrimination upon an employee, especially when the following provisions are made or applied in: a) access to employment, especially in public job advertisements, hiring, and in the conditions of employment; b) a provision made before the establishment of the employment relationship or other relationship related to employment, related to the procedure facilitating the establishment of such a relationship; c) establishing and terminating the employment relationship or other relationship related to employment; d) relation to any training before or during the work; e) determining and providing working conditions; f) establishing and providing benefits due on the basis of the employment relationship or other relationship related to work, especially in establishing and providing wages; g) relation to membership or participation in employees' organisations; h) the promotion system; i) the enforcement of liability for damages or disciplinary liability.<sup>17</sup>

The principle of *equal treatment is not violated* if a) the discrimination is proportional, justified by the characteristic or nature of the work and is based on all relevant and legitimate terms and conditions, or b) the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.<sup>18</sup>

#### Accession to non-agricultural land (housing)

Act LV of 1994 on Arable Land (LandA) contains provisions for the acquisition of ownership title of non-arable lands (housing). Prior to the EU accession, EEA nationals were equated with other foreigners in terms of having been subjected to *authorisation for the acquisition* of non-agricultural lands.<sup>19</sup> Act XXXVI of 2004 amended the LandA as a result of which the new regime, as from 1 May 2004, provides free access to EU nationals to housing.<sup>20</sup> According to the LandA *EU nationals, legal persons and unincorporated entities established in any Member State of the EEA may acquire title of ownership of non-agricultural land under the same conditions as Hungarian nationals (without special permission)*.

There are some procedural requirements which should be met during *the transitional period*.<sup>21</sup> EU nationals shall be able to obtain title of ownership of a property only if they provide guarantees fixed in a private document of full probative force or in a public document that the property is intended to serve as a principal place of residence. EU nationals shall be entitled to acquire only one property under the title of principal place of residence during the transitional period. The head of office shall be vested with powers to monitor compliance with the provisions contained in LandA in conjunction with the Registrar of the local self-government and the agricultural board.

---

16 For the purposes of Subsection (1) 'wage' shall mean any remuneration provided to the employee directly or indirectly in cash or kind based on his/her employment.

17 Section 22 of EqualA.

18 Section 23 of EqualA.

19 Section 88 states that foreign legal entities or private individuals may acquire title of ownership to real property not qualifying as arable land, other than through inheritance and with the exception of what is contained in Section 88/A, by authorization from the head of the Budapest or county administration office of competence, in accordance with the location of the property.

20 Sections 88/A – 88/D deal with these issues.

21 Hence there are restrictions for the acquisition of secondary homes, a clear distinction must be set in law and in practice between principal and secondary homes.(see further cahpeters).

### Application of the language requirement

As Art.3 of Reg. 1612/68/EEC declares, language requirements are not per se prohibited, only those which are not necessitated by the job at issue. This has been confirmed in the cases of the ECJ too (*Groener, Angonese cases*).<sup>22</sup> Language requirements can be found in Hungarian law in two aspects: a) regarding recognition of foreign diplomas, and b.) in the acts dealing with the legal status of civil servants and public officials.

In Act C of 2001 on Recognition of Foreign Diplomas and Qualifications (QualA) the rules dealing with language requirements are found in Title III on recognition of EEA diplomas of EEA nationals. Art.30 (5) of the Act on the *aptitude test* states that it is made by the competent authorities of the host Member State *in Hungarian language* with the aim of assessing the practical and theoretical ability of the applicant to pursue a regulated profession in Hungary. The aptitude test takes into account the fact that the applicant is a qualified professional in the Member State of origin and the test concerns only those abilities which are inevitable in the pursuit of the said profession in Hungary. Moreover, pursuant to Art. 55 (4) these rules are applicable in case of self-establishment, the competent authority may require the applicant to evidence that she /he obtained the necessary information on Hungarian laws and ethical rules, and also on the possibilities of learning Hungarian. Ministerial Decree No. 31 of 2004 on the recognition of health care diplomas, in its section 8, regulates the language requirement in the same spirit. It declares that the competent authority informs the applicant in Hungarian or English language about the professional and ethical rules, the applicable social security laws and the possibilities on learning Hungarian language.

As regards *civil servants and public officials the knowledge of Hungarian language* is not expressly required. However, in case of civil servants one of the conditions is the Hungarian nationality, Art. 7 (1) states that a civil servant shall be Hungarian national (which inherently presumes the knowledge of Hungarian language). It is indirectly evidenced by Art 7 (2) which says that career starters must possess foreign language skills – English, German or French – which also presumes that Hungarian language skills are presented. As an exception, Art 7 (8) declares that a civil servant might be an EEA national or the family member of a Community worker as defined in Art 11 of Reg. 1612/68/EEC, but only if the work at issue is not confidential and the person possesses *the Hungarian language* skills necessary to perform the tasks. In case of public officials the knowledge of Hungarian language is not expressly required, either. However, Art 74 declares that the public official is entitled to wage-supplement if he regularly uses a foreign language besides Hungarian. This means that the knowledge of Hungarian language is evident.

Although the public/for profit sector implement own rules on employment criteria, the language ability of EEA worker should be certified by a language examination taken out of Hungary. The *recognition of this certification even on Hungarian or in non-Hungarian language skill* would be the most objective evidence, and conditions of recognition are defined in the Ministerial Decree issued by the Minister of Public Education. This procedure is centralised to the Accreditation Centre and it takes up to 45 days. The fee depends on whether the applicant had taken a bilingual or a unilingual exam, and the structure of examination is similar to the accredited one in Hungary or not. Recognition may require taking an additional examination in Hungary in one of the accredited language centres by the applicant. We have no information how to use this channel in employment procedure, partly due to precedence of diploma qualification and inherent knowledge of language of studies, partly due to rare cases of Hungarian language certificate.

### Effect of the *Burbaud* ruling (C-285/01) on the free movement of persons

Essentially the issue in the *Burbaud* case is that, according to French law, only those persons can acquire a *stage* (post-secondary probation time in the public service), who successfully pass the entrance exam for and in the aftermath go through the training of the ÉNSP. Those who pass the final examination (for which there is no any formal document) obtain a permanent appointment as civil servant to

---

22 379/87 Anita *Groener v Minister for Education and the City of Dublin Vocational Educational Committee* (1990) ECR-3967, C-281/98 *Roman Angonese v Cassa di Risparmio di Bolzano SpA eset* (2000) ECR I-4139.

the hospital public service. Apparently, those who pass the entrance exam to the ÉNSP are already civil servants (this is a form of recruitment), and they get a permanent status at the end of the training. (These posts are not necessarily qualified as an exemption in terms of Art. 39 (4) of the Treaty of Rome.) The first problematic issue in the main proceeding was whether this *final examination can be regarded as a diploma* within a meaning of Dir. 89/48/EEC. The ECJ declared that this final exam confirms that the person has successfully completed a post-secondary course that is why it can be regarded as a diploma (Art. 1(a) of Dir. 89/48/EC). In effect the judgement declares that persons (French or EEA nationals) holding diplomas acquired in other EEA Member States can require their diplomas must be mutually recognised. However, a second problem arises, namely *how to channel* persons holding an equivalent diploma from another Member State into this system. According to France, these persons have to pass the entrance exam, because that is the selection (competition) part, and after that they are exempted (in full or in part) from the training by an opinion of a committee. The ECJ acknowledged the importance of the entrance examination by selecting the candidates, however pointed out, that this exam checks skills of graduated students and not the acquired qualifications of professionals as in a usual recruitment process. Taking this special feature into account, the ECJ stated that the method proposed by France is liable to detract nationals of other Member States who already pursuing a profession and is therefore liable to be an obstacle to free movement of persons.<sup>23</sup> The ECJ also pointed out that a kind of selection process might be worked out for such situations, similar to what is called the *du tour extérieur*, but that shall be proportional and appropriate.

It is apparent that the ruling is important only for those Member State that have similar systems or training methods. It shall be emphasised at the outset, that *Hungary does not have any similar construction in force*.<sup>24</sup> Accordingly, Hungarian law does not envisage any such kind of recruitment or selection process in the course of which a post-graduate candidate is in a preliminary civil servant status. It seems that Hungary belongs to the majority of the Member States in this regard.<sup>25</sup>

It has to be added, however, that there is a *scholarship construction* in Hungary for students studying in high level education, on the basis of which the administrative body wishing to employ the selected students enters into a contract with the student with a view of at least one year long employment after the completion of the studies. However, these students are not qualified as civil servants but trainees and their status is determined only in the course of the actual employment.

### Captain of ships

According to qualification and requirements for captains there is equal treatment of EEA nationals. Naturally, examination obtaining the certificate shall be taken in Hungarian with exception of language qualification.<sup>26</sup> In this way nationality as condition is not required at all.

### Sport

Professional athlete shall be remunerated *exclusively* on the base of the Labour Code regardless his nationality according to the Act on Sport. He has to conclude on employment contract with a sport club or association as a labourer with certain specific exceptions defined in the Act.<sup>27</sup> Beyond this basic condition, professional athlete shall be in possession of labour permit<sup>28</sup> that may be issued without economic test if “according to [internal rules of] competent national federation of the sport in concern his/her employment is acceptable”.<sup>29</sup> It means that professional athletes from the EEA can be employed on the upper described rules (on reciprocity or without labour permit).

---

23 Paras 100-101.

24 However, a plan for exam of competition in public service has been outlined (May 2006 – www.meh.hu).

25 Network on the Free Movement of Workers in the EU in 2002-2003, p. 17.

26 Applicant for certificate on Danube-lines shall take exam in specific terminology in Russian or German language (see the International Treaty on Danube) and for certificate on sea-lines in English.

27 Act on Sport No. I of 2004, Art. 8.

28 Ministerial Decree on foreign labourers' authorisation, Section 6 (1) d.

29 Ministerial Decree on foreign labourer's authorisation, Section 6 (5).

The written *contract on employment* may be terminated if his personal licence on professional race is withdrawn by the responsible national sport league. This licence shall be issued upon request of the athlete, and employment contract is forbidden to conclude without his/her transferable right for racing. During validity of employment contract it includes the transfer of right for racing to the employer sport club/association. Consequently it may transfer further to another club/association according to a contract. In this case athlete is considered as a posted worker. The Act replacing the prior provisions (Acts in 1996 and in 2000) changed the legal standing of professional athletes in order to provide their free movement as employees instead of entrepreneurs, share-holders of clubs, associations or self-employed persons. For this reason the Act defines a maximal three year transitional period for modification of each existing civil contract of professional athletes' sporting activities.<sup>30</sup> Moreover, the national sport league (federation) representing interests of the given branch of sport is entitled

- to regulate the Racing Conditions (e.g. of national championship) and Code on Transferring,
- to register racing rights,
- to issue or reject the racing licence, authorisation "for *Hungarian [national] athletes* participating on race held abroad and for *foreign [national] athletes* participating on race held in Hungary" (Art. 22),
- to maximise the lawful wage and other supports for professional athletes in employment contract,
- to maximise the lawful compensation for transferring racing right and licence.

What are the *major conflicts between legislation and practice*? Beyond the absence of reference on Community law on free movement of professional athletes in the area of EEA and proper harmonisation of law taking into account Accession Treaty and labour law, the set of frictions are as follows:<sup>31</sup>

- Sport leagues are entitled to regulate racing rights, racing licence and transferring of racing rights but its regulative power is too wide and cannot counterbalanced the absence of general rules, guarantees and reference on accession to employment in the Act.
- Codes on racing including transferring racing right and licence, agreement that has to be made on transfer of athlete's racing right between offering and receiving associations are inconsistent, not in harmony with Accession Treaty, Community law and labour law. Majority of them use the term of "Hungarian", "foreign" athlete or "foreign athlete in possession of settlement/long term residence permit" who are received/transferred to Hungary or abroad.<sup>32</sup> It means that all non-Hungarian nationals including EU nationals, EEA citizens and other persons under the Commu-

---

30 Act on Sport No. I of 2004, Art. 78 (3).

31 European comparative research on free movement of professional athletes in the EU, in particular of football made by University of Sport, Department of Legal Studies, SOTE - Pázmány Péter Catholic University. Team leader is dr. András Nemes. An international conference on research is under preparation.

32 Some examples: Statute of *Hungarian Football League*, Rules on Licence and Transfer (Resolution of the HFL 36/2003, 24 April) covers on "Hungarian national" and "non-Hungarian professional sportsmen", returnee and leaving nationals. Resolution on rules of licence and transfer of athletes issued by the Presidency of *Hungarian Pentathlon Federation* (16 November 2005) shall be implemented on "athlete in possession of Hungarian nationality or settlement permit obtained in Hungary". In Section 12 it adds "athlete who is Hungarian national or who shall be treated as national may be transferred to another sport club (even abroad) only in possession of the consent of national federation". This consent would be obtained tacitly if "athlete acquired his/her Hungarian nationality at least one year before or has settlement permit and transfer is in harmony with international sport rules and interest of international sport association. (Section 13) Statute of *Hungarian Table Tennis Federation* (1 July 2005) defines: Racing licence may be issued for a non-Hungarian national if his national league rejected the consent but s/he obtained as a foreigner a settlement permit at for a year ago in Hungary and issuing the licence does not violate the rules of the international federation (Art.8 (10.5.)). The tacit consent to transfer inside Hungary shall be supposed if athlete acquired Hungarian nationality more than 8 years ago or s/he is in possession of a settlement permit in Hungary (Section 17). The transfer can be managed by an agent in possession of a licence issued by the national federation paying a bail (Section 20). This construction is far from strict rules on employment agency. The Code on Racing adopted by the Hungarian Cycling Federation (20 December 2005) defines that athlete with dual citizenship in racing and registration shall be treated as Hungarian national if s/he has a Hungarian nationality. Dual nationals have to prove the absence of racing licence issued of any of UCI member federation (Section 1.13.).

nity law preference are equally treated as third country nationals.<sup>33</sup> While the rules on labour authorisation respect for sport federations' internal regulation, the analysed codes on racing make *no differences between EEA nationals and third country nationals*.

- In practice employment of athlete is attached to unlawful sponsorship, insurance, remuneration or other compensatory civil contracts. Labour law is not applicable in certain momentum of sportsman' contract (e.g. limited validity of employment, fixed salary, fixed and inclusive bonus, "audition" of the athlete before lending, transfer of racing right by another/national sport club/association in the analogy of labour law). For this reason "illegal employment" or irregular employment is rather spread in professional sport.
- Although the legal status of athlete is directed by labour law, the cogent rules on private employment agency as defined in the ILO<sup>34</sup> and Government Decree<sup>35</sup> is totally trespassed or at least neglected in professional sport. Existing agents operate in informal way or only in possession of the licence of the international federation.
- Sport documentation (e.g. Registry of sport associations, state subsidy for athletes) contains no information on accession to employment in internal sport rules and their practice.
- Labour authority, labour inspector's control cannot monitor this sphere. Athletes from less developed region are delivered in a vulnerable situation. Sport Arbitration Court disputes cases on compensation paid to consignor club and league for transfer of racing rights and licence of the athlete in concern. By the way, this is the most regulated issue in Codes on Racing Conditions of national sport federations.

#### Literature

Nagy, Ibolya, Sport az Európai Közösség jogában. *Európai Jog*, 2004:5, 10-15.

Kovács, Bálint & Nemessányi, Zoltán, Az első magyar előzetes döntéshozatali eljárás margójára: a közösségi jog visszaható hatályának és a Dzodzi-elv alkalmazhatóságának kérdése [To the margin of the first preliminary ruling of the ECJ upon the first request of a Hungarian Appealing Court – Is there any retroactive effect of the Community law and what is the relevance of the principle of Dzodzi?] *Európai Jog*, 2006:1; 3-11.

---

33 The neutral regulation of personal scope on racing is exceptional. We mention the Statute of Hungarian Water Polo Federation (see modified and full text as adopted on 16 September 2004).

34 Hungary is a party state of the Convention 181 on Private Employment Agency (1997). It was published by the Act CX of 2004. In particular its provision on authorisation of agency, free service for the athletes penalty/proper sanction for abuses or fraudulent practices (Art.3, 7, 8) are uncontrolled and trespassed.

35 Government Decree No.118 of 2001, 30 April on private employment and job-lending agencies and their registry and operation shall be implemented on professional sport without excluding provision (such as agencies of artists) in Section 1 (2). The following requirements of private agency shall be met before starting the lawful activity: (1) registration at County Employment Office providing regular statistics to the labour authority (2) defined diploma and certain years of proved practice, labour experience (3) proper office for the agency (4) registered company at court or private entrepreneur licence (5) and deposited money at least in sum of 500 000 HUF (2 000 €) covering on compensation which has to pay on the base of liability (Section 4-6).

## Chapter III

### Equality of treatment on the basis of nationality

#### *Regulation in force*

- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act on Social Administration and Social Benefits]
- 1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról [Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons]
- 2003. évi LXXXVII. törvény a fogyasztói árkiegészítésről [Act LXXXVII on consumer price-supplement]
- 2001. évi C. törvény a külföldi diplomák és oklevelek elismeréséről [Act on Recognition of Foreign Diplomas and Qualifications]
- 31/2004. (IV. 26.) ESzCsM rendelet az egészségügyi, szociális és gyermekvédelmi tevékenység végzéséhez szükséges oklevelek, bizonyítványok és a képesítés megszerzéséről szóló egyéb tanúsítványok elismeréséről, továbbá az ideiglenes működési nyilvántartásba vétel, valamint az oklevelek, bizonyítványok és egyéb tanúsítványok külföldi elismertetéséhez szükséges igazolások kiadásának egyes eljárási szabályairól [Ministerial Decree on the Procedural Rules of Recognition of Diplomas, Qualifications in the Health and Social Sector, and of Interim Registration and of Issuing the Certificates Necessary for the Recognition of Diplomas and Qualifications abroad]
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [Government decree on the housing-related state subsidies]
- 287/1997. (XII.29.) Korm. rendelet a közforgalmú személyszállítási utazási kedvezményekről [Government decree on advantages in public passenger transport]
- 17/2005. (II.8.) Korm. rendelet a diákigazolványról [Government Decree on the Student Card]
- 35/2000. (XI.30.) BM rendelet a közúti közlekedési igazgatási feladatokról, a közúti közlekedési okmányok kiadásáról és visszavonásáról [Decree of the Minister of the Interior on Road Traffic Administration Tasks and Issuance and Withdrawal of Road Traffic Licenses]

#### **Social advantages**

Article 7 (2) of Reg. 1612/68/EEC requires Member States to provide for equal treatment in the field of social and tax advantages. There are a series of cases of the ECJ that deals with the definition of social advantages stating that “social advantages should be interpreted as meaning all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community”.<sup>36</sup> The ECJ extended the scope of this term not only to the *benefits* available for the workers themselves, but for their *family members* too (educational rights, benefits for disabled children, loans etc.).<sup>37</sup> This concept essentially means that Community workers are *quasi* nationals in terms of the aptitude of their entitlements.

Prior to the EU accession, EEA nationals were not entitled to claim their entitlements to social advantages. Relevant changes occurred upon accession or at later stages. It shall be emphasised, however, that the practical implementation of this concept is very difficult for the concept concerns potentially the whole body of law, and inequalities might remain hidden for a long time.

Most importantly, Community workers and their family members can be entitled to all benefits enshrining in Act III of 1993 on social administration and social benefits (SocialA). With an entry into force upon accession, Act XXVI of 2004 on the Amendment of the SocialA declared that the personal scope of the SocialA is extended to Community workers. The Act contains both in cash and in kind benefits, the most of which are means tested and awarded by the self-governments. Except for the

---

36 Even (207/78) para 22., Meints (C-57/96) para 39.

37 Lair (39/86), Brown (197/86), Reina (65/81), Inzirillo (63/76).

non-contributory old-age allowance which is a special, non-contributory benefit in terms of Reg. 1408/71/EEC (See for more Chapter 10.), the benefits regulated in the SocialA are only granted to Hungarian nationals, refugees, persons with permanent residence permits and Community workers and their family members falling within the ambit of Reg. 1612/68/EEC.<sup>38</sup> This regulation entails the opportunity for all Community workers and their family members to make use of social assistance benefits in Hungary.

Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons (DisabledA) aims at mitigating the disadvantages suffered by disabled by enhancing their equal opportunities and by changing the attitude of the society towards disabled issues. The purpose of the DisabledA is to define the rights of people with disabilities, to determine the instruments of asserting such rights, to regulate comprehensive rehabilitative services to be offered to persons with disabilities, and as a result, to ensure an independent living and active involvement in social life. The Act has a general personal scope by stating that disabled person is “anyone who, to a significant extent or entirely, is not in possession of sensory functions, specifically vision and hearing, of locomotor functions or mental capacity, or who is significantly limited in communication, which constitutes a long-term disadvantage in active participation in social life”.<sup>39</sup>

The definition of disabled is determined without referring to nationality. However, in one section, that concerning the in cash benefit for the disabled (disabled benefit), the DisabledA tightens the general personal scope. Prior to the EU accession only Hungarian nationals, refugees and persons holding a permanent residence permit were entitled to apply for the disabled benefit. After two amendments the DisabledA reached its legally correct version upon accession.<sup>40</sup> Since 1 May 2004 the DisabledA confers the right to *disabled benefit* to persons falling within the ambit of Regulation 1612/68/EEC.<sup>41</sup>

Government Decree No. 12 of 2001 on the *housing-related state subsidies* (HouseD) aims at regulating the subsidies that can be accorded to married couples, families with more children and other persons in need. The subsidy can take the form of state contribution to the price of the house (flat), contribution to the interest payable, beneficial methods of payments etc. Only those can qualify who belong to the personal scope of “supported person”. Government Decree 251 of 2004, 7 September amended the definition of “supported person” of the HouseD in order to encompass Community workers as well. Pursuant to point 7 of the HouseD supported persons are Hungarian nationals and Community workers in terms of Reg. 1612/68/EEC who possess a valid residence permit during their employment relationship. Following from this, Community workers can qualify as supported persons in terms of the Government Decree.

Government Decree No. 287 of 1997 on *advantages in public passenger transport* (TransportD) aims at granting benefits for certain groups of persons using the inland public transport facilities. Section (2) of the TransportD states that the following categories are entitled to free of charge travel in unlimited occasions: children under the age of 6; persons over the age of 65 if they are Hungarian nationals, nationals of an EEA Member State or nationals of a neighbouring state. The latter group is entitled to travel in the second class only by producing their identity cards. Section 4 lays down that the spouse of the person falls also into the privileged category both travelling alone or with the entitled person. Section 5 declares that students are entitled to buy seasonal tickets with 90 percent discount if they possess a Hungarian student card. Pursuant to Government Decree No. 17 of 2005 on the Student Card (CardD) Hungarian student card is automatically accorded to persons who are students of a public schools or high school that is accredited or recognised in Hungary. According to the CardD the Hungarian Student Card must be applied for, and entitles the holder for travelling only together with the seasonal ticket. These students may travel on unlimited occasions too. Act LXXXVII on consumer price-supplement (PriceA) gives a complementary element to the system, it regulates how the state subsidises the service providers for the loss of income resulting from the above-mentioned benefits. Art 6 (b) states that supplement is due – among others – after EEA nationals of 65 years of age. It means that EEA nationals over 65 years of age (or children) are not only entitled to

38 It means that not all persons who can avail themselves of Reg. 1408/71/EEC, but only workers can enjoy social assistance.

39 DisabledA, Art. 4 (a).

40 See for more Gellérné Lukács Éva – Illés Sándor (2005) 65-67.

41 Art. 23 (2) (a) of the DisabledA.



travel free of charge, but the loss incurred by that is reimbursed the same way as for Hungarian nationals.

Summing up, the browsing of Hungarian law shows that Hungarian law clearly provides for the *most important benefits attached to the concept of social advantages*, namely social assistance, disability benefits, access to state subsidies and some transport benefits. It is beyond doubt that the Hungarian legislator is fully aware of the existence of the concept and applies it. The reporter does not exclude the possibility of hidden restrictions that might come to light later. However, one thing is worth mentioning here. In connection to the transition period – analysed upper – a general question occurs: *whether it is practically possible to apply Article 7 (2) of Reg. 1612/68/EEC when Articles 1-6 are suspended*. Seemingly, Hungarian law only awards social advantages to those persons who are able to fall within the personal scope of that Regulation. Hungary applies its national law, not Regulation 1612/68/EEC towards the EEA-18 states, even if the effect of Hungarian law is the same as that of Reg. 1612/68/EEC. It seems that the present wording of Hungarian law – albeit correct in its objective – poses applicability problems at least the textual interpretation concerned by excluding automatically the nationals of the EU-15 (better saying EEA – 18) who – per se – can not fall within the personal scope of the suspended Regulation.

### **Recognition of driving license obtained in an EEA Member State**

Ministerial Decree No. 35 of 2000 on Road Traffic Administration Tasks and Issuance and Withdrawal of Road Traffic Licenses treats, on the one hand, the conditions of issuing driving licenses, on the other hand, the validity and change of driving licenses issued by foreign authorities. As regards issuance of driving licenses equal treatment is granted between Hungarian nationals and EEA nationals. The Decree (Art. 12-14) declares that driving license can be issued to a person who fulfils the health suitability and training requirement, moreover, if the applicant is a Hungarian or an EEA national residing in Hungary in possession of a residence permit, there is no waiting period. In case of other foreigners a waiting period of 6 months shall be fulfilled before the application can be submitted. As regards validity (recognition) or change of driving licenses the Decree lays down (Art. 16-18/A) that a driving license qualifies as appropriate if the country where it has been issued ratified the 1968 Agreement on Road Traffic of Vienna, the license has been issued in an EEA country or the proprietor of the license belongs to the personnel of foreign armed forces staying or being in transit in the country. There are differences in the timeframe for which the validity of the driving license can be recognised. In case of driving licenses issued in EEA countries the original validity of the license is respected, the Hungarian authorities accept the license until its expiry date. In case of driving licenses issued outside the EEA the validity is one year calculated from the entry into the country. Foreigners other than EEA nationals are required to apply for Hungarian driving license if their stay exceeds one year (there are some exceptions for members of diplomatic and consular missions). In case of loss or damage of the driving license issued in an EEA country the person is given a Hungarian Driving license after contacting the foreign authority which has formerly issued the original driving license.

However, the *third country national family members of EEA nationals are not put on the same footing as EEA nationals*. It means that these persons have no equal rights they fall within the regime applicable to “other foreigners”. It is not clear whether this provision is in compliance with EC law or not hence there has not yet been similar case before the ECJ.

### **Recognition of diplomas obtained in an EEA Member State by third country national family members**

In case of social advantages it is interesting to tackle upon the entitlement of third country family members as regards the recognition of diplomas. The most relevant law in the field of recognition is Act C of 2001 on Recognition of Foreign Diplomas and Qualifications (RecA). This law implements Dir. 89/48/EC, Dir. 92/51/EC and Dir. 1999/42/EC (and the corresponding parts of the new Dir. 2005/36/EC). The Law regulates its personal scope as follows: EC law has to be applied “if a *national of a Member State* is intended to pursue a regulated profession in Hungary and s/he is entitled to pur-

sue that activity in his/her country of origin” (Art. 21 (1)). Member State means the members of the EU and countries enjoying the same legal advantages as EU countries (Article 25(2)). Browsing the law gives the impression that, *from the point of view of general recognition system third country national family members are not expressly entitled to make use of the advantages guaranteed for nationals of a Member State*. However, talks with the competent authorities revealed that they interpret Reg. 1612/68/EEC together with the directives on recognition of diplomas, and albeit they apply EC law to third country family members on the basis of the Regulation, however, there has not been a single application by family members so far.

Separate rules refer to the recognition of diplomas verifying specialist training acquired abroad in the course of the sectoral directives. For health care diplomas the most important piece of legislation is the Ministerial Decree No. 31 of 2004 on the Procedural Rules of Recognition of Diplomas, Qualifications in the Health and Social Sector, and of Interim Registration and of Issuing the Certificates Necessary for the Recognition of Diplomas and Qualifications abroad (QualhD).

Pursuant to Article 2 (1) the personal scope of the QualhD encompasses nationals of the EEA, nationals of countries that, on the basis of international agreement, enjoy the same status as EEA countries, and in addition, *persons who, on the basis of European Community law, enjoy the same entitlements as EEA nationals*. Article 2 (1) also prescribes that these persons has to apply for recognition of a diploma that has been issued in an educational institution of a Member State falling within the material scope of the directives on mutual recognition.

Article 2(1) expressly refers to a group of persons who – pursuant to EC law – enjoy the same entitlements as EEA nationals provided that they obtained their diploma in an EEA Member State. *Talks to the competent authority*<sup>42</sup> revealed that this definition expressly relates to third country national family members giving them entitlement to make advantage of EC law in the same way as EEA nationals as regards health care professions. In practice there has been one single person – the Cameroonian national husband of an EEA national possessing a Greek diploma – who has applied for recognition on this legal base and who was able to get his diploma recognised.

#### Literature

- Gellénné Lukács, Éva & Szigeti, Borbála, *Munkavállalási szabályok az EU tagállamaiban az átmeneti idő alatt* (The rules on taking up employment in the Member States of the EU during the transition period), KJK Kerszöv, Budapest, 2005.
- Gellénné Lukács, Éva & Illés, Sándor, *Migrációs politikák és jogharmonizáció* (Migration politics and legal approximation), KSH NKI (Demographic Research Institute), Kutatási jelentések 79. Budapest 2005/2.
- Gellénné Lukács, Éva & Szigeti Borbála, *Munkavállalási szabályok az EU tagállamaiban az átmeneti idő alatt* (The rules on taking up employment in the Member States of the EU during the transition period), KJK Kerszöv, Budapest, 2005.
- Gyulavári, Tamás & Bitskey, Botond, Hungarian Anti-discrimination Act: A New Member State’s Perspective, *Acta Humana*, 2004/4.
- Gyulavári, Tamás, Egyenlő bánásmód és esélyegyenlőség (Equal Treatment and Equal Opportunities), in Gyulavári, Tamás (szerk), *Az EU szociális dimenziója, második (átdolgozott) kiadás* (The Social Dimension of the EU – second (revised) version), Ofa Kht, Budapest, 2004, page 105-132.
- Illés, Sándor, *Foreigners in Hungary: Migration from the European Union*, Hungarian Central Statistical Office, Demographic Research Institute, Working Papers on Population, Family and Welfare, No. 5. 2004.

---

42 Personal interview with the officials in charge (Ministries of the Public Health Care, Social Affairs, 27 February, 2006)

## Chapter IV Employment in the public sector

### *Regulation in force*

- 1997. évi LXVII. törvény a bírák jogállásáról és javadalmazásáról [Act on legal standing of judges and their earnings]
- 1994. évi LXXX. törvény az ügyészségi szolgálati viszonyról és az ügyészségi adatkezelésről [Act on services of public prosecutor office and data storage]
- 2001. évi LVIII. törvény a Magyar Nemzeti Bankról [Act on the National Bank of Hungary]
- 1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati viszonyáról [Act on service of members in administration of justice] modified by Act XXIX of 2004
- 1996. évi I. törvény a rádiózásról és a televíziózásról [Act on Radio and Television Broadcasting]
- 1992. évi XXXIII. törvény a közalkalmazottak jogállásáról [Act on legal standing of public servants]
- 1992. évi XXIII. törvény a köztisztviselők jogállásáról [Act on legal standing of public officials]
- 1996. évi XLIII. törvény a fegyveres szervek hivatásos állományú tagjainak szolgálati viszonyáról [Act on working position of officers in law enforcement]

The public sector can be divided into the following categories in accordance with laws:

- a. *Elected positions defined by public law* that shall be fulfilled exclusively by Hungarian national. For instance, member of the Constitutional Court<sup>43</sup> or chair of country municipal<sup>44</sup>. Each of them is regulated in separate acts requiring directly or indirectly (for instance, in case of the member of National Auditor Office the Parliament is entitled to elect the proper, qualified person regardless even his nationality).

According to the Act on National Bank of Hungary, the member of the Monetary Council and Inspectoral Board shall be a Hungarian national.<sup>45</sup>

The public sector covers on the independent body controlling the publicly financed radio and television broadcasting. The Act on Radio and Television Broadcasting regulates the tasks, responsibilities of programming services if the broadcaster has its corporate domicile in Hungary. Although before accession the Act was amended taking into account harmonisation, the task and component of the *National Radio and Television Board* has not changed. It shall protect and promote the freedom of speech by helping broadcasters to appear on the market, by breaking down any information monopolies and preventing the creation of new ones, by protecting the independence of broadcasters, too. It pays attention to the enforcement of the constitutional principles of the freedom of the press and shall inform Parliament thereof. The Board and its members are only subject to the law, and cannot be instructed relating to their decision or activity. (Art.31). This approach may explain why the Board's office consists of civil servants. Moreover, the membership in the Board requires Hungarian citizenship beyond proper qualification, clean criminal record and at least five years' professional experience<sup>46</sup>. The Parliament elects the Board members upon party group proposals (Art.34). For various reasons the Act has to be modified.

- b. *Administration of justice* (court, public prosecutor office) has own regulation on employment.

Accession to employment in administration of justice (judge, administrator, expert in judicial sciences, protocol writer, typist, physical worker) the basis requirement is to be a national in possession

---

43 1989.évi XXXII. törvény az Alkotmánybíróságról, Art. 5.

44 1989.évi XX. törvény, Art. 71.

45 2001. évi LVIII. törvény a Magyar Nemzeti Bankról, Art. 49., 52/A.(5)

46 The following activities shall be regarded in particular as professional experience: information service, programme editing and making, broadcasting, telecommunications, frequency management, as well as the technical, legal, administrative, economic, cultural, scientific and public opinion survey activities related thereto.

of voting right, clean criminal record and defined qualification. Certain exceptions are regulated in the Act in favour of EEA nationals and their family members defined in the Art 11 of 1612/1968/EC Regulation. In this way the applicant

- has to have a defined qualification,
- has to have *Hungarian language knowledge* which is necessary to work in the given position,
- has to have a clean criminal record, if intends to be employed as expert in judicial sciences, candidate of expert, typist or physical worker. Moreover, only a Hungarian national may be appointed to judge at court<sup>47</sup>, public prosecutor, drafter, secretary and investigator at prosecutor office<sup>48</sup>.
- further, typist and physical worker at public prosecutor office may be an EEA national and his/her family member (Section 11 of 1612/1968/EC Regulation) in possession of a proper Hungarian language knowledge. This exception is not applicable “in important and confidential working position at public prosecutor office”<sup>49</sup>.

Thus the key position means implementation on power of justice (such as judge, member of tribunal, public prosecutor) *shall belong to nationals together with their assistance in a too wide circle*. Protocol writers, secretary of judges, officials of prosecutor or file administrators at court must be Hungarian nationals also in future.

- c. *Public servants* mean a gathering term in public sector providing workers for all kinds of publicly financed institutions on the base of Act and decrees on branches. There is no nationality requirement among the general preconditions of employment.

However, the Act on legal standing of public servants provides a wide manoeuvring room for supervising ministers of the given sector of the public services. The Art 20 (2) entitles the minister to define further pre-conditions to conclude a public servant contract beyond the requirements of the Act. In this way the minister (in a decision, circular letter or in decree) may determine working positions in which applicant is to be a Hungarian national with clean criminal record in full age. Without definition of task or public interest work this entitlement is problematic, and seems to violate the constitutional rule-of-law. The consequence of appointment in absent pre-conditions on given position (such as Hungarian citizenship) means invalidity of contract on employment (Art.10 (1) of the Act). Numerous ministerial decrees were issued that were amended<sup>50</sup> due to accession but the following remained in force together with previously adopted Decrees of the Government:

- Public servant in position of security or asset-guard of *archives and public collections* (museum) must be a Hungarian national unless the minister of culture and public education accepts it.<sup>51</sup>This acceptance is totally discretionary. Moreover, the a foreigner without proper practice and qualification may be appointed to a high leading positions at artist institutions if s/he is considered as internationally well-known, outstanding artist<sup>52</sup>.
- Contract of public servant employment in all public institutions, organs under the *supervision of the minister of the interior* requires proving the proper Hungarian language knowledge depending on the given task, unless the minister upon request of local leader of the unit may issue an acceptance. Further on, the minister determines the institutions/organs in an appendix of the Decree in which Hungarian nationals shall be employed if “public order, investigation of crime, border control, catastrophe-management, protection of data and migration interests requires it.”<sup>53</sup>

47 1997. évi LXVII. törvény a bírák jogállásáról és javadalmazásáról, 3.§.

48 1994. évi LXXX. törvény az ügyészségi szolgálati viszonyról és az ügyészségi adatkezelésről, 14.§, 79.§.

49 1994. évi LXXX. törvény az ügyészségi szolgálati viszonyról és az ügyészségi adatkezelésről, 82.§ (2) amended by 2004.évi XXIX. törvény [Act on Legal Harmonisation relating to Accession].

50 E.g. higher leading position in publicly financed research institution is the researcher, administrative, financial, taxation, security or human resource manager, who shall be in possession of Hungarian citizenship. (49/1993. (III.26.) Korm. rendelet amended by 35/2003.(III.27.) Korm.rendelet which deleted the requirement of citizenship.

51 150/1992. (XI. 20.) Korm. rendelet 2.§ (2).

52 150/1992. (XI. 20.) Korm. rendelet 6.§ (6).

53 62/1997. (XI.7.) BM rendelet, 5.mellékelt (Headquarters of Police and units of Police, Headquarters of the Border-Guard and its all units, National Catastrophe-Management Directorate and its all units including the

This technique on legislation is tricky: the concrete position or task is not clearly defined but time to time, upon initiative of the unit leader the minister evaluates the required interest and type of the organ during exclusion process.

- Public servants employed in *each unit of National Defence* shall be Hungarian nationals. Upon request of the commander of the given unit (director, admiral, air-raider) the minister or the hierarchical high leader of defence may give acceptance.<sup>54</sup> The grounds of decision and types of position are not defined at all.
- Unless the minister of justice allows exception, public servant employment in *penological institutions* (prison-guard, service-man in prison system) shall be a Hungarian national. As in other cases, the grounds of acceptance or rejection by the minister are unknown<sup>55</sup>.
- Top leaders in public financed *institutions belong to the minister of national heritage* shall be Hungarian nationals, such as director in National Administration on Ancient Monuments<sup>56</sup>.
- Hungarian citizenship is required for public servant employed at Headquarters of Customs Police and units under its supervision, if the position is out of a physical job.<sup>57</sup>
- Also high level leaders (e.g. director of public financed institutions under the supervision of minister, director of an institution appointed by the local municipal) in the field of industry, commerce and tourism shall be Hungarian nationals.<sup>58</sup>

d. *Public officials* also a gathering term of employees working at various authority implementing the public power at local (municipal) and national level. Act outlines<sup>59</sup> and the government decree determines time to time the precise circle of the scope of state organs in which the implementation is in full or in absence of specific provisions is obligatory.

Rules on employment in civil service are included into a frequently amended code. Accordingly the applicant for official in charge shall be a Hungarian national in possession a legally required qualification and security control. Due to the amendment adopted before accession<sup>60</sup> EEA nationals and their family members defined the Section 11 of 1612/1968/EC Regulation can be employed as clerks (e.g. file manager) out of leading or confidential position, if the applicant has – beyond the upper defined, usual requirements – Hungarian language knowledge which is necessary to work in the given position. (Art.7 (8))

e. *Officers as also a gathering term includes members of police, national security services, professional member of defence, border-guard, catastrophe-management, emergency-management, customs police, fire brigades and punishment executive institutes.* This is a big and gradually extending group in entitlement to use coercive measures. In general applicant for employment in officer position has to be full age but below 35, and he/she shall have a standard residence in Hungary, clean criminal record, qualification as defined in the given position by law, Hungarian citizenship and confirmation by the security checking. (Art.37)

Further requirement is determined of applicants joining the police and civil security services.

---

Training Centre, Police Academy, high-school of police education, Protection Service of Law Enforcement, Office of Immigration and Nationality Affairs and its reception centres, Telecommunication Service of the Ministry of the Interior).

54 25/1992. (XI. 25.) HM rendelet a honvédségnél foglalkoztatottak közalkalmazotti jogviszonyával összefüggő egyes kérdések rendezéséről, 3.§.

55 7/1993. (III. 9.) IM rendelet a közalkalmazottak jogállásáról szóló 1992. évi XXXIII. törvénynek a büntetés-végrehajtás szerveinél történő végrehajtásáról, 2.§.

56 5/1993. (II. 7.) KTM rendelet 2. §.

57 17/1993. (VI. 18.) PM rendelet a közalkalmazottak jogállásáról szóló 1992. évi XXXIII. törvénynek a pénzügyminiszter ágazati irányítása alá tartozó szerveknél történő végrehajtásáról, Art. 2. (2).

58 44/1997. (III. 12.) Korm. rendelet a közalkalmazottak jogállásáról szóló 1992. évi XXXIII. törvénynek az ipari, kereskedelmi és idegenforgalmi ágazatban történő végrehajtásáról, 2.§.

59 Act shall be implemented at Prime Minister's Office, ministries, national authorities and their regional, territorial units, National Investigation Office, County Public Administration Offices, mayor offices, public inspector offices. Moreover, if otherwise is not regulated in specific rules, it shall be implemented at officials in the office of the State President, Parliament, Ombudsman, Constitutional Court, Audit Office, Council of Public Procurement, National Agency of Arable Land Management, Body of Radio and Television Broadcasting, Economic Competition Authority, Secretariat of Hungarian Academy of Sciences and National Telecommunication Authority (Art 1).

60 2004. évi XXIX. törvény.

## Hungary

- In possession of multiple nationality employment at any police unit may be allowed only by the minister of the interior (Art 258 (6)).
- The minister supervising the civil security services is entitled to allow exceptionally for applicant to be employed if he/she is a multiple national. (Art.284 (2)).

In summary, the Hungarian regulation concentrates basically the *types of the organ/institution/authority* requiring citizenship among other conditions in access to employment in public sector. In particular in working positions of officials and public servants the substantial division of legal/administrative power from community service is missing. In other terms, *nationality is required not only in position of public power* substantially, but also in various public services in absence of genuine entitlement of public power.

The language requirement of EEA nationals is required only in public official positions and in certain occupations (doctor, architect, solicitor etc.) as a requirement of licence to practice in Hungary taking exam on professional issues in Hungarian language. This method is neither defined in executive provisions nor in practice (e.g. testing). According to all information from competent authorities it causes *no problem in absence of non-Hungarian speaking candidates, potential migrant workers*.

For mentioned reasons recognition of professional experience for the purpose of determining the professional advantages has remained a marginal issue due to low number of cases and in particular in low-qualified public officials jobs available for non-nationals in public sector.

Despite of the ongoing preparatory works on reform in public administration and management have neglected to revise the upper mentioned restrictions or requirements. The main emphases are on capacity and efficiency, e-government and interoperability of public service management. It can be observed in various papers prepared or published by top leaders in the government agencies.

### Literature

- Hudák, Annamária, Balázs Gellér, László Kiss & Éva Lukács, *A diplomák és szakképesítések kölcsönös elismerése az Európai Unióban és Magyarországon* [Mutual acceptance of qualification and diplomas in Hungary and in the EU] Egészségügyi, Szociális és Családügyi Minisztérium. 2003. Budapest
- Balázs, Ferenc, Változások és reformok az európai országok közigazgatásában. Magyarország és szomszédai. [Changes and reforms in the public administration of European states, in Hungary and in neighbourhood] *Magyar Közigazgatás*, 2005:12; 763-767.
- Dudás, Ferenc, Közigazgatásfejlesztési tendenciák a luxemburgi ministeri tanácskozás tükrében I-III. [Trends in development of public administration in the light of the ministerial meeting in Luxembourg] *Magyar Közigazgatás*, 2005:9; 522-531, 2005:10; 577-589, 2005:11; 646-659.
- Hazafi, Zoltán, A közszolgálati jogviszonnal kapcsolatos szabályozás [Legislation on public service] *Magyar Közigazgatás*, 2005:12; 754-762.
- Dudás, Ferenc & Hazafi, Zoltán, Elgondolás és fejlesztési javaslat a közigazgatás személyi állománya teljesítőképességének növeléséről I-II. [Conception and development proposal for enriching the performance capacity of the personnel in public administration] *Magyar Közigazgatás*, 2005:4; 204-220, 2005:5; 276-282.
- Sivák, József, Continuity and New Steps in Public Administration reform in Hungary. In: *Challenges in Public Management Reforms*. Conference Volume by IRSPM, Budapest 2004
- Tóth, Judit, *Státuszjogok. Kisebbségkutatás Könyvek*, Lucidus Kiadó, Budapest, 2004. 1-328.

## Chapter V Family members

### *Regulation in force*

- 2001. évi XXIX törvény a külföldiek beutazásáról és tartózkodásáról [Act on Entry and Stay of Foreigners modified by Act I of 2005, Act XLVI of 2005 and Act LXXXIII of 2005];
- 170/2001. (IX.26.) Korm. rendelet [Executive Decree of the Government on AlienA modified by Government Decree No.119 of 2005, April 28]
- 35/2001.(XII.22.) BM-KüM e. rendelet [Joint Decree issued by the Ministers of the Interior and Foreign Affairs on Fees related to Entry and Stay of Foreigners]
- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits]
- 1992. évi XXIII. törvény a köztisztviselők jogállásáról [Act XXIII. of 1992 on the Legal Status of Public Officials]
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történő csatlakozást követően alkalmazandó munkaerőpiaci viszonyosság és védintézkedés szabályairól - Government Decree on the rules of labour market reciprocity and the safeguard measure to be applied following the accession of the Republic of Hungary to the European Union]
- 8/1999 (XI. 10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Decree of the Social and Family Affairs Minister on Work Permits Issued to Foreign Nationals in Hungary]
- 1994. évi LV. törvény a termőföldről [Act LV of 1994 on Arable Land]
- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséről [Government Decree on Acquisition of Real Estate by Foreign Residents]
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act on Social Administration and Social Benefits]
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [Government decree on the housing-related state subsidies]

### **Entry, residence and departure**

Amendments of the AlienA and AlienD entered into force in various date due to the technical and major internal political requirements. In other term, it was neither the aim to clarify of the legal standing of EU nationals and their family members, nor to transpose perfectly the relevant directives on family unification, free movement of EU nationals and their family members or long-term residents. Despite of this intention, certain modification may contribute to a more stable legal status of them at least a bit.

The AlienA and AlienD regulates the entry, residence and departure of

1. third country nationals including stateless persons, minor without guardian and family members of third country nationals who are also foreigners. These provisions mean the *general rules*.
2. EEA nationals (“national of the member state of EEA”) which cover on Hungarian citizen in absence of exclusive reference, and family members of EEA nationals as *specific rules*. Family member includes:
  - a. Spouse of EEA citizen, his/her and own descendant under the age of 21, his/her and own dependent descendant over the age of 21, his/her or own dependant ancestor – if the EEA citizen is an employed, self-employed person or an entrepreneur;
  - b. Spouse of EEA citizen, his/her or own dependant child, his/her or own dependant ancestor – if the EEA citizen is retired or self-sustaining person residing in Hungary;
  - c. Spouse and dependant child of EEA citizen – if the EEA citizen is a student residing in Hungary.

*What is the relation between the general and specific rules?* Three chapters of the AlienA shall be implemented to EEA nationals and family members (its personal scope is wider including spouse,

## Hungary

dependant descendant, adopted child, child of spouse, dependant ancestor of any spouse, minor's parent) in the context of entry and residence, of alien policing and registration of aliens in general. Moreover, a separate Chapter defines further specific provisions on EEA nationals and family members under own personal scope. This mixture of rules is *really embarrassing* just in family unification implementing the provisions on

1. EEA citizens and family members arriving and living together, and
2. subsequent arrival and (re)settlement of family members in order to live together in Hungary either under specific or the broader circle of relatives.

The most important provisions on family members of EEA citizens' entry, residence and departure are summarised as follows:

### The visa

- a. is issued free of charge if family member has to obtain. We add that a great number of third country nationals enjoy visa free travel (as a tourist).
- b. in order to family reunification, a visa for stay ("D" visa) may be provided family member of Hungarian national, if s/he is spouse, minor child, spouse's minor child including adopted child of national,
- c. visa application may be submitted exceptionally out of the competent of consular office by domicile, if the applicant's family member lives in Hungary.

### The residence

- a. Right to stay of family member of a worker, self-employed person, entrepreneur, retired or self-subsistent person or student as staying EEA national in Hungary is respected. It shall be proved by a residence permit.
- b. Application for residence permit shall be submitted to the immigration authority at least 15 days before expires of validity of visa. The same deadline shall be complied with application for prolongation of the residence permit.
- c. Family relationship shall be proved with submission of proper document. AlienD gives an example: a certificate issued by the country of origin with reference on family contact, maintenance of family member by the head of the family or applicant lives in his/her household.
- d. In order to obtain residence permit documents of self-subsistence, material cover shall be submitted. AlienD claims to attach to the application a verified declaration on applicant's maintenance by the head of the family (EEA national). Naturally, family member would have own income or other material cover on residence expenditure. Further, family member has to prove that medical care is totally ensured unless the EEA national as head of the family is an employed, self-employed person, entrepreneur, retired (pensioner) or other self-sufficient person.
- e. Period of validity of family member's residence permit fits to the EEA national's one. In case of his (head of the family) death or self-employment ceased, the issued permit of the family member may remain valid up to further two years.
- f. Family member also is obliged to notify the immigration authority *immediately any change of relevant facts and circumstances* related to legal basis or entitlement of his/her residence. AlienD makes invalid the residence permit if its content or any indicated information has changed – perhaps it is a sanction for delayed notice, but its practice is vogue however it is not compatible with EC law.

Departure of family member follows the fate of the EEA national (and other foreigners) in general. However,

- a. EEA national under the RecipD has to obtain *labour permit*, the validity of issued residence permit of the family member may be limited to be in harmony with validity of the labour permit of EEA national (head of the family). Ceased entitlement for residence/labour of EEA national, family member's permit automatically shall be withdrawn.
- b. *Residence permit* issued on the base of family unification ("living together in a family") shall be withdrawn within 6 months of its issuance if joint family life or maintenance has ceased on con-



dition that “family had been formed just for this reason”. It is a fight against marriages for convenience but its practicality is minimal.

- c. In case of withdrawal of residence permit foreigner has to leave the country within 15-30 days. Instead of appeal a judicial review is provided on leaving order.

Judicial practice related to EEA nationals’ family member, their status and movement is not available due to the *absence of data base of judgement or court decision* on reviewing public administration. I guess the major task is to disseminate proper knowledge on specificity of family members as third country national being partly under the national law and partly the Community law. Only one example how irrelevant is the family membership of the foreigner in legal procedure. A Nigerian male submitted an asylum application in Hungary and judicial review on refusal at the Capital Court in 2005 detected that “he has had meanwhile [of the procedure] a spouse in possession of a Hungarian citizenship”. But there was no consequence of it<sup>61</sup>, his residence permit was not issued or the hopeless asylum procedure was not finished even upon his (inclusive) request. The best educated judges also passed over this fact.<sup>62</sup> Further on, the administrative practice supposedly cannot control ongoing movement of family members (and of EEA nationals) due to weak statistics, changing provisions and categories of foreigners under and out of the Community law,<sup>63</sup> moreover, numerous visa free agreements provide free entry of visitors in a great extent. Rules on notified address and application for residence permit or leaving the country are not necessarily respected for even by EEA nationals and their family members.

In brief, it is embarrassment to define the precise legal standing of EEA nationals or family members according to law in force. For this reason the Ministry of the Interior and of Justice is working on a *completely separate Act on EEA nationals’ legal status*. The Bill is due to submitted to the Parliament in September 2006. It is very probable that a *package of Bills on pending transposition of directives on migration*<sup>64</sup> will be prepared and offered to the newly elected legislation.<sup>65</sup>

### **Social and economic rights of family members**

The rights of family members include rights of migrant workers: access to employment, non-discrimination in employment, access to housing and social advantages. The Accession Treaty (Act of Accession, X Annex, point 8. regulates the rights of family members. According to this point:

“As long as the application of Articles 1 to 6 of Regulation (EEC) No 1612/68 is suspended, Article 11 of the Regulation shall apply in Hungary with regard to nationals of the present Member States, and in the present Member States with regard to Hungarian nationals under the following conditions:

- member of a worker's family referred to in Article 10(1)(a) of the Regulation, legally residing with the worker in the territory of a Member State at the date of accession, shall have, upon accession, immediate access to the labour market of that Member State. This does not apply to family members of a worker legally admitted to the labour market of that Member State for a period of less than 12 months;
- member of a worker's family referred to in Article 10(1)(a) of the Regulation, legally residing with the worker in the territory of a Member State from a date later than the date of ac-

---

61 AlienA Art 2 (4) makes clear relation between the Asylum Act and Alien Act including family members of EEA citizens.

62 Training for judges on asylum and Community Law (Fővárosi Bíróság, 13-14 March 2006, Budapest) managed by the National Council of Justice Administration and the National Development Office, subsidized by the EU. The case started in 2004 and finished in April 2005 (6.K.34132/2004/7).

63 Interreg III Seminar on migration law in Hungary and in the EU (Central European University, 12-15.January 2006) held for – inter alia - staff of labour, social and immigration authority subsidized by the EU. My presentation on existing categories was a surprise for the participants.

64 It means the transposition of the directives on family unification, students and volunteers, long-term migrant’s status, free movement of EEA nationals and their family members.

65 Announcement from Director dr. Maria Lado, Ministry of Employment Policy and Labour (Bruxinfo 23 January 2006) [www.bruxinfo.hu](http://www.bruxinfo.hu).

cession, but during the period of application of the transitional provisions laid down above, shall have access to the labour market of the Member State concerned once they have been resident in the Member State concerned for at least eighteen months or from the third year following the date of accession, whichever is the earlier.

These provisions shall be without prejudice to more favourable measures whether national or resulting from bilateral agreements.”

Article 10(1)(a) of Reg. 1612/68/Eec states that “The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State: (a) his spouse and their descendants who are under the age of 21 years or are dependants.”

The UnemplA and the RecipD regulate the rights of spouses and dependant or under the age of 21 years old children – irrespective of their nationality – the same way as envisaged by the Accession Treaty. Section 4 of the RecipD repeats the text of the Accession Treaty. Section 6 (h) of the PermitD states that the work permit can be issued without the assessment of the labour market situation for employing the spouse of a foreign national [as defined in Art 7 (2) of UnempA encompassing EEA nationals as well!] if they have lived together in Hungary for at least one year, or for employing the widow(er) of one of the persons described above if they lived together in Hungary for at least one year prior to the death of the spouse. It seems that there is a contradiction inherent in the Hungarian legislation in this regards, hence one rule of the law guarantees free access (RecipD) while the other guarantees another legal entitlement (PermitD) referring to the same circle of persons. The essence is that first, *the Accession Treaty applies to the spouses and children of EEA nationals. As second, other relatives of EEA nationals and the family members of non-EEA nationals can obtain access to employment on the basis of the normal authorisation process.* That means the necessity of work permit as a main rule subject to certain exceptions (See upper Chapter).

Interestingly, Act XXIII of 1992 on the Legal Status of Civil Servants deals with the family members of EEA nationals. Art 7 (1) states that civil servant shall be only Hungarian nationals. As an exception, Art 7 (8), however, declares that civil servant might be an EEA national or the family member of a Community worker as defined in Article 11 of Reg. 1612/68/EEC, if the work at issue is not confidential and the person possesses the language skills necessary to perform the tasks.

It is worth mentioning, that albeit the ECJ has shown particular activity in matters relating to reverse discrimination (and the fight against reverse discrimination), taking into account the cases *Surinder Singh, Akrich*,<sup>66</sup> Hungarian legislation stands on the basis of nationality in assessing work permit applications. Following from that, it seems that the legislation does not take account of the fact that *a person might be a family member of a worker* who already acquired the status of a “Community worker” which status can be invoked by the family member as making reference to Article 10 of Reg. 1612/68/EEC. It is also notable, that the case *Diatta and Reed* are also not of practical importance for Hungary.<sup>67</sup>

The rules on non-discrimination in employment apply to the family members as well. Access to housing on the same footing as Hungarian nationals is restricted in Hungary to EEA nationals. It means that the EEA national family members are entitled to fall within the personal scope of the law, however, *non-EEA national family members qualify as “foreigners”*. In compliance with the LandA and the Government Decree No. 7 of 1996 on Acquisition of Real Estate by Foreign Residents these persons need permission for non-agricultural land (housing) acquisition.

It seems that the right to social advantages is also granted to family members. The SocialA and the HouseD make express reference to the personal scope of Reg. 1612/68/EEC in terms of defining the beneficiaries, which means that the family members – irrespective of their nationality – are entitled to avail themselves of the rights contained in these laws.

---

66 C-370/90 *The Queen v Immigration Appeal Tribunal and Surinder Singh*, ex parte Secretary of State for Home Department case (1992) ECR I-4265. C-109/01 *Secretary of State for the Home Department v Hacene Akrich* case, 2003.09.23

67 Analysed in Lukács (1999) 173, *Diatta v Land Berlin* 267/83 case [1985] ECR 567, *Reed* 59/85 case [1986] ECR 1283.

In recognition of *driving license obtained in an EEA Member State* the third country national family members of EEA nationals are not put on the same footing as EEA nationals which means that these persons have no equal rights they fall within the regime applicable to “other foreigners”. It is not clear whether this provision is in compliance with EC law or not hence there has not yet been similar case before the ECJ.

### Recognition of diplomas and qualifications

*From the point of view of general recognition system third country national family members are not expressly entitled to make use of the advantages guaranteed for nationals of a Member State.* However, talks with the competent authorities revealed that they interpret Reg. 1612/68/EEC together with the directives on recognition of diplomas, and albeit they apply EC law to third country family members on the basis of the Regulation, however, there has not been a single application by family members so far. *Separate rules refer to the recognition of diplomas in the health and social sector.* The relevant law expressly refers to a group of persons who – pursuant to EC law – enjoy the same entitlements as EEA nationals provided that they obtained their diploma in an EEA Member State. *Talks to the competent authority<sup>68</sup> revealed that this definition expressly relates to third country national family members giving them entitlement to make advantage of EC law in the same way as EEA nationals as regards health care professions.* In practice there has been one single person – the Cameroonian national husband of an EEA national possessing a Greek diploma – who has applied for recognition on this legal base and who was able to get his diploma recognised.

### Literature

Lukács, Éva, *Menni vagy nem menni – a magyar munkavállalók és vállalkozók esélyei az Európai Közösség munkaerőpiacán* (To go or not to go – chances of Hungarian workers and self-employed in the labour market of the European Communities), *Magyar Jog* (1999) 46: 169-177.o.

*Migráció és Európai Unió* (Szerk: Lukács Éva- Király Miklós) AduPrint, Budapest, 2001

Judit Tóth, Hungary (National report to) *The Legal Status of Migrants Admitted for Employment*. Edited by Ryszard Cholewinski. 2004 July, Council of Europe, Strasbourg, 56-60.

Judit Tóth, *The long-term migrant's status in the Directive and in the Hungarian law*. Conference paper (University of Radboud University, Nijmegen, 9 February 2006)

*Nem kívánt gyerekek? Külföldi gyerekek a magyar iskolákban* [Empirical research on migrants' children attending schools in Hungary] Szerk: Feischmidt Margit és Nyíri Pál. MTA Kisebbségkutató Intézete, Budapest 2006.

---

68 See footnote 42.

## Chapter VI

### Impacts of ECJ decisions

#### *Impacts of Trojani case*

The *Trojani* case (C-456/02) essentially relates to the cases *Martinez Sala* and *Grzelczyk* where the ECJ made it clear that union citizenship alone is not sufficient to confer social rights on an EEA Member State national (union citizen). The ECJ emphasised that first the right to free movement has to be effectively exercised, and the person is only entitled to claim a social assistance benefit if s/he is in temporal need and poses no unreasonable burden on the Member State's social assistance system. (Actually, the question dealt with in this case is firmly connected to the future implementation of Article 7, 14 and Article 24 of Directive 2004/38/EC which say that union citizens can only have.) The main element of the judgement is, first, a prerequisite *legal residence* and, as second an assessment of *the temporary financial necessities that shall not be so serious as to burden* the national social assistance system. The question is thereby: what shall be deemed a "temporal need" and what shall constitute "unreasonable (serious) burden". The ECJ would favour a case by case assessment of these concepts, putting the national administration in a quite challenging situation in which a margin of appreciation shall be awarded to the decision making clerk.

Hungarian law (AlienA, Art 4-5) states that entry and stay of a foreign national can be authorized – among others – if the foreign national has *sufficient financial resources* as defined by legal regulation to cover the costs of entry and the costs of living, including accommodations for the entire length of stay, and for leaving the country, and if able to prove of being covered under any health insurance system for the full range of health care services, or is able to finance the costs of health care services (*general rules*). *Financial resources* sufficient to cover the costs of entry and stay may be substantiated by: a) Hungarian currency or foreign currency convertible at a Hungarian financial institution; or b) a valid letter of invitation; or c) documents (bank account agreement, deposit book, etc.) entitling the foreign national to withdraw cash at a Hungarian financial institution; or d) cash substitute payment instruments accepted in Hungarian commercial circulation (check, credit card, etc.); e) proof of room and board reserved and paid for through a travel agency; f) other reliable means.

Pursuant to Hungarian law (AlienA, Art 10) authorisation of foreigners to stay can be a visa, a residence permit or an immigration permit (long-term residence permit). The issuance of the visa is subjected to the fulfilling of the above-mentioned condition of sufficient resources. If the foreign national who already received the visa fails to satisfy other visa requirements at the time of entry, or no longer satisfies the requirements during his stay, the visa shall be invalidated and destroyed. The application for a residence permit - the same applies to the immigration permit – shall contain the applicant's personal identification information, citizenship (stateless status), other passport data, educational qualifications, occupation, marital status, the purpose and place of stay, *financial resources*, reasons and, if using a foreign-registered motor vehicle while staying in Hungary, the data from the vehicle's registration papers. The issuance of the residence permit or its prolongation can be denied if the applicant can not meet the prescribed requirements (AlienA, Art 16-17). The Act does not *expressly* regulate the question in which cases the residence permit can be *withdrawn* during the originally issued time-frame. It is striking especially in the light of the article dealing with the immigration permit according to which the permit – upon the existence of certain conditions – can be withdrawn. The law lays down that expulsion or restriction of entry and stay *may* be imposed in respect of foreign nationals a) who have violated or have attempted to violate the rules of entering and exiting the country; b) who have violated the regulations on staying in the country.

It seems that Hungarian law does not exactly take into account the *Trojani*-case, however, it also seems that the issue is of *slight practical importance* in Hungary. On one hand, the law is strict in the sense that the residence permit can not be issued or prolonged if the conditions are not met (including possession of financial resources). There is *no assessment* at all of minor burdens on the social assistance system. On the other hand, it seems that there might be some inconsistency in the law (AlienA) itself hence at one point the law says that the residence permit can not be withdrawn during its validity period on the basis of the lack of financial resource, at another point it says that expulsion may be imposed if the rules on staying are not met. It is not clear whether the foreigner – not only union citizens (!) – can in fact apply for temporary social assistance or not and whether it will result in the loss

## Hungary

of the right of residence and residence permit (expulsion) or not. *Available statistical data does not include the reasons of withdrawal of residence permits in Hungary. Further on, EEA nationals have never been subjected to expulsion procedures.* This is another question whether the person is eligible for social assistance benefits under Hungarian law which is dealt with in the SocialA. *There are no available statistics in Hungary whether EEA nationals apply for in cash social benefits in Hungary.* It is worth noting that the negotiations regarding the implementation of Dir. 2004/38/EC seem to include the inclusion of the concept of “unreasonable burden” in Hungarian law in a more consistent manner.

### *Impacts of the Collins case*

The *Collins* case essentially confirmed that a person seeking employment in a Member State is not a “worker” in the sense of Reg. 1612/68/EEC, moreover, s/he is not entitled to apply for residence permit on the basis of Dir. 68/360/EC hence the latter’s personal scope is confined to “workers”. What the ECJ newly brought in with *Collins* is that union citizens exercising their *right to free movement and access to employment* can no longer be excluded from benefits of a financial nature intended to facilitate the access to employment and the “habitual residence” concept can not be maintained, *except if objective considerations exist.* The objective consideration *is* that there is no genuine link (or no genuine link became valid) between the job seeker and the labour market of the state at issue. The ECJ says that the link *may* be the fact of searching for work, but the judgement does not foresee it as an obligation for Member States. Consequently, the Member States are free to decide whether the job-seeking activity is enough to establish a genuine link between the person and the labour market thus allowing the job-seeker to apply for jobseeker’s benefits.

It seems that the *Collins* case is of *no legal importance* for Hungary. Pursuant to Hungarian law (that has considerably changed with effect from 1<sup>st</sup> November 2005) job-seeker EEA nationals – who are not “workers” in sense of Reg. 1612/68/EEC – are eligible for active labour market measures (information, placement services, enhancement to become self-employed, incentives given to employers if they employ young employees etc.). Passive measures – so-called in cash benefits – are always dependant upon former employment (insurance) periods the system of which is regulated by Reg. 1408/71/EEC. Hence there is no Hungarian in cash benefit for jobseekers which is independent of former employment, the “one-day rule” prevails meaning that the person has to work at least one day as a worker in Hungary in order to fall within the ambit of Hungarian law. Based on the one day employment requirement, the *Collins* case is not applicable.

### *Effects of other cases*

The *Ioannidis* case declared that a tideover allowance which is intended to facilitate the transition of young people from education to employment can not be linked to the fact that the applicant must have completed his/her studies in the respective Member State. On a general plane the judgement might point to the general requirement of prohibiting overt or covert forms of discrimination in adjudicating claims for unemployment benefits (even being social benefits). It seems that – similarly to the *Collins* case – this judgement is not of great importance from the point of view of Hungarian law. Pursuant to Hungarian law the eligibility for any kinds of unemployment benefits is connected to former employment periods in the lack of which claims can not be assessed. Based on the one day employment requirement, the case is not applicable in Hungary.

The *Hans van Lent* case (together with the cases C-464/02 and C-151-152/04) declares that Member States can not require the registration of company vehicles which are used by their residents in connection with their employment relationship *predominantly* in the other Member State if the vehicle is properly registered in the seat country of the employer.

The *Hans van Lent* case might be of importance for Hungary hence the law seems not to definitely preclude that residents shall register their vehicles even if the registration already occurred in another Member State. It seems also that the core of the issue is the interpretation of the concept of “predominant use”. Act I of 1988 on Road Traffic, Act LXXXIV of 1999 on the Register of Road Traffic, Act CX of 2003 on Motor Vehicle Registration Duty handle the issue of vehicle registration in Hungary. Decree 35/2000. (XI. 30.) BM on Road Traffic Administration Tasks and on the Issuance and Withdrawal of Road Traffic Licenses handles the status of number plates.

## Hungary

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Article 23 (6) of Act I of 1988 on Road Traffic, if the car has been registered abroad – it has a foreign number plate – and the car *is intended to be used in inland traffic*, the proprietor is obliged to apply for the putting into circulation within 30 days of bringing the car into Hungary. If the proprietor is an EEA national and s/he *intends to use the car in inland traffic*, Decree of the Minister of the Interior (No. 35 of 2000, November 30) lays down that the application for putting into circulation shall be submitted within 30 days of receiving the residence permit or of bringing the car into Hungary (Article 40(5)). The putting into circulation means the award of a Hungarian number plate and the payment of the registration tax in accordance with the Act of 2003 on Motor Vehicle Registration Duty. The law speaks, first, of the obligation of the *proprietor*, second, of cars intended to be used in inland traffic. This implicitly means that, if the EEA national living in Hungary is not the proprietor of the car, moreover, if the car is not intended for inland traffic, the provisions shall not be applicable. However, if the intended use is in Hungary, it can not be excluded that the proprietor established in another Member State can also be required to register the car in Hungary. Hence *Hans van Lent* treats cases when the person only lived in the country and the *actual usage has occurred in another Member State* (that of registration), it might be that there is no contrast with EC law. In case the usage is intended to be *partly* in Hungary, the law, however, might be in contrast with EC law hence than registration shall be effected by the proprietor. Talks to the competent authority<sup>69</sup> revealed that in practice this rule is difficult to apply hence the actual wording of the law – “intended for inland usage” – *is unclear*.

Albeit the *Carlos Garcia Avello* case (C-148/02) has not been on the list of cases that are of importance, it might be interesting to examine its effects on national civil laws. The ECJ declared in this case that persons enjoying the right to free movement have also civil law rights deriving from union citizenship, namely rights as regards the choice of surnames for their children. This case might pose lots of questions. Hungarian Law – Act IV of 1952 on Marriage, Family and Guardianship – expressly regulates the modalities of giving name to a child (Article 42). The child – on the basis of agreement of the parents – bears the surname of his/her father or mother. The child can also bear the surnames of the mother and father together, consisting of a maximum of two words (e.g. Garcia-Weber). However, there are no other provisions entitling the influence of other civil laws. Probably, this is quite the same in all national laws.

### *Effect of the ECJ rulings on sports*

There is no influence of jurisprudence of the European Court of Justice on free movement, employment of athletes. Regardless the ECJ jurisdiction (Bosman, Kolpak, Simutenkov cases) on direct implementation of Agreement on Associations and liberalisation on sports, the Hungarian sport leaders have neglected also in case of El Hadzi Malick. The basketball player as Senegal national was refused to race in the National Male Basketball Championship as a player of Jászberényi Basketball Sport Association (Jászberényi Kosárlabda Sportegyesület) due to decision of the “B” Section of the Professional Male Basketball League. It referred on Section 1 of Art.10 in Racing Condition to 2005/2006 on 1<sup>st</sup> “B” Class as adopted by Male Basketball of Hungarian National League. El Hadzik Malick shall be treated in accordance with Cotonou Agreement, consequently the jurisprudence in *Deutscher Handballbund v. Kolpak* case would have been taken into account. This unlawful situation started and has existed since 8 May 2003. It is very probable there are similar cases but it is published alone in literature.

### *Literature*

Kecskés László, Sportban egy évvel korábban történt Magyarország csatlakozása – a Kolpak ügyben hozott ítéletével az Európai Bíróság kiterjesztette a Bosman-ítélet liberalizációs tételét. In: *EU-jog és jogharmonizáció*. HVG-Orac, Budapest (2005) pp.822-47.

Nemessányi Zoltán, Az Európai Bíróság 2005.április 12-én hozott előzetes döntése az Igor Simutenkov v. Ministerio de Education y Cultura és a Real Federacion Espanola de Fútbol ügyben, C-265/03. In: *Európai Bírósági Ítéletek* 2005:2, 55-59.

---

69 Personal interview with officials in charge at Ministry of the Interior, and Traffic (26 February 2006).

*Hungary*

## **Chapter VII**

### **Obstacles in free movement**

Some inconsistencies of regulation, administrative and judicial practice have already been indicated in the other chapters.



## Chapter VIII EU enlargement

### *Text in force*

- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act on Job Assistance and Unemployment Benefits]
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történő csatlakozást követően alkalmazandó munkaerőpiaci viszonyosság és védintézkedés szabályairól - Government Decree 93/2004 (IV. 27.) on the rules of labour market reciprocity and the safeguard measure to be applied following the accession of the Republic of Hungary to the European Union]
- 8/1999 (XI. 10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Decree of the Social and Family Affairs Minister on Work Permits Issued to Foreign Nationals in Hungary]

### **Access to employment**

The Accession of Hungary to the European Union brought fundamental changes into Hungarian law in terms of access to the labour market of certain groups of persons. Based on this the forth-coming presentation of the access to employment issues will be put forward, first, by presenting the legally binding norms following from the Accession Treaty, and as second, by presenting the other relevant norms regarding the award of work permits and certain exceptions.

### *Rules and practical implementation of the Accession Treaty*

The Accession Treaty has been signed in Athens on 16 April 2003 and entered into force on the 1 May 2004. Article 24 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded lays down that the measures listed in the Annexes enclosed shall apply in respect of the new Member States under the conditions mentioned therein. Annex X applies to Hungary, in its point 1 the transitional rules on the freedom of movement of persons has been enumerated.

The texts which have been adopted are the same for all the eight new Member States (Malta and Cyprus apply EC law as from the 1 May 2004). The core of the regime is that in the 7 years following the accession the old Member States are entitled to apply their national laws. In the first two years following the accession, old Member States apply their own national rules, they are entitled to opt for whether they act in a liberal or in a restrictive manner. Articles 1-6 of Reg. 1612/68/EEC are suspended in full while the rules of Dir. 360/68/EEC can be applied restrictively insofar its rules may not be dissociated from those of Reg. 1612/68/EEC.<sup>70</sup> In the next three years, old Member States can further apply their restrictive national laws, but if they wish to open up their labour market, they already have to apply the *acquis* meaning that Reg. 1612/68/EEC and Dir. 68/360/EEC shall apply. In the last two years restrictive national measures can only be maintained in case of serious disturbances or the threat thereof in their labour market (based on a special procedure).

The new Member States can not apply transitional periods towards each other, however, they can do so *vis-à-vis* those old Member States which make use of the transition tool in Annex X (*reciprocity clause*). According to point 10 of Annex X *Hungary may maintain in force equivalent measures* with regard to the nationals of the Member States in question. There are some guarantees built-in as well, namely the:

- standstill clause (legal and practical situation can not be worse than on 16 April 2003);

---

<sup>70</sup> In practice it means that the residence permits are issued only for the duration specified in the work permit, not for 5 years as normally envisaged in the Directive.

## Hungary

- safeguard clause (in case of serious disturbances or the threat thereof Member States can, in a timely, geographically restricted manner, re-state the application of their national laws requiring work permits for certain occupations);
- 12-months rule (Nationals of Member States involved in the transitional measures, legally working in the other Member State for an uninterrupted period of 12 months or longer will enjoy access to the labour market of that Member State);
- rights of family members (the members of family of the worker legally residing with the worker at the date of accession shall have immediate access to the labour market of that Member State. Those, who join later, shall wait 18 months or until the end of the third year whichever is earlier).

It is a well-known fact that only three countries have voted for opening up their labour markets upon 1 May 2004.<sup>71</sup> The Hungarian government, after getting known the perspectives of the old Member States, has decided to avail itself of the possibility set forth by Annex X and *introduced reciprocity in terms of point 10*. It is worth mentioning that the Accession Treaty does not give any interpretation whatsoever of what should be meant under “*equivalent measures*” as reciprocal restrictions. The Guideline published by the European Commission does not give and further explanations either.<sup>72</sup> Hungary interpreted the introduction of “*equivalent measures*” as a fair and just application of its existing laws on access of foreigners to the labour market instead of trying to individually react to the different regimes of the Member States.

Art 7 (1) of the Act IV of 1991 on Job Assistance and Unemployment Benefits (UnempA) foreigners may pursue gainful employment in Hungary only in possession of a work permit except for specified cases. According to Art 7 (2) (b) of UnempA no work permit is required for the employment in Hungary of EEA nationals and their relatives authorised to reside. Accordingly, the Hungarian law gives permission to EEA nationals to enjoy full access to the labour market of Hungary as a main rule. However, pursuant to Art 7 (2) (b) differing provisions may be enacted by an act of Parliament or by a government decree in compliance with the contents of the Treaty of Accession. The Hungarian Government, making use of the delegated power, adopted a Decree in order to implement its political will for equivalent restrictions towards the old Member States, and in order to lay down the detailed procedure for the application of the safeguards clause. It means inherently, that the nationals of Ireland, Sweden and the United Kingdom do not fall within the ambit of this decree, hence their Member State provides for a treatment which corresponds to that appearing in Reg. 1612/68/EEC. These nationals enjoy full access to the Hungarian labour market in terms of Article 7 (2) (b) of the UnempA.

The Government Decree No. 93 of 2004 on the rules of labour market reciprocity and the safeguard measure to be applied following the accession of the Republic of Hungary to the European Union (RecipD) as the date shows, has been adopted 3 days before the accession. The reason for that was that the old Member States have hesitated quite a time to make their official position public. Sweden, for example, reached its final conclusion at the second half of April as a result of a late parliamentary voting. Keeping this experience in mind – and also the future notification deadlines in 2006 and 2009 –, the structure of the RecipD is very flexible. It contains the basic, substantive rules in the body-text, and encompasses the respective EU countries, properly categorised only in the annexes.

Section 2 of the RecipD lays down that a national (or a relative of the said national) of a state, which is already a Member State of the European Union at the time of the accession of the Republic of Hungary to the European Union, and a national (and the relative of the said national) of a state which enjoys equal treatment with the Member States of the European Union on the basis of an international agreement<sup>73</sup> may be employed in Hungary on the basis of a *work permit*, if the Member State of which the said person is a national, applies – in accordance with its respective national legislation – different treatment to Hungarian nationals with regard to employment within its territory from the treatment specified in Articles 1-6 of Reg. 1612/68/EEC on freedom of movement for workers within the Community. It means that the nationals of those old Member States that apply restrictive transitional arrangements towards Hungary can take up employment in Hungary only on the basis of a work permit. This main rule prevails except for person falling under the 12-months rule, who, pursuant to

---

71 United Kingdom, Sweden, Ireland.

72 [http://europa.eu.int/comm/employment\\_social/free\\_movement/docs/pr\\_en.pdf](http://europa.eu.int/comm/employment_social/free_movement/docs/pr_en.pdf), point 6.

73 Switzerland has to be meant under this heading.

Section 3 are exempted from the work permit obligation. If the person meets the requirement of continuous, uninterrupted employment for at least 12 month, there is no need for work permit for the taking up of any subsequent legal employment relationship. Section 4 implements point 8 of Annex X by regulating the rights of family members.

The procedure, in which the *work permit is awarded, is however differentiated* according to the national measure applied by the respective old Member State concerned. Denmark and Norway apply a special transitional measure towards Hungary which, in effect, can not be regarded as a real obstacle in accessing their labour market. Denmark, for example, accepts Hungarian workers in full employment with appropriate wages without posing the obligation to possess a work permit. Based on this, though Hungary prescribes the possession of a work permit for Danish and Norwegian nationals and their family members, this work permit is issued to them without the assessment of the labour market situation. It means essentially that, after submitting the application, the employer obtains the work permit quasi automatically, and the work permit is rather a registration document in context. The nationals of the other old Member States fall within the ambit of the *normal (general) authorisation* process. The normal authorisation regime was renewed in 1999 but has been modified several times.

#### *Normal authorisation process*

According to Art 7 (6) of the UnempA the Minister of Employment Policy and Labour – in agreement with other ministers concerned - may create a decree to specify the highest number of foreigners to be employed in individual occupations in any county, the capital city, and in Hungary as a whole at any one time, the occupations in which no foreigner may be employed due to the then current trends and structure of unemployment. In 2005 the number of foreigners employed in Hungary can not exceed 87 000.<sup>74</sup> In turn, pursuant to Art. 7 (3) of the UnempA the Minister of Employment Policy and Labour shall lay down the detailed rules concerning the granting of the work permits and other procedural questions. The respective ministerial decree is the Decree of the Social and Family Affairs Minister No. 8 of 1999 on Work Permits Issued to Foreign Nationals in Hungary (PermitD).

The PermitD states in Section 2 (1) that the creation of all legal relationships aimed at employment on the basis of which a foreign natural person performs work in Hungary for a domestic employer is subject to permission with due regards to the exceptions contained in the UnempA or this decree. Legal relationship aimed at employment includes all activities where the object of the service is work performed by the foreigner for the employer in return for compensation.

Section 7 (1) of the PermitD lays down the cases in which *no work permit is required*. For example for the director of a branch office or representative office of a foreign-registered business association, for the staff of diplomatic or consular missions, or the branches or offices of such, for work performed by foreign nationals at international organizations or at joint organizations established under international convention. No work permit is needed for carrying out work that involves commissioning, warranty repair, maintenance or guarantee service activities performed on the basis of a private contract with a foreign-registered company, if such does not exceed fifteen consecutive days at any given time. Some education related cases are also acknowledged: for a foreign national winning a tender for post-doctorate related employment, or the János Bolyai Research Scholarship for work performed as part of the tender or the scholarship program, for the employment of a foreign national studying at a foreign institution of higher education as part of an apprentice training program arranged by an international student organization, for foreign nationals pursuing full-time studies at vocational schools, secondary school, basic art schools or institutions of higher education, for foreign nationals to be employed in basic, intermediate and higher education institutions for lecturing in a foreign language, if such employment is part of an international school program signed by the relevant ministers of the countries involved, as verified by the Ministry of Education.

It is noteworthy, that the PermitD states as well, that there is no need for work permit for the employment of a foreign national if his/her *spouse is a Hungarian citizen* and if they live together in Hungary, furthermore, for the employment of widows/widowers of the above-specified persons if they lived together in Hungary for at least one year before the death occurred.<sup>75</sup> Preceding the EU accession Hungarian law did not contain favourable conditions for the taking up of employment by the fo-

---

74 Magyar Közlöny 2005/9. FMM közleménye.

75 Section 7 (1) (p).

reign spouses of Hungarian nationals. The law in effect until 1 May 2004<sup>76</sup> contained that the foreign spouses of Hungarian nationals could enter the labour market only after 1 year residence and with a work permit issued without the assessment of the labour market. However, taking into account the rules of EC law, especially Articles 10-11 of Reg. 1612/68/EEC, which gives full access in Hungary to the labour market not only for the EC national but also for his/her spouse and children of third-country nationality, Hungary decided to avoid reverse discrimination. Aimed at easing the situation of foreign spouses of Hungarian nationals these persons now also fall within the “no work permit needed” category.

An *individual work permit can be issued* if, first, the employer duly indicated its request for a worker (workforce request), prior to filing the workforce request no Hungarian worker was available for the position in question, nor, as second, any national of the European Economic Area or a relative of such national who is registered as a job-seeker.<sup>77</sup> However, in certain cases the second element, namely the *assessment of the labour market situation* can be set aside. These are, for example, for employment of a foreign national in a key position, for employment in a business association under foreign majority ownership if the number of foreign nationals employed does not exceed two per cent of the labour force registered on 31 December of the previous calendar year, for professional athletes involved in sports activities under employment contract, for the employment of an internationally recognized foreign national in the field of education, science or art.

There are two interesting provisions regarding the members of families. Section 6 (g) and 6 (h) lay down that the work permit must be issued without assessing the labour market situation:

- for the employment of a close relative<sup>78</sup> of a foreign national working in Hungary for at least eight years, if they live in the same household for at least five years, moreover
- for employing the spouse of a foreign national [as defined in Section 7 (2) of UnempA encompassing EEA nationals as well!] if they have lived together in Hungary for at least one year, or for employing the widow(er) of one of the persons described above if they lived together in Hungary for at least one year prior to the death of the spouse.

In brief, the above analysed Hungarian legal norms are successfully intending to implement the Accession Treaty. Both the UnempA, the RecipD together with PermitD go along the same lines: Hungary applies reciprocity in terms of the Accession Treaty but attaches importance to the just application of the equivalency rule. The Community preference, the 12-months rule, the rights of family members are expressly regulated.

The following inconsistencies seem to arise here. First, there is an obligation in EC law to provide for *free access to the labour market for workers performing a service contract* in terms of freedom to provide services – and the Accession Treaty gives way to restrictions only in case of Austria and Germany (see Chapter 11).<sup>79</sup> Seemingly, Hungarian law does not contain this possibility for individual workers, there is no express mention in the “no work permit” or “work permit without the assessment of the labour market” sections for this specified category of persons.<sup>80</sup> Secondly, it seems, that the *spouses of EU nationals* might fall also within the ambit of the exemption rule and the normal authorisation process (Section 6 (h) of PermitD), at least the UnempA and the PermitD, read together, are *not clearly* construed. One has the impression that the categories of EEA- and third-country nationals related cases somehow merge. It also seems that the status of the widows, regulated only in the PermitD as a beneficiary rule might exceed the scope of exemptions contained in the hierarchically prevailing Act (UnempA).

It might be legally interesting to mention – however, it is not of importance in practice – special status of Turkish nationals (as envisaged by the Association agreement and Association Council deci-

---

76 Section 6 (h) in effect on 30 April 2004.

77 This section is the implementation of the principle of Community preference in Hungarian law.

78 Spouse and children.

79 Hungary is fully obliged to let workers come into the country from the other Member States without restrictions in the course of service provision, and Hungarian nationals fully enjoy the same right in all the other Member States (except certain sectors in Austria and Germany).

80 There is another Act, Act XXIV of 1988 on the Investments of Foreigners in Hungary, which contains some sporadic provisions on the economic activity of foreign persons in Hungary, however, these are mainly connected to self-employed activities.

## Hungary

sion 1/80<sup>81</sup>) is not expressly appearing in Hungarian law. UnempA and PermitD contain general clauses like “no work permit is needed/no assessment of the labour market is needed if *international agreement* that requires” (Section 6 (1) (a) or Art 7 (1) (a)), but there has not been any concrete movements (problems), up to now, involving Turkish nationals.

### *Implementation issues in the year of 2005*

Annex X foresees the standstill clause (legal and practical situation can not be worse than on 16 April 2003). The Final Act to the Treaty of Accession,<sup>82</sup> “II. Other Declarations, Point C. Joint declarations of the present Member States, point 13., Declaration on the free movement of workers: Hungary” lays down the so-called prospective clause. Pursuant to the declaration: “The EU stresses the strong elements of differentiation and flexibility in the arrangement for the free movement of workers. Member States shall endeavour to grant increased labour market access to Hungarian nationals under national law, with a view to speeding up the approximation to the *acquis*.”

*As a consequence, the employment opportunities in the EU for Hungarian nationals should improve substantially upon Hungary's accession.*

Moreover, the EU Member States will make best use of the proposed arrangement to move as quickly as possible to the full application of the *acquis* in the area of free movement of workers.”

According to information received from Hungarian nationals wishing to work in countries of the EU that apply the restrictions, it is often communicated that some countries reduced the duration of the work permits to 50 weeks instead of 52 weeks, or introduced new administrative burdens (fees, additional documents, disadvantageous deadlines etc.) that are not in compliance with neither the standstill clause, nor the prospective clause.

### *Literature*

Gellérné Lukács, Éva & Szigeti, Borbála, *Munkavállalási szabályok az EU tagállamaiban az átmeneti idő alatt* (The rules on taking up employment in the Member States of the EU during the transition period), KJK Kerszöv, Budapest, 2005.

Sándor, Illés, *Foreigners in Hungary: Migration from the European Union*. No. 5. Working papers on Population, Family and Welfare. Demographic Research Institute – Central Statistical Office, 2004.

---

81 19 September 1980.

82 P. 972-974.

## Chapter IX Statistics

In order to understand the structure of EEA citizens' treatment and some weakness of statistical punctuality, the following table defines the categories in labour law in Hungary on the base of reciprocity (RecipD) and Accession Treaty (Annex X).

<i>Name of the category</i>	<i>Country whose nationals belongs to it</i>
1. National provisions on migrant labourers shall be implemented in general	Austria, Belgium, Finland, France, Greece, the Netherlands, Luxemburg, Germany, Italy, Portugal, Spain, Iceland, Liechtenstein
2. Economic test on needs is not necessary in labour authorisation	Denmark, Norway
3. Labour permit is not necessary	UK, Ireland, Sweden
4. Green card holders (under the 12 months rule)	Migrants workers whose labour permit was valid not less than 12 months
5. Registration of employed migrants	Slovakia, Slovenia, Poland, Czech Republic, Estonia, Latvia, Lithuania
6. Service providers	EEA
7. Family members	Third countries

As it is clear from the available or calculated data the labour and immigration statistics cannot produce figures on the base of the upper categories. Although certain efforts for reform are going in the ministries and Central Statistical Office, the existing proceedings and the practice of legal implementation has not been in harmony.

Due to the *absence of public data base of judgements and labour permits* no one can analyse and draw conclusion on jurisprudence on free movement or relating authorisation issues to migrant workers. The guarantees for obtaining relevant information (such as on decisions of the courts) have to be improved. Thus the recently adopted Act on accession to information on public interest through the internet would be a relevant guarantee of the free accession to information of public interest as a fundamental right.<sup>83</sup> Neither the Act on Statistics<sup>84</sup> nor on Protection of Personal Data and on Free Accession to Information of Public Interest<sup>85</sup> contains concrete method and instrument how to obtain information of public interest without individual request of information. The new Act<sup>86</sup> entering into force on 1<sup>st</sup> January 2006 defines how data bases, homepages shall be set up and fed up regularly with information on operation of public power, authorities, state agencies and publicly financed institutions. We strongly hope that statistical analysis on EEA migrant workers' residence, social insurance or authorisation of labour will be developed by electronic accession to fresh data despite of actual obstacles. Electronic data bases of judgements at appealing and the Supreme Court will be available after 1 July 2007.

In 2005 there were issued 46 329 labour permits that meant a decrease while the presence of officially registered foreign labour force was not changed about 63 000 persons<sup>87</sup>. The valid number of labour permits issued to migrant workers was 51 210 (31 December 2004), and from those 1 594 belonged to EEA citizens (3.1 percent of all permit holders). One year later, on 31<sup>st</sup> of December 2005

83 Article 60. (1) In the Republic of Hungary everyone has the right to freely express his opinion, and furthermore to access and distribute information of public interest. (3) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the public access to information of public interest and the law on the freedom of the press. (Constitution of the Hungarian Republic).

84 Act XLVI of 1993.

85 Act LXIII of 1992.

86 Act XC of 2005.

87 Source: Állami Foglalkoztatási Szolgálat – FMM [Employment Service – Ministry of Employment Policy and Labour].

## Hungary

from the total number of all labour permits<sup>88</sup> issued to migrant workers was only 44 274 valid but its 4 percent was issued for the EEA nationals. It means *a small growth among the labour permit holders within one year*. Further on, labour force from non-EU EEA nationals has remained marginal.

*Table 1 Number of labour permits issued for EEA nationals (2005)*

Nationality of	Labour permits issued in 2005	Labour permits valid on 31st December 2005
Austria	246	218
Belgium	68	68
Czech Republic	0	0
Cyprus	2	0
Denmark	33	30
Estonia	0	0
Finland	60	54
France	304	250
Germany	868	789
Greece	14	11
Ireland	0	0
Italy	182	177
Latvia	0	0
Lithuania	0	0
Luxemburg	0	0
Malta	0	0
The Netherlands	132	112
Poland	0	0
Portugal	21	19
Slovakia	0	0
Slovenia	0	0
Spain	53	47
Sweden	2	0
UK	0	0
Switzerland	32	29
Norway	23	19
Iceland	2	2
Liechtenstein	0	0
Total	2 042	1 775

We have to add the number of valid labour permit issued for *Turkish nationals* that was 165 on 31<sup>st</sup> December 2005. Their role in labour supply can be put on one side. They are employed in processing and building industry (16), transport (1), economic management (18), office management (3) other service (89), graduated self-employment, and among them there were 16 unskilled and 12 graduated employees.

Migrant workers employed on the base of reciprocity with *requirement of registration* arrived only from Slovakia in great number in 2005. Their number was 11 402 on 1<sup>st</sup> January 2005, and it was oscillating from 15 000 to 18 000. In certain northern regions of the country their presence and concentration has pushing out impact. Despite of this local, sporadic effect the *protective arrangements not to be introduced*. Cross-border commuters' movement would remained a stable component of labour migration on the Slovak-Hungarian and Austrian-Hungarian borders pending on economic prosperity, regional and transport development, employment policy and unemployment rate. The less but stable group of migrant workers of new Member States is coming from Poland, their number is rather reducing in comparison to last year (866 persons were registered) while a duplication of wor-

88 The upper dedicated source and the internal document of the Ministry of Employment Policy and Labour – Office for European Integration (January 2006) said total number of issued labour permits was 51 000 plus 2 300 seasonal permits for agricultural work. The rate of EU nationals accordingly is 3.8 percent.

Hungary

kers from Czech Republic was detected within one year. It is necessary to underline that statistics<sup>89</sup> can contains only notified workers of which number is below the really employed EU labourers due to the absence of sanction. *Omission of registration has been sanctioned since 1<sup>st</sup> January 2006.*

*Table 2 Number of employed EU nationals (2005)*

Nationality of	Registration	Green-card	Registration	Green-card
	Issued in 2005		Valid on 31 <sup>st</sup> December 2005 <sup>90</sup>	
Austria	0	33	1	60
Belgium	0	19	0	27
Czech Republic	110	0	115	0
Denmark	0	6	0	14
Estonia	42	0	6	0
Finland	0	6	0	8
France	0	61	1	81
Germany	0	145	1	229
Greece	0	1	0	2
Italy	0	30	0	37
Latvia	4	0	6	0
Lithuania	21	0	23	0
The Netherlands	0	22	0	29
Poland	709	0	638	0
Portugal	0	2	0	2
Spain	0	3	0	5
Slovakia	17 983	0	15 108	0
Slovenia	27	0	38	0
UK	0	0	0	2
Family member	11	3	17	13
Total	18 907	331	15 954	509

*Family members of EEA nationals* are limited for not known reasons. Commuters and seasonal workers arrive alone but green card holders or other migrant worker not necessarily. Deeper roots would require further research.

The following table may represent the geographical difference of all migrant workers coming from EEA and third countries by 20 territorial units (counties). It proves the *high attracting power of the capital and its surrounding* (Pest county) as well as the *border zones* (Csongrád county in South, Győr-Moson-Sopron in West and Komárom-Esztergom in North) to commuters or neighbours.

89 The Employment Service registered 13 639 labourers between 1st January and 30th September 2005, while the total number of valid registrations was 14 154 on 30th September 2005. (See the reference in the internal paper of FMM-EüH, 2006.01.)

90 Although data were dated back to 30th September 2005 the internal document of the Ministry of Employment Policy and Labour – Office for European Integration (January 2006) contained higher figures of green cards issued for Austrians (56), for Germans (194), for French labourers (73) and Italians (33). This paper confirms the zero of green cards requested or issued for nationals of Ireland, Luxemburg, Sweden, Portugal, Iceland and Norway.



Hungary

*Table 3 Breakdown of all permits valid on 31<sup>st</sup> December 2005 by counties (%)*

County	Labour permits	Seasonal permits	Registration	Green card holders	Total
<i>Budapest</i>	55.7	0	11.1	29.1	44.1
<i>Pest</i>	21.9	43.5	8.2	18.1	18.4
<i>Komárom-Esztergom</i>	2.2	0	65.5	3.1	18.2
<i>Győr-Moson-Sopron</i>	2.1	9.7	5.5	16.7	3.1
<i>Csongrád</i>	3.4	27.4	0.1	0.8	2.6
Fejér	1.8	0	1.7	5.1	1.8
Bács-Kiskun	2.0	8.1	0.9	1.4	1.7
Veszprém	1.9	0	0.3	3.1	1.5
Nógrád	0.4	0	3.4	1.4	1.1
Heves	1.2	0	0.4	6.1	1.0
Szabolcs-Szatmár-Bereg	1.0	0	0.3	1.6	0.8
Zala	1.0	0	0.3	0.6	0.8
Vas	0.9	0	0.2	2.8	0.7
Baranya	0.7	0	0.2	2.2	0.6
Békés	0.8	6.5	0.1	0.2	0.6
Tolna	0.7	0	0.1	0.4	0.6
Borsod-Abaúj-Zemplén					
Hajdú-Bihar	0.6	1.6	0.1	0.8	0.5
Jász-Nagykun-Szolnok	0.6	0	0.2	2.4	0.5
Somogy	0.6	3.2	0.1	0.8	0.5
Total	100.0	100.0	100.0	100.0	100.0

Taking into account the ratio of economic branches of registered migrant workers, the table shows the ratio of high representation of new Member States' labour in transport, machine operation, processing and building industry. Their presence in agriculture does not exist while the *proportion of unskilled workers is much more than one year ago*. The major figures are as follows (N = 15 937)

*Table 4 Registered EU citizens by economic branches (2005)*

Nationals of	Processing & building industry	Transport & machine operation	Economic management	Graduated self-employment	Graduated employees	Office management	Other service	Unskilled	Other
Czech R.	11	2	19	16	16	3	15	0	33
Estonia	0	0	0	1	0	2	0	1	2
Poland	240	12	26	27	38	17	162	7	109
Latvia	1	0	0	2	1	0	0	0	2
Lithuania	10	0	0	1	7	2	1	0	2
Slovakia	1 888	8 583	75	232	571	70	255	2 793	641
Slovenia	3	1	4	2	13	0	1	0	14
Total 100%	13.5%	54%	0.8%	1.7%	4%	0.6%	2.7%	17.6%	5.1%

The labour permit holders from the EEA countries form a different pattern partly due to various statistical methods. The internal *proportion of unskilled employee is below 2 percent* while the graduated self-employment is almost 20 percent and 23 percent was the rate of graduated employees. Naturally, this distribution deviates if it was compared with totality of all labour permit holders.

*Table 5 EU citizens as labour permit holders by economic branches (31<sup>st</sup> December 2005)*

*Hungary*

Nationals of	Processing & building industry	Trade	Transport & telecommunication	Finance	Education, culture, sport	Agriculture	Health care	Other	Total
Austria	142	18	12	19	10	0	5	12	218
Belgium	5	6	4	47	1	1	0	4	68
Denmark	13	1	5	6	1	0	0	4	30
Finland	35	2	0	12	3	0	0	2	54
France	94	50	18	68	8	0	0	12	250
Germany	543	38	22	108	25	2	6	45	789
Greece	3	3	0	2	2	0	1	0	11
Italy	63	15	4	75	15	2	0	3	177
The Netherlands	17	6	27	46	3	2	0	11	112
Portugal	5	2	1	7	2	0	0	2	19
Spain	14	1	5	10	12	0	0	5	47

The EEA nationals' *residence in Hungary* was growing in 2005. While both of submitted applications and authorisation was *below 10 000 in 2004*, the following table reflects increasing trend of their immigration. The composition of nationals has remained unchanged on first six places but Norwegians are replaced by Dutch citizens. The gathering term of "others" has been never explained.

*Table 6 Residence permits for EEA citizens (2005)*<sup>91</sup>

Nationals of	Submitted application	Issued permit
Germany	4 600	4 569
Slovakia	2 411	2 368
Austria	970	975
France	875	881
UK	860	837
The Netherlands	522	505
Italy	465	462
Others	2 355	2 301
Total	13 058	12 898

Statistics on visa and residence permit contains direct information neither on family unification nor migration of third country nationals as *family members* to EU nationals. We can say that migrant workers and family unifiers in visa authorisation decreases in small extent, and in parallel, it is growing among residence permit applicants. The possible interpretation would be different time scale of authorisation or the statistics of applications include the cases of prolongation of residence permit. The latter may fit better to the real operation of immigration authority in rally for a higher significance in public administration. On the other side, figures cover on number of cases, and dysfunctional authorisation issues permits for a shorter validity, thus decrease of migrants can provides growing figures of cases.

*Table 7 Lawful migration to Hungary (2005)*<sup>92</sup>

91 Bevándorlási és Állampolgársági Hivatal, BM [www.bevandorlas.hu](http://www.bevandorlas.hu).

92 On the base of statistics by Bevándorlási és Állampolgársági Hivatal, BM [www.bevandorlas.hu](http://www.bevandorlas.hu).

Hungary

Purpose of visa for stay ("D" visa)	2004	2005
<i>Employment</i>	30 957 (64%)	19 374 (63%)
Seasonal work	779	34
<i>Family unification</i>	1 914 (4%)	1 232 (4%)
<i>Study</i>	4 721 (9.8%)	3 659 (11.9%)
<i>For earning (entrepreneurs)</i>	1 823 (3.8%)	906 (2.9%)
Visit	3 518	1 876
Official travel	121	171
Medical treatment	37	21
Other	4 263	3 438
Total	48 133 (100%)	30 711 (100%)
Purpose of issued residence permit including its prolongation		
<i>Employment</i>	24 902 (55.8%)	26 958 (57.8%)
<i>Family unification</i>	6 486 (14.5%)	7 884 (16.9%)
<i>Study</i>	4 855 (10.9%)	4 693 (10.1%)
<i>For earning (entrepreneurs)</i>	2 232 (5.0%)	658 (1.4%)
Visit	1 923	1 916
Official stay	79	106
Medical treatment	61	68
Other	3 994	4 383
Total	44 532 (100%)	46 666 (100%)

Table 8 Foreign students in public education (number and % of the total student in the given type of institution) in 2004/2005<sup>93</sup>

	Nursery-school (3-6 years old)	Elementary school (6-14)	Secondary school (14-18)	Public schools together	High-level education
Foreign students	1608 (0.5%)	4577 (0.5%)	6235 (1.1%)	12 420 (0.7%)	13 601 (3.2%)
From them: Ethnic Hungarians	834	2831	4791	8456	5227
EU nationals	334	636	1397	2370	4481
Non-EU nationals	575	1336	1031	2942	3893

From this simple table proves the *low significance* of pupils attending public schools in Hungary. The presence of EU nationals is limited in comparison with ethnic Hungarians coming from the adjacent states. Inside of the non-nationals the rate of EU citizens is almost *20 percent*. In students' migration EU nationals play a more visible role covering *one third* of all migrant students.

It comes from the enumerated statistics in absence of more precise data it can be stated the components of registered, lawful migration has stable in the field of employment and family unification, it is growing in study trips while it is reducing in money making, entrepreneurship or self-employment.

Further on, expert *estimation on repatriation and illegal employment* is neither known nor developed recently<sup>94</sup> at all. The missed registration of employment, residence, leaving country would

<sup>93</sup> Source: Ministry of Public Education, Budapest

<sup>94</sup> The last survey was managed by the ICMPD, see Tass and Futo: 2002 Year Book on Illegal Migration and Trafficking in central and Eastern Europe, 2003, Vienna and Fehér, Lenke: Legal Study on the Combat of Trafficking in Women for the Purpose of Forced Prostitution in Hungary. Ludwig Boltzmann Institute of Human Rights, Vienna 1999.

explain it together with shadow economy. The International Organisation for Migration surveyed on illegal employment – inter alia – and it found subcontracted persons or irregular migrants in forced labour situation<sup>95</sup> in our region, too. Subcontract would be researched in future in greater extent in the EU in the context of enlargement.

In summary, *influx* of Community workers and their family members in comparison to third country nationals has not grown in a significant extent. Inside of its migratory movement participation of citizens of new Member States are more visible as registered workers but far from outstanding in the labour market regardless in some (border) regions. The rate of unskilled migrants is also limited but statistics have severe shortage to analysed trends in a sophisticated way. Migrant workers are basically employed in trade and tourism. Repatriation of Hungarian nationals as well as migrant workers from Hungary cannot be followed on the base of existing set of data. As academics underlined, there are no responsible authority or government agency working on collection and analysis of data on *out-flow migration*, its economic effects on certain regions, economic sectors, on preparation of possible migrant workers how to protect own rights and interests. Thus there are only soft information on brain drain and undeveloped policy combating shortage of labour force in research, health care, IT and engineers in Hungary. Empirical research proved the severe shortage<sup>96</sup> in health care due to the overlapping impacts of outflow of low-paid medical staff and transposition of the 2003/88/EC directive.

#### Literature

- Beate Andrees & Mariska N.J. van der Linden, Designing Trafficking Research from a Labour Market Perspective: The ILO Experience. In: Data and Research on Human Trafficking: A Global Survey. Edited by Frank Laczko and Elzbieta Gozdzia, *International Migration*, Vol. 43, 2005, p. 55-74
- Migráció és statisztika. Kutatási jelentések 71. KSH Népeségtudományi Kutatóintézet. Szerk: Illés Sándor - Lukács Éva. Budapest (2002)
- Baranyi Béla & Balcsók István, *Határ menti együttműködés és a foglalkoztatás: Kelet-magyarországi helyzetkép*. Budapest, MTA KTI 2004. KTI Műhelytanulmányok sorozat 2004/20.
- Sándor Illés, *Foreigners in Hungary: Migration from the European Union*. No.5. Working papers on Population, Family and Welfare. Demographic Research Institute – Central Statistical Office (2004)
- Viszt Erzsébet, A munkaerő mobilitás alakulása és várható hatásai a magyar munkaerőpiacra az EU-csatlakozás után. [Changing mobility and impacts of the EU accession on the Hungarian labour market] *Munkaügyi Szemle* 2005:3, p. 89-94.
- Hárs Ágnes: Iskolázottság és migráció, az iskolázottság hatása a külföldi munkavállalási döntésekre. In: *Munkaerőpiaci Tükör 2004* [Relation between level of education and intention of labour migration] Szerk: Fazekas Károly – Varga Júlia. Budapest, MTA KKI – OFA 2004., pp131.136.
- Cseres-Gergely Zsombor & Csorba Gergely, Vita a közszféra adatainak felhasználásáról a munkatudományi kutatásokban. [Discussion on applicability of public interest data in labour research. Conference paper.] MTA Közgazdaságtudományi Intézet – Eötvös Károly Közpolitikai Intézet 2005. (Konferencia 2006. febr.9.)
- Bíró Marcell, Alea iacta est? A munkaidőről szóló irányelv magyar egészségügyet érintő vonatkozásainak aktuális kérdéseiről. [Actual problems of transposition of the directive on working-time management and its impacts on the Hungarian health care] *Európai Jog* 2006:1; 36-47

95 Beate Andrees and Mariska N.J. van der Linden: Designing Trafficking Research from a Labour Market Perspective: The ILO Experience. In: Data and Research on Human Trafficking: A Global Survey. Edited by Frank Laczko and Elzbieta Gozdzia, *International Migration* Vol.43, 2005, p. 59.

96 800 companies were surveyed on employed migrants, brain drain, outflow and inflow, facts and expectations. See more details in E.Viszt's article (2005).

## Chapter X Social security

### *Regulation in force*

- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek támogatásáról [Act IV of 1991 on job assistance and unemployment benefit]
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act III of 1993 on social administration and social benefits]
- 1997. évi XXXI. törvény a gyermekek védelméről és a gyámságról [Act XXXI of 1997 on the protection of children and guardianship]
- 1997. évi LXXXIII. törvény a kötelező egészségbiztosítási ellátásairól [Act LXXXIII of 1997 on the benefits of Compulsory Health Insurance]
- 1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségéről [Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons]
- 1998. évi LXXXVI. törvény a családok támogatásáról [Act LXXXIV of 1998 on the support of families]

### *Relationship between 1408/71 and 1612/68*

The European Community rules on free movement of persons and free movement of services have a considerable impact on social legislations as such. Articles 39, 42 and 49 of the Treaty of Rome, Reg. 1408/71/EEC on the application of social security schemes to employed and self-employed persons and their families moving within the European Community, and Reg. 1612/68/EEC on freedom of movement for workers within the Community (especially Article 7(2) on social advantages) exert major influence on the personal scope of social laws.

Hungarian law contains three types of benefits: insurance-based, universal and social assistance benefits. Sickness, maternity, old-age, invalidity and unemployment belong to the insurance-based group, family benefits and benefits for the disabled belong to the second group and social assistance forms the third group. For the period prior to the EU accession the general observation can be made that most of the benefits were not available for foreigners (irrespective of whether they were EEA or non-EEA nationals) except sickness benefits and the benefits due under bilateral agreements.<sup>97</sup> Reg. 1408/71/EEC and Reg. 1612/68/EEC fundamentally changed this legal situation upon accession. *EEA nationals*, who fall within the ambit of Reg. 1408/71/EEC became *entitled to insurance-based and universal benefits*. Moreover, a new category emerged from EC law, that of special, non-contributory benefits, which is on the borderline of social assistance, but at the same time connected to the insurance-based or to the universal benefits. It is noteworthy that Hungarian law did not know this term before and, during the accession preparations, the benefits suitable to this category should have been defined. Article 20 of the Act of Accession, Annex II, point 2 on the free movement of persons contains the necessary changes in the annexes of Reg. 1408/71/EEC due to EU accession. Pursuant to this three Hungarian benefits belong to the category of special non-contributory benefits: invalidity annuity, non-contributory old-age allowance and transport allowance for the disabled. Social assistance remained a matter for only Reg. 1612/68/EEC, these persons are entitled to all kinds of social assistance in Hungary, being in cash or in kind. The philosophy of the *Grzelczyk* and *Trojani* judgments, however, which would place students or migrant persons in need on the same footing with migrant workers as regards social benefits, has not been inserted into this sphere of Hungarian legislation (see for more in Chapter 11 on students). Hence some of the conclusions of this case have been regulated in Dir. 2004/38/EC, the implementation of that Directive might bring new dimension into Hungarian law.

Community workers and their family members in terms of Reg. 1612/68/EEC are entitled to all *family benefits* which encompass birth grant, family allowance, child home care allowance, child raising support, regular and irregular child protection support. This category of persons is entitled to *the sickness and maternity* benefits and to *disability benefit*. Finally, Community workers and their family

---

97 These bilateral agreements are constantly under review.

members can qualify as unemployed in terms of UnempA and are entitled to *unemployment benefits*.<sup>98</sup> Last but not least, *old-age and invalidity* benefits are also due. Persons falling within the personal scope of Reg. 1408/71/EEC are entitled almost to the same benefits as Community workers mentioned above. The most remarkable difference is that persons – other than workers – falling within the ambit of Reg. 1408/71/EEC are not entitled to birth grant hence that benefit is listed in Annex II of Reg. 1408/71/EEC, and not entitled to social assistance (as laid down in the SocialA).

It can be said that *the most important changes* in the social field upon accession were, first, the *extension of the personal scope* of laws to EEA nationals and their family members (stateless persons too), as second, the *creation of new legal instruments for the union citizens* (e.g. European Health Insurance Card). As regards migrant workers, the most challenging rules of EC co-ordination probably were the frontier worker definition and its usage in the unemployment sphere (*Meints* case<sup>99</sup>), the *Kohll and Decker* cases in the sickness field from 1998,<sup>100</sup> the interpretation of a family including spouses and children living in an other Member State, and the pro rata calculation in the field of old-age. It shall be emphasised that Hungary belongs to the group of a few Member States that already implemented the *Kohll and Decker* case law<sup>101</sup> *giving the right to insured persons to go to another EEA Member State without prior approval and to get non-hospital treatment subject to reimbursement according to Hungarian tariffs*.

As regards social security and free movement of workers, an issue today is the connection between the transition period and Reg. 1408/71/EEC.<sup>102</sup> The Accession Treaty envisages a transition phase during which certain EC law norms are suspended (See Chapter 3). Very importantly, Reg. 1408/71/EEC is not suspended meaning that obligations following from that Regulation must be fulfilled by the Member States. The debated point is a borderline question. Reg. 1408/71/EEC foresees the right for unemployed persons to export their benefits to other Member States in order to search for work there. However, Articles 1-6 of Reg. 1612/68/EEC are suspended, out of which Article 5 regulates the right to search for work. On the one hand, there is a *right to benefit export and search for work*. On the other hand, there are restrictions for that right. Some Member States (mostly the EU-15) strictly oppose to except unemployed persons intending to make use out of the provisions of Reg. 1408/71/EEC, some (mostly the new Member States, but Austria as well), however, accept these unemployed persons. It seems that this question is that of principle, and is *not sorted out properly*.

As regards the *Collins* judgement,<sup>103</sup> the Hungarian position is clear. Reg. 1408/71/EEC precludes Member States to prescribe minimum residence (or insurance) periods for entitlement to social benefits, however, job seekers are not entitled to social benefits. Hungary sees a specific problem in the field of *unemployment benefits*. Due to the transition period mentioned above, some Member States do not award unemployment benefits to persons whose employment does not reach 12 months saying that these persons are not entitled to enter their labour market. Consequently they can not fall within the definition of unemployed in their laws. *It seems that this practice is not in line with the rules on free movement of workers*.

#### *Supplementary pension schemes*

Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community aims at preserving the supplementary pensions right accrued by those EEA nationals who stop paying contributions because they move to another Member State. The directive covers voluntary and compulsory supplementary pension schemes that do *not* fall within the ambit of Regulation 1408/71/EEC.

In Hungary only one pillar of the pension sector does not fall within the ambit of Reg. 1408/71/EEC, namely, the so-called “third pillar” concerning the voluntary pensions. These pensions are regulated by Act XCVI of 1993 on Voluntary Mutual Insurance Funds. The Act is in compliance

98 As from 1 November 2005 our unemployment system has completely been re-structured – conformity with Reg. 1408/71/EEC is kept.

99 57/96 Meints (1997) ECR I-6689.

100 C-120/95, C-158/96 Kohll and Decker joint cases (1998) ECR I-1831.

101 Article 27 of Act LXXXIII of 1997 on the benefits of Compulsory Health Insurance.

102 See the description of the problem in Gellérné Lukács Éva – Szigeti Borbála (2005) 26-29.

103 C-138/02, Brian Francis Collins v Secretary of State for Work and Pensions, OJ C 106, 30/04/2004, p. 9-10.

with the Directive. There are no different rules for employed and self-employed persons, eligible person is the member of Fund (in case of his/her death his/her close relative or cohabiting partner) who accepts the Statute of the Fund and pays the prescribed contributions. The payments of the member are registered on an individual account. According to Article 2 (5) (c) pension plan benefit (supplementary pension) shall mean a pension benefit or any lump-sum cash payment or a combination of the two that is disbursed to a fund member from his individual account as chosen by the fund member, after s/he reaches retirement age, from the methods afforded in the by laws. *The member can obtain his/her accrued capital after reaching the retirement age and 10 years' accruing (waiting) period irrespective of whether s/he performed the payments continuously or sporadically, and irrespective of his/her actual residence at the time of becoming entitled.*

*Literature*

- Gyulavári Tamás & Gellérné Lukács Éva, A legális és illegális bevándorlók jogai az Európai Unióban (The Rights of Legal and Illegal Immigrants in the European Union), *Európai Tükör*, 4/2005: 47-75. o.
- Gellérné Lukács Éva & Szigeti Borbála, *Munkavállalási szabályok az EU tagállamaiban az átmeneti idő alatt* (The rules on taking up employment in the Member States of the EU during the transition period), KJK Kerszöv, Budapest, 2005.
- Gellérné Lukács, Éva, Szociális biztonsági koordináció (Social Security Coordination) In Gyulavári (szerk.), *Az EU szociális dimenziója*, Ofa Kht, Budapest 2004, p. 73-103.
- Hajdú, József, A szociális dimenzió fogalma és normatív szabályozásának fejlődése az Európai Unióban (Definition of Social Dimension and the Development of its Normative Regulation), *Európai Jog* (2001) 3: 17-22.o.
- Lukács, Éva, Ki fizeti a számlát? – A személyek szabad áramlása és az egészségügy kapcsolata az EU tagállamaiban (Who pays the bill? – The Relationship between the Free Movement of Persons and Health Care in the Member States of the EU), *Magyar Jog* (2002) 49: 485-496.o.

## Chapter XI

### Establishment, provision of services and students

#### *Regulation in force*

- 1998. évi LXXII. törvény a külföldiek önálló vállalkozóként történő gazdasági célú letelepedéséről [Act LXXII of 1998 on the right of economic establishment of foreign self-employed persons]
- 1994. évi I. törvény a Magyar Köztársaság és az Európai Közösségek és azok tagállamai közötti társulás létesítéséről szóló, Brüsszelben, 1991. december 16-án aláírt Európai Megállapodás kihirdetéséről [Act I of 1994 on publishing the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, signed in Brussels, 16 December 1991]
- 1990. évi V. törvény az egyéni vállalkozásról [Act V of 1990 on self-establishment]
- 110/2004. (IV. 28.) Korm. rendelet az áruk, szolgáltatások és anyagi értéket képviselő jogok országhatárt, illetve vámhatárt átlépő kereskedelméről [Government Decree No. 110 of 2004, 28 April on the cross-border (cross-custom) trade of goods, services and rights with substantive value]
- 67/2004. (IV. 28.) GKM rendelet a Korm. rendelet végrehajtásáról [Ministerial Decree No. 67 of 2004, 28 April on the implementation of the Government decree]
- 1993. évi LXXX törvény a felsőoktatásról [Act LXXX of 1993 on high-level education]
- 1993. évi LXXIX. törvény a közoktatásról [Act LXXIX of 1993 on public education]
- 157/2001. (IX. 12.) Korm. rendelet a külföldiek magyarországi és a magyarok külföldi felsőfokú tanulmányainak egyes kérdéseiről [Government Decree on Distinct Issues Regarding Education of Foreign Nationals in Hungary and of Hungarian Nationals Abroad]

#### **Right of establishment**

Article 44 (6) of the Europe Agreement – that entered into force 1 February 1994 - stated that the parties were obliged to accord national treatment for branches, agencies and nationals establishing as self-employed persons from the start of the second stage of the association as referred to in Article 6 of the Europe Agreement. Article 6 (1) declared that the Association includes a transition period of a maximum duration of 10 years divided into two successive stages, each in principle lasting five years. Hence the first stage begun when the Agreement entered into force, Hungary counted the beginning of the second stage for 1 February 1999. Based on this, Act LXXII of 1998 on the right of economic establishment of foreign self-employed (SelfA) was passed in December 1998 with an entry into force of 1 February 1999. The legal basis of SelfA was Article 44 of the Europe Agreement. The SelfA contained in Article 1 (1) that a foreign national is entitled to pursue economic self-employed activities in Hungary, on equal footing with Hungarian nationals, if this right is expressly laid down in an instrument of international law. The wording evidently referred to the Europe Agreement as a binding instrument of international law. The SelfA gave a definition to self-employment: activities falling within the ambit of Act V of 1990 on self-establishment and activities on the basis of which the person pays social security contributions on his/her own.<sup>104</sup> *As a result of the SelfA, as from 1 February 1999 all EU nationals became eligible to pursue self-employed activities in Hungary.* Interestingly enough, the Member States of the EU and the European Commission had a different interpretation on the date of the second stage appearing in Article 6 of the Europe Agreement (from which date the Member State were obliged to provide for equal treatment for Hungarian nationals in their countries). They said that according to the spirit of the Europe Agreement, the second stage of the Association begins when the EU-Hungary Association Council passes a decision in this regard. The decision declaring the transition to the second stage was released in Decision 1/2000 of the EU-Hungary Association Council of 11 April 2000 and took effect on 1 July 2000.<sup>105</sup>

---

104 Essentially these activities are enumerated in the Act on Social Insurance.

105 2000/327/EC, OJ L 114/32, 13.5.2000.



*Practically it means that Hungary provides equal treatment to the EU nationals as from 1 February 1999 while the same right is conferred upon the Hungarian nationals as from 1 July 2000.*

### **Provisions of the Treaty of Accession on freedom of movement of services without establishment**

As it has been outlined above, Hungarian law fully provides for the establishment of EEA national self-employed as well as companies and branches etc. Notably, however, an issue regarding the freedom of movement of services has to be tackled upon here.

Point 13 of Annex X of the Treaty of Accession states that “In order to address serious disturbances or the threat thereof in specific sensitive service sectors on their labour markets, which could arise in certain regions from the trans-national provision of services, as defined in Article 1 of Directive 96/71/EC, and as long as they apply, by virtue of the transitional provisions laid down above, national measures or those resulting from bilateral agreements to the free movement of Hungarian workers, Germany and Austria may, after notifying the Commission, derogate from the first paragraph of Article 49 of the EC Treaty with a view to limit in the context of the provision of services by companies established in Hungary, the temporary movement of workers whose right to take up work in Germany and Austria is subject to national measures.” Then the list of sectors can be read (such as construction, industrial cleaning, home nursing, etc.).

Very importantly, the Accession Treaty, the Act of Accession and the Annexes attached thereto, as a main rule, do not foresee restrictions for service provision and the *labour market access of workers* who take up employment in the course of service provision. In accordance with the Treaty of Rome and Directive 96/71/EC the freedom of movement of services has to be given full legal force, following the judgements of the ECJ in *Van der Elst* and *Rush Portuguesa*, and only Germany and Austria can rule out this possibility in certain sectors.<sup>106</sup>

The new Member States are entitled to apply *reciprocity* in this regard,<sup>107</sup> but – in order to apply their measures in a legitimate way – the reciprocity has to be notified to the Commission. Section 6(a) of Government Decree No 110 of 2004 on the cross-border (cross-custom) trade of goods, services and rights with substantive value declares that every service contract between a foreign and Hungarian company whose performance in Hungary requires the taking up of employment of workers other than Hungarian nationals is subject to *authorisation* by the Office for Authorisation *if* there are restrictions sides the state of the foreign company on the basis of point 13 of Annex X of the Treaty of Accession. Accordingly, Hungary applies reciprocity, keeps under control the economic activity of Austrian and German companies wishing to pursue economic activity in the sectors mentioned in point (13).<sup>108</sup> It seems, however, that this provision rather aims at authorising the *contract* itself, not the employment of the workers. According to Section 6 (5) of the implementing ministerial Decree No 67 of 2004 the work permits of the workers have to be enclosed during the authorisation process (which is, indeed, the essence of point 13 of Annex X), but it seems that the whole activity is under control. There might be some problem with this approach from the point of view of freedom to provide services and its compliance with the Treaty of Rome. On the other hand, there are no restrictions in these laws towards the service provision of companies, which are settled in the Member State not affected by point 13 of the Treaty of Accession.<sup>109</sup>

### **Students**

“Student” in terms of Hungarian legislation can be a pupil taking part either *in public education or in high level education*. The two sectors are regulated separately. Public education is regulated by Act LXXIX of 1993 on Public Education, while high-level education is regulated by Act LXXX of 1993 on High Level Education and its implementing rules.

---

106 Point 13 of Annex X.

107 *Ibid*, 3. paragraph.

108 There is no public information whether the notification to the Commission has been effectuated or not.

109 As it has been touched upon in Chapter 2, there seem to exist restrictions for individual workers in the course of service provision.

## Hungary

*Public education* encompasses kindergarten, elementary- and secondary level school and college (dormitory). Public education institutions can be established by the state, local governments, churches, foundations, associations, private companies having a seat in Hungary or self-employed persons. As a main rule, the education services provided for by kindergartens and schools run by the state or local governments are *free of charge* and obligatory. All children in the Republic of Hungary are obliged to visit school when they become 6 until they reach the age of 20 with some exceptions (Article 6). The elementary school is obliged to register the student if s/he is habitually residing or staying in the territorial unit for which the school is competent.

There are special provisions for *non-Hungarian national students* (Article 110). Pursuant to the PublicA a non-Hungarian can be obliged to visit school in Hungary, if s/he is an asylum seeker, a refugee, an immigrant, a person in possession of a long-term residence permit, a residence permit or a residence visa, or a person residing in Hungary with humanitarian residence permit as an accompanied or unaccompanied minor. If the duration of stay does not exceed one year, on the request of the parent, if the duration exceeds one year, ex officio shall the child be qualified as being *obliged to visit school*. If the child visits school s/he is entitled to the education services free of charge, on the same footing as Hungarian nationals. The child has several rights, among which s/he is entitled to apply for free of charge meals, books or can be exempted from other costs related to his/her studies (Article 10(4)). Moreover, the school receives normative budget contributions after each non-Hungarian child in the same way as for Hungarian students (Article 4). Those children (Article 110 (6)) who do not meet the residence criteria shall visit school as well and they are required to pay the costs of their studies, the sum of which, however, is restricted to the costs of the education services per child.

It seems that *there is no discrimination between Hungarian, EEA national and other foreign national students*.

The rules applicable to students visiting high-level education institutions can be found in Act LXXX of 1993 on High Level Education (HighA) and in Decree on Distinct Issues Regarding Education of Foreign Nationals in Hungary and of Hungarian Nationals Abroad (EducD).

*High-level education* encompasses universities and colleges founded or recognised by the state in the territory of the Republic of Hungary the list of which can be found in the Annex 1 of the HighA. High-level education institution can be established or terminated by the Hungarian Parliament while non-state institutions need the approval of the Parliament. Both types are entitled – among others – to normative financing from the state budget on the basis of the number of students who are qualified as “students taking part in education financed by the state”. Private institutions enter into an agreement with the state on the number of their “students taking part in education financed by the state” (Articles 9-10). Full time students are entitled to several benefits. They can apply for scholarships, maintenance payments, contribution to the costs of their books, to their accommodation and further benefits enumerated in the Statutes of the institutions (Article 30). Students, as a main rule, pay attendance fees and other costs, however, the first diploma and the first post-graduate diploma are free of charge in state institutions (Article 31).

There are special provisions for *non-Hungarian national students* (Articles 83 and 103-104). Pursuant to the HighA EEA nationals are entitled to enter into Hungarian high-level education under the same conditions as Hungarian nationals (Article 83 (16)). According to Articles 103-104 for the access, legal status and education of students with foreign nationality the provisions of the Act shall be applied unless other laws or international conventions rule otherwise. HighA expressly delegates the power to the Government to regulate the issue of foreign students which takes the form of the EducD. The Decree enlists the foreign students into different groups (from A to F) and attaches well-defined rights to the groups. EEA nationals belong to group “F” if they qualify as “students taking part in education financed by the state”. The entitlements of group “F” are expressly regulated in Article 14/A. Pursuant to this article EEA nationals enjoy the same rights as Hungarians because

- they entitle the institution to request normative financing after them in the same way as after Hungarians,
- they pay the same attendance fees and costs as Hungarian students, and
- they are entitled to apply for scholarships and other benefits connected to their professional progress.

## *Hungary*

This means that all EEA nationals enjoy the same benefits as Hungarians except the fact that they do not have access to social benefits. However, the Decree emphasises – Article 14/A. (5) - that those EEA nationals who fall within the ambit of Reg. 1612/68/EEC are indeed entitled to social advantages. The Decree states as well that the institution can oblige the applicant of EEA nationality to evidence that s/he disposes over necessary Hungarian languages skills.

There is one issue that shall be dealt with as regards the EducD. Pursuant to Article 2 (2) students who receive scholarship from Hungary or from other EEA countries belong to category “A” or “B”. These students are entitled to cash benefits and additional benefits enumerated in the Statutes of the high-level education institutions. From a strictly legal point of view it seems that category “F” guarantees more rights than category “A” and “B” hence the above-mentioned equal treatment clause only concerns category “F” students, not category “A” or “B” ones. It is especially true for the social advantages that are expressly guaranteed to “F” students. However, talks to the competent institution revealed that the distinct Statutes of high-level institutions guarantee same rights to category “A” and “B” as to Hungarian students, and it also has been said that the predominant majority of students choose to belong to category “A” and “B”, and not to category “F”.

At least *it seems that the law is not transparent enough and students get their experience and bring their decision on the basis of other students’ opinion and not on the basis of the law.* From 1 March 2006 a new Act on High Education and a new Implementing Decree will enter into force.

It is worth mentioning that the rules on foreign students are in compliance with Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. Article 4 of the directive lays down that more favourable provisions of bilateral or multilateral agreements shall be applicable, which is implemented by Article 2 of the EducD. Hence the directive does not expressly refer to other rights of students (access to benefits etc.) it does not further concern these laws.

### *Literature*

Harzig Anne-Wil, Ideal Jobs and International Student Mobility in the Enlarged Union. *European Management Journal*, 2004:6; 693-703.

*Külföldi gyerekek a közoktatásban.* Menedék – Hungarian Association for Migrants, Budapest, 2004.  
*Olталomkeresők* (Menedék Egyesület hírlevele 2005.évi számai [www.refugee.hu](http://www.refugee.hu))

## Chapter XII

### Miscellaneous

Reading and participating in various *labour and migration research*, it can be stated that regulative aspects and legal practice, frictions of jurisprudence of temporary period, Community labour and social law have not been released in Hungary. Political, societal and economic aspects, ramification and expectations of labour migration have been better described. There are four institutions which regularly provide studies or books on realm of labour but never on labour migration or labour law. For this reason, the reporter faces difficulties to find not only statistical data but also relevant studies. The major sources of studies are as follows:

- *National Employment Public Foundation*: since 1993 it has supported labour research, and its results are published, publicly discussed. In 2005 labour mobility and possible effects of EU accession were investigated (Viszt, Erzsébet, [www.ofakht.hu/munkahelyvitak/20051003](http://www.ofakht.hu/munkahelyvitak/20051003)) The Foundation's recent yearbook on research covers on practicality of employment by research.
- *Institute of Economics, Hungarian Academy of Sciences*: together with the Labour Science Department of the HAS it launch research on labour market, supply and need. Beyond the regular conferences and seminars it publishes regularly yearbook as an overview on the labour market. The last one is *The Hungarian Labour Market 2005* edited by Fazekas, Károly and Varga, Júlia, Budapest, IE HAS (see [www.econ.core.hu](http://www.econ.core.hu) although it contains minimal data on labour migration the whole context can be understood better).
- *Hungarian Association of Labour Studies*: gathering all academics, university and practical experts it manages time to time debates on actual topics even on labour law, European integration and harmonisation of law. (e.g. 10<sup>th</sup> September 2005 a conference was held on discrimination in the labour market, the ombudsman also gave lecture. ELTE ÁJTK, Budapest).
- *Munkügyi Szemle* provides publicity for labour law in practice (see [www.munkaugyiszemle.hu](http://www.munkaugyiszemle.hu)) For instance, in 2005 it published articles on discrimination in employment, free movement of workers in the Slovakian and Hungarian border zone, the practice of EURES, temporary provisions on labour in Austrian practice, mobility of the Hungarian labour force after accession.

Briefly, there is *no direct systematic research, data collection and regular analysis* of labour law including Community law in academic circle, science of labour or labour studies mean a complexity of economic, statistic, political, social, geographical, psychological and legal approaches and their actual components or rate is not co-ordinated. The only institute on labour studies under the auspice of the ministry of the labour/employment was terminated some years ago.

*Nationality and dual citizenship issues are relevant to accession.* EU nationals are benefited in naturalisation procedure according to modified Act on Hungarian Nationality in 2003.<sup>110</sup> EU nationals in possession of EEA residence permit may submit application for naturalisation if they have previously resided three years in the country while third country nationals in possession of a permanent residence permit. It means that a third country national has to live in the country at least three uninterrupted year lawfully obtaining permanent residence permit and plus three further years submitting the application for naturalisation. The *EU national may spare three years waiting period*, because the EEA residence permit is almost automatically issued for longer period of residence than 90 days in Hungary. Regardless this *preference* the number of naturalised EU nationals is minimal in comparison with applicants from Romania, Ukraine and Yugoslavia. In 2004 the *rate of naturalised Europeans from the non-neighbouring countries was 4.96 and in 2005 only 4.30 percent*<sup>111</sup>. The yearly figures cannot be mechanically taken into account due to long procedure over year(s). In 2004 the total persons acquired Hungarian nationality were 5667 and in 2005 their number was 9981. In this way the *absolute number is growing* while the trend of new applications is decreasing (in 2004 it was 5761

110 Act on Hungarian Nationality was amended by 2003.évi LVI. törvény. This modification entered into force at the moment of accession (Art. 23).

111 Ministry of the Interior, Immigration Office [www.bevandorlas.hu/statisztikak\\_HUN](http://www.bevandorlas.hu/statisztikak_HUN).

## *Hungary*

and in 2005 it was 3898). We have to add that applications for verification of Hungarian citizenship submitted by Diaspora members in West have been stable: its number is between 5 -6 000 per year.

Further on, there is no restriction or hinder to obtain second nationality. Due to the totally liberal system the *number of multiple nationality cases increases*. The statistics on naturalisation contain only the major group of applicants by citizenship and their status (refugees, stateless persons), so data on dual nationality are not available.

### *Literature*

Kutatási összefoglaló Viszt Erzsébet: A munkaerő mobilitás alakulása és várható hatásai a magyar munkaerőpiacra sz EU-csatlakozás után. [Changing mobility and impacts of the EU accession on the Hungarian labour market] Munkaügyi Kutatások Szakmai Műhelye, OFA 2005., illetve Munkaügyi Szemle 2005:3; 89-94.

Judit Tóth, Principles and Practice of Nationality Law in Hungary. *Regio* (Minorities, Politics, Society) Vol. 8; 2005, pp. 21-39.

## Appendix

### *Internet sites of national legislation*

www.im.hu (legal provisions related to justice)  
www.magyarorszag.hu (legal provisions related to public administration)  
www.mhk.hu (the recent copies of the Official Journal)  
www.bevandorlas.hu (the most relevant rules on immigration are available)

### *Internet sites of judgements*

www.mkab.hu (only the Constitutional Court's judgement are available in the net)  
www.lb.hu (only the guiding judgements of the Supreme Court are available)  
www.birosag.hu (only the statistics of cases and major rules on justice are available)

### *Abbreviations*

AlienA	Act XXIX of 2001 on Entry and Stay of Foreigners
AlienD	Executive Decree of the Government on the AlienA No. 170 of 2001, 26 September
CardD	Government Decree No. 17 of 2005, 8 February on the Student Card
DisabledA	Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons
EducD	Government Decree No. 157 of 2001, 12 September on Distinct Issues Regarding Education of Foreign Nationals in Hungary and of Hungarian Nationals Abroad
EqualA	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities
HighA	Act LXXX of 1993 on High Level Education
HouseD	Government decree No. 12 of 2001, 31 January on the housing-related state subsidies
Labour Code	Act XXII of 1992 on the Labour Code
LandA	Act LV of 1994 on Arable Land
PermitD	Decree of the Social and Family Affairs Minister No. 8 of 1999, 10 November On Work Permits Issued to Foreign Nationals in Hungary
PriceA	Act LXXXVII of 2003 on consumer price-supplement
PublicA	Act LXXIX of 1993 on Public Education
QualA	Act C of 2001 on Recognition of Foreign Diplomas and Qualifications
QualhD	Decree of the Social and Family Affairs Minister No. 31 of 2004, 26 April on the Procedural Rules of Recognition of Diplomas, Qualifications in the Health and Social Sector, and of Interim Registration and of Issuing the Certificates Necessary for the Recognition of Diplomas and Qualifications abroad
RecipD	Government Decree No. 93 of 2004, 27 April on the rules of labour market reciprocity and the safeguard measure to be applied following the accession of the Republic of Hungary to the European Union
SelfA	Act LXXII of 1998 on the right of economic establishment of foreign self-employed
SocialA	Act III of 1993 on Social Administration and Social Benefits
TransportD	Government decree No. 287 of 1997, 29 December on advantages in public passenger transport
UnempA	Act IV of 1991 on Job Assistance and Unemployment Benefits