REPORT ON

MIGRANT WORKERS IN HUNGARY

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EXECUTIVE SUMMARY[1]

In 2006 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 did not become wider in 2006 but recently adopted modification of acts (Act I of 2007 passed in December 2006) on public sector mean in 2007 a step forward the interpretation of the ECJ on public power. The Act XLII of 2000 on trafficking rules on water was modified in 2006 deleting the precondition of Hungarian nationality for internal water or sea ship captain or first officer [Art 34 (3)]. It means that EEA nationals in these positions enjoy equality. Based on the provision of the Labour Code and that of the Government Decree a manpower agency (employer) located in another Member State seems to be barred from the possibility to send workers to Hungary without having legally established there that might be an obstacle to free movement of workers.

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. 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. As regards social security and free movement of workers, a borderline issue today is the connection between the transition period and Reg. 1408/71/EEC, namely how the right for *unemployed persons* can 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 (mostly the new Member States, but Austria as well) countries accept these unemployed. It seems that this question is that of principle, and is not sorted out properly.

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. 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.

Transposition of the *Directives of free movement of EU nationals and family members and long term residents' status* partly happened in 2006 adopting two acts on the last days. The transposition is going on in 2007 due to preparatory work of executive rules attached to Act I and II of 2007.

The electronic data base of juridical decisions will be set up only on 1 July 2007. For this reason, research of impacts of ECJ on legal practice means unresolved task in Hungary.

1 This report cannot be prepared without valuable advice of Éva Lukács and Ágnes Hárs.

However, it seems that the *relevant case law of the ECJ is only rarely observed* in Hungarian legislation.

Government Decree No. 354 of 2006, 23 December on the transitory rules applicable to free movement of workers by the Republic of Hungary after the accession of the Republic of Bulgaria and Romania to the European Union entered into force 1 January 2007. The new rules lifted the restrictions partially for 219 jobs by stating that for these occupations the work permit is issued without assessing the labour market. In 2006 four academic institutions established a regular survey network monitoring social and economic impacts of accession on Hungary. This interdisciplinary approach includes economic, sociological, political sciences and legal analysis also on labour migration, effects of transitory measures on labourers from A8. The first volume is in press but conference held at the Hungarian Academy of Sciences was publicly discussed just for critics against illiberal Governmental regulation introduced against Bulgarian and Romanian labourers in 2007. Neither expert estimations, nor prior experiences of A8 can justify the temporary provisions.

CHAPTER I. ENTRY, RESIDENCE AND DEPARTURE

1. Regulation in force

- Act XXIX of 2001 on Entry and Stay of Foreigners (AlienA) that was modified by Act I of 2005, Act XLVI of 2005, Act LXXXIII of 2005 and Act XLVI of 2005 (the recent amendment entered into force on 1st January 2006);
- 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 and Government Decree No. 178 of 2006, August 23 (the recent amendment entered into force on 1st September 2006);
- Executive Decree of the Minister on AlienA No. 25 of 2001 (AlienMD), November 21 that was recently amended by the Decree of the Minister No.38 of 2005, September 22 that entered into force on 1st January of 2006;
- Decree of the Minister of Health Care No. 48 of 2001, December 27 on Disease Endangering Public Health relating to the Authorisation of Foreigners' Residence and on Evidence of Material Cover on Health Care [a külföldiek magyarországi tartózkodásának engedélyezésével összefüggö közegészséget veszélyeztetö betegségekröl, valamint az egészségügyi ellátás fedezetének igazolásáról] that was amended by Ministerial Decree No. 14 of 2006, 27 March entering into force on 1st of April 2006.

AlienA together with AlienD and AlienMD was modified in 2005-2006 that entered into force in 2006. Those related to general preconditions of entry and residence. A special visa exceeding up to five years for ethnic minority was introduced excluding remunerated work for these third country nationals. New provisions on family reunification were inserted into the AlienA because of transposition of Directive. Further on, the modified AlienD provides acceptance of residence permit issued by certain EEA state authority for third country national[2] allowing them to transit freely and entry in a simplified way without visa to Hungary. The modified documentation system is relevant to third country national family members of EEA nationals.[3] The public health requirements of entry and residence were also amended in 2006.

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[4]. This contradiction on personal scope due to a presumption[5] 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 exhaustedly described due to the broad entitlement written in AlienA given to the Gov-

2 895/2006/EC European Parliament and Council Decision (14 June 2006). It refers to permit holders coming from 11 EEA states.

3 In connection with 2133/2004/EC Council Reg.

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).

ernment.[6] Its Decree contains a provision referring back to 38 various Sections that "shall be implemented on EEA nationals in a proper way".[7] 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.

Due to the setting up a new government after regular general elections division of governmental responsibilities changed in mid-2006.[8] It meant deletion of the Ministry of the Interior and its tasks were divided into two parts: emergency (protection in catastrophe) service was allocated under supervision of the Ministry of Local Self-governments and Regional Development, while responsibility on police, border guard, immigration (Office for Immigration and Nationality Affairs, OIN) and nationality issues moved to the Ministry of Justice. Accordingly its name amended: Ministry of Justice and Law Enforcement including penology institutes, preparation to Schengen acquis and legislative preparatory work, too. Further on, integration of the separate police and separate border guard was also launched on the base of modernisation and rationalisation. The new amalgam is under formulation which indirectly influences on migration policy and operation of OIN but directly on extended legislative preparatory.

2. Draft legislation

The European Commission initiated in infringement procedure against Hungary for non-compliance with the residence directives (2006/0446-0451). The Hungarian government submitted two Bills in order to transpose the Directive 2004/38/EC and the Directives dealing with third country nationals' rights to the Parliament on 10 November 2006. The Parliament adopted the text (Act I of 2007 on the entry and residence of persons exercising their right to free movement and Act II of 2007 on entry and residence of third country nationals) at its plenary session on 12 December 2006.[9] The new Acts introducing a completely new set of rules delete the rules in force. The Acts were published on 5 January 2007, and it enters into force on 1 July 2007.[10] However, executive provisions of Government Decree and Ministerial Decrees related to it are pending.

3. Entry

The most important provisions on EEA citizens' entry are as follows according to the presently effective AlienA and AlienD:

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

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6 Art. 30 (5) says: "Further conditions for residence of EEA national and his/her third country family member may be defined in Goverment Decree."

7 Section 126 of AlienD.

8 These changes can be found in the following acts: 2006. évi LVII. törvény a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról [Act LVII of 2006 on national public administrative organs and responsibilities of the member of the governmnet and state secretaries], 2006. évi LV. törvény a Magyar Köztársaság minisztériumainak felsorolásáról [Act LV of 2006 on the list of ministries], 2006. évi LIV. törvény a Magyar Köztársaság Alkotmányáról szóló 1949. évi XX. törvény módosításáról [Act LIV of 2006 on amendment of the Constitution].

9 Table, no 29, T/1299: http://www.mkogy.hu/internet/plsql/ogy_stat.stat_torv?P_CKL=38&P_DATUM_TOL=2006.12.01&P_DATUM_IG=2007.04.06&P_TORV=g1.

10 Magyar Közlöny 2007/01, http://www.magyarkozlony.hu/nkonline/index.php?menuindex=0200&page index=0220.

4. Residence

The most important provisions on EEA citizens' residence are summarised as follows according to presently effective AlienA and AlienD:

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 (OIN) that keeps up the central data-base of EEA nationals and family members. Application for EEA residence permit shall be submitted up to the 75th days of residence personally on a form[11] together with a photo to the competent regional immigration office as AlienMD defines.
   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.
c. 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.
d. 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.
   a. 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.
   b. 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).
   c. 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 necessaries, 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.

11 Form on application EEA and family members' residence permit or its prolongation in AlienMD was modified by Ministerial Decree of the Interior No. 38 of 2005, 22 September since 1st of January 2006.

d. 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 that appears within 3 months of his/her entry12,

Public health is endangered by the following diseases, or in being of the pathogen condition of
- Tuberculosis,
- HIV-infection13,
- Leprosy,
- Lues,
- Typhoid or paratyphoid in pathogen condition, or
- Hepatitis B.14

If the sanitary authority recognized one of these, this fact is noticed officially to the OIN regional office as a general alien policing rule.

   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, the permit is not eligible to certify its content (due to falsification or demolishing), permit holder died or s/he has acquired Hungarian nationality.

5. Departure

The most important provisions on EEA citizens' departure are summarised as follows according to the presently effective AlienA and AlienD:

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,
      1. 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

12 Art. 32 (1) f. of the Act XLVI of 2005 modified it.
13 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.
14 Since 1st of April 2006 – Ministerial Decree No. 14 of 2006, 27 March.

2. s/he suffers from any disease - specified in legal provisions - that represents a potential danger to public health and this disease appears within 3 months of his/her entry[15].

d. Expulsion order is registered in the immigration data base (OIN), 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.

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. But a Supreme Court decision proves: expulsion as legal consequence can be implied for non-nationals only in a defined period.[16]

Recent literature

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15 Art. 32 (1) e. of the Act XLVI of 2005 amended.

16 Bírósági Határozatok 2006/273. [Published Judgements of the higher courts.]

CHAPTER II. ACCESS TO EMPLOYMENT

1. Regulation in force:

- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act on Equal Treatment and Promotion of Equal Opportunities] that as modified by the Act CIV of 2006 entering into force on 1st January 2007, and 362/2004.(XII.26.) Kormány rendelet az Egyenlő Bánásmód Hatóság előtti részletes eljárásról [Governmnet Decree No.362 of 2004, 26 December on procedural rules of the Equal Treatment Authority] that was amended by the Government Decree No. 332 of 2006, 23 December entering into force on 1st January of 2007;
- 2002.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code];
- 1997. évi LXXXIV. törvény az alkalmi munkavállalói könyvvel történő foglalkoztatásról és az ahhoz kapcsolódó közterhekl egyszerűsített befizetéséről [Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions]
- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits]
- 2001. évi C. törvény a külföldi diplomák és oklevelek elismeréséről [Act C of 2001 on the Recognition of Foreign Diplomas and Qualifications] that was recently amended by the Act C of 2006 entering into force on 23 December 2006
- 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]
- 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]

2. Equal treatment in access to employment: non – discrimination

a) Regardless of 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 basic law 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.

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 No. 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 Labour Code as well. First the provisions of the Labour Code, than those of the EqualA are scrutinised here.

b) 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 Hungarian Labour Code – in compliance with Dir. 97/80/EC, Dir. 2000/43/EC, Dir. 2000/78/EC – already in 2001.[17] 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.[18] 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. Section 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, programs related to training and occupational safety, and any other program or programs introduced in connection with any other aspect of employment. Section 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. [This provision is deleted from 1st January 2007.[19]]

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.[20] 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.[21] 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 quantity, working conditions, vocational training,

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

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

19 Act CIV of 2006.

20 (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.

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

physical and intellectual efforts, experience and responsibilities".[22] 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.

c) 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.[23]

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.[24]

Provisions of EqualA shall be implemented through a complain procedure if a violation is supposed. The Equal Treatment Authority – inter alia – can scrutiny in employment and pre-employment complaint on the base of Government Decree No.362 of 2004, 26 December. Its fact finding and burden-sharing procedural provisions were modified in 2006 resolving the collision between the Community law and national law on burden of proof.[25] These amendments enter into force in 2007.[26] However, theoretically anti-discrimination rules transposed into the Hungarian labour law would be implemented for protection of privacy of employee against employer, and freedom in concluding contracts can be limited in favour of worker only in public service contracts. It means that practical impacts of anti-discrimination provisions in employment, in particular on private sector are utmost supplementary.

3. Employment with temporary working book

A unique instrument of Hungarian labour law is the employment with temporary work book (AM könyv). The construction stems from 1997 as a possible instrument to legalise in part the shadow economy and rising up economic activity in working ages. Pursuant to the Act a worker possessing a temporary work book is entitled to work a maximum number of 120

22 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.

23 Art. 22 of EqualA.

24 Art. 23 of EqualA.

25 Act CIV of 2006 and Government Decree 332 of 2006, December 23.

26 EqualA amended Art. 19 (1) Victim of infringement of right or entitled organ for litigation on behalf of public interest shall make probable in procedures of violation of equal treatment that a) affected person or group was suffered from disadvantage or – in case of standing for public interest its immediate danger is threatening, and b) victim(s) were supposed by the infringement maker(s) to belong to one of the designated groups as defined in Art. 8. (2) If probability of infringement defined in par. (1) is set up, the other party shall prove a) the absence of conditions of injury, or b) equal treatment requirement was respected or in given circumstances its respect was not required.

days in a calendar year with different employers (but a maximum of 90 days with the same employer). During one month the maximum number of working days can not exceed 15 days. The Act determines both the minimum and maximum salary to be attributed to this kind of work and also the amount of the payable public contributions (taxation and social insurance contribution).

The possibility to apply for a temporary work book is open to non-nationals, so also to the EU citizens from the date of Hungary's accession. Applicants must comply with the provisions of the Labour Code (Art. 72[27]) according to which only persons qualifying as workers can apply for the temporary work book. It means that foreign persons who do not need a work permit to enter the labour market are automatically eligible. However, in practice it caused problems in case of certain EEA nationals who are – because of the transition period – only entitled to work with a work permit. At the end of 2005 the circle of beneficiaries was clarified: only foreigners who are legally entitled to enter the Hungarian labour market without permission can apply for the book with horizontal applicability, other foreigners can only get the "green temporary book" which entitles only to a certain type of activities (seasonal work for a maximum period of 60 days per year). Popularity of this employment version has been growing since 2002 due to personal income deduction, flexibility and simplicity of procedure.

4. Assistance by employment agencies

Act IV of 1991 on Job Assistance and Unemployment Benefits (UnemplA) regulates the eligibility conditions for labour market services and job assistance subsidies (Chapter III). Pursuant to Art 13/A the Government Employment Service shall provide services to assist job seekers to find employment, and for employers to find appropriate personnel and in maintaining existing jobs. Labour market services shall include the following:

a. providing information pertaining to the labour market and employment,
b. consulting on work, career and employment opportunities, and rehabilitation and local (regional) employment policies,
c. providing for placement services.

Additionally, job seekers are also entitled to apply for training assistance or assistance to become an entrepreneur. Employers can also apply for certain assistance: assistance to create new jobs, to employ incapacitated workers, or to employ workers in unconventional employment relationship (part-time, temporary work book). Employers can apply for social security contribution reductions.

Access to the job-seeker services is guaranteed to all persons who are legally entitled to enter the Hungarian labour market (Hungarian nationals, foreign persons possessing an immigration/settlement permit, refugees, EEA and Swiss nationals and their family members). EEA and Swiss nationals are placed on an equal footing with Hungarian nationals hence they are qualified as "job-seeker" and enjoy this status. The principle of Community preference is also applied hence EU citizens are entitled to use job-seeker assistance services by the employment agencies regardless the fact whether they are required to hold a work

27 Art. *72:* (1) All persons entering into an employment relationship as employees must be at least sixteen years of age.(2) Persons of diminished capacity may also enter into an employment relationship without the permission of their legal guardians. (3) For the purposes of employment-related matters, employees under eighteen years of age shall be construed as young workers. (4) Notwithstanding Subsection (1) above, an employment relationship may be entered into by a person of at least fifteen years of age pursuing elementary school, vocational school or secondary school full-time studies during the school vacation period. (5) Young persons under sixteen years of age may enter into an employment relationship only with the consent of their legal guardians. (6) No deviation from the provisions set forth in Subsections (1)-(5) shall be considered valid. (7) Young persons subject to compulsory full-time schooling may be employed by way of derogation from the provisions laid down in Subsections (1) and (4) for the purposes of performance in artistic, sports, modelling or advertising activities upon prior authorization by the competent authority.

permit or not. Moreover, employers are entitled to take into account these workers when applying for certain benefits as if they were Hungarian nationals.

5. Language requirement

Article 3 of Reg. 1612/68/EEC declares that language requirements are not per se prohibited, only those that are not necessitated by the job at issue. This has been confirmed in the cases of the ECJ too (*Groener, Angonese*).[28] Language requirements can be found in Hungarian law in two aspects. First, in the laws regarding recognition of foreign diplomas, and second, in the acts dealing with the legal status of civil servants and public officials (see in Chapter IV.). In other world, the private sectors' practice is unknown and not regulated.

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 an aptitude test is a test 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) on the rules 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.

Employers in Hungary are free to offer employment on terms laid down by them. In these cases the degree of necessary language abilities is set by the employer, however, they are required to comply with the case law of the ECJ. Some articles and news prove how competition among professionals may upgrade the level of tests.

6. Recognition of diplomas and academic graduates

QualA regulates the recognition of degrees obtained at foreign higher education institutions. During the recognition process the authority declares the legal force of the foreign degree equivalent to the legal force of a degree obtainable in Hungary. The resolution on the recognition of the level of qualification determines which Hungarian qualification is equivalent to the foreign degree, thus, whether the foreign degree is equivalent to a Hungarian university, or college degree, or to a degree obtainable at postgraduate training following a college or university degree.

The most important bodies exercising official functions in this field are the Office of Health Authorisation and Administrative Procedures (EEKH) and the Hungarian Equivalence and Information Centre (HEIC). The former is an independent body since the end of the year of 2004 dealing with health-related qualifications[29]. The HEIC is the generally competent authority for qualifications falling within the general system of recognition and operated as one of the departments of the Ministry of Education and Culture since 2004. HEIC deals with recognising certificates and degrees obtained abroad as well as providing information about education systems in Hungary and abroad.[30] As one of the departments of the Ministry of Education and Culture its tasks encompassed the active involvement in

28 379/87 *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.

29 Pursuant to Government Decree No. 295 of 2004, 28 October.

30 Government Decree No. 47 of 1995, 27 April established it.

legal approximation. In 2007 the HEIC becomes an independent body[31]working within the Office of Education (Oktatási Hivatal), and, according to point 1. i) of the Statute of the Office of Education its tasks encompass recognition and the provision of information. Consequently, the law-making functions remained with the Ministry while implementation was transferred to another institution.

The recognition of scientific degrees issued by a foreign higher education institution falls within the authority of those Hungarian universities which are entitled to provide PhD training and award scientific degrees in the field of study, or in its identifiable branch, testified by the foreign degree. During this process the university examines whether the degree issued abroad is equivalent to a PhD or DLA degree obtainable in Hungary. The nostrification takes place in one procedure at the university chosen by the applicant, it is not a prerequisite to have the level of the qualification recognised. (Nevertheless, it is possible to request the recognition of the level testified by the foreign scientific degree from HEIC). Consequently, the recognition of academic diplomas falls within the competence of the high-level educational establishments, neither the EEKH nor the HEIC is competent.

The recent modification of QualA in last days of 2006[32] provides transposition of 74/556/EEC Directive. Due to this amendment occupations related to trade and commerce of toxical substances would be considered as equivalent in Hungary although those are based on certain practice or non-scholar curricula in EEA countries. This amendment ensures free establishment of self-employed persons and service providers, too. Its executive joint ministerial decree on lists on affected occupations shall be issued by the minister of health care and agriculture.

7. Draft legislation

During the year of 2006 no preparatory legislative steps were undertaken aimed at implementing Dir. 2005/36/EC, however, expert level discussion took place. According to the original legislative plans the QualA will be amended and a first draft will be submitted to the Parliament in April 2007 whereby the implementation deadline will probably be met.

8. Nationality condition for captains of ships

According to qualification and requirements of obtaining certificate for captains, nationality and language knowledge means the unequal treatment. For instance, examination obtaining the certificate shall be taken in Hungarian with some exceptions.[33]The Act XLII of 2000 on trafficking rules on water was modified in 2006[34] deleting the precondition of Hungarian nationality for internal water or sea ship captain or first officer [Art 34 (3)]. It means that EEA nationals in these positions enjoy equality. The case law of ECJ[35] appointed how nationality precondition can be lawfully preserved in accordance with public law. Taking into account the ECJ interpretation, nationality as precondition was deleted, and the executive provisions provide transposition of 2005/45/EC Directive and 2001/25/EC Directives. Accordingly the qualification of captains follows the requirements as determined by the STCW Code and EMSA. But these amendments enter into force in 2007. [36]

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31 Pursuant to Government Decree No. 307 of 2006, 23 December that enters into force on 1st January 2007.

32 Act C of 2006 that entered into force on 13 December 2006.

33 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.

34 Act CX of 2006 entering into forc on 22 December 2006.

35 C-47/02 and C-405/01 on the base of Art 39 (4) of the Treaty.

36 Act LXXIX of 2003, Ministerial Decree on nautical qualifications No. 15 of 2001, 27 April that was amended by Economic and Trafficking Ministerial Decrees No. 93 and 95 of 2006, 27 December. In additional, the Seafarers' Training, Certification and Watchkeeping Code was published by the Economic and Trafficking Ministerial Decrees No. 41 of 2006, 28 June as point of reference on qualification.

9. 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.[37] Beyond this basic condition, professional athlete shall be in possession of labour permit[38] 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".[39] It means that professional athletes from the EEA can be employed on the upper described rules (on reciprocity or without labour permit).

The Government Decree No.157 of 2004, 18 May[40] regulates the equivalent qualification (certificate or diploma) in the field of sport (e.g. qualified or master trainer, human-kineologist, PET) due to internal legal changes in higher education system. Until May 2005 in the internal sport rules of the sport federations had to defined the affected sport positions in which these professionals should be employed in accordance with the qualification categories in the Appendix of the Decree. If an applicant is over 50 years old and has at least five year outstanding activity in the given sport branch, s/he can be exempted from obtaining the professional qualification temporarily upon request of the sport federation up to 31 December 2007. (Section 3) Nationality requirement of applicant is not defined.

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.[41] 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[42]:

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37 Act on Sport No. I of 2004, Art. 8.
38 Ministerial Decree on foreign labourers' authorisation, Section 6 (1) d.
39 Ministerial Decree on foreign labourer's authorisation, Section 6 (5).
40 Amended by the Government Decree No.171 of 2005, 1 September.
41 Act on Sport No. I of 2004, Art. 78 (3).
42 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 and Pázmány Péter Catholic University. Team leader is dr. András Nemes.

- 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[43]. It means that all non-Hungarian nationals including EU nationals, EEA citizens and other persons under the Community law preference are equally treated as third country nationals.[44] 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[45] and Government Decree[46] 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.

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43 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 license 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.)

44 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)

45 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.

46 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).

- 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.

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CHAPTER III. EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

1. Regulation in force:

- 2003. évi CXXV. törvény az egyenlö bánásmódról és az esélyegyenlöség elömozdításáról [Act on Equal Treatment and Promotion of Equal Opportunities]
- 2002.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code]
- 1994. évi LV. törvény a termöföldröl [Act LV of 1994 on Arable Land, amended by Act XXXVI of 2004]
- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséröl [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]
- 1998.évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlöségük biztosításáról [Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons] that was amended by the Act CIX of 2006
- 2003.évi LXXXVII. törvény a fogyasztói árkiegészítésről [Act LXXXVII on consumer price-supplement] in a consolidated text
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [Government decree on the housing-related state subsidies] in a consolidated text
- 287/1997. (XII.29.) Korm. Rendelet a közforgalmú személyszállítási utazási kedvezményekről [Government decree on advantages in public passenger transport] and its replacement by the Government Decree No.139 of 2006, 29 June since 1st July 2006
- 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]

2. Working conditions, social and tax advantages

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[47]. 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.[48] 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 quantity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities".[49] 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

47 (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.

48 This Article can be regarded as the implementation of Dir. 75/117/EEC.

49 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.

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.[50]

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.[51]

3. Social and taxation 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 deal 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".[52] 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.).[53] This concept essentially means that Community workers are *quasi* nationals in terms of the aptitude of their entitlements.

Equal foot in personal income taxation advantages is applicable for all persons whose domicile or centre of economic interests is in Hungary or whose income is coming from Hungary regardless nationality[54] [Art.2 (4), 3 (2)]. The taxation procedure also covers on all subjects of taxation including on-line service providers making taxable income from Hungary[55] [Art 3 (1)] Since accession to the EU a Government Decree has regulated the execution and legal aid procedure of taxes between the Hungarian an other taxation authorities in Member States.[56]

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 non-contributory old-age allowance which

50 Art. 22 of EqualA.
51 Art. 23 of EqualA.
52 *Even* (207/78) para. 22, *Meints* (C-57/96) para 39.
53 *Lair* (39/86), *Brown* (197/86), *Reina* (65/81), *Inzirillo* (63/76).
54 Act CXVII of 1995 on personal income tax.
55 Act XCII of 2003 on taxation procedural rules.
56 Government Decree No. 7 of 2004, 22 January.

is a special, non-contributory benefit in terms of Reg. 1408/71/EEC (See for more Chapter X), 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.[57] 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 for persons with disabilities. 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".[58]

The definition of disabled is determined without referring to nationality. However, in one Art., 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. Since 1 May 2004 the DisabledA confers the right to disabled benefit to persons falling within the ambit of Regulation 1612/68/EEC.[59] The amendment in 2006 followed only the altered competences of the national authorities and the Parliamentary control on the Government.[60] However, that changing paradigm related to disabled persons and workers, namely from a medicalisation model to a social model based on adaptation to special needs of disabled persons as defined in the 2000/78/EC Directive and case law of ECJ[61] - has not happened in Hungary.

Government Decree No. 12 of 2001, 31 January 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.[62] 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, 29 December 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

57 It means that not all persons who can avail themselves of Reg. 1408/71/EEEC, but only workers can enjoy social assistance.
58 DisabledA, Art. 4 (a).
59 Art. 23 (2) (a) of the DisabledA.
60 Act CIX of 2006.
61 See *Sonia Chacón Navas* case, C-13/05
62 The structure and types of supports were modified four times in 2006 due to rationalisation of state budget and public finance.

person. Section 5 declares that students are entitled to buy seasonal tickets with 90 percent discount if they possess a Hungarian student card.

The new TransportD[63] extended the benefits to the following categories:

a. train tickets
   i. free travel without charge 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 proving own identity by a card,
   - members of the EP proving his/her position by a card,

   ii. reduced price is available for
   - families with alt least three children,
   - blind or persons obtaining disabled benefit (in ambit of DisabledA),
   - job seeker proving this position by a certificate issued by the Labour Service,
   - pensioners under the age of 65 by a certificate of Pension Centre,
   - persons under guardianship,
   - students in possession of Student card,
   - student or pupil groups .

b. long-distance bus lines
   i. free travel without charge 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 proving own identity by a card,
   - members of the EP proving his/her position by a card

   ii. reduced price is available for
   - families with alt least three children,
   - blind or persons obtaining disabled benefit (in ambit of DisabledA),
   - job seeker proving this position by a certificate issued by the Labour Service
   - students in possession of Student card,

c. suburban train
   i. free travel without charge 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,
   - blind or persons obtaining disabled benefit (in ambit of DisabledA),

   ii. reduced price is available for
   - families with alt least three children,
   - students in possession of Student card,
   - job seeker proving this position by a certificate issued by the Labour Service.

d. on ferry travel
   i. free travel without charge 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

   ii. reduced price is available for
   - families with alt least three children,
   - students in possession of Student card.

e. local urban vehicles train
   i. free travel without charge in unlimited occasions:
   - children under the age of 6,
   - blind or persons obtaining disabled benefit (in ambit of DisabledA),
   - persons over the age of 65 if they are Hungarian nationals, nationals of an EEA Member State

   ii. reduced price is available for
   - students in possession of Student card,

63 Government Decree No. 139 of 2006, 29 June replaced the prior on 1st July 2006.

- job seeker proving this position by a certificate issued by the Labour Service,
- pensioners under the age of 65,
- socially supported persons by the local self-government proving a document issued by the registrar.

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 of 2003 on consumer price-supplement (PriceA) gives a complementary element to the system, it regulates how the state subsidies the service providers for the loss of income resulting from the above-mentioned benefits. Art. 6 -7 of PriceA was modified[64] in order to provide harmony with extended benefits to EEA 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 a general question occurs whether practically how it is 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.

4. 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.[65] 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.[66] 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*). This free acquisition refers on permanent, principal place of residence. EEA national is entitled to acquire without permission the non-permanent place of residence (secondary home) estate if s/he has resided continuously and lawfully at least 4 years in Hungary. This period shall be proved by the OIN certificate.

There are some procedural requirements which should be met during the transitional period.[67] 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

64 Act XXVI and CLIII of 2005.

65 Art. 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.

66 Art. 88/A – 88/D deal with these issues.

67 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.

shall be entitled to acquire only one property under the title of principal place of residence during the 2004-2009 transitional period. The head of office shall be vested with powers to monitor compliance with the provisions contained in LandA in conjunction with the notary of the local self-government and the building authority.[68]

5. Administrative practice

The European Commission initiated an infringement procedure against Hungary (2006/4489, 18 October 2006) hence it deemed its laws relating to the admittance to museums of EU citizens being contrary to the equal treatment principle.

The European Commission stated that Hungarian law[69] breached the equal treatment principle of the Treaty (especially Art. 12, Art. 49.). Pensioners, teachers and students were placed at disadvantage according to the European Commission. At present the steps of an infringement procedure take place, the Hungarian party is most willing to sort out this problem.

A German national *Michael Graeme* worked 7 years in Hungary, lived (and still lives) permanently in Harkány (one of the most well-known spas of Hungary is situated there) and wanted to use the benefits provided for the local inhabitants of Harkány when accessing the spa. According to the rules of admittance at the spa Hungarian nationals living officially in Harkány are entitled to a reduction of 50% on the basis of a special card. Michael Graeme's application for the card embodying the reduction, as being a German national, was refused by the Harkány self-government, consequently he was forced to pay full price when using the services of the spa.[70] He submitted an appeal to the Equal Treatment Authority claiming that his rights to equal treatment were breached. The Equal Treatment Authority passed its decision on the 15th of May 2006 stating that the admittance rules of the spa and related practice are contrary to the principle of equal treatment and obliged the Harkány self-government to make an end to this illegal conduct.

Interestingly, the Equal Treatment Authority did not mention in its reasoning the rights of a former worker (as falling from Reg. 1251/70/EEC) but concentrated on the free provision of services aspect of the case.

6. Other obstacles to free movement of workers

There is a provision in the Labour Code (Act XXII of 1992) that might pose questions that is related to the provision of manpower (munkaerö kölcsönzés). Pursuant to Art. 193/D. para. (1) of the Code was inserted by the Act CLIV of 2005 with intention to combat abusing the rules of manpower and referring on Austrian and German experiences[71]: According to this rules: (1) A placement agency must be a limited liability business association or a non-profit company that is domiciled in Hungary, or a cooperative in respect of employees other than its members; it must satisfy the requirements prescribed in this Act and in other legal regulations and must be registered by the employment centre responsible for the place where the placement agency is established (hereinafter referred to as "employment centre"). The Government Decree No. 118 of 2001, 30 June on the registration and operation of agencies for the provision of manpower and private placement agencies defines the conditions of registration in a way that it makes necessary a complete new establishment of the company in Hungary (Section 4-5.).

The *Webb* case[72] of the European Court of Justice states that

> "Article 59 does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursu-

68 LandA was modified by the Act CIX of 2006 affecting the authority competences.
69 Government Decree No. 194 of 2000, 4 November on benefits at museum admission
70 http://index.hu/politika/belfold/harkany0612/?print.
71 Explanation made to the Bill by the Government www.mkogy.hu.
72 *Webb* case, 279/80 (1981) ECR 3305.)

> ing activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the state in which he is established, provided, however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes no distinction based on the nationality of the provider of his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by that provider of the services for the pursuit of his activities in the Member State in which he is established".

Based on the provision of the Labour Code and that of the Government Decree *a manpower agency (employer) located in another Member State seems to be barred from the possibility to send workers to Hungary without having legally established there* that might be an obstacle to free movement of workers. However, this question is extremely complicated because of its relationship to the free movement of services topic and the lack of harmonisation of EC law in this area.

Another obstacle of mobility would be the acceptance or validity of driving licence issued by non-Hungarian authority. The Ministerial Decree of the Interior 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 (Section 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 nationals 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 licence holder 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.

7. Frontier workers

In absence of specific regulation the movement of registered A8 labourers to Hungary is mentioned in other Chapter. Further on, Hungarian labourers can use the quotas of trainee's, seasonal and frontier work as defined in bilateral agreements concluded even before accession with Germany (since 1990) and Austria (since 1999). For instance, this quota to Germany in 2006 was 2000 persons but number of applicants was below the whole. They can be employed in tourism, agriculture and mobile circus or domestic nursing. The yearly quota to Austria was 1700 persons fully applied[73].

73 MTI 2006, Aug. 21.

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CHAPTER IV. EMPLOYMENT IN THE PUBLIC SECTOR

1. 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 2004.évi XXIX. törvény
- 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 köztisztviselök 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 officiers in law enforcement]

2. Access to public sector: nationality conditions including captains of ships

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

a. Elected positions defined by public law

Certain positions shall be fulfilled by exclusively by Hungarian national. For instance, member of the *Constitutional Court,*[74]chair of country municipal[75] or National Accreditation Board.[76] 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.[77] 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[78]. The Parliament elects the Board members upon party group proposals (Art.34). For various reasons the Act has to be modified.

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74 Act XXXII of 1989 on the Constitutional Court, Art. 5.
75 Act XX of 1949, Art. 71.
76 Act LXXVIII of 2005 on National Accreditation Bodies, Art. 17.
77 Act LVIII of 2001 on Hungarian National Bank, Art. 49. 52/A.(5).
78 The following activities shall be regarded in particular as professional experience: information service, programme editing and making, broadcasting, telecommunications, frequency

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

Accession to employment in administration of justice (judge, administrator, expert in judicial/forensic sciences, protocol writer, typist, physical worker) the basis requirement is to be a national in possession 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 Section 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[79], public prosecutor, drafter, secretary and investigator at prosecutor office[80].
- Further on, 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".[81]

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

It means a gathering term providing workers for all kinds of publicly financed institutions on the base of Act and decrees on ministerial branches. There is no nationality requirement in 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 par. (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[82] due to accession but the following remained in force together with previously adopted decrees of the government:

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management, as well as the technical, legal, administrative, economic, cultural, scientific and public opinion survey activities related thereto.

79 Act LXVII of 1997 on legal standing and remuneration of judges, Art.3, and Act LXVIII of 1997 on legal standing of workers in administration of justice, Art. 11 (3).

80 Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office, Art. 14, 79.

81 Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office, Art. 82 (2) as amended by the Act XXIX of 2004 on Legal Harmonisation relating to Accession.

82 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. (Government Decree No. 49 of 1993, 26 March amended by No. 35 of 2003, 27 March which deleted the requirement of citizenship.

- 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.[83] This acceptance is totally discretional. 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.[84]
- 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.[85] 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-raid) the minister or the hierarchical high leader of defence may give acceptance.[86] 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[87].
- 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[88].
- 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.[89]
- 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.[90]

d. Public officials

It is also a gathering term of employees working at various authority implementing the *public power at local (municipal) and national level.* Act outlines[91] and the government decree

83 Government Decree No. 150 of 1992, 20 November, Section 2 (2).
84 Government Decree No. 150 of 1992, 20 November, Section 6 (6).
85 Ministerial Decree of the Interior No. 62 of 1997, 7 November, Appendix 5 (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 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)
86 Ministerial Decree of Defence No. 25 of 1992, 25 November on certain issues of public servants' legal standing employed in Defence, Section 3
87 Ministerial Decree of the Justice No. 7 of 1993, 9 March on executive rules of the Act XXXIII of 1993 on public servants' legal standing in penology institutions, Section 2
88 Ministerial Decree of Environment Protection and Regional Development No. 5 of 1993, 7 February, Section 2.
89 Ministerial Decree of Finance No.17 of 1993, 18 June on executive rules of the Act XXXIII of 1992 in organisations under the supervision of the MF, Section 2 (2).
90 Government Decree No.44 of 1997, 12 March on executive rules of the Act XXXIII of 1992 in the organisations in industry, trade and tourism, Section 2.
91 Act shall be implemented at Prime Minister's Office, ministries, national authorities and their regional, territorial units, National Investigation Office, County Public Administration

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 more time 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 amendment adopted before accession[92] 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

This general term covers on members of police, national security services, professionals of defence, border-guard, catastrophe-management, emergency-management, customs, fire brigades and officers in penology institutes. This is a wide and gradually extending group being entitled 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.

- 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 has multiple nationality. (Art.284 (2))

In summary, in 2006 the Hungarian regulation concentrated 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.

However, the Act I of 2007 passed in last days of December 2006 amended numerous acts providing equal legal treatment for EEA nationals (more precisely for persons with rights for free movement). For instance, on 1st July 2007 it deletes the nationality requirement for

- members in National Accreditation Board and Accreditation Body,[93] (Art.124) or
- workers in administration of justice, such as expert in judicial/forensic sciences or candidate, typist or physical worker,[94] (Art 108) or typist or physical worker at Public Prosecutor Offices[95] (Art 102) or administrator as public servant[96] (Art 97), if s/he has a necessary knowledge in Hungarian to his/her task.

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).

92 Act XXIX of 2004.

93 Amending the Act LXXVIII of 2005 on National Accreditation Body.

94 Amending the Act LXVIII of 1997 on legal standing of workers in administration of justice.

95 Amending the Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office.

96 Amending the Act XXIII of 1992 on legal status of public officials.

This transposition solution follows the actual pattern of regulation in part: type of the given organisations is more important than task, genuine implementation of public power by a working position. Loyalty in public sector is supposed by law.

2. Language requirement

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 Article 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.

Despite of the ongoing preparatory works on reform in public administration and management have neglected to revise language ability issues and how to form an objective test of "necessary knowledge" to the given task. 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.

3. Recruitment procedures (follow-up of Burbaud case)

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 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 (Section 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 to have their diplomas 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.[97] 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.

97 Paras 100-101.

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 at present does not have any similar construction in force*. Accordingly, Hungarian law does not envisage any such kind of recruitment or selection process in the course of which a postgraduate candidate is in a preliminary civil servant status. It seems that Hungary belongs to the majority of the Member States in this regard.[98]

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 1 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.

4. Other issues

There are neither specific provisions on recognition of diplomas and certificates (e.g. for ship captains), nor on recognition of professional experience in recruitment and professional advantages procedure in public sector. However, a case[99] proves how the courts interpret the professional experience in public sector. A plaintiff's action in law was submitted for rejection of a job due to absence of two years minimal professional experience in public administration although he had experiences spending long years as police officer. The non-accepting judgement refers on specific legal commitments of police officers, regardless the general character of police that belongs to the public administration system. The judgement rendered the professional experience requirement in a really tight way, literarily as Act on Public Servants defined.

During the launched reform of the public sector and administration in 2006, in the first phase a more competition oriented assessment system has been introduced for all increments of civil servants. According to the plans of the government, in the second phase effectuated in 2007 a new system for access to the public sector will be introduced. The newly defined rules will aim at honouring the applicants' different abilities (professional, language, communication skills) including former employment relationships. Its details have not been published yet.

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

99 Bírósági Határozatok [periodical of published cases of the Supreme Court] 1488/2006.

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CHAPTER V. FAMILY MEMBERS

1. Regulation in force:

- Act XXIX of 2001 on Entry and Stay of Foreigners (AlienA) that was modified by Act I of 2005, Act XLVI of 2005, Act LXXXIII of 2005 and Act XLVI of 2005 (the recent amendment entered into force on 1st January 2006);
- 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 and Government Decree No. 178 of 2006, August 23 (the recent amendment entered into force on 1st September 2006);
- Executive Decree of the Minister on AlienA No. 25 of 2001 (AlienMD), November 21 that was recently amended by the Decree of the Minister No.38 of 2005, September 22 that entered into force on 1st January of 2006;
- Decree of the Minister of Health Care No. 48 of 2001, December 27 on Disease Endangering Public Health relating to the Authorisation of Foreigners' Residence and on Evidence of Material Cover on Health Care [a külföldiek magyarországi tartózkodásának engedélyezésével összefüggö közegészséget veszélyeztetö betegségekröl, valamint az egészségügyi ellátás fedezetének igazolásáról] that was amended by Ministerial Decree No. 14 of 2006, 27 March entering into force on 1st of April 2006.
- 2005. évi CXXXIX. törvény a felsöoktatásról [Act CXXXIX of 2005 on high-level education]
- 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 elösegítéséröl és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits]
- 1992. évi XXIII. törvény a köztisztviselök 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 történö csatlakozást követően alkalmazandó munkaeröpiaci viszonosság 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 engedélyezéséröl [Ministerial Decree on foreign labourers' authorisation on employment] amended by 12/2005.(VII.29.) FMM rendelet
- 1994. évi LV. törvény a termöföldröl [Act LV of 1994 on Arable Land]
- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséröl [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]

2. Residence rights

In brief, it is an embarrassment to define the precise legal standing of EEA nationals or family members according to law in force pursuant to the effective laws (AlienA and AlienD). As stated in Chapter I, the new Act defining the rights of both EEA/Swiss nationals and their family members have already been passed (Act I of 2007 on entry and residence of persons exercising their right to free movement), but it is not in force yet. It means there is a delay in transposition of 2004/38/EC Directive. The rules on family members are summarised on the basis of the laws being in effect in 2006.

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, 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 charged if family member has to obtained. We add that a great number of third country nationals enjoy visa free travel (as a tourist).
b. With a view to family unification, 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.

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 condition 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.

3. Draft regulation

Transposing Directive 2004/38/EC and the Directives dealing with family unification and other third country nationals' rights, the Parliament adopted the Act I of 2007 on the entry and residence of persons exercising their right to free movement and Act II of 2007 on entry and residence of third country nationals at its plenary session on 12 December 2006.[100] The new Acts introduced a completely new set of rules in favour of family members and family unification deleting the rules in force. The Acts were published on 5 January 2007, and it enters into force on 1 July 2007.[101] However, executive provisions of Government Decree and Ministerial Decrees related to it are pending.

4. Judicial and administrative practice

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,[102] his residence permit was not issued or the hopeless asylum procedure was

100 Table, number 29, T/1299: http://www.mkogy.hu/internet/plsql/ogy_stat.stat_torv?_P_CKL=38&P_DATUM_TOL= 2006.12.01&P_DATUM_IG=2007.04.06&P_TORV=g1

101 Magyar Közlöny 2007/01, http://www.magyarkozlony.hu/nkonline/index.php?menuindex=0200&pageindex=0220.

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

not finished even upon his (inclusive) request. The best educated judges also passed over this fact.[103]

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[104], 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.

A case refers on a family member of a possible Hungarian national but as in all similar cases, the court has no taken into account the legal status of the couple and children at all. The applicant coming from China has resided 15 years in Hungary, and after divorce he married again and lived together with own son and wife in a consolidated life. The immigration authority withdrew his long-term residence permit due to changing personal conditions, not authentic documents and fragile subsistence. His genuine family ties, economic activity (registered entrepreneur) and relation to Hungary, clean criminal record and separation from his minor son as a consequence of the rejected residence were totally ignored[105].

5. Access to work

The rights of family members include rights of migrant workers: access to employment and non-discrimination in employment. 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:
> - the members 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;
> - the members 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 accession, 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

103 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, subsided by the EU. The case started in 2004 and finished in April 2005 (6.K.34132/2004/7).

104 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 subsided by the EU. My presentation on existing categories shocked the participants.

105 Bírósági Határozatok [Periodical of Published Judgements of the Supreme Court] 2006/1472.

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 Chapter 2).

Family members (spouse and children) of union citizens irrespective of their nationality are entitled to work with *temporary work book* under the same conditions as union citizens (Art 1. (2) point c). Moreover, the spouse of a Hungarian national is also eligible (Art. 1. (2) point d).

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*,[106] 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.[107]

The rules on non–discrimination in employment apply to the family members as well pursuant to the provisions of the Labour Code and the EqualA.

6. Access to education and study grants

According to the Act on High-level education there are special provisions for *non-Hungarian national students* (Art. 39 and Art. 119). Pursuant to the HighA EEA nationals *and their family members* are entitled to enter into Hungarian high-level education under the same conditions as Hungarian nationals (Art.39 (1)). As a main rule, all the provisions of the HighA shall be applicable, EEA nationals and their family members are entitled to social maintenance payments and other study grants, contribution to their books and accommodation (Article 119 (2) b). This rule is in full compliance with Art. 24 (2) of Directive 2004/38/EC which confirms that Member States are not obliged to provide for social maintenance payments for student before they obtain long-term resident status. It means that for a certain period of time the Member State is exempted, however, after obtaining the long-term resident status this obligation comes into force. Hungarian law benefits in general EEA nationals and their family members irrespective of the duration of their stay. Hungarian law also takes account of the *Grzelczyk* case,[108] according to which in certain cases a Member State is obliged to endure that a legally resident student faces financial difficulties. Moreover, the Government Decree No.175 of 2006, 15 August provides grants and benefits for EEA

106 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.

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

108 C-184/99 *Rudy Grzelczyk v Centre Public d'Aide Sociale d'Ottignies Louvain-la Neuve eset* (2001) ECR I-6193.

students in high education on equal foot as for nationals. This new Decree deleted the prior, more time amended one, and it refers directly on 2004/38/EC Directive, too.

7. Social and tax advantages (equal treatment)

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.

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 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.

Recent 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: 169-177.0.

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.

CHAPTER VI. IMPACTS OF ECJ DECISIONS

Reading the published cases in periodical of Bírósági Határozatok [Supreme Court Judgements] it is clear that majority of finished cases were submitted before accession to the EU, and final decisions if those were dated even after accession would not be influenced by this fact substantially. In other words, it takes about 4-5 years to observe somehow the impacts of the case law. Available judgements do not refer on free movement rights[109], and in general the frequency of implementation of case law is growing in a small extent. Thus legislation has played the major role of interface to the jurisprudence of the ECJ yet.

1. 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 EU 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 EU 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. 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 (the latter is the 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

109 For instance, the Supreme Court refers to *Foster* (C-188/1989) and *Jaeger* (C-151/02) case confirming the direct implementation of working time Directive. The plaintiff working in public health care required to recognise the entire time in duty as working time taking into account the 2003/88/EC Dir. The Supreme Court refused to submit preliminary ruling to the ECJ due to clear terms of the Directive and developed case law of the ECJ (BH 2006/1142). In another case it is said that Community law has no retroactive effect on taxation year before accession to the EU. Moreover, the Supreme Court stated that a request for preliminary ruling was inadequate due to acte claire by the ECJ (BH 2006/1142).

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* regulates 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 takes 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 EU citizens (!) – can in fact apply for temporary social assistance or not and whether it will result in the loss 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 for social reasons.* 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.

2. 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 considerable changed with effect from 1st 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.

3. Effects of the Ioannidis case

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.

4. Effects of the van Lent, Commission v Denmark and Nadin cases

The *Hans van Lent* case, the *Commission v Denmark* case (together with the *Nadin and Nadin-Lux* case[110]) declare 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. In so far the legislation and administrative practice do not allow employees who are employed in a neighbouring Member State and resident in another Member State to use for business or private purposes a company vehicle or motor vehicle registered in that neighbouring Member State where the undertaking of their employer is established the Member State infringes Article 39 of the Treaty of Rome.

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. Ministerial Decree of the Interior No. 35 of 2000, 30 November on Road Traffic Administration Tasks and on the Issuance and Withdrawal of Road Traffic Licenses handles the status of number plates.

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Art. 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*, the upper mentioned Decree of the Minister of the Interior No. 35 of 2000 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 (Section 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 revealed that in practice this rule is difficult to apply hence the actual wording of the law – "intended for inland usage" – is unclear.

110 C-151-152/04.

5. 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 Hadzsi Malick. The basketball player as Senegal national was refused to race in the National Male Basketball Championship as a player of Jászebrényi Basketball Sport Association (Jászberényi Kosárlabda Sportegyesület) due to decision of the "B" Section of the Prefessional Male Basketball League. It referred on Section 1 of Art.10 in Racing Condition to 2005/2006 on 1st "B" Class as adopted by Male Basketball of Hungarian National League. El Hadzsik 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.

Recent 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 joghamonizáció. HVG-Orac, Budapest (2005) pp.822-47.

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

Várnay Ernö – Papp Mónika - Varjú Márton – Bartha Ildikó: A tagállamokkal szembeni kötelezettségszegési eljárások. [Infringement procedures and cases against Member States] 2006, Complex Kiadó, EU-jog a tárgyalóteremben sorozat

Hriczó Krisztina: A személyek, illetve a munkaerö szabad áramlása az Európai Unióban. [Free movement of workers and persons in the EU] *TDK-dolgozatok*. 2006. 389-414.

CHAPTER VII. OBSTACLES IN FREE MOVEMENT

Without repetition of social, legal and administrative obstacles in free movement named in other Chapters, a further possible obstacle of free movement from the side of Hungarian nationals can be mentioned. According to recent surveys the extraordinary low level of mobility and competitiveness of Hungarian workers derives from public and high education that produces people with extremely limited competencies, such as absence of foreign language knowledge, weak ability to solve ordinary problems, limited willingness to run a risk or insufficient experience in IT. This deficiency has been proved more times by PISA (Programme for International Student Assessment adopted by the OECD), surveys of ÁVF (College of Entrepreneurship Studies), Hungarian Chamber of Commerce and Industry (its Economic Analysis Institute). For instance, assessments made among successful business actors and companies in 2002-2006 approve a necessary change in education and training to develop abilities, skills and attitudes to work, labour method, competition and life long learning.

Recent literature

Berde Éva – Czenky Klára – Györgyi Zoltán – Híves Tamás – Morvay Endre – Szerepi Anna: Diplomával a munkeröpiacon. Felsöoktatási Kutatóintézet, Budapest, 2006.

Karcsics Éva: A versenyképes munkavállaló kompetenciái az Európai Unióban és Magyarországon. Európai Tükör, 2007/3. 128-140.

CHAPTER VIII. EU ENLARGEMENT

1. Regulation in force

- 1991.évi IV. törvény a foglalkoztatás elösegítéséröl és a munkanélküliek ellátásáról [Act on Job Assistance and Unemployment Benefits]
- 354/2006. (XII. 23.) Korm. rendelet a Bolgár Köztársaságnak és Romániának az Európai Unióhoz történő csatlakozását követően a Magyar Köztársaság által alkalmazandó, a munkavállalók szabad áramlására vonatkozó átmeneti szabályokról [Government Decree 354/2006 (XII. 23.) on the transitory rules applicable to free movement of workers by the Republic of Hungary after the accession of the Republic of Bulgaria and Romania to the European Union]
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történö csatlakozást követöen alkalmazandó munkaerőpiaci viszonosság 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] that was amended by the Government Decree No.107 of 2006, 2 May and No. 218 of 2006, 9 November
- 8/1999 (XI. 10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséröl [Decree of the Social and Family Affairs Minister on Work Permits Issued to Foreign Nationals in Hungary] that was recently amended by the Ministerial Decree of Employment and Labour No.5 of 2006, 12 May

2. Information on transitional arrangement regarding A8 including changes in national law and practice since previous report

The new A8 Member States (1.5.2004.) are not allowed to apply transitional periods towards each other. Consequently the nationals of these Member States and their family members are allowed to enter the Hungarian labour market without the need to possess a work permit (UnempA, Art. 7). Government Decree 93 of 2004, 27 May (RecipD) 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 however, prescribes the condition for the employer to register the workers with these nationalities, moreover, the possibility and procedure for safeguard measures is also encompassed in Hungarian legislation.

So far the safeguard rules have not been amended and safeguard measures have not been initiated. The volume of workers with these nationalities is relatively low and does not endanger the position of Hungarians thereby not necessitating any further actions although in certain regions and sectors labour market tensions are mentioned in press.

3. Second phase of the transitional arrangements

Government Decree No. 107 of 2006, 2 May amended the RecipD to be applied from 1st of May 2006. It changed the Member States in the formerly existing three categories:

i. no restrictions in employment,
ii. general rules of employment of foreigners, and
iii. necessity of work permit but no assessment of the labour market.

The following table shows the changes between 1st of May 2004 and 1st of May 2006.

Categories	1.5.2004	1.5.2006
No restrictions	UK, IRL, SE	UK, IRL, SE, FIN, GR, NL, ISL, PT, ES
General rules of employment of foreigners (work permit system)	AT, DE, IT, LIE, *BE, FR, LUX,* FIN, GR, NL, ISL, PT, ES	AT, DE, IT, LIE, *CH*[111]
Work permit without assessment of the labour market	DK, NO	DK, NO, *BE, FR, LUX*

The Hungarian government consequently followed its previous approach: it applied reciprocal measures towards every "old" EU-15 Member States. Towards those lifting the restrictions (FIN, GR, NL, ISL, PT, ES) Hungary opened up its labour market while it kept partial or complete restrictions towards the others that decided themselves for a stricter approach.

Albeit there have been public discussions where some of the stakeholders (employer organisations) argued for a liberalised labour market the former reference point has not been changed. No scientific back-up can be given for this decision (the number of nationals of the old Member States not lifting the restrictions, who are working in Hungary is very limited, so it has evidently no influence on the Hungarian labour market). This is a purely political decision of the Government.

4. Details of the legal regime, including relevant legislation, applicable for the second phase

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 1st point 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.[112] 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 a 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

111 The bilateral agreement between Switzerland and the new (1.5.2004.) CEE Member States entered into force on the 1st of April 2006. This is the reason why CH is not mentioned in the 2004 table. Hence CH applies restrictions towards the A8 (1.5.2004) Hungary applies reciprocity as well.

112 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.

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);
- 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 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.[113] The Government 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 the 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 those "old" Member States who lifted the restrictions 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 Art. 7 (2) (b) of the UnempA.

The RecipD is very flexible in its structure. 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[114] 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 Section 3 is 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 employ-

113 http://europa.eu.int/comm/employment_social/free_movement/docs/pr_en.pdf , point 6.
114 Switzerland has to be meant under this heading.

ment 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, Norway, Belgium, Luxemburg and France 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 these 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 authorisation process. The normal authorisation regime was renewed in 1999 but has been modified several times.

5. 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[115]. 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 a public-financed 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.

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

115 Magyar Közlöny 2005/9. FMM közleménye.

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.[116] 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.

The above analysed Hungarian legal norms are successfully intending to implement the Accession Treaty. Each of the UnempA, the RecipD or the PermitD goes 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.

6. Practical problems and individual cases

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:[117] "II. Other Declarations, Point C. Joint declarations of the present Member States, point 13., Declaration on the free movement of workers: Hungary". It 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.

7. Preparation and discussions of transitional measures for workers from Bulgaria and Romania applicable on 1st January 2007

The accession of Romania and Bulgaria also generated extensive public discussions where employer organisations and even one of the governing political parties argued for a liberal conduct. The issue of RO / BG indicated a lot more involvement by Hungarians than the "old" Member States. The government let research made as well (by TÁRKI Social Research Inc.) attempting to get also an expert insight on the topic.[118]

The decision of the Hungarian government – albeit the expert opinion was far from backing it up – took a rather cautious approach. Instead of opening up the Hungarian labour market it voted for a partial approach keeping the general methods of foreign workforce recruitment. The decision was based on the labour market forecast for 2006 (especially pages 108-109).[119]

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116 This section is the implementation of the principle of Community preference in Hungarian law.
117 P. 972-974.
118 Hárs-Sik (2006) http://www.tarki.hu/adatbank-h/kutjel/pdf/a977.pdf.
119 Rövidtávú munkaerő-piaci prognózis 2006. évre, FMM, FH. http://www.afsz.hu/engine.aspx?page=full_afsz_rovidtavu_prognozisok_oldal.

According to other information, for instance a survey made by NACAB (2005) on the migration potential of Romanian population in active age, only 5.8% of them intends to migrate for a remuneration work to Hungary. It would be the fourth target country after Italy, Spain and Germany and preceding France, UK, Austria, Portugal and Ireland. Numerically, it would mean yearly 150-200 000 workers from Romania, rather from ethnic Hungarians, border region population and experienced participants in various EU projects – as a civil researchers team (Metszéspont, October 2006) projected.

The most detailed analysis (TÁRKI, November 2006) summarised the rate of severe intention of migration to Hungary from Romania. Accordingly accession to the EU would provide a 4-5% additional labour force supply in Hungary including ethnic Hungarians, workers with secondary education, skilled labourers in sectors facing labour shortages and high rate of unskilled persons. Frictions among labour stock and foreign labourers would be foreseen in some regions and sectors. However, the high salary expectations of ethnic Hungarians may limit their migratory movements. The Bulgarian labourers' intention is considered as marginal by all experts.

The most important findings of the expert opinion are as follows:

- the migration potential of Romanian nationals in general is very high, however, the target country is not Hungary but Germany, Austria and the Mediterranean countries. Hungary is a target country for Hungarian minorities;
- Romanian nationals with high-level educational degrees will probably not enter the Hungarian labour market, but people with secondary educational degrees, blue collar workers, and people without professional qualification are most probable;
- the target region is the capital city and its surrounding;
- most importantly: „a major part of foreigners is employed in the provision of traditional trade and agricultural services without possessing a qualification (unskilled workers), but the demand and supply of foreign workforce in the sectors with labour shortages correspond". Moreover "it is possible, in certain regions, temporarily and in certain employment groups that the entry of additional foreign workforce will create a disadvantage for the competing Hungarian workforce".[120]

Additionally, the authors emphasise that „the Hungarian speaking Romanian nationals work already in considerable numbers in Hungary" and „the workforce officially appearing after the accession of Romania to the EU does not mean "new" workforce, only the status of illegal workers will be thereby legalised. The research estimates the effect of the accession on the Hungarian legal labour market altogether to a 1-3% increase.

The Government finally has adopted an illiberal temporary measure on Romanian and Bulgarian labourers although it has urged liberalised labour market of EU15 on the base of solidarity, equality and economic rationale. A partial accession to the Hungarian labour market is based on (tacit) compromise with parliamentary parties and trade unions. The associations of employers and researchers support to open the gates together with adequate monitoring on labour supply and need and lawful employment including contribute to social insurance[121]. Due to labour shortages in certain sectors the competitiveness of our economy is endangered.

Government Decree No. 354 of 2006, 23 December on the transitory rules applicable to free movement of workers by the Republic of Hungary after the accession of the Republic of Bulgaria and Romania to the European Union entered into force 1 January 2007. The new rules lifted the restrictions partially for 219 jobs by stating that for these occupations the work permit is issued without assessing the labour market. The procedure is accelerated but its spirit is the same: the employer is obliged to apply for the work permit. Among the 219 occupations falling within the simplified and accelerated process which are really important are as follows: professionals working in the health care and social sector, engineers, building, food and processing industry plus different forms of housekeeping (cleaning, baby-sitting). There are jobs which will probably not made use of: philosopher, linguist and literature his-

120 Hárs-Sik (2006), p. 7.
121 Magyar Hírlap, 13 December of 2006; 15 February of 2007; Figyelő-Net 3 October 2006.

torian. And there are occupations which are important but they are not on the list: skilled and unskilled workers in trade, catering industry, agriculture and building industry. Summing up, the liberalisation in the 219 occupations is a real step forth but is a very restrictive approach of the labour shortages (for instance in health care) and hidden illegality problems.

Two concurring reasoning were stressed by the government, first, that the labour market restrictions are lifted in accordance with the labour market forecast for the year 2006 aimed at giving a workforce-pool for the employer. And as second, the government protects the Hungarian labour market from a dumping of new workers and an increasing unemployment of Hungarian nationals. Hence mainly Hungarian minorities are interested in migrating into Hungary, the decision on the labour market implied the general policy of Hungary, namely, not to enhance the mass emigration of Hungarian minorities from their original place of living. Consequently, the government followed the cautious hypothesis by mirroring the present trends of foreigners' employment, and by not facing the challenge of a radical change in immigration policy.

A Government Resolution No. 2251 of 2006, 23 December was also passed. It decides administrative tasks on labour management in accordance with the Accession Treaty of Romania and Bulgaria providing a facilitated labour authorisation in sector in need of foreign labour force. It requires a scrutiny the list of facilitated labour permits issuing for labourers from Bulgaria and Romania quarterly by the Ministry of Employment and Labour Policy. Further on, a ministerial review of the implementation and first year experiences of temporary provisions is also ordered. The Government prescribed the necessary analysis on the labour authorisation system in practice up to July 2007 (RecipD and PermitD). The Resolution determined the modification of RecipD, too.

Although the minimal and maximal fine for illegal employment (e.g. employment without labour permit) was lifted up in 2006 (its minimal amount is 2000 € at first time, and repeated infringement of law it is 3750 € in accordance with the increasing level of lawful monthly salary), its efficiency is limited due to rare labour inspection control. The risk is really low for small and micro-entrepreneurs. As a branch leader of the Labour Inspector Office said: there are more cases when procedure is based on notices on illegally employed gardener, babysitter which are coming from neighbours[122].

Recent literature

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122 2006.3.29. A büntetés minimum egymillió, Piac és Profit.

Judit Tóth: Impacts and future of transitional arrangements from the perspectives of the CEE accession and EU 15. Prague, EU Com., 10 - 11 November 2006. Conference paper

CHAPTER IX. STATISTICS

Researchers face numerous shortages in statistical and public data system as follows:

- The labour and immigration statistics cannot produce figures on the base of the legal 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.
- There is an *absence of public data base of judgements and labour permits, thus* 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. The 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 that is a fundamental right[123]. Neither the Act on Statistics[124] nor on Protection of Personal Data and on Free Accession to Information of Public Interest[125] contains concrete and standard method of implementation. The Act[126] entered into force on 1st January 2006, and some progress can be seen on homepages of authorities, state agencies and publicly financed institutions, but detailed statistics and up-to-date information are not available easier. Electronic data bases of judgements at appealing and the Supreme Court will be available after 1 July 2007.
- Public administration reform and re-establishment of national or/and regional competences causes *discontinuation of statistical data collection and publication*.
- Ongoing enlargement, new bilateral agreements or provisions *changed in the middle of the year are not covered by yearly statistical brake or ratio*.
- Proportion of *sex and age* of migrants, labourers from EEA and third country nationals is not available.

Taking into account these circumstances, it can be said that migration of EEA nationals and family members is stable. In comparison data of issued labour permits, registration, green cards and seasonal permits in 2005-2006[127]

- migration activity of EU-15+3 does not increase, it is marginal, while
- appearance of labourers from EU-8 is growing, in particular from Slovakia. Practically we are speaking on frontier or commuting workers (multinational companies carry daily the workers from Slovakia to Hungary to 12 hour-long shift which is partially attractive for local unemployed people).
- the third country nationals' activity in labour migration is also stable but it is much more higher than existence of EEA labourers. (Table 1)

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123 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).

124 Act XLVI of 1993.

125 Act LXIII of 1992.

126 Act XC of 2005.

127 Source: Állami Foglalkoztatási Szolgálat – FMM [Employment Service – Ministry of Employment Policy and Labour] and Bevándorlási és Állampolgársági Hivatal [Office of Immigration and Nationality Affairs.]

Table 1: Labour migration in Hungary in 2004-2006

	Valid on.12/31/2004				Valid on.12/31/2005				Valid on.12/31/2006				
	Labour permit	Re-gis-tered	Green card	Together	Labour permit	Regis-tered	Green card	Together	Labour permit	Season (ag-ric.) permit	Regis-tered	Green card	Together
Austria	288		45	333	218	1	60	279	246		1	84	331
Belgium	56		18	74	68		27	95	75			27	102
Denmark	38		7	45	30		14	44	36			21	57
UK	129		5	134			2	2					0
Finland	60		5	65	54		8	62	22			8	30
France	112		26	138	250	1	81	332	270		1	121	392
Greece	19		1	20	11		2	13	4			2	6
NL	106		18	124	112		29	141	117			35	152
Ireland	13			13				0					0
Lux.				0				0	1				1
Germany	691		133	824	789	1	229	1019	631		5	342	978
Italy	158		22	180	177		37	214	160			55	215
Portugal	15			15	19		2	21	9			4	13
Spain	32		4	36	47		5	52	20			6	26
Sweden	22			22				0					0
Norway	15			15	19			19	22				22
Switzerl.	26			26	29			29	23			1	24

	Valid on.12/31/2004				Valid on.12/31/2005				Valid on.12/31/2006				
	Labour permit	Re-gis-tered	Green card	Together	Labour permit	Regis-tered	Green card	Together	Labour permit	Season (ag-ric.) permit	Regis-tered	Green card	Together
EU-15	**1780**	**0**	**284**	**2064**	**1823**	**3**	**496**	**2322**	**1641**	**0**	**7**	**708**	**2349**
Cyprus				0				0					0
Malta				0				0					0
Czech R.	29	59		88		115		115			191		191
Poland	92	466		36		638		6			940		6
Slovakia	1619	10109		11728		15106		15106			16659		16659
Slovenia	12	20		32		38		38			67		67
Estonia	3	33		558		6		638			6		940
Latvia	1	7		8		6		6			10		10
Lithuania	2	5		7		23		23			20		20
EU 10	**1758**	**10699**	**0**	**12457**	**0**	**15932**	**0**	**15932**	**0**	**0**	**17893**	**0**	**17893**
Ro+Ukr+Yu	45126	9	1	45136	39803	15	2	39820	38560	121	14	2	38697
Others	6729	3	0	6732	4765	4	11	4780	5664	2	4	10	5680
Total	**55393**	**10711**	**285**	**66389**	**46391**	**15954**	**509**	**62854**	**45865**	**123**	**17918**	**720**	**64626**

The stock and flow data on labour permit holders coming from the EU-15+3 proves that about 15% of labourers spends less than one year in employment in average (Table 2), it was the same ratio in 2005. This fact raises the question of proportionality of transaction costs in authorisation, in particular in normal labour permit applications.

Table 2: Labour permits (flow & stock) in 2006

Nationals of	**Labour permits issued in 2006**	**Labour permits valid on 31 December 2006**
Austria	316	246
Belgium	80	75
Czech Republic	0	0
Cyprus	0	0
Denmark	50	36
Estonia	0	0
Finland	24	22
France	318	270
Germany	710	631
Greece	5	4
Ireland	1	1
Italy	204	160
Latvia	0	0
Lithuania	0	0
Luxemburg	1	1
Malta	0	0
The Netherlands	136	117
Poland	0	0
Portugal	14	9
Slovakia	2	2
Slovenia	0	0
Spain	22	20
Sweden	0	0
UK	2	1
Switzerland	30	23
Norway	28	22
Iceland	0	0
Lichtenstein	0	0
Total EU	1943	1640
Romania	33093	29238
Bulgaria	272	224
Turkey	230	154
Total (all countries)	**52414**	**45865**

Number of family members and green card holders has remained marginal, but there is a growth in number of green-card holders which was 509 in 2005 (+38%). This cannot compensate of 15% of labourers spending less than one year in the Hungarian labour market. In other words, a changeable, additional, short term (transit, frontier or commuting) work is rather available due to absent of strategy on how to keep up the best, qualified migrant workers. (Table 3)

Table 3: Number of employed EU nationals (registration, green-card holders) in 2006

Nationals of	**Registration**		**Green card**	
	valid on 31 December 2006			
	Total	**Family member**	**Total**	**Family member**
Austria			84	1
Belgium			27	
Czech Republic	191			
Denmark			21	
Estonia	6			
Finland			8	
France			121	
Germany		2	342	1
Greece			2	
Italy			55	2
Latvia	10			
Lithuania	20			
The Nether-lands			35	
Poland	940	1		
Portugal			4	
Spain				
Slovakia	16659	1	6	
Slovenia	67			
UK			2	
Total	**17893**	**4**	**707**	**4**

Labourers from the EEA and third countries play different roles in sectors. The EU-15+3 nationals are represented in *financial services and processing industry*, while third country nationals are employed in building industry, trade and processing industry in great extent (Table 4). This difference connects probably to differing qualification of the two groups. If we have a look the rate of labourers from *A8 a further disproportion can be seen: their 80% is employed only in processing industry and financial services* (Table 5). It means that workers from the EEA are employed in processing industry and financial services. After accession of Romania this trend would change.

Table 4: Valid labour permits by economic branches (31st December 2006)

Nationals of	To-gether	Agricul-ture	Processing industry	Building industry	Trade	Transport, tele-communication	Finance	Education, culture, sport	Health care	Other
Belgium	80	0	12	2	5	3	56	1	0	1
UK	2	0	0	0	1	0	0	1	0	0
Denmark	50	2	17	0	3	10	18	0	0	0
Finland	24	0	14	1	3	0	6	0	0	0
France	318	1	71	11	71	25	103	6	2	28
Greece	5	0	1	0	0	0	2	1	0	1
NL	136	1	24	0	17	23	65	0	0	6
Ireland	1	0	1	0	0	0	0	0	0	0
Lux	1	0	0	0	0	0	1	0	0	0
Germany	710	3	276	87	77	24	185	16	8	34
Italy	204	4	45	0	25	5	84	9	0	32
Austria	316	5	65	119	32	19	32	3	2	39
Portugal	14	0	2	0	1	0	8	0	0	3
Spain	22	0	4	0	1	0	8	9	0	0
Slovakia	2	0	1	0	0	0	1	0	0	0
Norway	28	0	0	0	0	4	21	1	0	2
Switzerland	30	1	14	0	4	3	8	0	0	0
Together of EEA	1944	17	548	220	240	116	598	47	12	146
	(100%)	(0.9%)	(28.5%)	(11.2%)	(12.2%)	(6.1%)	(30.2%)	(2.5%)	(0.8%)	(7.6%)
Bulgaria	272	0	27	2	21	153	37	9	0	23
Romania	33093	3151	6209	12149	5665	771	2426	160	691	1871
Turkey	230	0	14	14	144	11	30	6	1	10
Total	52414	3602	11011	17709	9259	1429	4645	460	960	3339
	(100%)	(6.9%)	(21%)	(33.7%)	(17.7%)	(2.7%)	(8.8%)	(0.9%)	(1.9%)	(6.4%)

Table 5: Registrations by economic branches (31st December 2006)

Nationals of	**Together**	**Agri-culture**	**Processing industry**	**Building industry**	**Trade**	**Transport, telecommu-nication**	**Finance**	**Education, culture, sport**	**Health care**	**Other**
Czech R.	191	1	46	13	19	57	25	2	1	27
Estonia	6	0	1	0	0	0	4	0	0	1
Poland	940	5	368	36	57	252	58	3	1	160
Latvia	10	0	0	0	1	2	4	1	0	2
Litvania	20	0	1	0	2	0	5	0	0	12
Slovakia	16659	151	10237	564	478	475	3797	65	256	636
Slovenia	67	0	6	1	8	17	13	2	0	20
Total	17893	157	10659	614	565	803	3906	73	258	858
	(100%)	0.8%	59.5%	3.5%	3.1%	4.5%	21.9%	0.4%	1.4%	4.9%

Since August 2005 employment booklet has been available at labour authority for occasionally hired foreigners and foreign couple of a national without labour permit. This booklet was introduced in 1997 but only the recent amendment provided this lawful employment and taxation, social insurance contribution is a simplified way with fixed tariff fee for local employer and foreign labourer. In 2005 the segregated nationals and unemployed persons work was equal with about whole year activity of 11,000 workers (2,188,826 working days). Non-nationals' 68,107 working days in August-December of 2005 can be considered as marginal (3% of the total) but the 2,236 foreign workers are recruited from three countries in 97%: Slovakia (64%), Romania (23%) and Ukraine (10%). In average 12% of these working days were employed in agricultural seasonal work. According to locality 60% of the occasional labour was managed in one county ticked to the Hungarian-Slovakian border and 18% in two rural counties.

In 2006 EU citizens were made entitled to apply for temporary work books in the middle of the year of 2004 there are experiences and statistics we can mention for the year of 2005.

The total number of temporary books issued was 275037 and validated: 124079. In the year of 2005 the number of issued temporary work books for foreigners (non-Hungarians) was 9209. Out of this only 2236 books were validated (24,3%). With the validated books foreigners worked a total of 68107 days. 80% of the working days (56 thousand) fell upon the district Komárom-Esztergom where mostly Slovak nationals are employed (border region to Slovakia). 3-3% fell upon Csongrád and Bács-Kiskun district while Budapest took only less than 1%. (Table 6)

Table 6: The nationalities making use of the temporary working books look (2005)

County	**Number of validated books**	**Out of these the nationals of:**					
		EU nationals	Out of these: SK	**Non-EU nationals**	Out of these: RO	UKR	Asia
Budapest	35	3	2	27	24	1	3
Baranya	18	1		17	11	2	
Bács-Kiskun	205			205	195	9	
Békés	20			18	14	1	
Bosod-Abaúj-Z.	49	40	40	9	4	5	
Csongrád	164			163	143		
Fejér	31	1		30	26	1	
Győr-Sopron-M.	16	4	4	12	1	8	
Hajdú-Bihar	37			37	11	25	
Heves	21	5	2	16	12	3	
Jász-Nagykun-Sz.	19			19	17	2	
Komárom-Esztergom	1335	1321	1319	14	10	3	
Nógrád	58	53	52	5	1	4	
Pest	22	10	10	12	12		
Somogy	11			11	5		
Szabolcs-Szatmár	173			172	21	150	
Tolna	12	1	1	11	10	1	
Vas	1			1	1		
Veszprém	8	4	1	4	3	1	
Zala	1	1					
TOTAL	**2236**	**1444**	**1431**	**783**	**521**	**216**	**3**

Falling from the table it is clear that 2/3 of the temporary work books were used by Slovak nationals, and the remaining 1/3 by Romanians and Ukraine nationals. This reflects quite

well the general tendencies characterising the Hungarian labour market as regards the representation of foreigners.

In first part of 2006 the number of requested temporary work booklet was 230 000. At lest 4 million € as social insurance contribution and tax were paid through this channel.[128] Further data on 2006 are not available.

As regard the migratory movement of EEA nationals, a slight decrease can be observed within in 2006. Due to OIN data the group of "others" includes 21 group pf nationalities without details, but the first six positions in Hungary have not been dramatically changed. (Table 7)

Table 7: Migration of EEA nationals

Nationals from the EEA	Applications for residence permit 2005	Applications for residence permit 2006
Germany	4 600	4 528
Slovakia	2 411	2 060
Austria	970	978
France	875	785
UK	860	737
The Netherlands	522	426
Others	2 820	3 313
Total	**13 058**	**12 827**

Speaking on migration in a broader context we can give details on visa, residence permit, settlement permit and naturalisation and expulsion decisions, procedures. The first observation is that number of lawful migrants was growing in 2006 (+16%) in comparison with the previous year. Further on, employment, labour and study means the major motivation of foreigners' entry to Hungary in growing extent (Table 8).

Table 8: Applicants for a year-long valid visa in 2006

Applicants for staying visa (D) by nationals of	2002	2003	2004	2005	2006
Romania	4 829	19 359	29 914	18 458	19 141
Ukraine	3 392	6 336	6 756	4 011	4 770
USA	963	1 139	1 238	1 165	1338
Serbia-Montenegro	852	1 077	1 507	1 329	1552
Russia	459	467	400	412	695
China	196	384	912	777	1440
Other	6 691	13 772	7 406	4 559	5 584
Total	**17 382**	**42 534**	**48 133**	**30 711**	**34 520**

128 Népszava, 2006, Aug. 21, MTI július 24.

Table 8a: Motivation of applicants for one-year long valid visa

Applicants for staying visa (D) for reason of	2002	2003	2004	2005	2006
Employment, labour	7 660	26 421	30 957	19 374	23 604
Study	5 095	6 742	4 721	3 659	3911
Visit	1 040	2 026	3 518	1 876	1509
Money making	856	1 340	1 823	906	891
Family re/unification	218	1 283	1 914	1 232	1805
Seasonal labour	0	796	779	34	34
Official trip	216	230	121	171	103
Medical treatment	15	20	37	21	16
Other	2 282	3 676	4 263	3 438	2 647

Table 9: Success of applicants for visa

For staying visa (D)	2002	2003	2004	2005	2006
Issued	15 800	37 838	44 701	29 362	32 714
Rejected	1 494	2 360	2 092	1 349	1806

Table 10: Applicants for residence permit

Applicants for residence permit on the reasons of	2002	2003	2004	2005	2006
Employment, labour	18 186	20 347	24 902	29 958	26 746
Study	5 436	5 559	4 855	4 693	5 297
Family re/unification	4 850	5 773	6 486	7 884	8 466
Remuneration, money making	4 310	3 206	2 232	658	479
Visit	1 483	1 391	1 923	1 916	1450
Official trip	207	193	79	105	109
Medical treatment	55	57	61	68	40
Other	2 798	3 011	3 994	1 384	4 000
Total	**37 151**	**39 564**	**44 532**	**46 666**	**46 587**

Although the absolute number of refusal was growing, the succession rate has increased for a staying visa application process (Table 9). It requires deeper analysis whether it can be explained of better trained clients or less prepared officials.

As Table 10 proves, the residence of foreigners is stable, there is no significant change. The components of residing migrants have altered in two directions: non-commuting la-

bourers' amount is reduced – perhaps due to certain liberalisation of labour market – while the rate of students and family reunifications increases.

Among the applicants for residence permit the three leading positions have not changed since 2002: the major source of lawful migrants has been Romania, Ukraine and China. (Table11). The rejection rate of application is slightly decreases but has remained really low (3.5%) including prolongation of the validity. It raises the question of screening effects of the authorisation in the territory of the county and – looking at success in visa applications – abroad. According to field research (Váradi, 2006) visa procedure is no more than a "game of presumptions".

Table 11: Distribution of applicants for residence permit

Applications for residence permit/ its prolongation	**2002**	**2003**	**2004**	**2005**	**2006**
Accepted	29 407	31 782	39 466	41 781	41 734
Rejected	189	1 853	1 549	1 534	1409
Ceasing cases	203	19	132	350	392
Pending	7 352	5 910	3 385	3 001	3 052
Total	**37 151**	**39 564**	**44 532**	**46 666**	**46 587**
Applicants by nationals					
Romania	16 048	17 528	24 621	25 660	24 618
Ukraine	3 745	4 226	6 156	5 819	6 161
China	2 558	2 573	2 187	2 987	3 012
Serbia- Montenegro	1 412	1 483	2 130	2 146	2 396
USA	1 035	942	948	1 069	1 034
Vietnam	782	542	608	1 358	1 001
Other	11 571	12 270	7 882	7 627	8 365

The permanent residence permit can be divided by two categories due to changed regulation: settlement and immigration permit. It is based on a political debate and both of those requires the same preconditions to be met by the applicants. It is interesting to add why this legal status is popular: it is the starting requirement of naturalisation for third country nationals. If you watch the Table 12 and 14 you can find the explanation of growing amount of applicants from Ukraine, Serbia and China. The Romanian applicants' activity is rather based on pessimism towards fast accession to the EU. After accession of Romania their residing nationals in possession of EEA residence permit enjoy the naturalisation preference provided for all EEA nationals.

Table 12: Distribution of applicants for settlement (permanent) residence permit

Applications for settlement permit	2002	2003	2004	2005	2006
Accepted	2 211	3 650	4 981	5 110	5 274
Rejected applications	400	658	941	891	1229
Ceased procedures	34	3	15	21	46
Pending	2 008	3 567	3 423	3 211	3 490
Total	**4 653**	**7 878**	**9 360**	**9 233**	**10 039**
Applicants by nationals					
Romania	3 020	5 233	6 344	5 955	6 477
Ukraine	502	1 032	1 093	1 062	1249
Serbia-Montenegro	295	392	597	555	711
China	122	313	441	718	546
Vietnam	63	64	84	192	178
Russia	53	126	143	128	149
Other	598	718	658	623	729

Table 13: Stock of residence permit holders (2006)

By nationality of	Residence permit holders on 31 December 2006
Romania	21 473
Ukraine	5 386
China	4 114
Szerbia-Montenegro	2 216
Vietnam	1 601
USA	1 312
Others	8 584
Total	**44 686**

Table 14: Stock of permanent residence permit holders (by changing legal categories)

Nationals of	Settlement permit holders on 31 December 2006	Immigration permit holders on 31 December 2006
Romania	21 434	23 139
Ukraine	3 784	4 6 54
Serbia-Montenegro	1 868	7 497
China	1 232	3 547
Russia	388	2 642
Vietnam	380	1 402
Others	2 428	9 788
Total	**31 514**	**569**

Taking into account of expulsion reasons the number of overstayed, illegally employed migrants was decreasing in 2006, in particular coming from Ukraine, Romania and Turkey. Otherwise, this reduction can be explained by the efficiency of entry and residence screening. However, the expulsion cases have been gradually half of figures in 2002.

Table 15: Decrease of expulsion migrants

Expelled foreigners by nationals of	2002	2003	2004	2005	2006
Romania	3 301	2 881	2 573	2 735	2 024
Ukraine	824	833	634	955	312
Serbia-Montenegro	516	233	100	120	190
Moldova	340	166	143	67	64
China	240	89	98	48	54
Turkey	132	82	74	50	21
Other	742	545	589	401	367
Total	**6095**	**4 829**	**4 211**	**4 376**	**3 032**

Table 16 indicates the upper confirmed fact that Romania, Sebia and Ukraine has remained the three main source counties, while the role of other nationals coming from other countries of the world are playing marginal role (8-12%) in naturalisation. It means that Hungary can be hardly considered as multicultural country due to ethnic migration from the neighbouring states. Or the Hungarian citizenship can attract only kin-minorities. Either the artificial preservation of cultural homogeneity, or limited attracting power, the Table 17 refers on a small group of naturalised persons yearly. We have to add that visa-residence permit – settlement permit – naturalisation process together takes at least 3-5 years even for benefited (ethnic) applicants alienating them from the whole institution of nationality.

Table 16: Rate of applicants for (re)naturalisation

Applicant for (re)naturalisation by nationality	2002	2003	2004	2005	2006
Romania	61,20%	60,30%	63,62%	67,80%	66,00%
Serbia-Montenegro	16,70%	15,10%	12,68%	11,00%	9,30%
Ukraine	10,60%	14,40%	14,28%	12,30%	11,90%
Other from Europe	5,60%	3,90%	4,96%	4,30%	6,40%
Non-European	4,80%	5,30%	3,44%	3,90%	5,70%
Stateless	1,10%	1,00%	1,02%	0,70%	0,70%

Table 17: Number of naturalised persons

(Re)Naturalisation process	2002	2003	2004	2005	2006
Persons (re)naturalised in the given year	3 890	5 579	5 667	9 981	6 564
Rejected applicants	468	502	502	482	424

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CHAPTER X. SOCIAL SECURITY

1. Regulation in force

- 1991. évi IV. törvény a foglalkoztatás elösegítéséröl 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 esélyegyenlöségéröl [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]

2. 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.[129] 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 which place students or migrant persons in need on the same footing with migrant workers as regards social benefits, has been inserted into this sphere of Hungarian legislation (see for more in Chapter 11 on students).

129 These bilateral agreements are constantly under review.

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 members can qualify as unemployed in terms of UnempA and are entitled to *unemployment benefits*.[130] 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 coordination probably were the frontier worker definition and its usage in the unemployment sphere (*Meints* case[131]), the *Kohll and Decker* cases in the sickness field from 1998,[132] 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 who already implemented the *Kohll and Decker* case law[133] giving the right to insured persons to go to an other 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 is still the connection between the transition period and Reg. 1408/71/EEC.[134] The Accession Treaty envisages a transition phase during which certain EC law norms are suspended (See in upper Chapter). Very importantly, Reg. 1408/71/EEC is not suspended, meaning that obligations following form 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.

3. Case law

As regards the *Collins* judgement,[135] our 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

130 As from 1 November 2005 our unemployment system has completely been re-structured – conformity with Reg. 1408/71/EEC is kept.
131 57/96 *Meints* (1997) ECR I-6689.
132 C-120/95, C-158/96 *Kohll* and *Decker* joint cases (1998) ECR I-1831.
133 Article 27 of Act LXXXIII of 1997 on the benefits of Compulsory Health Insurance.
134 See the description of the problem in Gellérné Lukács Éva – Szigeti Borbála (2005) p. 26-29.
135 C-138/02, *Brian Francis Collins v Secretary of State for Work and Pensions*, OJ C 106, 30/04/2004, p. 9-10.

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.

The *Röckler* judgement[136] is noteworthy. According to the judgement, the period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account for calculating a parental benefit, if the person after the employment with the Commission but prior to the birth-giving took up employment in Sweden. The judgement was based on the free movement of workers provisions and not on Reg. 1408/71/EEC but regulated the eligibility to a social security benefit. The judgement focused on the social security rights of employees of the European Communities who do not fall within the personal scope of Reg. 1408/71/EEC, but awarded them a right which was based on the principle of aggregation falling from Reg. 1408/71/EEC. The practical difficulty with the implementation of this judgement is that a sole right (the obligation of a state to take into account periods fulfilled with the EC) is confirmed but the complementary rights and obligations enshrining in Reg. 1408/71/EEC are missing. Consequently, the flow of data and the data protection rules, the anti-accumulation rules and the top-up benefit system is not attached to the right of aggregation and without these its implementation faces real problems.

4. 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 do 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 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 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.*

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136 Case C-137/04 *Amy Rockler v Försäkringskassan*, formerly Riksförsäkringsverket, 16 February 2006.

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CHAPTER XI. ESTABLISHMENT, PROVISION OF SERVICES AND STUDENTS

1. Regulations in force

- 1998. évi LXXII. törvény a külföldiek önálló vállalkozóként történö gazdasági célú letelepedéséröl [Act LXXII of 1998 on the right of economic establishment of foreign self-employed]
- 1994. évi I. törvény a Magyar Köztársaság és az Európai Közösségek és azok tagállamai között társulás létesítéséröl szóló, Brüsszelben, 1991. december 16-án aláírt Európai Megállapodás kihirdetéséröl [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]
- 2005. évi CXXXIX. törvény a felsöoktatásról [Act CXXXIX of 2005 on high-level education]
- 1993. évi a LXXIX. törvény a közoktatásról [Act LXXIX of 1993 on public education]
- 110/2004. (IV. 28.) Korm. rendelet az áruk, szolgáltatások és anyagi értéket képviselö jogok országhatárt, illetve vámhatárt átlépö kereskedelméröl [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]
- 157/2001. (IX. 12.) Korm. rendelet a külföldiek magyarországi és a magyarok külföldi felsöfokú tanulmányainak egyes kérdéseiröl [Government Decree on Distinct Issues Regarding Education of Foreign Nationals in Hungary and of Hungarian Nationals Abroad]
- 175/2006. (VIII. 14.) Korm. rendelet a felsöoktatási hallgatók juttatásairól [Government Decree on Benefits of Students in High-level Education]
- 86/2006.(IV.12.) Korm. rendelet a Diákhitel Központról [Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre]

2. 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 Art.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 entrepreneur activities on the basis of which the person pays social security contributions on his/her own.[137] *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

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

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 Decision 1/2000 of the EU-Hungary Association Council of 11 April 2000 and took effect on 1 July 2000.[138]

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.

3. 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.[139]

The new Member States are entitled to apply reciprocity in this regard,[140] 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).[141] 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 provi-

138 2000/327/EC, OJ L 114/32, 13.5.2000.
139 Point 13 of Annex X.
140 *Ibid.*, 3rd paragraph.
141 There is no public information whether the notification to the Commission has been effectuated or not.

sion of companies, which are settled in the Member State not affected by point 13 of the Treaty of Accession.[142]

4. Students

The new Act on high-level education (Act CXXXIX of 2005) entered into force on 1 March 2006. The HighA re-structured the prior law, however, the rights of migrants are regulated in the same spirit as before.

"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 (PublicA), while high-level education is regulated by the HighA and its implementing rules.

There are special provisions for *non-Hungarian national students* in public education (Article 110 of PublicA). 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 possessing 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 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 in public education (including secondary level education).

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. Hungarian high-level education institutions shall be registered and approved by the Registration Authority and recognised by the Hungarian Parliament (Art. 12.), while foreign high-level education establishments can be operational in Hungary if they are registered (Art. 116). Only recognised/registered high-level educational institutions are entitled to normative financing from the state – among others – on the basis of the number of students who are qualified as "students taking part in education financed by the state". Private Hungarian institutions enter into an agreement with the state on the number of their "students taking part in education financed by the state" (Art. 129). Foreign institutions can be entitled to normative financing only on the basis of international agreement.

Full time students are entitled to several benefits. They can use the services of the institution (library, laboratory etc.), apply for scholarships, college-accommodation, social maintenance payments, contribution to the costs of their books, to their accommodation and further benefits enumerated in the Statutes of the institutions, for instance, student card (Article 46). Students, as a main rule, pay attendance fees and other costs (Article 49).

There are special provisions for non-Hungarian national students (Article 39 and Article 119). Pursuant to the HighA *EEA nationals and their family members are entitled to enter into Hungarian high-level education under the same conditions as Hungarian nationals* [Article 39 (1)]. *As a main rule, all the provisions of the HighA shall be applicable, EEA nationals and their family members are entitled to social maintenance payments and other study grants, contribution to their books and accommodation* (Art. 119 (2) b). This rule is in full compliance with Art. 24 (2) of Directive 2004/38/EC which confirms that Member States are not obliged to provide for social maintenance payments for student be-

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

fore they obtain long-term resident status. It means that for a certain period of time the Member State is exempted, however, after obtaining the long-term resident status this obligation comes into force. Hungarian law benefits in general EEA nationals and their family members irrespective of the duration of their stay. Hungarian law also takes account of the *Grzelczyk* case,[143] according to which in certain cases a Member State is obliged to endure that a legally resident student faces financial difficulties.

The HighA [Article 119 (3)] expressly delegates the power to the Government to regulate the issue of foreign students which takes the form of the EducD.

Prior to 1 September 2006 the system enlisted the foreign students into different groups (from A to F) and attached well-defined rights to the groups. EEA nationals belonged to group "F" if they qualified as "students taking part in education financed by the state". The entitlements of group "F" were expressly regulated in Article 14/A. Pursuant to this article EEA nationals enjoyed the same rights as Hungarian citizens because

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

This meant that all EEA nationals enjoyed the same benefits as Hungarians except the fact that they did not have access to social benefits. However, the Decree emphasised [Section 14/A. (5)] that those EEA nationals who fell within the ambit of Reg. 1612/68/EEC are indeed entitled to social advantages. The Decree stated as well that the institution could oblige the applicant of EEA nationality to evidence that s/he disposes over necessary Hungarian languages skills.

With effect form 1 September 2006 a new Government Decree entered into force repealing the EducD (Government Decree No. 175 of 2006, 14 August on the Benefits of Students in High-level Education). The new system terminated the categorisation of students in groups. Article 2 enumerates the benefits which are generally available in Hungarian high-level educational institutions: study grants, social maintenance payments, other grants (e.g. grant of the President of the Republic), contribution to books, accommodation, usage of library, sport facilities etc. The eligibility of EEA nationals and their family members to these benefits is clear reading together the HighA and Article 28 of the Government Decree. Pursuant to Article 28 (2) of the Government Decree *EEA nationals (and nationals qualifying as EEA nationals) and their family members shall be treated on an equal footing with Hungarian nationals as regards rights and obligations in terms of fees and benefits.*

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 term 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.

The Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre aims at providing for long-term and subsidized study loan construction for students in high-level education. The Study Loan Centre is responsible for granting the loan to the student who meets the requirements laid down in the Decree. The following persons are eligible to apply for the study loan: Hungarian nationals, refugees, persons with permanent residence permit, and the nationals of EEA countries if they possess a residence permit issued for employment or self-employment purposes (in accordance with the AlienA).

It inherently means that only Community workers and self-employed are entitled to apply for the study loan, EEA nationals who study in Hungary without exercising an eco-

143 C-184/99 *Rudy Grzelczyk v Centre Public d'Aide Sociale d'Ottignies Louvain-la Neuve eset* (2001) ECR I-6193.

nomic activity are not expressly allowed to apply. The family members of EEA nationals are generally not allowed to apply for the study loan.

The Hungarian rule is in partial compliance with Article 24(2) of Directive 2004/38/EC according to which Member States shall not be obliged, prior to the acquisition of the right of permanent residence, to grant students loans to persons other than workers, self employed persons, persons who retain such status and members of their families. The Hungarian rule meets the provisions of the Directive as regards workers and self-employed but seems to be contrary to it with respect to family members. Moreover, the Directive obliges Member States to provide for the possibility of the study loan to EEA nationals other than workers and self-employed after obtaining the right of permanent residence. It seems that the Decree tends to sort out this issue by referring to persons with permanent residence permit. However, hence the document issued on the basis of EC law does not have the same name the implementation of this provision is questionable.

Recent literature

Oltalomkeresők 2006.évi számai [Migration Newsletter issued by the Hungarian Assocaition for Migrants] www.refugee.hu

Grósz Katalin: Határon átnyúló jogi képviselet lehetöségei [Opportunities of legal representatives across the borders] *Közjegyzök Közlönye* 2007/2. 10-12.

Homicskó Árpád: A személyek szabad mozgásának biztosítása az Európai Unióban az egészségügyi szolgáltatások vonatkozásában [Free movement of persons and health care services] *Jogelméleti Szemle* 2006/1-2

Homicskó Árpád: Az egészségügyi ellátások biztosítása az Európai Unió tagállamaiban [Healh care services in the Member States in he EU] Globalizáció és a magyar jog. 2006. 100-105.

Az Európai Parlament állásfoglalása a jogi szakmákról és a jogrendszerek müködéséhez füzödö általános érdekröl [Statement of the EP on the legal professions and common interest to operation of legal systems] *Ügyvédek Lapja* 2006/2:13-16.

CHAPTER XII. MISCELLANEOUS

In 2006 four academic institutions established a regular survey network on social and economic impacts of accession in Hungary. This interdisciplinary approach includes economic, sociological, political sciences and legal analysis also on labour migration, effects of transitory measures on labourers from A8. The first volume is in press but conference held at the Hungarian Academy of Sciences was publicly discussed just for critics against illiberal Governmental regulation introduced against Bulgarian and Romanian labourers in 2007. Neither estimations, nor prior experiences of A8 can justify the temporary provisions.

The Ministry of Foreign Affairs in late 2006 requested certain academic and research institutes to prepare a foreign relations strategy for the coming 5-10 years. Employment and foreign labour policy means one component of it. Central European University prepared discussion papers involving scholars from numerous universities, Hungarian Academy of Sciences and other experts. The papers and expert opinions are debated in March-April of 2007, and its result would be available in a book(let).

A gender study on role playing by the women in international migratory movements was launched by a scientific consortium in 2006. FEMAGE is financed by the EU 6th framework research program covering on Hungary, Estonia, Czech Republic from A8 and Germany, Austria and Finland from EU15.[144] Beyond questionnaire-based data collection and interviews, it makes analysis on stakeholders (government, civil and migrants' organizations, trade unions), too.

Series of compilation of case law at the ECJ were published in Hungarian in the periodical issuing for judges [Bírósági Határozatok] also in 2006. In parallel this popularisation of case law, the activity of national courts to submit application for preliminary ruling was growing. The Supreme Court published at least four opinions in which outlined own views on how to implement in the adequate way of the entitlement of judges to launch preliminary ruling process. Those cover on (a) importance of accession date to the EU; (b) exclusion of repetitive request due to acte claire; (c) exclusion of substantive collision of national law with a Directive; and (d) direct applicability of directives.[145] However, the electronic data base of juridical decisions will be set up only on 1 July 2007. For this reason research of impacts of ECJ on legal practice means unresolved task in Hungary.

Literature

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Allan F. Tetham: EC Law in Practice: A Case-Study Approach. HVG-Orac Kiadó, Budapest, 2006.

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144 FEMAGE (SSP4-CT-2005-022355) Needs for female immigrants and their integration in ageing societies 2006-2007 www.bib-demographie.de/femage/.

145 BH 2006/511, 1433, 18, 374 (with reference to the Civil Procedural Act Art 115/A, 155/A, 249/A., Treaty 234., ECJ C-166/1973, C-238/81).

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Kun Attila: Posting of workers in the EU with specific regard to temporary agency work in Hungary. = Studia iuridica Caroliensia, 2006, p. 109-130.

APPENDIX

Internet sites of national legislation

www.irm.hu (legal provisions related to justice) in Hungarian
www.magyarorszag.hu (legal provisions related to public administration)
www.mhk.hu (the recent copies of the Magyar Közlöny -- Official Gazette) in Hungarian
http://www.magyarkozlony.hu/nkonline/index.php?menuindex (other copies of the Magyar Közlöny – Official Gazette) in Hungarian
www.bevandorlas.hu (the most relevant rules on immigration are available)

Internet sites of judgments in Hungarian

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
AlienMD	Executive Decree of the Minister on AlienA No. 25 of 2001, 21 November
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
EqualA	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities
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
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, and the Government Decree No. 139 of 2006, 29 June replaced the prior on 1st July 2006
UnempA	Act IV of 1991 on Job Assistance and Unemployment Benefits
PublicA	Act LXXIX of 1993 on Public Education
HighA	Act LXXX of 1993 on High Level Education

EducD	Government Decree No. 157 of 2001, 12 September on Distinct Issues Regarding Education of Foreign Nationals in Hungary and of Hungarian Nationals Abroad