

**REPORT**  
**on the Free Movement of Workers**  
**in Hungary in 2007**

Rapporteur: prof. Judit Tóth  
University of Szeged

September 2008



## Contents

Abbreviations

Executive summary

Chapter I Entry, residence, departure

Chapter II Access to employment

Chapter III Equality of treatment on the basis of nationality

Chapter IV Employment in the public sector

Chapter V Members of the family

Chapter VI Relevance/Influence/Follow-up of recent Court of Justice Judgments

Chapter VII Policies, texts and/or practices of a general nature with repercussions on free movement of workers

Chapter VIII EU enlargement

Chapter IX Statistics

Chapter X Miscellaneous

## Abbreviations

AlienA	Act XXIX of 2001 on Entry and Stay of Foreigners modified by Act I of 2005, Act XLVI of 2005, Act LXXXIII of 2005 and Act XLVI of 2005
AlienD	Government Decree No. 170 of 2001, 26 September implementing the rules of Act XXIX of 2001. It was modified by Government Decree No.119 of 2005, 28 April and Government Decree No. 178 of 2006, 23 August
CardD	Government Decree No. 17 of 2005, 8 February on the student card
ChildA	Act XXXI of 1997 on the Protection of Children and Guardianship
DisabledA	Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons
EEKH	Office of Health Authorisation and Administrative Procedures
EkhoA	Act CXX of 2005 on Simplified Public Contributions
EqualA	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities
FamA	Act LXXXIV of 1998 on Support of Families
FreeA	Act I of 2007 on Free Movement and Right to Residence
FreeD	Government Decree No. 113 of 2007, 24 May implementing the Act I of 2007
FreeMD	Decree of the Minister of Justice and Law Enforcement No. 25 of 2007, 31 May implementing the Act I of 2007 and Government Decree No. 113 of 2007, 24 May
HealthA	Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance
HEIC	Hungarian Equivalence and Information Centre
HighA	Act CXXXIX of 2005 on High-level Education
HouseD	Government Decree No. 12 of 2001, 31 January on the housing-related state subsidies
Labour Code	Act XXII of 1992 (including all amendments)
LandA	Act LV of 1994 on Arable Land
LoanD	Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre
ManD	Government Decree No. 118 of 2001, 30 June on the registration and operation of agencies for the provision of manpower and private placement agencies
MusD	Government Decree 194 of 2000, 4 November on benefits at museum admission
NKHI	National Office for Research and Technology
OIN	Office for Immigration and Nationality Affairs (BÁH) under the subordination of the Ministry of Justice and Law Enforcement (IRM)
PermitD	Decree of the Social and Family Affairs Minister No. 8 of 1999, 10 November On Work Permits Issued to Foreign Nationals in Hungary
PriceA	Act LXXXVII of 2003 on Consumer Price-Supplement
PublicA	Act LXXIX of 1993 Public Education
PuboA	Act XXIII of 1992 on Legal Standing of Public Officials
PubsA	Act XXXIII of 1992 on Legal Standing of Public Servants
QualA	Act C of 2001 on Recognition of Foreign Diplomas and Qualifications

## HUNGARY

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
ResD	Government Decree No. 181 of 2007, 6 July on the accreditation of research organisations receiving third-country national researchers and on the hosting agreement
RomD	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
ScolD	Government Decree No. 152 of 2005, 2 August on the scholarships for promoting the equal opportunities of disadvantaged groups
SocialA	Act III of 1993 on Social Administration and Social Benefits
SportA	Act I of 2004 on Sport
StudD1	Government Decree No. 175 of 2006, 14 August on the benefits of students in high-level education
StudD2	Government Decree No. 51 of 2007, 26 March on benefits and fees of students in high-level education
TaxA	Act CXVII of 1995 on Personal Income Tax
TaxPA	Act XCII of 2003 on Taxation Procedural Rules
ThirdA	Act II of 2007 on Entry and Residence of Third Country Nationals
ThirdD	Government Decree No. 114 of 2007, 24 May on the implementation of Act II of 2007
TraD1	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
TraD2	Government Decree No. 355 of 2007, 23 December on the transitory rules applicable to free movement of workers by the Republic of Hungary in respect of persons enjoying the right to free movement and the right of residence
TransD1	Government Decree No. 139 of 2006, 29 June on advantages in public passenger transport
TransD2	Government Decree No. 85 of 2007, 25 April on advantages in public passenger transport
TWB.A	Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions
UnemplA	Act IV of 1991 on Job Assistance and Unemployment Benefits

## Executive Summary

After some months delay the Act I of 2007 on free movement and right to residence transposed the 2004/38/EC Directive into the national law.

### *The FreeA*

- clearly regulates that the Republic of Hungary guarantees the right to free movement and the right of residence to EEA nationals (also Swiss nationals) and this right is also provided for the family members of Hungarian nationals (irrespective of their nationality). Family members are included in the term “persons being entitled to free movement and right to residence”.
- changed the personal scope of several very important acts upon its entry into force. Usually these acts refer to “persons being entitled to free movement and right to residence” in their personal scope meaning that family members are covered by this term. In sum, the wording of the personal scope of the FreeA and its extensive word-by-word citation in other areas of law lifted family members into the category of migrant workers – with some exceptions of course.
- refers on Schengen Borders Code and visa requirements providing certain remained components of Schengen acquis transposition into the Hungarian regulation.

These legislative steps generally contributed to the enhanced rights of union citizens and family members in Hungary.

In 2007 the Hungarian regulation on *employment in public sector* was changed in limited extent in order to unify the terminology (persons enjoying right to free movement as FreeA inserted into the national law), and to introduce more instrument of competitiveness (entry examination) and anti-corruption rule (declaration on assets). The reasons, needs why non-nationals are excluded from numerous positions – especially as public servants – are not clearly explained by law. It seems arbitrary including granting or refusing exceptions for non-nationals.

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. Until 2009 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.

Directive 2005/71/EC on a specific procedure for *admitting third-country nationals for the purposes of scientific research* has been implemented in Hungarian law at different levels (acts, decrees). According to the data of the competent authority for the registration of research organisations (NKHI) at the end of 2007 the number of registered research organizations amounted to 38. Upon May 2008 the number increased to 72 showing a slowly growing interest of research organisations to take the chance of beneficial entry and residence of third-country researchers. Also the website of the NKHI evidences that the possibility of accepting third-country national researchers in an enhanced way is well-known in Hungary. However, according to the register there was no third-country national researcher entering into a hosting agreement with the registered research organization in 2007. The zero number shows that in reality the opportunity has not yet been utilized. This transposition may illus-

## HUNGARY

trate the pure law-making without proper infrastructure, pro-migration policy cannot be successful.

Some types of *repercussion on free migratory movements* can be seen from the complaints submitted for maladministration to the Ombudsman and the Equal Opportunity Office. In absence of administrative or judicial practice (e.g. free accession to judgements at courts, major administrative decisions or training materials, public data and statistics on migration-relevant issues) these complaints would assist to analyse the legal practice.

The *participation of other nationals on the Hungarian labour market is subsidiary*, and is positively appreciated. The employment of Slovak nationals is treated on a very practical basis. Employers favour Hungarian workers because they do not necessarily need accommodation, travel and administrative costs. However, if no Hungarians are available, there are well-functioning mechanisms to recruit Slovak (or marginally other, e.g. Romanian) nationals. Rational facts influence on the decision of employers. The most important factors are: distance between the place of work and the place of living of the worker; limited knowledge of Hungarian language, additional costs related to the maintenance of the labour force. The legal background is decisive. Since authorisation has been deleted between Hungary and Slovakia labour relations intensified and became balanced.

As from 1 January 2008 the rules on access to employment of EEA nationals and their family members became *simple and transparent due to the Government Decree* on the transitory rules applicable to free movement of workers enjoying the right to free movement and the right of residence. As a main rule occupations that are subject to a diploma (being regulated professions) are exempted from the necessity of a work permit, no authorisation whatsoever is needed for such persons. It means that Romanian and Bulgarian nationals need a work permit only if they arrive in the sector most probably hit by unemployment in Hungary, in the sphere of unskilled work. If the occupation covers an unskilled job work permit is necessary, however, it is issued without the assessment of the labour market in general for agricultural seasonal activities. Pursuant to the general administrative rules employers are obliged to report the competent labour centre the employment of EEA nationals and their family members.

It can be stressed that the liberalisation of labour relationships between the A8 countries (the 93% of whom are Slovak nationals in Hungary) proved *beneficial for both sides* contributing to a more balanced labour market in the respective geographical frontier area. An intensifying competition for workers might be awaited in the near future hence new companies settle not only on the Hungarian side of the border but on the Slovak side as well.

## Chapter I Entry, Residence, Departure

### 1. REGULATION IN FORCE

- 2001.évi XXIX. törvény a külföldiek beutazásáról és tartózkodásáról [Act XXIX of 2001 on Entry and Stay of Foreigners] modified by Act I of 2005, Act XLVI of 2005, Act LXXXIII of 2005 and Act XLVI of 2005 – in force until 30 June 2007
- 170/2001. (IX.26.) Korm. rendelet a külföldiek beutazásáról és tartózkodásáról szóló 2001.évi XXIX. törvény végrehajtásához [Government Decree No. 170 of 2001, 26 September on implementing the rules of Act XXIX of 2001] It was modified by Government Decree No.119 of 2005, 28 April and Government Decree No. 178 of 2006, 23 August – in force until 30 June 2007
- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [Act I of 2007 on entry and residence rights of persons with right to free movement and right to residence] with effect since 1 July 2007
- 113/2007. (V.24.) Korm. rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007.évi I. törvény végrehajtásáról [Government Decree No. 113 of 2007, 24 May on implementing the rules of Act I of 2007] with effect since 1 July 2007

This Chapter focuses on the rights of entry and residence of EEA nationals. After some months delay the Act I of 2007 on free movement and right to residence<sup>1</sup> transposed the 2004/38/EC Directive into the national law. However, it is necessary to shortly refer to this outstanding legislative instrument that entered into force on 1 July 2007. FreeA contains amendments of about 30 different acts, so this package of laws means the transposing rule of 2004/38/EC Directive.

#### *The FreeA*

- clearly regulates (Article 1 (1) b) that the Republic of Hungary guarantees the right to free movement and the right of residence to EEA nationals (also Swiss nationals) and pursuant to Article 1 (1) c) this right is also provided for the family members of Hungarian nationals (irrespective of their nationality). Family members are included in the term “persons being entitled to free movement and right to residence” (Article 1(1) involved).
- changed the personal scope of several very important acts upon its entry into force. Usually these acts refer to “persons being entitled to free movement and right to residence” in their personal scope meaning that family members are covered by this term. In sum, the wording of the personal scope of the FreeA and its extensive word-by-word citation in other areas of law lifted family members into the category of migrant workers – with some exceptions of course.
- refers to Schengen Borders Code and visa requirements providing certain remained components of Schengen acquis transposition into the Hungarian regulation.

---

<sup>1</sup> The Parliament adopted it on 18 December 2006.

## HUNGARY

These legislative steps generally contributed to the enhanced rights of union citizens and family members in the sphere of residence rights, too.

### 2. PRIOR TO 1 JULY 2007

FreeA entered into force on 1<sup>st</sup> July 2007, consequently in the first half of 2007 the prior AlienA – in particular its chapter on EEA nationals and family members as special, exceptional provisions – together with AlienD were applicable.

The AlienA and AlienD regulated *until 30 June 2007* the entry, residence and departure of EEA nationals (“national of the Member State of EEA”) which covers on Hungarian citizen in absence of exclusive reference, and family members of EEA nationals as *specific rules in relation to all non-nationals as general subjects of AlienA*. The clear circle of specific provisions cannot be exhaustively described due to the broad entitlement written in AlienA given to the Government.<sup>2</sup> Its Decree contains a provision referring back to 38 various Sections that “shall be implemented on EEA nationals in a proper way”.<sup>3</sup> This is out of rule-of-law.

#### A. 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.

#### B. 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 75<sup>th</sup> days of residence personally on a form<sup>4</sup> 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,

---

<sup>2</sup> Art.30 (5) says: „Further conditions for residence of EEA national and his/her third country family member may be defined in Government Decree.”

<sup>3</sup> Section 126 of AlienD

<sup>4</sup> 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.

## HUNGARY

- 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 necessities, own assets) and health care with exception of case defined in point d. while its fulfilment has also to be proved (for instance, contract on employment, labour permit or the necessary certificate for self-employment or entrepreneurship),
    - iii. Student has to present the document of accession to the higher education or actual enrolment.
  - 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 entry.<sup>5</sup>

Public health is endangered by the following diseases, or in being of the pathogen condition of

- Tuberculosis,
- HIV-infection,<sup>6</sup>
- Leprosy,
- Lues,
- Typhoid or paratyphoid in pathogen condition, or
- Hepatitis B.<sup>7</sup>

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.

---

<sup>5</sup> Art.32 (1) f. of the Act XLVI of 2005 modified it

<sup>6</sup> Since mid-90s human rights organisations have criticized the HIV-infection and AIDS for being treated as usual, traditional epidemiological appearance in public law in Hungary. [www.tasz.hu](http://www.tasz.hu)

<sup>7</sup> Since 1st of April 2006 -- Ministerial Decree No. 14 of 2006, 27 March

### C. 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 suspensive 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
    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<sup>8</sup>.
- 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.<sup>9</sup>

### 3. SINCE 1 JULY 2007

The *personal scope of the FreeA means a legal guarantee for free movement and residence* as subjective right. Hungary shall ensure the right to move and reside freely for (Art.1):

- a) citizens of Member States of the European Union, with the exception of Hungarian nationals, and citizens of other signatory states to the Agreement on the European Economic Area, and also, with regard to the right to move and reside freely under international agreements between the European Community and its Member States and non-signatory states to the Agreement on the European Economic Area, for persons with

---

<sup>8</sup> Art 32 (1) e. of the Act XLVI of 2005 amended

<sup>9</sup> *Bíróági Határozatok 2006/273.* [Published Judgements of the hisher courts]

## HUNGARY

- identical legal status to nationals of signatory states to the Agreement on the European Economic Area (*EEA national*);
- b) family members of a non-Hungarian EEA national who accompany or join them (*family member of an EEA national*);
  - c) non-Hungarian family members of a Hungarian national who accompany or join them (*family member of a Hungarian national*); and
  - d) a person who accompanies or joins an EEA national or a Hungarian national and who:
    - i. is a dependant of a Hungarian national, or who has lived in the same household as a Hungarian national for at least one year, or who is cared for in person by a Hungarian national upon serious health grounds;
    - ii. was a dependant of an EEA national, or lived in the same household as an EEA national for at least one year, in the country from which they arrive, or who is cared for in person by an EEA national upon serious health grounds;and whose entry and residence as a family member is permitted by the authorities.

FreeA regulates the *definition of family member* (Art 2b, see more details in Chapter 5) and the meaning of *paid employment* (Art.2c):

- a) anyone who works for consideration in a legal, hierarchical employment relationship as defined by law, for and with another person;
- b) anyone whose employment may legally be performed independently and for consideration, if he sees to health insurance and pension plan cover himself according to the law; or
- c) anyone not falling under the scope of prior paragraph, and who performs his employment as the owner or director of a business, co-operative or other profit-generating legal entity, or as a member of its directing, representative or supervisory body.

### ***a. Entry and residence not exceeding 3 months***

It is regulated by FreeA (Art. 3, 5):

- i. EEA citizens with a valid travel document or personal identity card are entitled to enter the territory of Hungary.
- ii. The rules in Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) shall also apply to entry. If entry is denied because the entry conditions have not been fulfilled, the border traffic authority shall, upon request of the (very probable) EEA national the opportunity to obtain the necessary documents, or otherwise prove that the entry conditions have been fulfilled, within 72 hours of return being decreed.
- iii. An EEA national with a valid travel document or identity card and entering legally, shall have the right of residence for up to 3 months from the date of entry as long as his residence does not become an unreasonable burden on the social assistance system of Hungary.

### ***b. Residence exceeding 3 months (Art 6, 9, 10(4), 13, 14(1)):***

- i. EEA nationals shall be entitled to residence for more than 3 months if:
  - a. the purpose of residence is paid employment;

## HUNGARY

- b. they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and have adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law; or
  - c. they have been admitted to study at an educational institution falling under the scope of the Act on General and Further Education, including vocational training and adult education, if the training programme is accredited, and has, at the time of entry, sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and have adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.
- ii. On ceasing paid employment, an EEA national shall retain right of residence as a worker, if s/he
    - a. is unable to work due to accident or illness requiring medical treatment;
    - b. has become a job-seeker, as defined in separate rules, following the cessation of paid employment; s/he retains their right of residence based on paid employment for as long as they are paid job-seeker support as defined under separate act (6 months), or
    - c. is participating in vocational training for performing professional activities at a higher level, providing that he gained the practical experience stipulated for such vocational training during employment.
  - iii. Family members of an EEA national shall retain the right of residence if they are the family member of a Hungarian national or of an EEA national who fulfils the conditions of residence (self-subsistence, paid employment, study purpose).
  - iv. Leaving territory of Hungary for more than 6 months within one year before obtaining the right of permanent residence means *a waiver the right to residence*. It shall not apply if the reason for absence is compulsory military service; or an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.
  - v. The *right of residence shall cease* if: they no longer fulfil the conditions for the right of residence; or they are prohibited from entry and residence.

### ***c. Right to permanent residence (Art. 16-19)***

- i. It shall be provided for EEA nationals who have resided legally in the territory of the Republic of Hungary for five years without interruption, further on, children born in Hungary to a parent with the right of permanent residence.
- ii. If the family member surrenders the right of residence in the territory of Hungary and then returns for a period of more than 3 months, the period of time required for obtaining the right of permanent residence shall start again. The following shall not constitute interruption to residence: residence outside the country of no more than six months per year; absence for compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the EEA national stops exercising the right of residence in Hungary (leaving, disappearing).

## HUNGARY

- iii. EEA nationals EEA nationals residing in Hungary for paid employment purposes shall be entitled to permanent residence before the end of the five-year residence period, if:
  - a. they have resided in the territory of the Republic of Hungary for more than 3 years from the date of entry, and at the time of ending paid employment they have reached the age laid down for entitlement to an old-age pension, or have ceased paid employment in order to take early retirement, assuming that they performed their paid employment in the country in the 12 months prior to retirement;
  - b. they have resided in the territory of the Republic of Hungary for more than two years from the date of entry, and gave up paid employment as the result of an accident or illness requiring medical treatment;
  - c. their inability to work is the result of an industrial accident or occupational illness entitling them to treatment as defined in separate legislation; or
  - d. they have been in paid employment in the territory of Hungary for at least 3 years without an interruption, and have subsequently been in paid employment in the territory of another signatory state to the Agreement on EEA, but keep their domicile in the territory of Hungary.

The mentioned period of paid employment shall also include time during which the EEA national: qualifies as a job-seeker as defined in separate legislation; or is not in paid employment as the result of accident or illness.

- iv. The right of permanent residence shall cease in the event of continuous absence of 2 years; or declaration of a ban on entry and residence.

### ***d. Documentation proving the right to residence is as follows (Art.21, 24, 26-32)***

- i. *Registration certificate:* An EEA national, if his/her residence for more than 3 months, shall be obliged to register residence and personal details at the latest by the 93<sup>rd</sup> day after entry. Documents verifying that the conditions for residence are fulfilled, as defined under separate rules, must be shown or enclosed at the time of registration. Once the conditions given in FreeA are verified, the OIN regional unit shall immediately issue the registration certificate that attest to the fact and date of the registration. The paid employment as purpose of residence shall be certified with labour contract, property document in a company, entrepreneurship card or other proper way. The minimal monthly income must exceed the lawful minimal pension per month per capita – about 130 € – in the family, or proving assets, real estate or other sources of income, entitlement to social insurance benefits, taking into account the size of the family not to become unreasonable burden. The study purpose may be proved with enrolment or student status document. In case of ceased employment the EEA national oblige enter into contact with the regional unit of the OIN proving the conditions for residence exist. Further on, the worker status may be certified with expert opinion issued by entitled medical institute on limitation/lost his/her work ability, certificate issued by the labour authority on obtaining a job-seeking allowance and its expiring date, or enrolment to the re/training course together with the certificate on possible length of the training. (Section 20-23, 28 of FreeD). The registration certificate shall be invalid if the right of residence has ceased.

## HUNGARY

- ii. *Permanent residence card*: it attests to the right of permanent residence of the EEA national. It is issued by the OIN regional unit within 3 months. The permanent residence card shall be invalid if the right of permanent residence ceases.
- iii. The family member shall report *his/her first home (address) in Hungary* during the procedure for issuing a residence card. For the purposes of issuing an official certificate attesting to the personal identification number and home address, the competent authority shall notify the personal data and address records agency of the personal identification data and address of the EEA national or family member, and also information on the registration certificate or residence card. The local notary shall notify the personal data and address records agency if the registration certificate or residence card is invalid. EEA national as well as the family member are obliged to report the theft, destruction or loss of their travel document, personal identity card or document proving their right of residence, and also if they find a document believed and reported to be missing. The competent authority (OIN, Police) may issue a search warrant for the document, if the whereabouts of the document are unknown. Moreover, EEA nationals shall be obliged to obtain a new travel document to replace a lost, stolen, destroyed or expired travel document if they do not have a valid personal identity card. An EEA national or family member in residence for more than three months shall be obliged to report with their personal details: the death of a family member living with him/her; name changes; if the death or cause of name change took place outside the country. The EEA national or family members have to present the document verifying his right of residence at the request of the authority empowered to monitor the legality of residence that may be verified in any other acceptable way. (Nationals also are obliged to carry always the ID and show it upon request of the checking authority. Its rejection or negligence means a minor offence, and its imposing fine is up to 600 €.) If the EEA national or family member stops exercising the right of residence, he/she shall be obliged to report this to the competent authority.

### ***e. Departure of EEA national refers on the following issues (Art. 15(2)-(4), 33-34, 38-48, 64)***

- i. If the right of residence ceases, the EEA national and family member must *leave the territory* of the country unless they are granted a residence permit under separate legislation. The obligation to leave the country must be fulfilled within 3 months of the decision taking legal effect.
- ii. The right of entry and residence can be restricted in accordance with the principle of proportionality and exclusively on the basis of the personal conduct of the individual concerned which represents a genuine, direct and serious danger to any of the fundamental interests of society, particularly public order, public security or public health. Return and expulsion shall respect for non-refoulement (protection against torture, death penalty, persecution).
- iii. *Entry and residence is prohibited*, if in respect of him/her Hungary has undertaken an international legal obligation to enforce a prohibition of entry and residence; or anyone in respect of whom the Council of the European Union has decided to enforce a prohibition of entry and residence. The authority shall determine the duration of a prohibition of entry and residence up to 3 years in the first instance, which may be extended by a

## HUNGARY

- maximum of 3 years on each occasion, if the conditions for it still exist upon the expiry of the prohibition. It must be repealed if the grounds for prohibition no longer exist.
- iv. The competent authority may *expel an EEA national or family member* (1-5 years) who:
    - a. has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
    - b. does not have the right of entry or residence but who has nevertheless referred the competent authority to false information or untrue facts in order to verify a right of entry or residence. The authority in both cases (a, b) must evaluate the nature and severity of the crime committed; the age and state of health of the individual concerned; the family situation of the individual concerned, and the duration of family relations; the number and age of any children of the individual concerned, and the means and frequency of his/her contact with them; whether there is another state where there is no legal obstacle to the family continuing to live together, taking into account any difficulties the family members might encounter if they were forced to settle in the territory of that state; the financial situation of the individual concerned; the duration of the individual's residence in Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin.
    - c. at the instigation of the public health authority, on public health grounds if s/he suffers from, could infect with, or is carrying a disease dangerous to public health as defined in separate rule (Health Care Ministerial Decree), and does not undergo compulsory treatment for these, unless he contracts, could infect with, or carries the disease after three months have passed from the date of entry;
    - d. has legally in the country for less than 10 years and not minor (unless expulsion takes place in the interest of the minor), or
    - e. has committed an offence and the court imposed the expulsion.
  - v. Against the expulsion and prohibition of residence there is a court review with suspensive effect on enforcement. The court shall rule on the application within 8 days of its arrival. The EEA national or family member must also be heard in person at the proceedings if a request for this is made. A hearing in person may be dispensed with if the EEA national or family member cannot be summoned at the given address, or has moved to unknown whereabouts. The court may amend the decision. There shall be no further right of appeal against the decision of the court.
  - vi. An EEA national or family member prohibited from entry and residence at the same time as his/her expulsion as an alien may, after one year has passed since the date of expulsion, request that the prohibition of entry and residence be repealed with reference to a change in his state of health or family situation that justifies his residence in the territory of Hungary. The competent authority shall decide on the application within 3 months. If the competent authority ends the prohibition of entry and residence, it shall see to its repeal.
  - vii. An EEA national or family member may not leave the territory of Hungary if he/she is under arrest pending criminal proceedings, under house arrest, forbidden from leaving his/her place of residence, in custody, in extradition custody, under arrest pending extradition, under arrest pending handover, under arrest pending temporary handover, or undergoing temporary, compulsory medical treatment. The competent authority shall decide to withhold the travel documents in mentioned cases. There is no right of appeal against this decision.

*f. Other relevant rules*

The “*unreasonable burden*” as regularly returning exclusive preconditions means that EEA national or family member has obtained for at least 6 months regular social allowance or regular age benefit on the grounds of SocialA. However, the authority shall evaluate the prior length of residence in the country, length of provided social benefits and reasons for material shortage of the family or the persons in concern (e.g. timely shortage or standard need). (Section 35 of FreeD) Its amount is really solid but we have to add that all non-nationals (EEA nationals, family members and third country nationals) entering the territory of the country have to prove as minimal source 1000 HUF (4 €) for residence per entry<sup>10</sup>It is obviously anachronistic but today is in not in harmony with the “social burden rule” which is applicable per capita. Due to kin-minorities living across the (EU) borders this amount has not been lifted up for years.

There are some *transitional provisions* (Art. 88) in the FreeA providing linkage to the AlienA, instead of retroactive regulation, such as

- i. An EEA national with a residence visa, residence permit or EEA residence permit issued prior to the entry into force of FreeA, until its expiry, have the rights of persons with a registration certificate.
- ii. A family member with a residence visa, residence permit or immigration and settlement permit issued on the ground of AlienA, until its expiry, be entitled to residence in accordance with the legal status proven by the said permit. Thus there was no an automatic exchange of residence documents.
- iii. *At the request* of the EEA national or family member with a residence visa or residence permit, the OIN regional unit shall, without prejudice to the rights obtained under paragraphs upper, draw up a document verifying the right of residence defined in this Act for the duration of the permit’s validity.
- iv. *At the request* of the EEA national or family member with a settlement or immigration permit (AlienA), a document verifying the permanent residence right must be drawn up without assessing the conditions.
- v. The provisions of FreeA shall apply to proceedings relating to applications for residence or settlement permits submitted by an EEA national or family member prior to the entry into force of FreeA and which have not yet been ruled on in the first instance.
- vi. The provisions of FreeA shall apply to custody decreed prior to the entry into force of this Act for an EEA national or family member under AlienA. If 30 days have passed since custody was decreed, custody must cease on the date of entry into force of FreeA.
- vii. If 30 days have passed since custody was decreed under the Aliens Act in respect of nationals of Bulgaria or of Romania or in respect of family members with the nationality of a third country, custody must cease on the date of entry into force of FreeA.
- viii. Upon the entry into force of this Act, the following shall be revoked in respect of nationals of the Republic of Bulgaria or of Romania or in respect of family members with the nationality of a third country: returns decreed by the aliens authority under the AlienA and the prohibition of entry and residence decreed with it; and prohibitions of entry and residence decreed independently by the immigration authority.

---

<sup>10</sup> Section 25 of Decree of the Minister of Justice and Law Enforcement No. 25 of 2007, 31 May on implementing rules of FreeA and ThirdA (Act I and II of 2007).

## HUNGARY

Both AlienA (in force until 30 June 2007) and the FreeA together with FreeD (with effect from 1 July 2007) contain express rules on the *residence rights of job seekers*. It means that there has been and there is an explicit legal basis for EU nationals seeking employment to avail themselves of this status and obtain the right to residence. Job seekers are required to meet the requirement of Case *Antonissen* (C-292/89) pursuant to which the seeking of employment must be documentary evidenced and there shall be a reasonable chance to find employment.

Art. 26 (4) c) of AlienA ruled that an EEA national not possessing appropriate financial resources or full sickness insurance coverage is only entitled to the right of residence if s/he provides for documentary evidences that s/he is continuing to seek employment and that s/he has a genuine chance of being engaged within six months of his/her entry.

Art. 6 (1) a) of FreeA lays down that EEA nationals are entitled to the right of residence exceeding 3 months if they pursue economic activity. Section 19 of FreeD requires documentary proof of the economic activity. Section 20 (1) d) stresses that job seekers are required to provide for documents that evidence the continuous seeking of employment and the genuine chance of being employed. The new law does not explicitly refer to the time limit of six months within entering Hungary being more flexible than the former approach.

### *Recent legal literature*

Oltalomkeresők – Migrációs Hírlevél (Menedék – Migránsokat Segítő Egyesület) 2007. évi számai [www.refugee.hu](http://www.refugee.hu) [Newsletter on migratory movements, event, statistics -- published by the Hungarian Association for Migrants]

Judit Tóth, Is There a Strategy on the Foreign Labour Force in Hungary? *Minority Research*, No.10 (2008) 9-23

Judit Tóth (szerk.), Schengene hangolva [Preparation to the Schengen acquis] (Fejes Zsuzsanna – Sallai János – Soós Edit – Vájlok László) *Európai Műhelytanulmányok*, A Külügyminisztérium kiadványa, 113.szám, 2007, p. 1-44

## 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 1<sup>st</sup> January 2007, and 362/2004.(XII.26.) Kormány rendelet az Egyenlő Bánásmód Hatóság előtti részletes eljárásról [Government 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 1<sup>st</sup> January of 2007;
- 1997. évi LXXIV. törvény az alkalmi munkavállalói könyvvel történő foglalkoztatásról és az ahhoz kapcsolódó közterhek egyszerűsített befizetéséről [Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions] amended by the Act XIX of 2007 with effect from 1 April 2007;
- 1992.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code];
- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits];
- 175/2006. (VIII. 14.) Korm. rendelet a felsőoktatási hallgatók juttatásairól [Government Decree No. 175 of 2006, 14 August on Benefits of Students in High-level Education] is repealed by the Government Decree 51/2007. (III. 26.) that was in force until 1 August 2007;
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [Government Decree No. 51 of 2007, 26 March on Benefits and Fees of Students in High-level Education] entered into force on 1 August 2007;
- 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] amended by Government Decree 115/2007. (V.24.) with effect from 1 July 2007;
- 2001. évi C. törvény a külföldi diplomák és oklevelek elismeréséről [Act C of 2001 on the Recognition of Foreign Diplomas and Qualifications] amended by the Act CX of 2007 entering into force on the 20<sup>th</sup> of October 2007;
- 30/2004. (IV.26.) ESzCsM rendelet az Európai Közösségi irányelvek hatálya alá tartozó, feltétel nélkül elismerésre kerülő, egyes egészségügyi oklevelek, bizonyítványok és a képzés megszerzéséről szóló egyéb tanúsítványok megnevezéséről [Ministerial Decree No. 30 of 2004, 26 April on the titles of Diplomas, Qualifications and other Certificates Necessary for the Recognition of Diplomas and Qualifications in the Health Sector that fall within the scope of automatic recognition in terms of EC law] that was repealed by the 4/2008. (I.16.) EüM rendelet [Ministerial Decree 4 of 2008, 16 January] with effect from 31 January 2008;
- 31/2004. (IV. 26.) ESzCsM rendelet az egészségügyi, szociális és gyermekvédelmi tevékenység végzéséhez szükséges oklevelek, bizonyítványok és a képzés megszerzéséről szóló egyéb tanúsítványok elismeréséről, továbbá az ideiglenes működési nyilván-

tartásba vétel, valamint az oklevelek, bizonyítványok és egyéb tanúsítványok külföldi elismertetéséhez szükséges igazolások kiadásának egyes eljárási szabályairól [Ministerial Decree 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];

- 35/2007. (XI. 13.) OKM rendelet a 2001. évi C. törvény III. részének hatálya alá tartozó, végbizonyítványnak minősülő képzések és bizonyítványok felsorolásáról [Ministerial Decree No. 35 of 2007, 13 November on the enlisting of trainings and qualifications ranked as final qualification in terms of Part III of Act C of 2001];
- 36/2007. (XI. 13.) OKM rendelet a szakmai tapasztalat elismerésének szabályai alá tartozó egyes szakmai tevékenységek felsorolásáról [Ministerial Decree No. 36 of 2007, 13 November on the enlisting of professional activities that fall within the scope of recognition of professional experience];
- 37/2007. (XI. 13.) OKM rendelet azon szervezetek felsorolásáról, amelyek tagjai által gyakorolt szakmák az európai közösségi jog alapján szabályozott szakmának minősülnek [Ministerial Decree No. 37 of 2007, 13 November on the enlisting of organisations the members of which exercise professional activities that fall within the scope of regulated professions in terms of EC law];
- 15/2001. (IV. 27.) KöViM rendelet a hajózási képesítésekről [Ministerial Decree No. 15 of 2001, 27 April on qualification on water vehicles board].

## **2. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT: NON-DISCRIMINATION**

One of the main objectives of Regulation 1612/68/EEC is to guarantee the principle of non-discrimination enshrining in particular in Articles 1-4. Pursuant to these nationals of the Member States and their respective family members, shall, irrespective of their place of residence, have the right to take up an activity as an employed person, and to pursue such activity within the territory of another Member State with the same priority as nationals of that State and in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefore.

The non-discrimination can be divided into two main pillars: the free access to the Hungarian labour market by EEA nationals and their family members (i) and the non-discriminative conditions during the recruitment process (including job-offers), the legal employment relationship and in connection with other rights laid down in the Regulation (e.g. access to training in vocational schools, housing, trade union rights). The free access to the Hungarian labour market is subject to limitations in terms of the Act of Accession that is described in detail in Chapter 8. In this Chapter the focus is put on the second aspect of non-discrimination, namely to the conditions surrounding the concrete legal employment relationship.

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

- The Republic of Hungary shall respect *the human rights and civil rights* of all persons in the country without discrimination on the basis of race, colour, gender, language, re-

## HUNGARY

- ligion, 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 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 two 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.

The Labour Code expressly deals with the equal treatment principle in terms of *remuneration for work*. Already the Constitution – Art.70/B – requires equality in work.<sup>11</sup> Art. 142/A (1) of the Labour Code states the principle of equal pay by determining that in respect of the remuneration of employees for the same work or for work to which equal value is attributed the principle of equal treatment must be observed.<sup>12</sup> Paragraph (2) states that “The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of work, its quality and quantity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities”.<sup>13</sup> Pursuant to paragraph (4) the wages of employees – whether based on the nature or category of the work or on performance – shall be determined in compliance with the principle of equal treatment as enshrined in Art 5.

c) Chapter III of the EqualA (Arts. 21-23) expressly refers *to employment*. Pursuant to Article 21 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:

- i. access to employment, especially in public job advertisements, hiring, and in the conditions of employment;

---

<sup>11</sup> (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.

<sup>12</sup> This section can be regarded as the implementation of Dir. 75/117/EEC.

<sup>13</sup> 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.

- ii. 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;
- iii. establishing and terminating the employment relationship or other relationship related to employment;
- iv. relation to any training before or during the work;
- v. determining and providing working conditions;
- vi. establishing and providing benefits due on the basis of the employment relationship or other relationship related to work, especially in establishing and providing wages;
- vii. relation to membership or participation in employees' organisations;
- viii. the promotion system;
- ix. the enforcement of liability for damages or disciplinary liability.

The provisions laid down in Article 21 of the EqualA mirror the obligations of a Member State pursuant to Regulation 1612/68/EC. In compliance with the Regulation the EqualA prescribes non-discriminative advertisements and hiring procedures, training, working conditions, membership in certain organisations and increment opportunities. (Educational rights are further elaborated in point 2.3.)

The provisions of the EqualA shall be implemented through a complain procedure if a violation is supposed. The Equal Treatment Authority – *inter alia* – can act on the basis of an application but *ex officio* as well. Some procedural rules have been amended with effect from 1 January 2007.<sup>14</sup> 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. However, theoretically anti-discrimination rules transposed into the Hungarian labour law would be implemented for protection of privacy of employee against the 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. ACCESS TO EDUCATION AND STUDY GRANTS

The new Act on high-level education (HighA) entered into force on 1 March 2006. The HighA re-structured the prior, however the rights of migrants were regulated in the same non-discriminative spirit as before. The HighA has been amended twice in 2007<sup>15</sup> but these amendments did not touch upon the provisions related to the rights of migrants.

*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

---

<sup>14</sup> Act CIV of 2006 and Government Decree 332 of 2006, December 23 with effect from 1 January 2007

<sup>15</sup> Act CIV of 2007 and Act CXLI of 2007

“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) a)]. As a main rule, all the provisions of the HighA shall be applicable, EEA nationals and their family members can be 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 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,<sup>16</sup> 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. Government Decree No. 175 of 2006 on the Benefits of Students in High-level Education were in effect until 1 August 2007 while Government Decree No. 51 of 2007 on Benefits and Fees of Students in High-level Education repealed it with effect from 1 August 2007.

- a. Prior to 1 August 2007: Article 2 enumerated the benefits which were 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 was 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.
- b. With effect from 1 August 2007: Article 7 enumerates the benefits which are generally available for students. Section 26-28 regulates the system of supports payable to foreign nationals who study in Hungary. Section 28 (2) of the Government Decree stipulates that persons falling within the scope of the Act on free movement and right to residence (EEA nationals and their family members included) shall be treated on an equal footing with Hungarian nationals as regards rights and obligations in terms of fees and benefits.

Government Decree No. 86 of 2006 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

---

<sup>16</sup> C-184/99 Rudy Grzelczyk v Centre Public d’Aide Sociale d’Ottignies Louvain-la Neuve eset (2001) ECR I-6193.

education. The Study Loan Centre is responsible for granting the loan to the student who meets the requirements laid down in the Decree. The Decree was amended with effect from 1 July 2007<sup>17</sup> in accordance with the entry into force of FreeA.

- a. Prior to 1 July 2007: The following persons were 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. It inherently meant that only Community workers and self-employed are entitled to apply for the study loan, EEA nationals who study in Hungary without exercising an economic activity were not expressly allowed to apply. The family members of EEA nationals were generally not allowed to apply for the study loan.
- b. With effect from 1 July 2007: The amendment entering into force brought beneficial changes in the system of the granting of Study Loans for EEA nationals and their family members. The following categories of the personal scope remained: Hungarian nationals, refugees, persons with permanent residence permits. Article 3 has however been supplemented. Pursuant to Article 3 (1) (b) ba) EEA nationals who exercise an economic activity are entitled to apply for the study loan, moreover, pursuant to Section 3 (1) (b) bb) family members of EEA nationals who exercise an economic activity can also apply. Finally, persons who are entitled to permanent residence in terms of the FreeA can apply (Section 3 (1) (b) bd).

The Hungarian rule is in 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 and with respect to family members. Moreover, the Decree refers to persons with permanent residence permit in terms of EC law.

Summing up, EEA nationals and their family members are placed on equal footing with Hungarian nationals as regards access to vocational training and to the benefits available under Hungarian law. The enjoyment of rights is not dependent upon the worker or self-employed status, moreover, not only long-term resident but every persons studying in a high-level educational establishment can qualify. Hungarian law is more beneficial than EC law. Entering into force from 1 July 2007 the system of study loans have been amended resulting in a complete compliance with EC law. Both EEA national workers and self-employed and their family members, and persons having the right of permanent residence can apply for the study loan.

#### **4. EMPLOYMENT WITH TEMPORARY WORK BOOK**

A unique instrument of Hungarian labour law falling within the area of atypical employment 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. The essence of this legal instrument is to provide for a very flexible way of employment for both the employer and the employee to which simplified administrative procedures, reduced labour law consequences and special social security arrangements are attached. The recruitment and dismissal of the employee is easier than in a typical em-

---

<sup>17</sup> Government Decree 115/2007, Section 27 (2)

## HUNGARY

ployment relationship, the amount of public contributions and the benefits obtainable from the social security system are also fixed at a reduced level.

Pursuant to the TWB.A a worker possessing a temporary work book is entitled to work a maximum number of 120 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 TWB.A determines both the minimum and maximum salary (first column) to be attributed to this kind of work and also the amount of the payable public contributions (taxation and social insurance contribution, second column). The payment of public contributions entitles the worker to in kind health care and health accident benefits, however, health care and maternity cash benefits are excluded. The third column shows the so-called financial basis for pension and unemployment benefits. If the person gets unemployed or reaches pensionable age this income basis will be taken into account instead of his/her salary (similar to the concept of gross wage).

Minimum and maximum salary (HUF <sup>18</sup> /day)	Public contribution (HUF/day)	Basis for pension (HUF/day)
1,800 – 2,399	400	2,700
2,400 – 2,999	700	3,600
3,000 – 3,599	900	4,500
3,600 – 4,600	1,100	5,400

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<sup>19</sup>) 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<sup>20</sup> 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 (Article 1 (2) points a)-b)). Other foreigners can only get the “green temporary book” which entitles them only to a certain type of activities (seasonal work for a maximum period of 60 days per year). Act XIX of 2007 amended the TWB.A in certain aspects (e.g. a person working in Hungary as a hired worker can not be employed with TWB), but the amendment did not touch upon the rights of migrants.

<sup>18</sup> 250 HUF = 1 €

<sup>19</sup> 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.

<sup>20</sup> Act LXXI of 2005

The popularity of employment with TWB has increased in the last years (see in Chapter 9) due to the advantages being affiliated with it, in particular its flexibility and simplicity of procedure. However, the growing popularity and usage of employment with TWB raises several new questions that are crucial for the legality of this kind of employment. A great summary of unsettled legal issues mentions *inter alia* the following:

- the daily salary is fixed, however, it is not specified whether this involves 8-10-12 hours of work;
- problem of double employment relationships: is it permissible for the employer to employ the same worker in a typical legal employment relationship while also employing him/her with TWB for a different kind of work?
- albeit the usage (validation) of the TWB is really simple, administrative infringements are though not rare. These include e.g. working with an empty (not signed) TWB, working without the possession of the TWB (alleging that it was left at home). If the labour inspectors disclose infringement of law they re-qualify the legal employment relationship as a typical employment and impose not only a fine but the payment of public contributions connected to a typical legal employment relationship as well.

## **5. ASSISTANCE BY EMPLOYMENT AGENCIES**

The UnemplA regulates the eligibility conditions for labour market services and job assistance subsidies (Chapter 3). 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, and
- 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, TWB). 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 permit or not. Moreover, employers are entitled to take into account these workers when applying for certain benefits as if they were Hungarian nationals. For the consequences of the ITC case, see for more Chapter 6 on ECJ cases.

## 6. 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*).<sup>21</sup> Article 7 (2) b) of the EqualA, in this spirit, lays down that the obligation of equal treatment shall not be complied with if it has a reasonable justification based on a careful and objective deliberation of the concrete legal employment relationship. In case of language skills necessary for a certain job this exemption from the obligation of non-discrimination can be deemed lawful.

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 4). In other words, the private sectors' practice is unknown and not regulated. It would be necessary to make a survey (e.g. in chambers, lobby-organisations of economic branch) on home-grown rules and practice in future.

In QualA the rules dealing with language requirements are found in Part III on recognition of EEA diplomas of EEA nationals and their family members. Art. 22 (3) lays down that the EEA national and family member applicant is only entitled to exercise a regulated profession in Hungary if s/he disposes of the language skills necessary for the pursuit of the concrete profession. Art 28 (14) 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 38 (5) on the rules applicable in case of free provision of services, the competent authority may require the applicant to evidence that she /he obtained the necessary information on Hungarian laws and ethical rules. For instance, the Ministerial Decree No. 31 of 2004 on the recognition of health care diplomas (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.

## 7. RECOGNITION OF DIPLOMAS AND ACADEMIC DEGREES

The most important bodies exercising official functions in this field are the EEKH and the HEIC. The former is an independent body since the end of the year of 2004 dealing with health-related qualifications.<sup>22</sup> The HEIC is the generally competent authority for qualifica-

<sup>21</sup> 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.

<sup>22</sup> Pursuant to Government Decree No. 295 of 2004, 28 October.

tions 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.<sup>23</sup> As one of the departments of the Ministry of Education and Culture its tasks encompassed the active involvement in legal approximation. On 1.1.2007 the HEIC became an independent body working within the Office of Education (OE), and, according to point 1.i) of the Statute of the OE 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 but 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.

QualA is in conformity with Directive 2005/36/EC hence Act CX of 2007 amending it substantially and entering into force on 20 October 2007 implements the rules laid down in the Directive.<sup>24</sup>

With Act CX of 2007 Hungary undertook a comprehensive review of QualA determining the rules on recognition. The new Act revisited completely Part III dealing with recognition under EC law. Most importantly, Part III now contains a new Chapter X on the free provision of services.

The amended Act empowered the Government, the minister of education and culture, the minister of health, the minister of agriculture and the minister responsible for construction to adopt the governmental and ministerial decrees necessary for the proper implementation of Directive 2005/36/EC. Some of these decrees have been adopted and published and they entered into force. The legal framework surrounding the diplomas in the health care and construction sector meet the requirements of the Directive. The legal mechanisms necessary for the recognition of diplomas falling within the ambit of general recognition have also been adopted.

QualA regulates the recognition of degrees obtained at foreign higher education institutions in three main procedures: automatic recognition (i) and recognition with conditions (ii) of EEA diplomas of EEA nationals, moreover recognition process for non-EEA nationals or non-EEA diplomas (iii). 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

---

<sup>23</sup> Government Decree No. 47 of 1995, 27 April established it.

<sup>24</sup> 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 legislative plans for 2007 the amendment of the QualA was approved by the Parliament on 10 September 2007 and entered into force on 20 October 2007.

a Hungarian university, or college degree, or to a degree obtainable at postgraduate training following a college or university degree.

## **8. DRAFT LEGISLATION**

Proposals for the amendment of Act C of 2001 are not underway. There are ministerial decrees which are technically necessary for the proper implementation of Directive 2005/36/EC that have not yet been adopted, e.g. in case of veterinary surgeon diplomas the list of equivalent diplomas have not yet been published. These are to be regarded as rather technical defects the lack of which does not influence the smooth operation of the whole system.

## **9. ADMINISTRATIVE PRACTICE**

The transposition of Directive 2005/36/EC did not cause problems for the administration. Hence the organisational set-up remained unchanged only the concrete procedural rules were to be amended and adjusted to the new EC law provisions. It does not mean that the solution of distinct and complicated individual cases might not pose some difficulties.

There were practical difficulties with the automatic recognition of Romanian health care diplomas in general during the year of 2007. The general principle of automatic recognition is that only those diplomas fall within its scope where the education leading to the acquisition of the diploma began after a so-called conformity date. The conformity date is a datum notified by the Member State and approved by the European Commission attesting the conformity of the education leading to the diploma with EC law. In case of Hungary it is 1986. If no conformity date is agreed upon the date of accession shall be taken as a reference point (meaning that in case of Romania the conformity date would be 1 January 2007 and the diplomas obtained in 2012 would first fall within the scope of automatic recognition in terms of Directive 2005/36/EC). During the year of 2007 no conformity date has been fixed for Romania. The lack of conformity date results in the impossibility of automatic recognition on the basis of the diploma. In practice it means that Romanian diplomas can only be recognised in the general system whereby either the duration of professional experience is taken into account or the concrete content of education is compared to the Hungarian diploma and supplementary measures (probation period, exams etc.) are foreseen. The only advantage of persons holding a Romanian diploma is that their application can not be dismissed. Until no conformity date is agreed upon EC law on automatic recognition of health care diplomas can not effectively be applied and several unnecessary administrative formalities (including fees) shall be born by the applicants.

A covered discrimination was discovered by the Ombudsman upon a complaint. Qualification of property and body guard and private investigator shall be approved by the Police issuing a personal certificate for the applicant. Practically the certificate is available if the qualification is obtained in different police courses thus other law enforcement classes,

courses are refused. For the wider interpretation of rules<sup>25</sup> the Ombudsman proposed an amendment to the Ministry of Justice and Law Enforcement.<sup>26</sup>

*Recent literature*

Dudás Katalin, Az alkalom szülte ... Az AM könyvvel történő foglalkoztatás – a munkaügyi ellenőrzés szemszögéből [Employment with TWG – from the point of view of labour inspection] *Humán Saldo* 2008/1: 11-14.

Kelemen Nóra, Keresetek, munkaerőköltség, minimálbér az Európai Unióban és Magyarországon [Remuneration, labour costs, minimum wage in the EU and in Hungary], *Európai Tükör* 2007/4: 133-145

Asztalos Zsófia, Az uniós polgárok diszkrimináció tilalmához és egyenlő bánásmódhoz való joga [The rights of union citizens to non-discrimination and equal treatment], *Miskolci Jogi Szemle*, 2007/2: 56-71.

Gellérné Lukács Éva, Változások az európai munkaerőpiacon [Changes on the European labour market], *Érdekképviselet Felsőfokon* 2007. június, D1.63 1-10.

László Blutman, Union citizens, free movement and self-sufficiency, *Acta Juridica et Politica*, 2007/6: 96-117

Gyulavári Tamás, Speciális foglalkoztatási formák. [Special employment relationships – employment with TWG] In: A munkajog nagy kézikönyve. Complex, 2006, 283-288.

Vékás Lajos: Egyenlő bánásmód polgári jogi jogviszonyokban? [Equal treatment in civil law cases?] *Jogtudományi Közlöny* 2006/10; 395-364

Kádár András Kristóf, A bizonyítási teher megosztásának kérdései [How to burden of proof of anti-discrimination cases can be divided in legal practice] *Fundamentum*, 2006/4:115-124

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

<sup>25</sup> Section 9 of 24/1998, 28 June Ministerial Decree (24/1998. (VI. 28.) BM rendelet) on the base of Act CXXXIII of 2005, Art.6(1)

<sup>26</sup> OBH 2860/2006. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

## Chapter III Equality of Treatment on the Basis of Nationality

### 1. REGULATION IN FORCE

- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities]
- 2003. évi XCII. törvény az adózás rendjéről [Act XCII of 2003 on taxation procedural rules]
- 1995. évi CXVII törvény a személyi jövedelemadóról [Act CXVII of 1995 on personal income tax]
- 1994. évi LV. törvény a termőföldről [Act LV of 1994 on Arable Land, amended by Act XXXVI of 2004]
- 1992. évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code]
- 1991. évi LXXXII. törvény a gépjárműadóról [Act LXXXII of 1991 on motor vehicle tax]
- 194/2000. (XI. 24.) Korm. rendelet a muzeális intézmények látogatóit megillető kedvezményekről [Government Decree on benefits at museum admission] amended by the Government Decree No. 281 of 2007, 25 October with effect from 1 January 2008
- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséről [Government Decree No. 7 of 1996, 18 January on Acquisition of Real Estate by Foreign Residents]
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act III of 1993 on Social Administration and Social Benefits]
- 1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról [Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons] 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 No. 12 of 2001, 31 January on the housing-related state subsidies] in a consolidated text
- 139/2006. (VI. 29.) Korm. rendelet a közforgalmú személyszállítási utazási kedvezményekről [Government Decree No. 139 of 2006, 29 June on advantages in public passenger transport] in effect until 30 April 2007, repealed by
- 85/2007. (IV. 25.) Korm. rendelet a közforgalmú személyszállítási utazási kedvezményekről [Government Decree No. 85 of 2007, 25 April on advantages in public passenger transport] in effect from 1 May 2007
- 17/2005. (II. 8.) Korm. rendelet a diákigazolványról [Government Decree No. 17 of 2005, 8 February 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 No. 35 of 2000, 30 November on Road Traffic Administration Tasks and Issuance and Withdrawal of Road Traffic Licenses]
- 152/2005. (VIII. 2.) Korm. rendelet az Útravaló Ösztöndíjprogramról [Government Decree No. 152 of 2005, 2 August on the Scholarships for promoting the equal opportuni-

ties of disadvantaged Groups] amended by Government Decree No. 38 of 2007, 7 March with effect from 15 March 2007

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

## 2. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT AND INDIRECT DISCRIMINATION)

### 2.1. Working conditions

The principle of equal treatment enshrines *expressis verbis* in the Labour Code, it is laid down in general terms in Art. 5: 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. The Labour Code deals with the equal treatment principle in terms of remuneration for work. Already the Constitution – Art. 70/B – requires equality in work.<sup>27</sup> Art. 142/A (1) of the Labour Code states the principle of equal pay by determining that in respect of the remuneration of employees for the same work or for work to which equal value is attributed the principle of equal treatment must be observed.<sup>28</sup> Paragraph (2) states that “The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of work, its quality and quantity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities”.<sup>29</sup> Pursuant to paragraph (4) the wages of employees – whether based on the nature or category of the work or on performance – shall be determined in compliance with the principle of equal treatment as enshrined in Art. 5.

The importance of working conditions is highlighted also with respect to special groups of workers. Art 75 of the Labour Code lays down that women and young persons shall not be employed in work which may result in detrimental effects with a view to their physical condition or development. The particular jobs for which women or young persons may not be

<sup>27</sup> (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.

<sup>28</sup> This Art. can be regarded as the implementation of Dir. 75/117/EEC.

<sup>29</sup> 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.

employed, or may only perform if specific working conditions are provided or on the basis of a preliminary medical examination, shall be determined by legal regulation. Article 85 of the Labour Code provides that a woman, from the time her pregnancy is diagnosed until her child reaches one year of age, shall be temporarily reassigned to a position suitable for her condition from a medical standpoint, or the working conditions in her existing position shall be modified as appropriate, on the basis of a medical report pertaining to employment. The new position shall be designated upon the employee's approval.

Chapter III of the EqualA (Art. 21-23) clearly refers to employment. Pursuant to Article 21 it is considered a particular violation of the principle of equal treatment if the employer inflicts direct or indirect discrimination upon an employee, especially when the following provisions are made or applied in the conditions of employment by:

- establishing and terminating the employment relationship or other relationship related to employment;
- determining and providing working conditions;
- establishing and providing benefits due on the basis of the employment relationship or other relationship related to work, especially in establishing and providing wages;
- the promotion system;
- the enforcement of liability for damages or disciplinary liability.

The principle of equal treatment is not violated if a) the distinction 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 distinction arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.<sup>30</sup>

## 2.2. Social and tax 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”.<sup>31</sup> The ECJ extended the scope of this term not only to the benefits available for the workers themselves, but for their family members too (educational rights, benefits for disabled children, loans etc.).<sup>32</sup> This concept essentially means that Community workers are *quasi* nationals in terms of the aptitude of their entitlements.

Equal treatment 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 of nationality pursuant to TaxA, Art. 2(4) and 3(2). The taxation procedure also covers on all subjects of taxation including on-line service providers making

---

<sup>30</sup> Art. 23 of EqualA.

<sup>31</sup> Even (207/78) para 22., Meints (C-57/96) para 39.

<sup>32</sup> Lair (39/86), Brown (197/86). Reina (65/81). Inzirillo (63/76).

taxable income from Hungary [TaxPA, Art 3 (1)]. In cases of mixed situations where part of the income comes from another Member State or tax deductions are foreseen adjustments are necessary and not only EC law but other international law commitments (agreements on the avoidance of double taxation, OECD norms) are applicable. Moreover, since the accession to the EU a Government Decree has regulated the execution and legal aid procedure of taxes between the Hungarian and other taxation authorities in Member States.<sup>33</sup>

Case C-150/04 *Commission v Denmark*, adjudicated on 20 January 2007 by the ECJ seems to strengthen the rights of migrants as opposed to the former case *Bachmann* (C-204/90). According to case *Bachmann* “legislation of a Member State which makes the deductibility of sickness and invalidity insurance contributions or pension and life assurance contributions conditional on those contributions being paid in that State is contrary to Articles 48 and 59 of the Treaty. However, that condition may be justified by the need to safeguard the cohesion of the applicable tax system”. In the newly passed case (C-150/04) the ECJ declared that Denmark failed to fulfil its obligations under Article 39, 43 and 49 by not allowing tax exemptions for payments under contracts entered into with pension institutions established in other Member States. The ECJ followed its reasoning already laid down in *Bachmann* by stating that this practice is contrary to EC law and is only acceptable if it is justified by pressing national interests. Contrary to *Bachmann* where the cohesion of the tax system was tolerable, in *Commission v Denmark* the ECJ refused to accept the justifications put forward by Denmark and evidently favoured the rights of migrants to tax deductions.

The TaxA does not provide for the deductibility of invalidity insurance contributions in general. In this sense the cases are not relevant for Hungary. However, it provides for the possibility of tax refund in case of life insurance and voluntary retirement and sickness insurance fees. The general rule is that payments for and from the voluntary mutual insurance funds (sickness and pension) do not form the basis of personal income tax (Art. 7. (1) points e and j). Consequently no personal income tax shall be payable after them. The core issue is what organisations can qualify as voluntary mutual insurance funds. The Act on the voluntary mutual insurance funds<sup>34</sup> lays down that a fund can be established by its members only pursuant to the rules of the Act. It means that only funds formed under Hungarian law having a Hungarian seat can fall within its terms. It means, funds formed under laws of other Member States do not fall within this category, namely the payments for and from these funds do not fall within the exception mentioned above. Hence these payments are private and deal with supplementary sickness and pension benefits. It seems that they have a lot in common with the characteristics of the life insurance fees in terms of tax law.

In case of life insurance contracts deductibility is guaranteed if the contract was concluded with a Hungarian resident company. Hungarian law regulates the deductibility of life insurance contributions paid on the basis of a contract entered into with companies established in Hungary but it excludes the deductibility of life insurance contributions paid to companies not established in Hungary. For this reason *not all taxpayers are entitled to tax refund on the basis of contracts*. In this regard Hungarian tax law does not provide for tax advantages for every person falling within its jurisdiction thereby not placing them on equal footing. However, as the case *Bachmann* shows justification may be given if the cohesion of the applicable tax system explains this distinction. Taking into account the reasoning laid down in *Bachmann* and the *Commission v Denmark* cases, Hungarian law has several common features with Belgian law in terms of life insurance fees that is why it seems that Hun-

---

<sup>33</sup> Government Decree No. 7 of 2004, 22 January

<sup>34</sup> Act XCVI of 1993

garian tax law safeguards its coherence when not granting the tax relief for life insurance fees paid to non-resident Hungarian companies. The compatibility of Hungarian law with EC law on free movement and taxation could, however, in the future would be assessed by the ECJ.

Also another ECJ case concerns personal income tax and taxation administrative rules, namely case *Lakebrink* (C-182/06). This case focuses on a specific issue between Germany and Luxemburg and the agreement on avoidance of double taxation between them. The general essence of the case is that a tax title (negative rental income) noted by the authorities of one Member State has to be acknowledged and processed by the authorities of the Member State liable for tax assessment if a bilateral agreement so prescribes. The priority and binding force of bilateral tax agreements is fully recognised in Hungarian law. In 2007 the Ministry of Finance and the Hungarian Tax and Financial Control Administration issued a circular (12816/2007.) in which it has been clearly stated that according to Article 5 (4) of the TaxPA are to be overwritten and adjusted by international law. Consequently, if a bilateral agreement so prescribes, a tax title emerging in another Member State has to be taken into account in the Member State liable for tax assessment. Based on this principle, e.g. if a Hungarian resident company has a branch in another Member State and the bilateral agreement foresees the taxation of the revenue of the branch in that Member State no additional taxes shall be payable in Hungary.<sup>35</sup>

As regards the free movement of persons and companies, the Hungarian Tax and Financial Control Administration clarified its position on the question of Hungarian dividend tax on dividend received in Slovakia by a Hungarian person owning a company in Slovakia. According to the TaxA persons whose domicile or centre of economic interests is in Hungary shall be liable for tax in Hungary according to the Hungarian rules on taxation even if their revenue from their company (the dividend) is accrued on Slovakia. Domicile and centre of interest is measured on the basis of the 183 days rule (Art. 3 (2) b) of TaxA).<sup>36</sup> In effect it means that *persons living in Hungary can not fully enjoy the tax benefits existing in other Member States*, e.g. in Slovakia. In their case the equal treatment means that they fall within the same rules as other Hungarians and they can not even be positively discriminated.

Hence tax law is not a fully harmonised area of EC law the existence and scope of tax advantages is rather limited but the differing provisions of bilateral agreements are duly taken into account.

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 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 ex-

<sup>35</sup> [www.apch.hu](http://www.apch.hu) (29 April 2008)

<sup>36</sup> The bilateral co-operation and agreement between Slovakia and Hungary is mentioned in article as a rather negative appearance: the entrepreneur/owner has to pay the taxation on spare money (from lower tax rate) in the country of his/her habitual (regular) residence. Szlovákia, adóparadicsom. Dr. Bódai Levente és Sebestyén Tibor a szlovákiai cégalapításról [Slovakia: a tax-paradise. How to establish companies – by attorney at law] *Ügyvédvilág* 2007/10:14-15.

tended to Community workers. The SocialA 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 is a special, non-contributory benefit in terms of Reg. 1408/71/EEC, the benefits regulated in the SocialA are only granted to Hungarian nationals, refugees, persons with permanent residence permits and Community workers and their family members falling within the ambit of Reg. 1612/68/EEC.<sup>37</sup> This regulation entails the opportunity for all Community workers and their family members to make use of social assistance benefits in Hungary. It is important to emphasise that FreeA changed to wording of the personal scope with effect from 1 July 2007.<sup>38</sup> The circle of beneficiaries as regards Community nationals has not been amended thus Community workers and their family members in terms of Directive 2004/38/EC (transposed by the FreeA) fall within its scope.<sup>39</sup> However, the applicability has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.

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 this Act 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”.<sup>40</sup>

The definition of disabled is determined without referring to nationality. However, in one Article that concerning the 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.<sup>41</sup> FreeA has altered the wording of personal scope, however, the circle of beneficiaries (Community workers and their family members) has not been changed.<sup>42</sup> However, the personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.<sup>43</sup> The changing paradigm related to disabled persons and workers, namely from a medicalisation model to a social model based on adaptation to special needs

<sup>37</sup> It means that not all persons who can avail themselves of Reg. 1408/71/EEEC, but only workers can enjoy social assistance.

<sup>38</sup> Art 100 of Act I of 2007.

<sup>39</sup> Act CXXI of 2007 (Art. 1) changed the personal scope of the Act with effect from 1 January 2008. The reference to Reg. 1612/68/EEC has been deleted and the FreeA is cited. It means that from 1 January 2008 the personal scope is again extended, from this date not only Community workers and their family member but every union citizen residing lawfully in Hungary for more that 3 months is eligible.

<sup>40</sup> DisabledA, Art.4 (a).

<sup>41</sup> Art. 23 (2) (a) of the DisabledA.

<sup>42</sup> Art. 116 of FreeA

<sup>43</sup> Act CXXI of 2007 (Art. 65 (1) paragraph) changed the personal scope of the Act with effect from 1 January 2008. The reference to Reg. 1612/68/EEC has been deleted and FreeA is cited. It means that from 1 January 2008 the personal scope is again extended, from this date not only Community workers and their family member but every union citizen residing lawfully in Hungary for more that 3 months is eligible.

of disabled persons as defined in the 2000/78/EC Directive and the case law of ECJ<sup>44</sup> – has not happened in Hungary.

HouseD aims at regulating the subsidies that can be accorded to married couples, families with more children and other persons in need. The subsidy can take the form of state contribution to the price of the house (flat), contribution to the interest payable, beneficial methods of payments etc. Only those can qualify who belong to the personal scope of “supported person”. Pursuant to Article 1 (2) 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. Consequently, Community workers can qualify as supported persons in terms of the Decree. This rule has not been changed by the FreeA and FreeAD Decree.

As regards advantages in public passenger transport two legal instruments were in effect during the year of 2007. Until 30 April 2007 TransD1 was applicable and with effect from 1 May 2007 TransD2 repealed it and became effective. Both of them aim at granting benefits for certain groups of persons using the inland public transport facilities.

a) Until 30 April 2007: Article 2 of TransD1 stated that the following categories were entitled to free of charge train, long-distance bus lines, suburban train, local urban vehicles train and ferry 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 was entitled to travel in the second class only by producing their identity cards. Reduced price was available for students in possession of Student card, job seeker proving this position by a certificate issued by the Labour Service, pensioners under the age of 65 and socially supported persons by the local self-government proving a document issued by the registrar.

b) Since 1 May.2007: The TransD2 consolidated the TransD1 by simplifying its rules and terminating the repetitions. The new decree gives the following listing for the circles of beneficiaries of advantages in public transport:

- persons given advantage on the basis of age,
- persons given advantage on the basis of being students,
- persons being pensioners,
- job-seekers,
- refugees,
- workers,
- disabled, or
- persons travelling in groups.

There are travel fare exemptions or reductions for long-distance and local travel facilities. As regards equal treatment of EU nationals it is to be stressed that the transport exemption or reduction is attached to the status of the person no to his/her nationality. It comes from that for instance, students or job-seekers are entitled to the advantages irrespective of whether they are Hungarian or EEA nationals. The rule according to which EEA nationals above 65 years of age are free to travel has remained in force.

Pursuant to the 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 irrespective of their nationality. According to the CardD the Hungarian Student Card must be

---

<sup>44</sup> See Sonia Chacón Navas case, C-13/05.

## HUNGARY

applied for, and entitles the holder for travelling only together with the seasonal ticket. These students may travel on unlimited occasions too. PriceA gives a complementary element to the system, it regulates how the state subsidises the service providers for the loss of income resulting from the above-mentioned benefits where no discrimination occurs between Hungarian and EEA nationals.

ScolD regulates scholarship possibilities for students and their tutors who are qualified as being severely disadvantaged or lives in a child protection institution. There are scholarships for primary schools, secondary schools and also high-level educational establishments. Pursuant to Article 3 (1) the personal scope of the Decree encompasses both Hungarian and foreign nationals including third-country nationals as well. There is no discrimination based on nationality in accordance with Directive 2004/38/EC.

It is recalled that the European Commission initiated an infringement procedure against Hungary in which it stated that Hungarian law<sup>45</sup> 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 museum entries.

MusD has been amended by Government Decree No. 281 of 2007, 25 October with effect from 1 January 2008 by which the breach of equal treatment has been terminated. The nationals of the EEA have been put on equal footing with Hungarian nationals. Article 2(2) lays down the cases of free of charge entries into museums for the nationals of the EEA included Hungarian nationals. It is worth noting that family members are not mentioned in the personal scope of the MusD.

As regards social advantages a substantial body of law (in form of self-governmental decrees) is created by the local self-governments. Thereby the personal scope of these regulations is of outmost importance hence local entitlements are laid down in these laws. A solid scrutiny of the local decrees shows that probably there shall not be major infringements in these rules. To take a notable example, the respective law of the 2<sup>nd</sup> District of Budapest in Municipal Decree on the cash, in kind and personal care-based social benefits<sup>46</sup> is cited here. Pursuant to Article 2 (1) of this Decree the personal scope of it covers persons falling within the ambit of the SocialA whose address is in the 2<sup>nd</sup> District. If the applicant has several addresses the competence of the self-government is based on the habitual residence (centre of interest). This wording can be regarded the usual wording in the municipal decrees. It shows that the usual practice of the self-governments is to cite the SocialA when determining the circle of beneficiaries. Hence the SocialA is in conformity with EC law the decrees referring to its personal scope are also in conformity with EC law. Of course, there are 3200 self-governments in Hungary and therefore a general compliance of these rules can only be presumed but not fully asserted.

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.

---

<sup>45</sup> Government Decree No. 194 of 2000, 4 November on benefits at museum admission.

<sup>46</sup> 23/2005. (IX.30.) Közgy.rendelet. Web: [www.masodikkerulet.hu](http://www.masodikkerulet.hu) (29 April 2008)

### 3. ACCESSION TO NON-AGRICULTURAL LAND (HOUSING)

LandA contains provisions for the acquisition of ownership title of non-arable lands (housing). Prior to the EU accession EEA nationals were equated with other foreigners in terms of having been subjected to authorisation for the acquisition of non-agricultural lands.<sup>47</sup> Act XXXVI of 2004 amended the LandA as a result of which the new regime, as from 1 May 2004, provides free access to EU nationals to housing.<sup>48</sup> According to the LandA *EU nationals, legal persons and unincorporated entities established in any Member State of the EEA may acquire title of ownership of non-agricultural land under the same conditions as Hungarian nationals (without special permission)*. 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.<sup>49</sup> EU nationals shall be able to obtain title of ownership of a property only if they provide guarantees fixed in a private document of full probative force or in a public document that the property is intended to serve as a principal place of residence. EU nationals shall be entitled to acquire only one property under the title of principal place of residence during the 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.<sup>50</sup>

### 4. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

There is a provision in the Labour Code that might pose questions that is related to the provision of manpower (*munkaerő kölcsönzés*). Pursuant to Art. 193/D. (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.<sup>51</sup> 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; (2) 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”). ManD 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<sup>52</sup> 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 li-

---

<sup>47</sup> 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 Art 88/A, by authorization from the head of the Budapest or county administration office of competence, in accordance with the location of the property.

<sup>48</sup> Art. 88/A – 88/D of LandA

<sup>49</sup> 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.

<sup>50</sup> LandA was modified by the Act CIX of 2006 affecting the authority competences.

<sup>51</sup> Explanation made to the Bill by the Government [www.mkogy.hu](http://www.mkogy.hu)

<sup>52</sup> Webb case, 279/80 (1981) ECR 3305.)

cence from requiring a provider of services established in another Member State and pursuing 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 ManD *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.

## 5. SPECIFIC ISSUES

### *a. Frontier workers*

In absence of specific regulation the movement of registered A8 labourers to Hungary is mentioned in Chapter 8. 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.<sup>53</sup> In 2007 the trainee agreement concerned 1800 persons while the cross-border agreement 1900 persons.

It is worth mentioning that the word “frontier worker” construed in terms of free movement of persons appears only in social law, in effect in FamA. See more on that in Chapter on ECJ cases (*Hartmann*).

### *b. Sport sector*

The Government Decree No.157 of 2004, 18 May<sup>54</sup> 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 define 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) This exception is deleted since February 2008. This qualification of sport experts is relevant in the employment (Section 4): all professional sportsman or member of sport organisation have to meet this qualification Decree that shall be implemented “in accordance with internal rules of the sport federations”. Because nationality requirement of

<sup>53</sup> MTI 2006. aug. 21.

<sup>54</sup> Amended by the Government Decree No.171 of 2005, 1 September and No. 19 of 2008, 5 February

applicant is not defined, this universal requirement of qualification shall be equally applied by EU and non-EU nationals. Until 31 December 2007 each sport federation shall define (Section 5(6)) in each sport field and branch what qualification is considered as sport expert and what position shall be fulfilled by qualified or master trainer. This requirement is relevant in labour authorisation for non-nationals (PermitD).

Professional athlete shall be *remunerated* exclusively on the base of the Labour Code regardless his nationality according to the SportA. In possession of a racing permit s/he has to conclude on fix-time (close-ended) written *employment contract* with a sport club or association as a labourer with certain specific exceptions as defined in the Act (Art.8). This racing right is assigned from the athlete to the employer sport organisation that shall be registered by the sport federation on the base of internal rules. This transfer of racing right means a financial compensation for the athlete. Due to termination of employment this racing right returns free of charge to the athlete (Art.9). The sport organisation obtaining this racing right temporarily or permanently may transfer it to another sport club with consent of the athlete who is entitled to get *compensation* from the transferring sport organisation that can obtain a *fee* from the hosting sport organisation. Financial compensation and fee is *consensual* (Art 10) but shall be announced to the sport federation, moreover its 1 percent shall be paid to the sport federation and 4 percent to the fund supporting the training of supplies (Art. 11(3)). If this transfer is not temporarily, a new labour contract shall be concluded.

During validity of employment contract it includes the fixed-time transfer of right for racing to another sport club/association according to a contract. In this case athlete is considered as a posted worker. The SportA provides athletes' free movement as employees. For this reason the SportA defines a maximal three year transitional period for modification of each existing civil contract of professional athletes' sporting activities (Art. 78(3)) that expired at the end of 2007.

Transfer of racing right can be prepared and managed by commercial agents as a lucrative activity (commission) if s/he is registered at the international at national sport federation. Any other share in transaction costs (beyond the athlete's compensation, commission, fee and sport federation) is invalid. (Art. 11(2))

Beyond this basic condition, professional athlete shall be in possession of *labour permit* (PermitD Section 6(1) d) 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" (PermitD Section 6(5)). It means that *professional athletes from the EEA* can be employed on the upper described rules (on *reciprocity* based facilitated authorisation or without labour permit). *Since 1<sup>st</sup> July 2007 employment of professional athlete and trainer is lawful without labour permit regardless nationality* (PermitD Section 7(1)t ). Legality of exception shall be proved by the employee, e.g. for a labour inspector's checking. (Section 7(6))

According to the SportA 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). However, *there are no quotas of non-national athletes defined in public legal rules.*

What are the major conflicts between legislation and practice? Beyond the absence of clear references on Community law, free movement of professional athletes in the area of EEA, Accession Treaty, Cotonou Agreement (ACP countries), non-discrimination rules, ECJ case law and labour law, the harmonisation of law and legal practice is not guaranteed. Some possible frictions can be identified as follows:<sup>55</sup>

- Sport leagues/federations are entitled (by the SportA) to regulate internally racing rights, racing licence and transferring of racing rights. This regulative power is wide and it is not framed by general rules, guarantees and reference on accession to free employment in the SportA.
- Internal codes on racing including transfer of racing right are inconsistent in personal scope. Majority of them<sup>56</sup> use the term “Hungarian”, “foreign” athlete or “non-national athlete” (in possession of settlement/long term residence permit) who are received/transferred to Hungary or from Hungary to abroad.<sup>57</sup> It means that all non-Hungarian nationals including EU nationals, EEA citizens and other persons under the Community law preference shall be equally treated.<sup>58</sup>
- These internal codes defines the term of professional athlete,<sup>59</sup> and home-grown rules distinguish national and non-national in transfer procedure and international transfer. The non-national athlete’s transfer has to be managed in harmony with the same home-grown rules on transfer adopted in the sending sport federation abroad. In practice it requires a binding declaration on respect for a foreign or international<sup>60</sup> sport federation’s rules by the Hungarian receiving club. However, the transfer of non-national can be managed with the consent (permit) of the sending sport federation or meeting additional requirements of students and persons in military duty.<sup>61</sup> In contrast, the transfer of na-

<sup>55</sup> Source: dr. Horváth Zsolt PhD student, Manuscript, 2007. (University of Sport, Department of Legal Studies, SOTE)

<sup>56</sup> The Code on transferring and registration of athletes were analysed for this report: the National Sport Federation of Wrestling, Triathlon, Volleyball, Basketball, Table Tennis, Motor Sport, Field Hockey, Parachute, Kayak-canoe, Weigh-lifter, Athletics, Football and Handball.

<sup>57</sup> Some examples: Statute of *Hungarian Football Federation*, 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.)

<sup>58</sup> 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)

<sup>59</sup> S/he is employed and is remunerated for sport activity by a sport organisation (club, association or sport company).

<sup>60</sup> For instance, see the Code of Volleyball, Field Hockey and Basketball.

<sup>61</sup> See the Code of Hungarian Wrestling Federation.

tional to abroad is permitted if the athlete undertakes to participate in the racing and training program of the national assorted team, or permit can be based on the respect of “the interest of the sending club and national assorted team”.<sup>62</sup> Although the request for international transfer can be submitted at any time, the transaction will be valid and final if consent of the national sport federation to the tracing right and transfer will be given.<sup>63</sup>

- The transferring fee is also determined by internal codes in different ways. In some cases it is openly intends to compensate the sport club educative and training efforts at least for three years before the age of 16 of the athlete, and it has to be maximised and paid by the hosting club.<sup>64</sup> Or it is the price of training a new weigh-lifter, thus it is a service from the perspective of taxation.<sup>65</sup> The most sophisticated rules can be found in football: expenses for reinforcement education shall be paid from the first professional athlete contract concluded with the athlete until his/her age of 23; transferring fee for termination of the club contract, and the cost for transmission of the playing right of the athlete shall be covered.<sup>66</sup>

SportA regulates employment of athlete following the model of the labour law but in practice it is attached to unlawful sponsorship, remuneration or other compensatory measures on the rational of civil contracts. Labour law is not applicable in certain components of sportsman’ contract (e.g. 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. For instance, Sport documentation (e.g. Registry of sport associations, state subsidy for athletes, Art. 56) system contains no information on accession to employment, fees, transfer of rights on the base of internal sport rules.. The labour authority, labour inspectors cannot monitor on 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. However, this is the most regulated issue in Codes on Racing Conditions of national sport federations.

The SportA is in silence on procedure, agent of *recruitment*, intercession and transmission of sportsmen from one club to another (foreign) club. Whether these actions must follow the labour force intermediation in harmony with ILO conventions<sup>67</sup> and national rules on registry (of private manpower offices) and on deposit (for foreign manpower transmission) or not or in part – it is unclear in this tight labour-law model. The model for regular workers is obviously out of practice, and sport managers, transmitting agent together with law firms manage the athletes’ recruitment, movement between clubs across the borders, too. Law firm provides the legal background (how to make contracts but not necessary in accordance with labour law but rather in civil law on sponsorship, transfer and management abroad), while managers as head-hunters provide the export of athletes entering into contact with clubs and

<sup>62</sup> For instance, see the Code of Volleyball, Wrestling.

<sup>63</sup> See the Code of the Football Federation.

<sup>64</sup> See the Code of the Basketball Federation.

<sup>65</sup> See the Code of the Weigh-lifter Federation.

<sup>66</sup> See the Code of the Football Federation.

<sup>67</sup> In particular with Conventions No.81, 129, 143

they negotiate on conditions, expenses, price of leaving and entry. At least football players (from Hungary to UK, Germany, and from Ukraine, Russia to the EU) have been transferred for years “although the biggest challenge means for us that concluded contracts are not necessarily based on the Hungarian legal system, and rules of FIFA and National Football League are different from the Act on Sport [...] within some years a legal harmonisation is required in order to reach a legal security in each Member State of the EU in the domain of the football” – said an experienced legal representative and a sport agent.<sup>68</sup> The Codes require involvement of sport manager or agent in possession of a licence from the European or the international sport federation, league, and in some case his signature in the transferring contract<sup>69</sup> or the agent shall be registered by the international sport federation whose efforts can be paid commission. However there only minimal example when contract is void by the Code if compensation for transferred racing right is distributed for third persons beyond the mentioned commission.<sup>70</sup> However, the SportA (Art 11(2)) makes the contract invalid if another person – beyond the registered agent, the sport federation, athlete and the receiving club – is benefited from the transaction. Who pays managers and lawyers?

Summing up, the sport federations’ home-grown rules on consensual fee and compensation, agent, transmission consent and undertakings can be considered as indirect repercussion of free movement but regardless the nationality of the athletes. Although there are no quotas for EU nationals the entitlement of sport federations – as influential civil organisations – on internal sport rules can hinder the free movement of non-national sport experts and athletes’ movements: these codes are not controlled by the government whether those are in harmony with EC law and ECJ case law; there is no reasonable publicity of transactions in sport. Consequently regulation on and practice of transactions is not necessary remain inside the legality.

### *c. Artists*

i.) *Taxation and social security coverage:* with effect from 1 January 2006 Hungarian law contains a special piece of legislation for most of the artists active in Hungary. EkhoA exempts artists from the general rules on taxation and payment of social security contributions and gives them the opportunity to opt for the payment of a fixed-rate public contribution (ekho) that is less and financially more beneficial than the general system. Implicitly, the reduced rate of public contributions results at the same time in reduced level of social security benefits.

The EkhoA covers, inter alia, the following categories of persons: editor, journalist, writer, actor, artist in fine arts, handicrafts and circus, puppet artist, musician and folk-musician, director, camera-man, photographer, dancer, singer, choreographer and designer. They fall within the ambit of the EkhoA if they realize an income reaching the yearly minimum wage but not exceeding HUF 25 million (100,000 €) from the enumerated artistic activities. A person meeting the requirements of the EkhoA is entitled but not obliged to make a declaration and register as an ekho-payer. In 2007 the employer or mandator is to pay 20% of social security contributions while the artist is to pay 15% ekho. The ekho contains 11% tax and 4% of social security contributions. The beneficial nature of the ekho is to be under-

<sup>68</sup> Ügyvéd és ügyfele. Dr. Körösi Tibor és Hrutka János a sport és a jog kapcsolatáról [Attorney at law and his clients. Relations of Sport to Law] *Ügyvédkalendár* 2007/10: 27-28.

<sup>69</sup> See the Code of National Football Federation,

<sup>70</sup> See the Code of the Volleyball Federation.

stood in light of the general tax and social security contributions rates, namely the obligation of the employer to pay social security contributions being 29% while the tax and social security contribution load of workers is 18-36% tax and 15.5% social security contributions.

The payment of the ekho entitles the artist to obtain in kind health care and accidental health care services (excluding cash benefits like sick-pay or maternity benefits), accident annuity and pension. The ekho does not cover unemployment benefits. The basis of the pension amounts to 50% of the yearly income.

The nationals of the EEA are entitled to opt for the ekho on the same footing as Hungarian nationals. If an EEA national is insured in an EEA Member State and performs the artistic activity only temporarily in Hungary, s/he is only obliged to pay taxes and s/he is to pay the social security contributions in the country of origin.

According to the statistics in 2007 24 Romanian and Bulgarian nationals obtained a work permit without the assessment of the labour market on the basis of artistic activity.

ii) *Access to employment of non-Hungarian nationals in 2007*: As pointed out in Chapter 2 and 8 the rules on access to the Hungarian labour market are unnecessary and unduly complicated. Artists are not exceptions to the rule either. First, the nationality of the artist shall be examined that determines the necessity of the work permit. During 2007 the following EEA nationals and their family members were exempted from possessing a work permit: UK, IRL, SE, FIN, GR, ISL, PT, ES, IT, NL, MT, CY and the A8 Member States. The following nationals were entitled to require the work permit without the assessment of the labour market pursuant to the general rules contained in PermitD: DK, NO, BE, FR, LUX. The nationals of Romania and Bulgaria fall within the ambit of RomD on the basis of which artists in terms of EkhoA are entitled to require the work permit without the assessment of the labour market pursuant to the general rules contained in PermitD. The remaining old-Member States' EEA nationals (DE, AT, LIE and CH) are subject to the normal authorisation process pursuant to the PermitD.

Very importantly, the general provisions of PermitD explicitly deal with artists. As a main rule, a foreigner does not need a work permit if the duration of the artistic activity (that is not defined in the Decree) does not exceed 5 working days. Moreover, the work permit shall be issued without the assessment of the labour market if an internationally recognised foreigner wishes to perform artistic activity for a public community institution or a registered film-shooting company employs the foreigner.

In sum, most of the artists of EEA nationality and their family members are either exempt from possessing a work permit or can obtain that without the assessment of the labour market pursuant to the UnemplAct, RecipD and RomD. In addition to that, being valid for only 3 EU Member States and Switzerland and the remaining third-states the general provisions of PermitD guarantee that every artist is exempted from the work permit if the artistic activity does not exceed 5 working days or if the foreigner is internationally recognised the work permit can be obtained without the assessment of the labour market.

Non-EEA nationals can only avail themselves of the possibilities laid down in PermitD.

iii) *Access to state grants*: the Act on National Cultural Fund)<sup>71</sup> lays down the rules on tendering operation of it that is a completely state-financed. The Fund aims at preserving and generating universal and national cultural assets. Its tenders are regularly published and the Act does not contain any restrictions on nationality.

---

<sup>71</sup> Act XXIII of 1993

**d. The Maritime sector**

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.<sup>72</sup> The Act XLII of 2000 on trafficking rules on water was modified in 2006<sup>73</sup> 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<sup>74</sup> 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. Since 1 January 2007 these amendments provides equal treatment for EEA nationals.<sup>75</sup>

**e. Researchers**

Academic circle cannot attract EEA nationals although there are neither exclusionary rules nor competitive conditions in academic research institutes, at universities. HighA, PublicA does not require nationality for scholars, researchers, teachers, and equality of working conditions, payment and dismissal, branches of social security, too. Due to lower level of salary and missing pro-migration policy of Hungary the outflow of qualified young researchers, PhD students, experienced academics is not compensated by returnees, newcomers from the third countries and EEA academics. In the centre-periphery relation, the fundamental change was when centres did not attract only the young any longer but retained all age groups, and not only temporarily but permanently. It takes a longer period – so we need further efforts towards researcher mobility.

**f. Other sectors**

The FreeA modified the terminology of certain rules related to accession to the labour (and service) market in favour of EEA nationals and family members with reference the personal scope of the FreeA (persons entitled to free movement and residence):

- Persons under the personal scope of the FreeA can be employed (e.g. by companies, public financed institutes, NGOs, co-operatives) as attorney with clean criminal record and diploma in legal studies. ‘The minister of justice is entitled to exempt from the requirement of nationality’. This sentence is embarrassing because it would mean a discretion power provided for the minister instead of individual right to be employed – if other conditions are ensured. Moreover, these persons can be registered upon his/her request as jurisconsult (legal adviser e.g. at companies, public financed institutes, NGOs,

<sup>72</sup> 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.

<sup>73</sup> Act CX of 2006 is entering into force on 22 December 2006.

<sup>74</sup> C-47/02 and C-405/01 on the base of Art 39 (4) of the Treaty

<sup>75</sup> 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.

- co-operatives) with clean criminal record, diploma in legal studies if s/he taken a legal professional's examination. This registry is made by the country/metropolitan court.<sup>76</sup>
- Persons belonging to the personal scope of FreeA can be employed as security guard with gun, natural environment protecting guard or rural constable, if s/he in a full age has a clean criminal record, required health conditions and taken exams and at least a secondary school certificate.<sup>77</sup>
  - Persons in ambit the FreeA can join to the Chamber of Patent Charge D'affaires as member or candidate for the charge d'affaires.<sup>78</sup> These persons can work without membership in the Chamber of Architects, Expert Engineers and Designers in possession of required diploma up to the end of the service project but maximum for a year registered at the Chamber. They also can join to the Chamber as member.<sup>79</sup> Although these can be considered as service providers but a company (law firm, design centre) can conclude undertaking contracts if at least one (employed, contractual) expert is available lawfully.

## **6. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68**

For the period prior to the EU accession the general observation can be made that most of the benefits were not available for foreigners (irrespective of whether they were EEA or non-EEA nationals) except sickness benefits and the benefits due under bilateral agreements.<sup>80</sup> Reg. 1408/71/EEC and Reg. 1612/68/EEC fundamentally changed this legal situation upon accession. EEA nationals, who fall within the ambit of Reg. 1408/71/EEC became entitled to insurance-based and universal benefits. Moreover, a new category emerged from EC law, that of special, non-contributory benefits, which is on the borderline of social assistance, but at the same time connected to the insurance-based or to the universal benefits. It is noteworthy that Hungarian law did not know this term before and, during the accession preparations, the benefits suitable to this category should have been defined. Article 20 of the Act of Accession, Annex II., point 2 on the free movement of persons contains the necessary changes in the annexes of Reg. 1408/71/EEC due to EU accession. Pursuant to this three Hungarian benefits belong to the category of special non-contributory benefits: invalidity annuity, non-contributory old-age allowance and transport allowance for the disabled.

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*. 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.

<sup>76</sup> Law-Decree 3 of 1983 on Legal Advisers, Art. 3 and 16 modified by the Art 94 of FreeA

<sup>77</sup> Act CLIX of 1997 on Activities of Security Guards and Rural Constable, Art 6 and 20 modified by the Art 114 of FreeA

<sup>78</sup> Act XXXII of 1995 on Charge d'Affaires of Patent, Art 5 modified by the Art. 103 of FreeA

<sup>79</sup> Act LVIII of 1996 on Chamber of Architects, Expert Engineers and Designers, Art 1, 25 modified by the Art 105 of FreeA

<sup>80</sup> These bilateral agreements are constantly under review.

## HUNGARY

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 shall be emphasised that Hungary belongs to the group of a few Member States who already implemented the *Kohll and Decker* case law<sup>81</sup> giving the right to insured persons to go to another EEA Member State without prior approval and to get non-hospital treatment subject to reimbursement according to Hungarian tariffs.

In 2007 the structure of regulation of the social sector in terms of entitlements for EEA nationals and their family members has not been changed. The only remarkable amendment concerned FamA. As from 1 July 2007 the personal scope of FamA has been clarified. Prior to that date the personal scope of the Act covered Hungarian nationals, persons with permanent residence permits, refugees, persons falling within the ambit of Reg. 16126/8/EEC and their family members and persons falling within the ambit of Reg. 1408/71/EEC if they resided in Hungary. Following from these rules one benefit (birth grant) was not eligible for an economically inactive EEA national spouse of a Hungarian national. This rule made the migration less attractive hence usually the mother was not entitled to claim the benefit only the father, the birth grant, however, can only be applied for by the mother. Upon 1 July 2007 the personal scope has been extended to the family members of Hungarian nationals as well terminating the discrimination and opening up the opportunity of application for the economically inactive spouses too.

### 7. ADMINISTRATIVE PRACTICE

The Office for Equal Treatment is responsible for claims in which persons avail themselves of the breach of equal treatment laid down both in the Constitution and in the EqualA. During 2007 the Office published a decision in which the breach of equal treatment was embodied by a nationality condition.<sup>82</sup> In fact a Romanian national who possessed a permanent residence permit, worked in Hungary since 2004 and owned a flat in Budapest wished to buy a TV on 22 November 2006 and to pay in instalments. The Accord Hungary Co. refused to let him to buy the TV in instalments referring to its Code of Conduct in which it stated that only Hungarian nationals are eligible for instalments. The Office declared that the defendant breached the principle of equal treatment by allowing only Hungarian nationals to buy certain goods in instalments hence it could not put forward a reasonable and objective justification for its practice. The company was fined 1 million HUF (4,000 EUR). It is worth noting that the Code of Conduct excluded not only third-country nationals (Romania has not yet joined the EU at the time of the breach) but EEA nationals as well, favouring only Hungarian nationals.

A further experience can be recalled. It was the case of beneficial parking (free of charge or for a reduced fee) in the Districts of Budapest and bigger cities. Several complaints were to be heard the essence of which was that only cars possessing a Hungarian licence plate number could obtain the stickers entitling the owner to the free of charge or reduced costs parking. Usually the self-government decrees regulating beneficial parking in the distinct areas of the self-governments' competence lay down that the owner has to fulfil the payment of motor vehicle tax or has to be exempted from this obligation. In Hungary the administration of motor vehicle tax is the task of the local self-governments and the tax partially belongs to the self-government. According to Act LXXXII of 1991 on motor vehicle

---

<sup>81</sup> Article 27 of HealthA

<sup>82</sup> [www.egyenlobanasmodhatosag.hu](http://www.egyenlobanasmodhatosag.hu) Case: EBH/56/13/2007. Available only in Hungarian. (29 April 2008)

tax (Article 1 (1)) only motor vehicles having an inland licence plate fall within the ambit of the Act except if these are lorries or trucks. Lorries registered in one of the Member States of the EU are also exempt. It means that automobiles for private or official use registered in other Member States (hence these are not subject of motor vehicle tax in Hungary) are not qualified for beneficial parking but only lorries used by a business organisation having the seat or branch office in Hungary (but these rarely need to park in the city).

In 2007 the case of the German national *Michael Graeme* (beginning in 2005 and continued in 2006) went to court. He 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.<sup>83</sup> 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 15<sup>th</sup> 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. However, the self-government appealed against the decision which is still at court. In 2007 it became also clear that at least 100 German and Austrian nationals suffered from the same problem. The case has not yet been solved.

Complaint was given to the Ombudsman for delay in pension (first scheme) determination procedure of migrant worker with working years in Austria, Germany and Hungary. Ombudsman requested the assistance of ombudsman in given states beyond his request to the Pension Directorate for a better bilateral co-operation. Finally the method of co-operation in exchange of documentation and data was established.<sup>84</sup>

Another complaint discussed how the changing rule of health care insurance could fit to the Art.22 (1) a-i. of 1408/71/EC Directive. Since 1<sup>st</sup> April 2007 Hungarian nationals studying abroad can obtain the health insurance if they pay 9 percent of lawful minimal monthly salary per month to the social insurance (up to 31 March 2007 it was covered by the health care of breadwinner for dependant family member). This contribution can be paid by him/herself, by the family or by the local municipal of his/her habitual residence in case of poverty. Residing in another Member State student has to prove his/her entitlement for health care with European Health Care Card or a subsidiary document and expenses of health care abroad is covered by the National Health Care Paying Office with exception of excess. This Card is issued if student's health care is based on legal entitlement for paid because health care over 18 is not a citizenship right for nationals regardless where s/he is staying. Thus there is no violation of the Directive by amendment of the HealthA.<sup>85</sup>

<sup>83</sup> <http://index.hu/politika/belfold/harkany0612/?print>

<sup>84</sup> OBH 1862/2007. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament of the Ombudsman, 2007]

<sup>85</sup> OBH 2793/2007. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament of the Ombudsman, 2007]

*Recent literature*

- Karoliny Eszter – Márton Mária – Varga Gergely: Of football players and the European law – A case analysis for the European Law Moot Court Competition. *Jura*, 2007/2: 101-110.
- Asztalos Zsófia: Az uniós polgárok diszkrimináció tilalmához és egyenlő bánásmódhoz való joga [The rights of union citizens to non-discrimination and equal treatment], *Miskolci Jogi Szemle*, 2007/2: 56-71.
- László Blutman: Union citizens, free movement and self-sufficiency, *Acta Juridica et Politica*, 2007/6: 96-117
- Sándor Illés – Éva Lukács Gellérné: Towards Researcher Mobility. *Európai Tükör*, Special Issue 2007/8: 139-155
- Bárd Petra: A fogyatékkal élő személyek jogai az *acquis communautaire* tükrében [Rights of disabled persons in the light of *acquis communautaire*] *Fundamentum*, 2006/4: 103-114.
- Lovász László: Az Európai Unió anti-diszkriminációs politikája a fogyatékos emberek tekintetében. [The EU's anti-discrimination policy towards disabled persons] *Munkaügyi Szemle* 2006/7-8:49-54.
- Gellérné Lukács Éva: Az 1408/71/EGK tanácsi rendelet modernizációja [Modernisation of Directive 1408/71/EC] In Dr. Király Miklós (szerk.), *Európai Jogi Tanulmányok 7.*, ELTE Állam- és Jogtudományi Kar Nemzetközi Magánjog és Európai Gazdasági Jogi Tanszék, Budapest 2006, 63-83.
- Pataky Csaba – Pataky Tibor: A járművezetői engedélyek bevonásának újabb problémái több európai országban. [Major concerns of withdrawal of driving licence in numerous European states] *Magyar Jog* 2006/9:570-574.
- Balázs Judit: A diszkrimináció tilalma és egyenlő bánásmód elvének szabályai az Európai Unióban [The anti-discrimination and equal treatment rules in the EU] *TDK-dolgozatok*. 2006. 281-303.
- Tanka Endre: Institutional and legal features of the Hungarian land ownership and land use system as main results of market-economic transition and access to EU. *Studia iuridica Caroliensia*. 2006. 219-240.

## Chapter IV Employment in the Public Sector

### 1. REGULATION IN FORCE

- 1997. évi LXVII. törvény a bírák jogállásáról és javadalmazásáról [Act LXVII of 1997 on legal standing of judges and their earnings]
- 1994. évi LXXX. törvény az ügyészségi szolgálati viszonyról és az ügyészségi adatkezelésről [Act LXXX of 1994 on services of public prosecutor office and data storage] amended by the Act I of 2007
- 2001. évi LVIII. törvény a Magyar Nemzeti Bankról [Act LVIII of 2001 on the National Bank of Hungary] in a consolidated version
- 1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati viszonyáról [Act LXVIII of 1997 on service of members in administration of justice] modified by the Act XXIX of 2004 and Act I of 2007
- 1996. évi I. törvény a rádiózásról és a televíziózásról [Act I of 1996 on Radio and Television Broadcasting]
- 1992. évi XXXIII. törvény a közalkalmazottak jogállásáról [Act XXXIII of 1992 on legal standing of public servants]
- 1992. évi XXIII. törvény a köztisztviselők jogállásáról [Act XXIII of 1992 on legal standing of public officials] amended by the Act I of 2007
- 1996. évi XLIII. törvény a fegyveres szervek hivatásos állományú tagjainak szolgálati viszonyáról [Act XLIII of 1996 on working position of officers in law enforcement]

### 2. ACCESS TO PUBLIC SECTOR: NATIONALITY REQUIREMENT

FreeA was passed in last days of December 2006 amending numerous acts providing equal legal treatment for EEA nationals (more precisely for persons with rights for free movement) with nationals. For instance, on 1<sup>st</sup> July 2007 it deletes the nationality requirement for

- members in National Accreditation Board and Accreditation Body<sup>86</sup> (Art.124),
- workers in administration of justice, such as expert in judicial/forensic sciences or candidate, typist or physical worker<sup>87</sup> (Art 108),
- typist or physical worker at Public Prosecutor Offices<sup>88</sup> (Art 102),
- administrator as public officials<sup>89</sup> (Art 97), if s/he has a necessary knowledge in Hungarian to his/her task.

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

---

<sup>86</sup> Amending the Act LXXVIII of 2005 on National Accreditation Body

<sup>87</sup> Amending the Act LXVIII of 1997 on legal standing of workers in administration of justice

<sup>88</sup> Amending the Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office

<sup>89</sup> Amending the Act XXIII of 1992 on legal status of public officials

*a. Elected positions defined by public law*

Certain positions shall be fulfilled by exclusively by Hungarian national. For instance, member of the *Constitutional Court*,<sup>90</sup> mayor or chair of county municipal.<sup>91</sup> Each of them is regulated in separate acts requiring directly or indirectly (for instance, in case of the member of National Auditor Office the Parliament is entitled to elect the proper, qualified person regardless even his nationality). According to the Act on National Bank of Hungary, the member of the *Monetary Council and Inspectoral Board* shall be a Hungarian national.<sup>92</sup> The public sector covers on the independent body controlling the publicly financed radio and television broadcasting. The Act on Radio and Television Broadcasting regulates the tasks, responsibilities of programming services if the broadcaster has its corporate domicile in Hungary. Although before accession the Act was amended taking into account harmonisation, the task and component of the *National Radio and Television Board* has not changed. It shall protect and promote the freedom of speech by helping broadcasters to appear on the market, by breaking down any information monopolies and preventing the creation of new ones, by protecting the independence of broadcasters, too. It pays attention to the enforcement of the constitutional principles of the freedom of the press and shall inform Parliament thereof. The Board and its members are only subject to the law, and cannot be instructed relating to their decision or activity. (Art.31). This approach may explain why the Board's office consists of civil servants. Moreover, the membership in the Board requires Hungarian citizenship beyond proper qualification, clean criminal record and at least five years' professional experience<sup>93</sup>. The Parliament elects the Board members upon party group proposals (Art.34). The executive manager of the *National Press Corporation* and representatives of the owner and founder (the Parliament) shall be appointed by the President of the Republic only a national with clean criminal record, proper decree and at least five years practice<sup>94</sup>. There is no reason to maintain these market-positions for nationals although the Act intends to define some public services provided by the Corporation (MTI).

*b. Administration of justice (court, public prosecutor office)*

This has its own regulation on 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.

- EEA nationals and their family members belonging to the personal scope of the FreeA is employable as typist or physical worker at the Public Prosecutor Office, if s/he has basic qualification, has *Hungarian language knowledge* which is necessary to work in the given position, has a clean criminal record. This exception cannot be implemented

<sup>90</sup> Act XXXII of 1989. on the Constitutional Court, Art.5

<sup>91</sup> Act XX of 1949, Art.71

<sup>92</sup> Act LVIII of 2001 on Hungarian National Bank, Art. 49., 52/A.(5)

<sup>93</sup> The following activities shall be regarded in particular as professional experience: information service, programme editing and making, broadcasting, telecommunications, frequency management, as well as the technical, legal, administrative, economic, cultural, scientific and public opinion survey activities related thereto. Art 34 (1) of Act I of 1996

<sup>94</sup> Act CXXVII of 1996, Art 6, 18

for a leading and confidential position.<sup>95</sup> Moreover, only a Hungarian national may be appointed to judge at court,<sup>96</sup> public prosecutor, drafter, secretary and investigator at prosecutor office.<sup>97</sup>

- Further on, EEA nationals and their family members belonging to the personal scope of the FreeA is employable as typist, physical worker, expert of justice and candidate for expert – with exception of protocol writer and editor at company court – at court administration, if s/he in possession of a proper Hungarian language knowledge that is necessary to the given position.<sup>98</sup>

Thus the key position means implementation on power of justice (such as judge, member of tribunal, public prosecutor) shall belong to nationals together with their assistance in a wide circle. The amendment entering into force on 1<sup>st</sup> July 2007 only changed rather the terminology (EEA nationals and family members was replaced by persons ambit the FreeA).

*c. Public servants*

It means a gathering term providing workers for all kinds of publicly financed institutions (e.g. at public schools, hospitals, universities) on the base of PubsA 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 (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 specific task or protected public interest this entitlement is problematic, and seems to violate the constitutional rule-of-law. The consequence of appointment in absent of pre-conditions (such as Hungarian citizenship) means invalidity of contract on employment (Art.10 (1) of the Act). According to the recent modification public servant's position shall be fulfilled by a competition procedure. The minister is also entitled to define specific requirements in application and in contract making beyond the general conditions by law (e.g. working practice to the given position and exemption from the probationary period). (Art 20/B and 20/A(5)) The purpose of the last modification of PubsA was to make the public service sector more competitive and transparent through the public tenders of jobs.<sup>99</sup> Moreover, all public servants determined by law shall take regularly declaration on assets since 2007.

Numerous ministerial decrees were issued that were amended due to accession but the following remained in force together with previously adopted *decrees which require nationality*.

---

<sup>95</sup> Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office, Art.82 (2) as amended by the FreeA in Art.82

<sup>96</sup> Act LXVII of 1997 on legal standing and remuneration of judges, Art.3

<sup>97</sup> Act LXXX of 1994 on public prosecutors' legal status and data protection in Public Prosecutor Office, Art. 14, 79

<sup>98</sup> Act LXVIII of 1997 on legal standing of workers in administration of justice, Art 11 (3) amended by the FreeA

<sup>99</sup> Government Decree No. 388 of 2007, 23 December on details how to publish the public servants' jobs and put those to the homepage of the Government Personnel Directorate

## HUNGARY

- High level leaders (e.g. director of public financed institutions under the supervision of minister, director of an institution appointed by the local municipal) and heading position of public servants *in the field of industry, commerce and tourism* shall be Hungarian nationals.<sup>100</sup>
- High level leaders and heading position of public servants (e.g. director, deputy-director of National Institute of Sport Supplies, Olympic Centre, institute director appointed by the municipal) in the field of *physical education and sport* shall be Hungarian nationals.<sup>101</sup>
- 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 exempts him/her.<sup>102</sup> This acceptance is totally discretionary, there are no substantial preconditions. Moreover, the a foreigner without proper practice and qualification may be appointed to a high leading positions at artist institutions if s/he is considered as internationally well-known, outstanding artist.<sup>103</sup>
- Contract of public servant employment in all public institutions, organs under the *supervision of the minister of the interior (law enforcement)* 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 only Hungarian nationals shall be employed if “public order, investigation of crime, border control, catastrophe-management, protection of data and migration interests requires it.”<sup>104</sup> 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. However, in Section 2 the Decree determines only Hungarian nationals can be employed as administrators, security-technician, night watchman, captain and member in security guard with gun, receptionist, gatekeeper, preparation in duty, communication and telephone-technician at *National Catastrophe-Management Directorate* and its all units including the Training Centre.
- 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 not regulated in a wide discretion power given to the minister.<sup>105</sup>
- Top leaders in public financed *institutions belong to the minister of national heritage* shall be Hungarian nationals, such as director in National Administration on Ancient Monuments.<sup>106</sup>

---

<sup>100</sup> 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 (1)-(3)

<sup>101</sup> Government Decree No. 89 of 1994, 8 June, Section 3(1)

<sup>102</sup> Government Decree No. 150 of 1992, 20 November, Section 2 (2)

<sup>103</sup> Government Decree No. 150 of 1992, 20 November, Section 6 (6)

<sup>104</sup> 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, 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).

<sup>105</sup> 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

<sup>106</sup> Ministerial Decree of Environment Protection and Regional Development No.5 of 1993, 7 February, Section 2

## HUNGARY

- Hungarian citizenship is required for public servant employed at Headquarters of Customs Police and units under its supervision, and at Information Service Centre of the Ministry of Finance – if the position is out of a physical job.<sup>107</sup>
- 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.<sup>108</sup> The grounds of decision and types of position are not defined at all.

### *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*. According to the recent amendment the public official shall be a national with clean criminal record, at least medium level education (clerk) or a diploma (in all decision-making position) and applicant has to take a successful entry exam.<sup>109</sup> Moreover, for a stronger transparency and anti-corruption efforts, in certain confidential and leading positions a declaration on assets and a security checking on the whole family of the applicant is necessary.<sup>110</sup>

While the nationality is a general requirement, persons under the personal scope of FreeA and “nationals of party states of the European Social Charter” 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)) This amendment as an exception means a more liberal regulation using another terminology (instead of EEA nationals and family members it refers back to persons with right to free movement) entering into force on 15 July 2007.<sup>111</sup>

PuboA outlines<sup>112</sup> and the government decree determines time to time the precise circle of the scope of state organs in which the implementation is in full or in absence of specific provisions is obligatory.

---

<sup>107</sup> 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)

<sup>108</sup> Ministerial Decree of Defence No. 25 of 1992, 25 November on certain issues of public servants’ legal standing employed in Defence, Section 3

<sup>109</sup> Art 7(1) of PuboA, and its Annex 6

<sup>110</sup> Its circle is regulated in ministerial decrees, such as 3 of 2004, 17 February by the Defence Minister, 5 of 2007, 13 February by the Defence Minister, 19 of 2003, 9 April of Minister of Economy and Transport, 2 of 2006, 14 March by the Minister of Foreign Affairs. The “sensitive working positions” for making regular declaration of assets of the public servants will determined by the Government (Art 79 of PuboA)

<sup>111</sup> Act LXXXIII of 2007

<sup>112</sup> PuboA shall be implemented at Prime Minister’s Office, ministries, national authorities and their regional, territorial units, National Investigation Office, County Public Administration Offices, mayor offices, public inspector offices. Moreover, if otherwise is not regulated in specific rules, it shall be implemented at officials in the office of the State President, Parliament, Ombudsman, Constitutional Court, Audit Office, Council of Public Procurement, National Agency of Arable Land Management, Body of Radio and Television Broadcasting, Economic Competition Authority, Secretariat of Hungarian Academy of Sciences and National Telecommunication Authority. (Art 1)

*e. Officers*

This general term covers 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) This rationale appears in regulation on students and lecturers of military and law enforcement high education. For instance, director of National Defence University shall be a national.<sup>113</sup> Similarly, professional and contractual worker in defence – with clean criminal record, determined qualification and health conditions and permanent residence in Hungary – shall be a national. For this reason, the legal relation is terminated in case of ceasing nationality or acquisition of another nationality.<sup>114</sup>

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/law enforcement. (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))

### 3. LANGUAGE REQUIREMENT

As regards public servants the knowledge of Hungarian language is not expressly required. However, in case of public servants belonging to law enforcement sector the “proper level of Hungarian language knowledge that is needed to his/her working task” is required for employment. Further on, upon request of the responsible unit leader the minister of justice is entitled to exempt the applicant the Hungarian language knowledge.<sup>115</sup>

Public officials shall be Hungarian national which inherently presumes the knowledge of Hungarian language. It is indirectly evidenced by Art.7 (2) of PuboA which says that career starters must possess foreign language skills – English, German or French – which also presumes that Hungarian language skills are present. As an exception, Art. 7 (8) declares that a public official might be a persons in personal scope of FreeA, but only if the (clerk’s) 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 determine the level of (Hungarian) language skills to which task or to regulate how to make 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.)

---

<sup>113</sup> Act XLV of 1996 on legal standing of students, lecturers and leaders of defence and law enforcement high education institutions, Art. 11(1)

<sup>114</sup> Act XCV of 2001 on legal standing of professional and contractual soldiers in defence, Art 41(1), 62(1)

<sup>115</sup> Internal Ministerial Decree 62 of 1997, 7 November on executive rules to the PubsA in the field of law enforcement

#### 4. RECRUITMENT, RECOGNITION OF DIPLOMAS AND PROFESSIONAL EXPERIENCE

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.<sup>116</sup> The ECJ also pointed out that a kind of selection process might be worked out for such situations, similar to what is called the *du tour extérieur*, but that shall be proportional and appropriate.

It is apparent that the ruling is important only for those Member State that have similar systems or training methods. It shall be emphasised at the outset, that *Hungary will introduce a similar entry exam for applicants of public officials only in 2009*. Accordingly, Hungarian law does not envisage any such kind of recruitment or selection process in the course of which a post-graduate candidate is in a preliminary civil servant status. It seems that Hungary belongs to the majority of the Member States in this regard<sup>117</sup> but the near future in can change in a segment that has been rather exceptionally open for EEA nationals and family members.

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.

---

<sup>116</sup> Paras 100-101.

<sup>117</sup> Network on the Free Movement of Workers in the EU in 2002-2003, page 17.

There are neither specific provisions on recognition of diplomas and certificates beyond the general rules as described in Chapter 2 (e.g. for ship captains), nor on recognition of professional experience in recruitment and professional advantages procedure in public sector. The existing provisions only determine the minimal qualification to the given task, working or leading positions.<sup>118</sup> We can conclude from these provisions the following:

- The required certificate or qualification shall be provided, exception is not allowed.<sup>119</sup> If there is an extraordinary case (e.g. a totally new qualification is introduced, thus a period of toleration is regulated).
- Nomination of qualifications or certificates is based on the nomenclature and structure of Hungarian vocational training and high degrees.<sup>120</sup> There is no reference on “equivalent” qualification obtained out of Hungary. Naturally, the recognition rules are applicable (in particular for public servants).
- There are no provisions how to evaluate or accept working experiences abroad.<sup>121</sup>

However, a case<sup>122</sup> 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, literally as Act on Public Officials defined.

The Ombudsman obtained some complaints from migrant workers why their working years abroad were not been taken into account in calculation of jubilee payment and premium period in public sector. The Ombudsman interpreted the applicable provisions and ascertained that exclusion from jubilee payment was lawful but exclusion from premium period of public servant is unlawful.<sup>123</sup>

In summary, in 2007 the Hungarian regulation on employment in public sector was changed in limited extent in order to unify the terminology (persons enjoying right to free movement as FreeA inserted into the national law), and to introduce more instrument of competitiveness (entry examination) and anti-corruption rule (declaration on assets). The reasons, needs why non-nationals are excluded from numerous positions – especially as public servants – are not clearly explained by law. It seems arbitrary including granting or refusing exceptions for non-nationals. Requirement of nationality in heading position of public servants *in the field of industry, commerce, tourism, cultural heritage and sport* is stretching over the interpretation of relationship to public power as determined by the ECJ.

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. Until 2009 a new system for access to the public sector will be introduced.

---

<sup>118</sup> For instance, Government Decree No. 9 of 1995, 3 February on qualification of public officials. It covers on local self-governments, public administrative offices at country level and central administration.

<sup>119</sup> Section 6 of Government Decree No. 9 of 1995, 3 February clearly bans exceptions.

<sup>120</sup> For instance, Interior Ministerial Decree 25 of 2005, 6 May on nomination of working tasks

<sup>121</sup> If there are specific rules on a given task (e.g. Architect in Chief employed in the Metropolitan Municipal) defines the minimal working and heading experience, without any reference on out of the Hungarian settlement management and administration (Section 2-4)

<sup>122</sup> *Bíróági Határozatok* [periodical of published cases of the Supreme Court] 1488/2006.

<sup>123</sup> *Állampolgári Jogok Országgyűlési Biztosá beszámolója*, Budapest, 2007. [Yearly report to the Parliament of the Ombudsman, 2007] p.80

The newly defined rules will aim at honouring the applicants' different abilities (professional, language, communication skills) including former employment relationships.

*Recent literature*

- Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament of the Ombudsman, 2007]
- Tóth Judit: Mit ér az állampolgárság, ha magyar? [What is the legal substance of the Hungarian nationality?] In: Közjogi tanulmányok Lőrincz Lajos 70. születésnapja tiszteletére. Szerk: Imre Mikós – Lamm Vanda – Máthé Gábor, Corvinus Egyetem – Károli Gáspár Református Egyetem – MTA Jogtudományi Intézet, Budapest, 2006. 419-426.
- Sárközy Tamás: Államszervezet és kormányzati irányítás [State structure and governance] Közigazgatás és EU. 2006. 75-86.
- Sivák József: Európai közigazgatási tér és magyar közigazgatás [Area of European Public Administration and the Hungarian Public Administration] Közigazgatás és EU. 2006. 13-17.
- Imre Forgács: The Dilemmas of Public Administration in the Age of Integration. Presentation given at the public administration conference "Administration in the 21<sup>st</sup> Century" organised by HAS Public Administration Committee (29 November 2006). It is summarised in *Európai Tükör*, Special Issues 2006. August, 39-46

## Chapter V

### Members of the Family

#### 1. REGULATION IN FORCE

- 2001.évi XXIX. törvény a külföldiek beutazásáról és tartózkodásáról [Act XXIX of 2001 on Entry and Stay of Foreigners] modified by Act I of 2005, Act XLVI of 2005, Act LXXXIII of 2005 and Act XLVI of 2005 – in force until 30 June 2007
- 170/2001. (IX.26.) Korm. rendelet a külföldiek beutazásáról és tartózkodásáról szóló 2001.évi XXIX. törvény végrehajtásához [Government Decree No. 170 of 2001, 26 September on implementing the rules of Act XXIX of 2001] It was modified by Government Decree No.119 of 2005, 28 April and Government Decree No. 178 of 2006, 23 August – in force until 30 June 2007
- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [Act I of 2007 on entry and residence rights of persons with right to free movement and right to residence] with effect since 1 July 2007
- 113/2007. (V.24.) Korm.rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007.évi I. törvény végrehajtásáról [Government Decree No. 113 of 2007, 24 May on implementing the rules of Act I of 2007] with effect since 1 July 2007
- 2005. évi CXXXIX. törvény a felsőoktatásról [Act CXXXIX of 2005 on high-level education]
- 2001. évi C. törvény a külföldi diplomák és oklevelek elismeréséről [Act C of 2001 on the Recognition of Foreign Diplomas and Qualifications] amended by the Act CX of 2007 entering into force on the 20<sup>th</sup> of October 2007
- 1993. évi LXXIX. törvény a közoktatásról [Act LXXIX of 1993 Public Education]
- 1992. évi XXIII. törvény a köztisztviselők jogállásáról [Act XXIII. of 1992 on the Legal Status of Public Officials] as amended by Act I of 2007.
- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits]
- 175/2006 (VIII. 14) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól [Government Decree No. 175 of 2006, 14 August on the Benefits of Students in High-level Education] that was in effect until 1 August 2007
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [Government Decree No. 51 of 2007, 26 March on Benefits and Fees of Students in High-level Education] entering into force on 1 August 2007 replacing the prior Government Decree
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történő csatlakozást követően alkalmazandó munkaerő piaci viszonyosság és védintézkedés szabályairól [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]
- 8/1999. (XI.10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Ministerial Decree No. 8 of 1999, 10 November on foreign labourers' authorisation on employment] in a consolidated text
- 1994. évi LV. törvény a termőföldről [Act LV of 1994 on Arable Land]

- 7/1996. (I. 18.) Korm. rendelet a külföldiek ingatlanszerzéséről [Government Decree No. 7 of 1996, 18 January on Acquisition of Real Estate by Foreign Residents]
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act III of 1993 on Social Administration and Social Benefits] in a consolidated text
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [Government Decree No. 12 of 2001, 31 January on the housing-related state subsidies]

This Chapter focuses on the rights of family members in the distinct sectors. However, it is necessary to shortly refer to the main legislative instrument entered into force on 1 July 2007, namely FreeA that has an important bearing on the rights of migrants' family members in general. FreeA means the transposing rule of 2004/38/EC Directive.

The FreeA

- clearly regulates (Article 1 (1) b) that the Republic of Hungary guarantees the right to free movement and the right of residence to family members of EEA nationals (also Swiss nationals) and pursuant to Article 1 (1) c) this right is also provided for the family members of Hungarian nationals (irrespective of their nationality). Family members are included in the term “persons being entitled to free movement and right to residence” (Article 1(1) involved).
- changed the personal scope of several very important acts upon its entry into force. Usually these acts refer to “persons being entitled to free movement and right to residence” in their personal scope meaning that family members are covered by this term. In sum, the wording of the personal scope of the FreeA and its extensive word-by-word citation in other areas of law lifted family members into the category of migrant workers – with some exceptions of course.

These legislative steps generally contributed to the enhanced rights of family members in the sphere of residence rights, recognition of diplomas and qualifications, in the case of study loans and in certain areas of the social field. Family members are not allowed to have access to non-agricultural land, they do not have equal treatment as regards acceptance of driving licences, they are not put on an equal footing as regards benefits at museum admission.

## 2. RIGHT OF RESIDENCE

After some months delay the FreeA<sup>124</sup> transposed the 2004/38/EC Directive into the national law. This Act entered into force on 1<sup>st</sup> July 2007, consequently in the first half of 2007 the prior AlienA – in particular its chapter on EEA nationals and family members as special, exceptional provisions – together with AlienD were applicable.

a) The AlienA and AlienD regulated *until 30 June 2007* the entry, residence and departure of EEA nationals (“national of the Member State of EEA”) which covers on Hungarian citizen in absence of exclusive reference, and family members of EEA nationals as *specific rules in relation to all non-nationals as general subjects of AlienA*. 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;

---

<sup>124</sup> The Parliament adopted it on 18 December 2006.

## HUNGARY

- 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.

Three chapters of the AlienA were to 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

- i. 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).
- ii. In order 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,
- iii. 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

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

## HUNGARY

- v. 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.
- vi. 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

- i. 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.
- ii. 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.
- iii. 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.

b.) The FreeA modified about 30 Acts in order to unify the terminology and legal standing of EEA nationals and their family members inside the Hungarian law *since 1 July 2007*.

The personal scope of the FreeA means a legal guarantee for free movement and residence as subjective right.

Hungary shall ensure the *right to move and reside freely* for (Art. 1):

- i. citizens of Member States of the European Union, with the exception of Hungarian nationals, and citizens of other signatory states to the Agreement on the European Economic Area, and also, with regard to the right to move and reside freely under international agreements between the European Community and its Member States and non-signatory states to the Agreement on the European Economic Area, for persons with identical legal status to nationals of signatory states to the Agreement on the European Economic Area (*EEA national*);
- ii. family members of a non-Hungarian EEA national who accompany or join them (*family member of an EEA national*);
- iii. non-Hungarian family members of a Hungarian national who accompany or join them (*family member of a Hungarian national*); and
- iv. a person who accompanies or joins an EEA national or a Hungarian national and who:
  - a. is a dependant of a Hungarian national, or who has lived in the same household as a Hungarian national for at least one year, or who is cared for in person by a Hungarian national upon serious health grounds;
  - b. was a dependant of an EEA national, or lived in the same household as an EEA national for at least one year, in the country from which they arrive, or who is cared for in person by an EEA national upon serious health grounds;and whose entry and residence as a family member is permitted by the authorities.

## HUNGARY

FreeA regulates the *definition of family member* (Art 2 b):

- a) the spouse of an EEA national;
- b) the spouse of a Hungarian national;
- c) the direct descendants under the age of 21, or dependants of, an EEA national or of their spouse;
- d) the direct descendants under the age of 21, or dependants of, a Hungarian national or of their spouse;
- e) the dependent direct relatives in the ascending line of an EEA national or of their spouse, unless otherwise provided for by this Act; and
- f) the dependent direct relatives in the ascending line of a Hungarian national or of their spouse,
- g) the parent or guardian of a Hungarian national under the age of majority;
- h) those whose entry and residence as a family member is permitted by the competent authority.

### ***Entry and residence not exceeding 3 months (Art. 3-5, 34(4))***

- i. A family member with the nationality of a third country accompanying an EEA or Hungarian national or joining an EEA or Hungarian national living in the territory of Hungary shall be entitled to enter the territory of the country with a *valid travel document* and, unless otherwise provided for in directly applicable European Community law or by international agreement, a valid (multi-entry) *visa*. It covers on dependant of a Hungarian/EEA national, or s/he has lived in the same household as a Hungarian/EEA national for at least one year, or is cared for in person by a Hungarian national upon serious health grounds. They can enter without visa, if they have a document proving the right of residence under this Act, or a residence card issued to them as a family member of an EEA national, having the nationality of a third country, by a signatory state to the Agreement on the European Economic Area.
- ii. The Schengen Borders Code shall also apply to entry and visa issuing. The right to entry by visa shall cease if the conditions in the Code cease to exist. If entry is denied because the entry conditions have not been fulfilled, the border traffic authority shall, upon request of the (very probable) EEA national or family member the opportunity to obtain the necessary documents, or otherwise prove that the entry conditions have been fulfilled, within 72 hours of return being decreed.
- iii. A family member having the nationality of a third country and entering legally, shall have the right of residence for up to 3 months from the date of entry as long as his residence becomes an unreasonable burden on the social assistance system of Hungary.

### ***Residence exceeding 3 months (Art 6-8, 10-15(1))***

- i. Due to *derivative residence right* of family member, the FreeA requires that EEA national shall be met the requirements: paid employment, sufficient resources for him/herself and family members during become an unreasonable burden on the social assistance system, or s/he has been admitted to study at an educational institution (accredited training programme, public education, vocational training, high-level education) if at the time of entry, sufficient resources for him/herself and family members (only the spouse or dependent child) are provided not to become an unreasonable bur-

## HUNGARY

- den on the social assistance system during their period of residence, and s/he has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.
- ii. A family member of a Hungarian national in paid employment shall be entitled to residence for more than three months, if s/he or the Hungarian national has sufficient resources for said family member not to become an unreasonable burden on the social assistance system, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.
  - iii. Residence *may be authorised* in absence of self-subsistence conditions for the parent or guardian of a Hungarian national below the full age (minor). Authorisation also may be allowed for dependant of a Hungarian national, or s/he has lived in the same household as a Hungarian national for at least one year, or is cared for in person by a Hungarian national upon serious health grounds; or the said person was a dependant of an EEA national, or lived in the same household as an EEA national for at least one year, in the country from which they arrive, or who is cared for in person by an EEA national upon serious health grounds, where the EEA national was in a paid employment, had sources for subsistence or admitted to study. It is conditional, the authorisation shall cease: if those concerned no longer live together, the Hungarian national died, his/her Hungarian nationality terminated, EEA national died, lost or gave up the right of residence.
  - iv. The family member obtain *own right to residence*
    - a. despite the death or giving up the right of the residence of EEA national, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law,
    - b. the family member's right to residence of a Hungarian national shall retain after the death of the national, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.
    - c. the right to residence of spouse of the EEA/Hungarian national shall retain despite of marriage is dissolved or annulled by the court, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law. Moreover, the right of residence depends on length of valid marriage and prior residence: if the marriage lasted for at least two years prior to its dissolution or annulment, and the ex-spouse resided in the territory of the Republic of Hungary for at least one year of the marriage as a family member of the EEA or Hungarian national; if the ex-spouse is also accorded by the courts the right of parent or guardian over the child of the EEA national residing in the territory of the Republic of Hungary, or is responsible for the supervision of the child by agreement; or if so justified by exceptional circumstances, particularly if their spouse, being an EEA or Hungarian national, carried out an intentional offence against them during the marriage, or if they had the legal status of settler prior to the marriage; or if the ex-spouse has visiting rights in respect of the child by agreement or by court judgment, assuming that such visiting take place in the territory of Hungary under the terms of the agreement or court judgment;

## HUNGARY

- d. the spouse of a Hungarian national having the nationality of a third country shall retain unconditionally the right of residence if the spouse also exercises the right of parental supervision over a child born of the marriage;
- e. if the EEA national dies, or loses or surrenders his/her right of residence, the right of residence of his/her children shall be retained, regardless of age, until they have completed their education, if they have already commenced their education and continue it without interruption;
- f. the other parent with the right of parental supervision over the children shall retain the right of residence until the children have completed their education;
- v. Leaving territory of Hungary for more than 6 months within one year before obtaining the right of permanent residence means *a waiver the right to residence*. It shall not apply if the reason for absence is compulsory military service; or an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.
  - i. The *right of residence of family members shall cease* if: they no longer fulfil the conditions for the right of residence; or they are prohibited from entry and residence. Family members with the nationality of a third country shall also lose their right of residence if the family stops living together within six months of the right of residence having been obtained, assuming that this only happened in order to obtain the right of residence, or the right of parental supervision shall lose and s/he is not entitled to continued residence on other grounds. The authority has to take a decision on recognition of these legal facts.

### ***Right to permanent residence (Art. 16-19)***

It shall be provided for

- a. family members who have resided legally in the territory of Hungary for five years without interruption,
- b. persons who have the right of residence in respect of an EEA or Hungarian national and who have resided legally in Hungary for five years without interruption;
- c. children born in Hungary to a parent with the right of permanent residence,
- d. a family member of a Hungarian national, with the exception of the spouse, if he/she has lived together with a Hungarian national for at least one year without interruption,
- e. the spouse of a Hungarian national, assuming that the marriage took place at least two years prior to the submission of the application and that they have been living together continuously ever since,
- f. a person with the right of residence as a family member, if the EEA national obtained the right of permanent residence (in paid employment and become inactive),
- g. a person with the right of residence as a family member, if an EEA national in paid employment in Hungary dies before obtaining the right of permanent residence, and the EEA national resided in the territory of Hungary for two years without interruption prior to death; or the death was the result of an industrial accident or occupational illness,

If the family member surrenders the right of residence in the territory of Hungary and then returns for a period of more than three months, the period of time required for obtaining the right of permanent residence shall start again. The following shall not constitute interruptions to residence: residence outside the country of no more than six months per year; absence for

## HUNGARY

compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the family member stops exercising the right of residence in Hungary (leaving, disappearing).

The right of permanent residence shall cease in the event of continuous absence of 2 years; or declaration of a ban on entry and residence.

### ***Documentation proving the right to residence is as follows (Art.20-26(1))***

- i. Visa is valid for six months from the date of issue but not exceed that of the travel document. It shall be issued free of charge, within 15 days, if the purpose of travel is certified (FreeD Section 9(4), 11). A visa must be invalidated if a third country national family member does not fulfil the conditions defined in the Schengen Border Code at the time of entry. There shall be no right of appeal against visa refusal or invalidation of a visa.
- ii. Residence card: The right of residence of more than 3 months for a third country family member shall be attested to by this document issued by the OIN regional unit, and which must be applied for at the latest by the 93<sup>rd</sup> day after entry. Documents verify that the conditions for residence are fulfilled, as defined under separate legislation, those must be shown or enclosed at the time the application is submitted. (The paid employment as purpose of residence shall be certified with labour contract, property document in a company, entrepreneurship card or other proper way. The minimal monthly income must exceed the lawful minimal pension per month per capita – about 130 € – in the family, or proving assets, real estate or other sources of income taking into account the size of the family not to become unreasonable burden. The family ties shall be proved by birth/marriage/adaptation certificate. The sponsorship declaration undertakes to provide subsistence for family member on a format. FreeD, Section 20-25). At the same time as the application is submitted, the authority shall issue a *certificate* attesting to the right of residence of a family member with the nationality of a third country until the application has been decided upon (3 months). The residence card shall certify that the conditions for residence are fulfilled for as long as it is valid (up to 5 years). The card shall be invalid if its holder stops exercising the right of residence in the territory of Hungary, or if the right of residence ceases.
- iii. Permanent residence card: it attests to the right of permanent residence of the family members. Third country family member shall submit an application for a permanent residence card before the expiry of the residence card. If s/he submits with delay and cannot give a valid excuse, it must be proved whether the conditions for the right of permanent residence have been fulfilled. At the same time as the application is submitted, the OIN regional unit shall issue a *certificate* attesting to the right of residence until a permanent residence card is issued (3 months). The permanent residence card shall be invalid if the right of permanent residence ceases.
- iv. The family member shall report his/her first home (address) in Hungary during the procedure for issuing a residence card.

***Departure of family member refers on the following issues (Art. 15(2)-(4), 33-34, 38-48, 64)***

- i. If the right of residence ceases, the EEA national and family member must *leave the territory* of the country unless they are granted a residence permit under separate legislation. The obligation to leave the country must be fulfilled within 3 months of the decision taking legal effect.
- ii. The right of entry and residence can be restricted in accordance with the principle of proportionality and exclusively on the basis of the personal conduct of the individual concerned which represents a genuine, direct and serious danger to any of the fundamental interests of society, particularly public order, public security or public health. Return and expulsion shall respect for non-refoulement (protection against torture, death penalty, persecution).
- iii. *Entry and residence is prohibited*, if in respect of him/her Hungary has undertaken an international legal obligation to enforce a prohibition of entry and residence; or anyone in respect of whom the Council of the European Union has decided to enforce a prohibition of entry and residence. The authority shall determine the duration of a prohibition of entry and residence up to 3 years in the first instance, which may be extended by a maximum of 3 years on each occasion, if the conditions for it still exist upon the expiry of the prohibition. It must be repealed if the grounds for prohibition no longer exist.
- iv. The competent authority may *expel an EEA national or family member* (1-5 years) who:
  - i. has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
  - ii. does not have the right of entry or residence but who has nevertheless referred the competent authority to false information or untrue facts in order to verify a right of entry or residence. The authority in both cases (a, b) must evaluate the nature and severity of the crime committed; the age and state of health of the individual concerned; the family situation of the individual concerned, and the duration of family relations; the number and age of any children of the individual concerned, and the means and frequency of his/her contact with them; whether there is another state where there is no legal obstacle to the family continuing to live together, taking into account any difficulties the family members might encounter if they were forced to settle in the territory of that state; the financial situation of the individual concerned; the duration of the individual's residence in Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin.
  - iii. at the instigation of the public health authority, on public health grounds if s/he suffers from, could infect with, or is carrying a disease dangerous to public health as defined in separate rule, and does not undergo compulsory treatment for these, unless he contracts, could infect with, or carries the disease after three months have passed from the date of entry;
  - iv. has legally in the country for less than 10 years and not minor (unless expulsion takes place in the interest of the minor), or
  - v. has committed an offence and the court imposed the expulsion.
- v. Against the expulsion and prohibition of residence there is a court review with suspensive effect on enforcement. The court shall rule on the application within 8 days of its arrival. The EEA national or family member must also be heard in person at the pro-

ceedings if a request for this is made. A hearing in person may be dispensed with if the EEA national or family member cannot be summoned at the given address, or has moved to unknown whereabouts. The court may amend the decision. There shall be no further right of appeal against the decision of the court.

- vi. An EEA national or family member prohibited from entry and residence at the same time as his/her expulsion as an alien may, after one year has passed since the date of expulsion, request that the prohibition of entry and residence be repealed with reference to a change in his state of health or family situation that justifies his residence in the territory of Hungary. The competent authority shall decide on the application within 3 months. If the competent authority ends the prohibition of entry and residence, it shall see to its repeal.
- vii. An EEA national or family member may not leave the territory of Hungary if he/she is under arrest pending criminal proceedings, under house arrest, forbidden from leaving his/her place of residence, in custody, in extradition custody, under arrest pending extradition, under arrest pending handover, under arrest pending temporary handover, or undergoing temporary, compulsory medical treatment. The competent authority shall decide to withhold the travel documents in mentioned cases. There is no right of appeal against the decision.

The “*unreasonable burden*” as regularly returning exclusive preconditions means that EEA national or family member has obtained for at least 6 months regular social allowance or regular age benefit on the grounds of SocialA. However, the authority shall evaluate the prior length of residence in the country, length of provided social benefits and reasons for material shortage of the family or the persons in concern (e.g. timely shortage or standard need). (Section 35 of FreeD)

### 3. ACCESS TO WORK

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

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).

As regards the public sector, we have to underline as follows.

- PubsA provides accession without nationality in general, while there are specific rules excluding non-nationals in defined tasks, jobs regulated by decrees as “exceptions”.
- PuboA deals with the family members of EEA nationals. Art. 7 (1) states that public official shall be only Hungarian nationals. As an exception, Art. 7 (8), however, declares that a person being entitled to free movement and right to residence can be employed in the public administration in administrative occupations (clerk), if the work at issue is not confidential and the person possesses the language skills necessary to perform the tasks.
- Accession to employment in administration of justice (judge, administrator, expert in judicial/forensic sciences, protocol writer, typist, physical worker) requires nationality, 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. Thus belonging to the personal scope of the FreeA a persons is employable as typist or physical worker at the Public Prosecutor Office, if s/he has basic qualification, has *Hungarian language knowledge* which is necessary to work in the given position, has a clean criminal record. This exception cannot be implemented for a leading and confidential position.<sup>125</sup> Moreover, only a Hungarian national may be appointed to judge at court,<sup>126</sup> public prosecutor, drafter, secretary and investigator at prosecutor office.<sup>127</sup> Further on, belonging to the personal scope of the FreeA s/he is employable as typist, physical worker, expert of justice and candidate for expert – with exception of protocol writer and editor at company court – at court administration, if s/he in possession of a proper *Hungarian language knowledge* that is necessary to the given position.<sup>128</sup>

#### 4. RECOGNITION OF DIPLOMAS AND QUALIFICATIONS

It is worthy to recall that until 1 July 2007 the entry into force of FreeA, the status of family members of EEA nationals has not been regulated in a unified way. FreeA changed the personal scope of Act C of 2001 on the recognition of diplomas and qualifications as well. Pursuant to Article 28 (2) a), the same legal status is added to the family members of EEA / Swiss nationals and Hungarian nationals as that of union citizens. In this sense the Act became clear: every family member enjoys the same rights as union citizens.

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.

---

<sup>125</sup> Act LXXX of 1994 on public prosecutors’ legal status and data protection in Public Prosecutor Office, Art.82 (2) as amended by the FreeA in Art.82

<sup>126</sup> Act LXVII of 1997 on legal standing and remuneration of judges, Art.3

<sup>127</sup> Act LXXX of 1994 on public prosecutors’ legal status and data protection in Public Prosecutor Office, Art. 14, 79

<sup>128</sup> Act LXVIII of 1997 on legal standing of workers in administration of justice, Art 11 (3) amended by the FreeA

## 5. SOCIAL ADVANTAGES

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.

In 2007 the structure of regulation of the social sector in terms of entitlements for EEA nationals and their family members has not been changed. The only remarkable amendment concerned FamA. As from 1 July 2007 the personal scope of Act has been clarified due to FreeA. Prior to that date the personal scope of the Act covered Hungarian nationals, persons with permanent residence permits, refugees, persons falling within the ambit of Reg. 16126/8/EEC and their family members and persons falling within the ambit of Reg. 1408/71/EEC if they resided in Hungary. Following from these rules one benefit (birth grant) was not eligible for an economically inactive EEA national spouse of a Hungarian national. This rule made the migration less attractive hence usually the mother was not entitled to claim the benefit only the father, the birth grant, however, can only be applied for by the mother.

Since 1 July 2007 the personal scope has been extended to the family members of Hungarian nationals as well terminating the discrimination and opening up the opportunity of application for the economically inactive spouses too. Thus personal scope covers on nationals, long-term migrants (persons with permanent residence permits), recognised refugees and stateless, persons falling within the ambit of Reg. 1408/71/EEC and FreeA, if s/he spend more than 3 months in Hungary and his address is registered (as all residents in the country regardless nationality). The maternity benefits – with exception of birth grant – persons ambit of Reg. 1408/71/EEC is eligible for persons belonging to FreeA residing in Hungary – including frontier workers – if his/her address is registered. (Art 2 of FamA). The procedural issues in favour of latest two circles shall be regulated by a Government Decree.

As regards access to educational and study grants see Chapter 2, point 3.

## 6. ADMINISTRATIVE PRACTICE

The Ombudsman investigated some cases related to family unification and entry and residence of TCN family members of Hungarian national (EU citizen) in Hungary. Visa was refused for the fiancé of a national although the invitation letter issued by the Hungarian national was approved by the Immigration authority (regional unit of the OIN). This maladministration was improved upon intervention of the Ombudsman.<sup>129</sup> Family unification was also refused for the couple of a national with reference to improper documentation causing a misuse of law.<sup>130</sup> A family unification and residence permit was also refused for a farer family member of a national but accession of Romania somehow forced the delayed solution in proceedings. We have to add that while the Ombudsman refers on the FreeA that is violated – there is no reference at all on 2004/38/EC Directive.<sup>131</sup>

<sup>129</sup> OBH 4133/2006. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

<sup>130</sup> OBH 4252/2006. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

<sup>131</sup> OBH 3357/2007. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

## HUNGARY

### *Recent literature*

- Gellérné Lukács Éva, Munkaerőszűrés a minőségért. [How to select out the best in the labour market], OFA – KSH Kutatási Jelentések, Budapest 2007. (in press) 1-40.
- Rédei Mária, Tanulók migrációja [Students' migration] OFA – KSH Kutatási Jelentések, Budapest 2007. (in press).
- 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)
- Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]
- 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

### Relevance/Influence/Follow-up of Recent Court of Justice Judgments

The recent cases decided by the ECJ during the year of 2007 focused on the following aspects of the free movement of persons:

- legal consequences of international agreements (C-97/05 *Gattoussi*),
- social advantages (C-212/05 *Hartmann*, C-213/05 *Geven*),
- “communitarisation” of labour market measures (ITC C-208/05),
- intercourse between free movement and social security rights (C-287/05 *Hendrix*),
- retention of Community worker status (C-291/05 *Eind*),
- residence rights and expulsion (C-50/06 *Commission v Netherlands*, C-1/05 *Jia*).

Additionally, tax issues arose in the cases of *Lakebrink* and *Commission v Denmark* that are dealt with in Chapter 3 referring to tax advantages.

#### 1. THE GATTOUSSI CASE (C-97/05)

In the *Gattoussi* case the ECJ essentially declared that the equal treatment article contained in the Euro-Mediterranean (Association) Agreement may limit the freedom of the Member States to freely decide on the right of residence of Tunisian nationals.

The case focuses on a very nuance but crucial element of national laws on foreigners. Namely which right presupposes the other: the *right to employment* presupposes a lawful residence or a *right of residence* can be deduced from the right to work, or there are no linkages between the two systems. Hungarian law (ThirdA) declares that a third-country national can only reside in Hungary aimed at pursuing economic activity if s/he possesses a residence permit for this purpose. ThirdD connecting to ThirdA specifies that the purpose of pursuing an economic activity can be justified, in particular, by a document evidencing the employment relationship. The maximum validity of the residence permit can amount to 3 years. However, the concrete duration is dependent upon the validity period of the work permit. From the wording of the law it can be deduced that the residence permit is issued after the submission of the work permit hence its duration shall be accorded to the validity of the work permit.

UnemplA does not mention the requirement of lawful residence as a pre-condition. PermitD enumerates the reasons on the basis of which the application for the work permit shall be dismissed. However, the lack of lawful residence is not among them. The PermitD also enumerates the attachments necessary for a correct application, but there is no mention of evidencing the lawfulness of residence. The provisions on the withdrawal of the work permit do not contain any inter-relationship with the right of residence either the cases of withdrawal are connected to the termination of the employment relationship, or the unlawfulness of the employment. There is a provision in the PermitD that the activity pursued on the basis of the work permit shall be regulated also by the other laws on aliens. Reading together the distinct Hungarian laws on the residence and employment of foreigners, it can be concluded that first the procedure of granting the work permit shall be effectuated that is followed by the issuance of the residence permit (or visa). Moreover, the withdrawal of the

residence permit or the withdrawal of the work permit is legally independent from each other.

The legal practitioners approach this problem quite practically. It is common practice that the issuance of the work permit precedes the issuance of the residence permit meaning that the residence permit presupposes the work permit. Hence it might occur that the foreigner receives the residence permit in his/her country of origin (so s/he has to travel back there) there can be substantial time differences between the issuance of the work permit and that of the residence permit. The end-validity of the permits shall, however, be the same date. If the residence permit is withdrawn and an order to leave is issued, the work permit is not withdrawn upon employer's notice on termination of labour (due to physical obstacle to work, not necessary an intention of parties). On the other side, the fact itself, that s/he has a timely valid work permit is not a factor alone entitling him/her to stay. In this sense the two systems are separated from each other without time-harmonisation of validity (e.g. the labour permit for one year validity is applicable for 9 months in practice due to visa and residence permit procedure). ThirdA (Article 45 (2)) stipulates that a third-country national who possesses a permanent residence permit or who is the family member of a third-country national possessing a permanent residence permit can only be expelled on serious grounds of public policy. Even if the third-country national does not possess a permanent residence permit, the competent authority examines several factors before passing an order to leave. Thus remaining person has to prove his subsistence in residence authorisation if labour permit is just expired in the non-harmonised procedures.

If the third-country national is a spouse of a Hungarian national EC law – in particular Directive 2004/38/EC – finds application hence these persons fall within the personal scope of FreeA implementing Directive 2004/38/EC.

## **2. THE HARTMANN AND GEVEN CASES (C-212/05 AND C-213/05)**

Albeit the facts of the two cases are different, they can be treated together, hence the core issue is the same and Hungarian law gives the same answer in the two cases.

The ECJ adjudicated the *Hartmann* and *Geven* cases differently.

In the *Hartmann* case it declared that a full-time employment is a valid factor of integration into the society of Germany and thereby Mr Hartmann's children are entitled to be granted child-raising allowance. However, in the *Geven* case the ECJ accepted the reasoning of Germany that a minor employment does not constitute a sufficiently close link with Germany, the refusal is proportionate and thereby justified. Consequently, Ms Geven's children could not receive the benefits.

The case raises important issues and can be brought in line with the cases formerly decided by the ECJ. In the *Raulin* (C-357/89) and *Bernini* (C-3/90) cases the ECJ already held that a marginal and ancillary economic activity might not confer upon the person the status of a Community worker – and the decision on the status must be brought by the national court. Hence frontier workers enjoy the same benefits and have the same obligations this line of argumentation applies to them, too, meaning that a minor activity might not suffice to claim certain rights attached to employment. Similarly, in the *Collins* case (C-138/02) the ECJ opened up the possibility of discretion for Member States by declaring that a genuine link with the labour market of the host state can be required if a union citizen claims job-seeker's allowance.

The above-mentioned cases acknowledged that in certain cases Member States are allowed to exercise discretion and require a sufficiently close link to exist between the person claiming the benefit and the country. Additionally, the legal nature of Reg. 1612/68/EEC shall be taken into account which does not regulate accumulation. Consequently a social advantage granted to a person will not rule out that s/he receives a similar benefit on a different legal title from another Member State.

Hungarian law approaches this question horizontally. As from 1 July 2007 the personal scope of FamA has been clarified. Until 1 July 2007 the Act was not so explicit, however, the effective application of the law by the competent authorities was the same as beyond the amendment of the Act. Pursuant to Article 2 c) – d) the provisions of the FamA shall be applied to persons exercising the right to free movement and to persons falling within the ambit of Reg. 1408/71/EEC. The persons shall evidence that they are in legal employment and that they reside in Hungary. Hungarian labour law does not dispose of minor employment: every person who is in legal employment qualifies as worker in terms of labour law. Every EEA national who exercises economic activity on the basis of a legal employment relationship will fall within the ambit of Reg. 1408/71/EEC. In addition, Article 2 d) FamA expressly lays down that the residence condition is waived for frontier workers. In sum, if a union citizen works in Hungary – irrespective of the duration of the work – in a legal employment relationship, s/he will fall within the ambit of Reg. 1408/71/EEC and if s/he resides in another Member State will be exempt from evidencing his/her Hungarian residence. The person will be entitled to claim family benefits as a Community worker for himself and for his family.

In this regard, Hungarian law is not as much sophisticated as it would be allowed by the ECJ because it grants benefits for the workers even if they have no real and sufficiently close links to Hungary.

Talks to officials revealed that the cases involving frontier workers are not problematic. The volume of frontier workers claiming family benefits is rather marginal. There are around 30.000 family benefit cases related to EEA nationals among which 1.000 affect frontier workers (almost exclusively Romanian and Slovak nationals mirroring the general employment trends). Compared to the yearly 1.2 million family benefit beneficiaries this means approximately 0,1%. However, it was also mentioned that the concept of entitlements for frontier workers is not acknowledged in every Member States causing inequalities and unjust situations.

### **3. THE HENDRIX CASE (C-287/05)**

The *Hendrix* case contains two important findings. First, the ECJ decided that a union citizen who has only worked in the Member State of his nationality but during the interruption between two legal employment relationships resided in a different Member State qualifies as a worker in terms of Article 39 of the Treaty of Rome. Secondly, the ECJ stated that the change in residence without any economic purpose is capable of activating Article 39 and it is not necessary to refer to Article 18 (union citizenship). ECJ overruled *Werner* (C-112/91) and – in our view – went far beyond the *Surinder Singh* (C-370/90) and the *Akrich* cases, too. In the first case the mere fact that a person resided in a Member State without economically establishing himself there did not embody any foreign element thereby it was not capable of invoking EC law. In the latter two cases the return of the Community worker into the country of origin and continuing employment was capable of invoking EC law meaning that the activation of EC law was based on a change in the *place of work*.

## HUNGARY

In *Hendrix*, the change in residence sufficed and entitled Mr Hendrix to avail himself of EC law in order to claim a benefit falling within the ambit of Reg. 1408/71/EEC and Reg. 1612/68/EEC. The conclusion thereby was drawn that Mr Hendrix could claim social security benefits and social advantages in accordance with the rules enshrined in the Treaty and in the relevant secondary legislation (Reg. 1408/71/EEC or Reg. 1612/68/EEC respectively) just because he changed his residence. In the concrete case the ECJ accepted that eligibility for a special non-contributory benefit can objectively require residence, however, it is evident that the proportionality of withdrawing the benefit based on the lack of residence was questioned. This case basically might give a chance to everyone to claim to fall within the ambit of EC law by a simple change in residence.

Hungarian social law contains three types of special non-contributory benefits in terms of Reg. 1408/71/EEC and the Act of Accession:

- non-contributory old-age allowance,
- invalidity annuity and
- benefit for motor-disabled persons.

These benefits are found in three pieces of legislation, the personal scope of which are, however, commonly regulated in the main Act (SocialA). Pursuant to the Act persons being entitled to exercise the right to free movement (EEA nationals, Swiss nationals and their family members) can claim these benefits if they possess a Hungarian residence that is evidenced by an address card issued by the local authority. The address card (registry) is usually issued for indefinite period in case of Hungarian nationals and for 1 year in case of EEA nationals. Both Hungarian and EEA nationals are obliged to notify the authorities of their change in residence and they are legally liable for the damage caused by the omission of the notification. Reading these provisions together it must be stressed that Hungarian law sets the objective criteria of Hungarian residence for these special non-contributory benefits that must be evidenced by a valid address card. The lack of lawful residence results in the withdrawal of the benefit – just in the way as the law of the Netherlands provided for in the *Hendrix* case. Hence the objective criterion of residence is set by the SocialA. The authorities are not allowed to exercise discretion in cases of persons who leave Hungary. The Act does not contain any general clause for persons in possible hardship who maintain their economic and social links to Hungary. It is presupposed that a person changing residence is entitled to establish legal links with the host country. EC law obliges authorities and courts to interpret national law in light of the cases of the ECJ. However, it is probably not well-defined yet in EC law either.

#### **4. THE *EIND* CASE (C-291/05)**

The *Eind* case is strongly connected to the *Singh* (C-370/90) and the *Akrich* cases and can be treated as a subsequent case aimed at clarifying unsettled issues. The *Eind* case made it clear that EC law remains applicable even if the worker, after his return, does not carry on any effective and genuine economic activity. Consequently, other benefits (e.g. right of residence to his daughter of third-country nationality) are affiliated to his status as well.

Entering into force on 1 July 2007 the FreeA regulates comprehensively the right of residence in terms of Dir. 2004/38/EC (see other Chapters). The FreeA clearly regulates (Article 1 (1) b) that the Republic of Hungary guarantees the right to free movement and the

right of residence to family members of EEA nationals – also Swiss nationals – and pursuant to Article 1 (1) c) this right is also provided for the family members of Hungarian nationals.

Consequently, if the person proves his/her family ties (spouse, children, ancestor) with a Hungarian national and wishes to settle in Hungary, the same rules apply to his/her situation then those applicable to a migrant EEA national's family member. It means that Hungarian law itself diminished reverse discrimination by placing EEA nationals and Hungarian nationals on the same footing. It also encompasses that it is not necessary to leave Hungary and to return in order to activate EC law and to become entitled to invoke the benefits contained in Dir. 2004/38/EC. The same legal effect can be generated by simply referring to the implementing Act and submitting the necessary documents.

### **5. THE *ITC* CASE (C-208/05)**

The *ITC* case is of special interest in the field of active labour market measures.

The case is of horizontal importance. Albeit there is no equivalent instrument in Hungary like a recruitment voucher, there are other active labour market measures where similar issues might arise. The UnemplA comprises several incentive measures: job seekers are 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, TWB, home-work). In these cases the UnemplA is silent on the place of employment meaning that in theory an employment in another Member State is not per se excludes the employed or the employer from the circle of beneficiaries. In these cases state support is subject to tenders and applications and an appointed body of the Labour Market Fund<sup>132</sup> decides which applications are to be supported. By now foreign element did not occur thereby it is not possible to tell what would happen in such a situation.

Talks to officials revealed that the liberal approach of the ECJ might lead to unwanted consequences hence the aim of state supports (as it has been pointed out in the *ITC* case by the German government) is to promote employment in the home country and not in other countries. If the obligation of a Member State to provide the benefits cross-border is set so expansively it might lead to a drastic reduction of active measures everywhere that would surely not contribute to the overall social policy aims of the EU.

### **6. RESIDENCE RIGHTS (C-1/05 *JIA*)**

The case *Jia* focuses on the meaning of the term “dependant parent” as enshrining in (the repealed) Directives 68/360/EEC and 73/148/EEC. In family unification cases the core issue is whether the non-Community national family member can prove his/her dependence on the Community worker or self-employed person hence dependent family members can claim right of residence in a Member State. The ECJ made it clear that the authorities of the Member States are to evaluate the documents put forward by the applicants. However, it gave concrete guidance on two aspects: proof may be adduced by any appropriate means (e.g. documents from the country of origin) to evidence that the family members are not able to meet their essential, basic needs without the support of their children. On the other side, a

---

<sup>132</sup> On the basis of Labour Ministerial Decree No. 6 of 1996, 16 July on measures supporting employment

## HUNGARY

mere undertaking from the Community worker to support the family members is not such as to establish the existence of real need and dependence.

The definition of dependant family member is used by analogy in Dir. 2004/38/EC that was in effect in the year of 2007. Hungarian law implements 2004/38/EC as regards the right of residence of family members in FreeA and FreeD. Article 2 of the FreeA defines the term “family member” as follows: “subparagraph be) the *dependent* ancestor of the EEA national or his/her spouse”. Henceforth both the FreeA and FreeD use the term family member as being understood to refer to dependent ancestors.

In case of temporary stay (not exceeding 3 months) the authorities do not require the third-country national family member to prove his/her dependence on the Community national. Albeit FreeA [in particular Article 3 (3)] uses the term family member that involves the fact of dependency [see Article 2 subparagraph be] only the existence of family ties shall be evidenced and the source of financial coverage for the temporary stay shall be indicated.

In case of residence exceeding 3 months it is not legally satisfactory that the family member must be dependent on the Community national but the Community national is also to prove that s/he disposes of financial means to provide for the existence of himself and his family members and none of the family members will be an unreasonable burden to the social security system of the host Member State. The FreeA does not specify the meaning of or the means of proving dependence. Article 25 of FreeD sets forth that the Community national shall make a declaration that s/he provides for the financial means to cover the costs of stay of the family member, or the family member himself/herself shall make a declaration that the family member will not be an unreasonable burden on the Hungarian social security system (the document is called supporting declaration). The supporting declaration is a necessary attachment of the application for the residence card. The concrete form of supporting declaration is Appendix 7 of FreeMD Appendix 7 is a simple form not requiring any official document only the personal statement of the applicant or the Community national.

It seems that the approach of Hungarian law to the question of dependence is a bit different from the approach applied by Sweden and thereby probably the case Jia, and the implications contained therein are not of real significance. Swedish law focuses on the fact of real dependence of the family member on the Community national as a pre-condition to judge an application. If dependence is appropriately proven, as a second step, the Community national is to evidence that none of the family members will be an unreasonable burden on the social security system of Sweden. However, in Hungary, dependence is rather treated as a guarantee towards the state that somebody – the Community national or the family member – will personally provide for the financial means necessary for covering the costs of stay. The whole concept of the supporting declaration sees as a primary target to appoint the person who is legally liable for the possible costs occurred in connection with the stay. In this sense it might be said that the real dependence of the family member on the Community national is not relevant. Consequently, the elements of dependence are not of practical relevance either.

### **7. EXPULSION (COMMISSION V NETHERLANDS C-50/06)**

The Commission v Netherlands case focuses on the conditions of expulsion in terms of Dir. 64/221/EEC. The ECJ states that the Netherlands, by making it possible to establish a systematic and automatic connection between a criminal conviction and a measure ordering expulsion, has failed to fulfil its obligations under the Directive. The case that has been adjudi-

cated in June 2007 is a logical follow-up of the other cases decided by the ECJ dealing with expulsion (cases C-482/01 *Orfanopoulos*, C-493/01 *Oliveri*). Already in those cases it was to be perceived that the ECJ is very much in favour of the rights of migrant union citizens and even in cases of years-long criminal convictions and imprisonments the expulsion was quite impossible.

Hungarian law regulates the expulsion of union citizens in FreeA. Hence for third-country nationals – except family members – national law contains another piece of legislation (ThirdA) it is legally not possible to apply the same rules on the two groups of persons. FreeA is in full compliance with EC law as regards expulsion. Prior to the entry into force of FreeA and ThirdA, 1 July 2007, the formerly effective law (Act XXIX of 2001 on Entry and Stay of Foreigners) made a clear distinction between the expulsion of union citizens and third-country nationals. Talks to officials revealed that there was no expulsion ordered against union citizens in 2007.

*Recent literature*

Tóth Judit, Közérdek az Európai Bíróság előtt. [Public interest in the ECJ case law] *Európai Tükör*, 2007:1; 31-58

Gellénné Lukács Éva, Munkaerősűrés a minőségért. [How to select out the best in the labour market], OFA – KSH Kutatási Jelentések, Budapest 2007. (in press) 1-40.

Comparative Study of the Laws in 27 Member States for legal immigration including an assessment on the conditions and formalities imposed by the each Member State for newcomers (European Parliament – IOM) February 2008 pp.565

Osztoivits András (szerk.), Az Európai Unió alapító szerződéseinek magyarázata 1-2. kötet [Comments to each Article of the EC Treaty and EU Treaty – Vol.1-2.] Complex Kiadó, Budapest, 2008. pp.2341

## Chapter VII

### Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

Directive 2005/71/EC on a specific procedure for *admitting third-country nationals for the purposes of scientific research* has been implemented in Hungarian law in different levels. ThirdA, QualA, UnemplA and PermitD. Moreover, a special transposition regulation was adopted in mid-2007: ResD laying down in-detail procedural rules for the correct implementation of the Directive. The competent authority for the registration of research organisations is the NKHI.<sup>133</sup>

According to the register of the NKHI at the end of 2007 the number of registered research organizations amounted to 38.<sup>134</sup> Upon May 2008 the number increased to 72 showing a slowly growing interest of research organisations to take the chance of beneficial entry and residence of third-country researchers. Also the website of the NKHI evidences that the possibility of accepting third-country national researchers in an enhanced way is well-known in Hungary.

However, according to the register there was no third-country national researcher entering into a hosting agreement with the registered research organization in 2007. The zero number shows that in reality the opportunity has not yet been utilized. An article (also available in English in paper format) deals with the possible effects of the Directive in Hungary. The authors (Illés and Lukács) carried out interviews with researchers from different fields (geography, IT technology, law, medical science) to survey their general knowledge on the Directive and the possible effects of it on their respective research field and activity. According to the summary of the article, Hungarian researchers are open and co-operative towards the acceptance of third-country researchers. The opinions of the respondents on the probable effect of the Directive were fairly identical. Third-country researchers may first of all have a supplementary role. Second, they may substitute Hungarian researchers and teachers temporarily away or replace those who cannot (or would not) come home and can fill positions in the Hungarian academic system not wanted by others. The displacement effect ranked only third and respondents stressed that this could happen very rarely and only in special cases. The interviewed researchers were aware of the global, world-wide competition existing in the area and that is why they fairly doubted the real success and attractive force of the rules of the Directive. The opinion of the researchers and the real tendencies were in line for the year of 2007 in Hungary.

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 (Sections 12-14) declares that driving license can be issued to a person who ful-

<sup>133</sup> See for more detail: <http://www.nkth.gov.hu/main.php?folderID=4371&objectID=5014395> in English.

<sup>134</sup> Illés Sándor, A tudományos kutatók nemzetközi migrációjának gazdasági-társadalmi és kulturális implikációi [The economic, social and cultural implications of researchers' international migration – lecture at HAS] MTA előadás, 14 November 2007

files the health suitability and training requirement, moreover, if the applicant is a Hungarian or an EEA national residing in Hungary in possession of a residence permit, there is no waiting period. In case of other foreigners a waiting period of 6 months shall be fulfilled before the application can be submitted. As regards validity (recognition) or change of driving licenses the Decree lays down (Sections 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.

Some types of repercussion on free migratory movements can be seen from the complaints submitted for maladministration to the Ombudsman. For instance, in order *to access to health care and social allowance* of a Hungarian national child born outside of Hungary, s/he has to be registered into the Hungarian birth register, too. For this purpose the document issued abroad is not proper alone. The ombudsman drew the attention of local notary and mayor offices to become more familiar with this requirement, and the awareness raising among migrant parents would be necessary. Some complains arrive to the ombudsman for delayed health care and social allowance procedure due to complication of missing documents.<sup>135</sup>

Another complaint from the migrant worker from Italy living for years in Hungary also may reflect an obstacle in movement. He owns valid Italian passport and a Hungarian address registry document but in absence of a Hungarian ID card he cannot open a bank account, obtain a bank credit and a mobile telephone contract is also challenging due to improper level of information. The Ombudsman passed the complaint to the Financial Inspection Authority, Customer Protection in Telecommunication requesting there immediate control on service providers and their level of awareness of applicable rules.<sup>136</sup>

The Ombudsman proclaimed that abolishment of the national data base on employment (EMMA, since 1<sup>st</sup> January 2007) meant a violation of rule of law. Although the entry of worker’s employment shall be registered without delay at taxation authority, its data is not

---

<sup>135</sup> OBH 4648/2006, OBH 4143/2007. Állampolgári Jogok országgyűlési biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

<sup>136</sup> OBH 3589/2006. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

## HUNGARY

accessible for workers thus s/he cannot control on legality of own work. This would be also relevant for migrant workers.<sup>137</sup>

Cars from another Member States (from abroad) have to be met three different requirements if the owner intends to put it into the traffic officially in Hungary. The public transport security, origin of ownership and environment authorisation takes unreasonably long time, much money and data without any co-ordination among different authorities. Thus the Ombudsman offers a shorter procedure based on co-operation among the authorities, usage a common data base and a simplified format that can be complete without expert representative taking into account the ECJ case law (C-297/05) and the Treaty Art.28. Due to refusal by the Ministry of Finance and Economic,<sup>138</sup> the Ombudsman proposed an urgent modification of rules to the Government and the Parliament.<sup>139</sup>

### *Recent literature:*

Illés, Sándor & Gellérné Lukács, Éva, Towards researcher mobility. *Európai Tükör*, Special Issue, Budapest, 2007 August, p. 139-155.

Gellérné Lukács Éva, *Munkaerőszűrés a minőségért*. [How to select the best in the labour market], OFA – KSH Kutatási Jelentések, Budapest 2007. (in press) 1-40.

*Comparative Study of the Laws in 27 Member States for legal immigration including an assessment on the conditions and formalities imposed by each Member State for newcomers* (European Parliament – IOM) February 2008, 565 p.

*Állampolgári Jogok Országgyűlési Biztosa Beszámolója*, Budapest, 2007. [Yearly Report to the Parliament by the Ombudsman, 2007]

---

<sup>137</sup> OBH 1183/2007. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

<sup>138</sup> The Ministerial Decree 5 of 1990, 12 April and 6 of 1990, 12 April (KÖHÉM r.) was modified by the Ministerial Decree 105 of 2007, 23 December (GKM r.)

<sup>139</sup> OBH 4091/2007. Állampolgári Jogok Országgyűlési Biztosa beszámolója, Budapest, 2007. [Yearly report to the Parliament by the Ombudsman, 2007]

## Chapter VIII EU Enlargement

### 1. REGULATION IN FORCE

- Act of Accession, Annex X.
- 1991.évi IV. törvény a foglalkoztatás elősegítéséről 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 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] – it was amended in 2007 by the Government Decree No. 189 of 2007, 18 July was in force until 31 December 2007.
- 355/2007. (XII. 23.) Korm. rendelet a Magyar Köztársaság által a szabad mozgás és tartózkodás jogával rendelkező személyek tekintetében alkalmazott, a munkaerő szabad áramlásával összefüggő átmeneti szabályokról [Government Decree No. 355 of 2007, 23 December on the transitory rules applicable to free movement of workers by the Republic of Hungary in respect of persons enjoying the right to free movement and the right of residence] repealing the Government Decree No. 354 of 2006, 23 December and No. 93 of 2004, 27 April – it entered into force on 1 January 2008
- 93/2004. (IV. 27.) Korm. rendelet a Magyar Köztársaság által az Európai Unióhoz történő csatlakozást követően alkalmazandó munkaerő-piaci viszonzosság és védintézkedés szabályairól [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] amended in 2007 by the Government Decree No. 188 of 2007, 18 July – it was in force until 31 December 2007
- 8/1999 (XI. 10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Decree of the Social and Family Affairs Minister on Work Permits Issued to Foreign Nationals in Hungary] in a consolidated text

### 2. INFORMATION ON TRANSITIONAL ARRANGEMENT REGARDING A8 INCLUDING CHANGES IN NATIONAL LAW AND PRACTICE SINCE PREVIOUS REPORT

The A8 Member States (joined to the EU 1 May 2004) are not allowed to apply transitional periods towards each other based on the Act of Accession. 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). 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. TraD2 repealing the RecipD with effect from 1 January 2008 has not changed this system. Consequently

the free access to the labour market and the obligation of the employer to register these workers remained intact.

So far the safeguard rules have not been amended, and safeguard measures have not been initiated. The volume of registered workers with these nationalities is relatively standard (18.000-20.000) and does not endanger the position of Hungarian labourers, thereby not necessitating any further actions. Although in certain regions and sectors labour market tensions are mentioned in press, the reality is that the region where mostly Slovak nationals are employed (North-West Hungary) suffers constantly from labour shortage. Rather considerable international companies are active in the geographical area meaning that there are continuous labour offers. An article based on interviews with the relevant stakeholders (employers, trade unions, labour centres, placement agencies) carried out in the area of Szombathely, Székesfehérvár, Győr and Komárom (the biggest cities around) examined the effects of the accession on the Hungarian labour market.<sup>140</sup>

It draws the following main conclusions:

- The participation of other nationals on the Hungarian labour market is subsidiary, and is positively appreciated.
- The employment of Slovak nationals is treated on a very practical basis.
  1. Employers favour Hungarian workers because they do not necessarily need accommodation, travel and administrative costs.
  2. However, if no Hungarians are available, there are well-functioning mechanisms to recruit Slovak (or marginally other, e.g. Romanian) nationals.
- Rational facts influence on the decision of employers. The most important factors are: distance between the place of work and the place of living of the worker; limited knowledge of Hungarian language, additional costs related to the maintenance of the labour force.
- The legal background is decisive. Since authorisation has been deleted between Hungary and Slovakia labour relations intensified and became balanced.

It can be stressed that the liberalisation of labour relationships between the A8 countries (the 93% of whom are Slovak nationals in Hungary) proved *beneficial for both sides* contributing to a more balanced labour market in the respective geographical frontier area. An intensifying competition for workers might be awaited in the near future hence new companies settle not only on the Hungarian side of the border but on the Slovak side as well.

### **3. CHANGES IN POSITION WITH REGARD TO THE SECOND PHASE OF THE (2004) TRANSITIONAL ARRANGEMENTS**

There has not been change in the system as regards the second phase of the 2004 transitional arrangements. RecipD remained in force listing the Member States in the following three categories:

- a. no restrictions in employment,
- b. general rules of employment of foreigners, and
- c. necessity of work permit but no assessment of the labour market.

---

<sup>140</sup> Gellérné Lukács Éva: Munkaerőszűrés a minőségért. [How to select the best in the labour market], OFA – KSH NKI Kutatási Jelentések, Budapest 2007. (in press) 1-40.

## HUNGARY

The categories remained unchanged; however, there has been a change in the enumeration of the countries. Government Decree No. 188 of 2007, 18 July amending the RecipD with effect from 19 July 2007 deleted the Netherlands from the countries with restrictions meaning that from that date the restrictions have been eliminated between the two Member States. The following table shows the changes between 1st of May 2004 and 31st of December 2007.

Categories	1 May 2004	31 December 2006	Changes in 2007
<i>No restrictions</i>	UK, IRL, SE	UK, IRL, SE, FIN, GR, ISL, PT, ES, IT	As from 18 July 2007 NL has been added to this category.
<i>General rules of employment of foreigners (work permit system)</i>	AT, DE, IT, LIE, BE, FR, LUX, FIN, GR, NL, ISL, PT, ES	AT, DE, LIE, NL, CH*	NL has been deleted from this category.
<i>Work permit without assessment of the labour market</i>	DK, NO	DK, NO, BE, FR, LUX,	No changes.

\*) The bilateral agreement between Switzerland and the A8 (1 May 2004) CEE Member States entered into force on the 1<sup>st</sup> of April 2006. This is the reason why CH is not mentioned in the 2004 table. CH applies restrictions towards the A8 (1 May 2004) and Hungary applies reciprocity towards Switzerland.

During 2007 the Hungarian government has not changed its previous approach: it applied *reciprocal measures* towards every EU-15 Member States. Towards those lifting the restrictions (FIN, GR, ISL, PT, ES, IT, NL) 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. This is a purely political decision of the Government. No scientific back-up can be given for this decision. Indeed, scientific articles and lectures emphasised that the restrictions can be accepted neither legally nor practically.<sup>141</sup> First and foremost, Hungary has always stood up for the fundamental principle of free movement of workers, it can hardly be explained why it was not able to give it effect in its own handlings. Secondly, 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. Thirdly, the transfer of know-how, the intensification of international labour relations always bears a competitive nature, and countries having unnecessary complicated rules lacking transparency and/or attractive elements might suffer considerable disadvantages.

#### **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 Re-

<sup>141</sup> Papers and lectures by Tóth Judit, Fóti Klára and Gellérné Lukács Éva inside the project on European strategy and foreign affairs of HAS – CEU (Budapest, 2006)

## HUNGARY

public 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. 68/360/EEC can be applied restrictively insofar its rules may not be dissociated from those of Reg. 1612/68/EEC.<sup>142</sup> In the next three years, old Member States can further apply their restrictive national laws, but if they wish to open up their labour market, they already have to apply the *acquis* meaning that Reg. 1612/68/EEC and Dir. 68/360/EEC shall apply. In the last two years restrictive national measures can only be maintained in case of serious disturbances or the threat thereof in their labour market (based on a special procedure).

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

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

Art. 7 (1) of the UnempA foreigners may pursue gainful employment in Hungary only in possession of a work permit except for specified cases. According to Art. 7 (2) (b) of UnempA no work permit is required for the employment in Hungary of EEA nationals and their relatives authorised to reside. Accordingly, the *Hungarian law gives permission to EEA nationals to enjoy full access to the labour market of Hungary as a main rule*. However, pursuant to Art. 7 (2) (b) "*differing provisions may be enacted by an act of Parliament or by a government decree in compliance with the contents of the Treaty of Accession*". The Hungarian Government, making use of the delegated power, adopted Government Decree RecipD 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 safe-

---

<sup>142</sup> In practice it means that the residence permits are issued only for the duration specified in the work permit, not for 5 years as normally envisaged in the Directive.

guards 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<sup>143</sup> may be employed in Hungary on the basis of a work permit, if the Member State of which the said person is a national, applies – in accordance with its respective national legislation – different treatment to Hungarian nationals with regard to employment within its territory from the treatment specified in Articles 1-6 of Reg. 1612/68/EEC on freedom of movement for workers within the Community. *It means that the nationals of those old Member States that apply restrictive transitional arrangements towards Hungary can take up employment in Hungary only on the basis of a work permit.*

- a. 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 employment relationship. Section 4 implements point 8 of Annex X by regulating the rights of family members.
- b. 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. 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.
- c. *The normal authorisation process:* According to Art.7 (6) of the UnempA the Minister of Employment Policy and Labour – in agreement with other ministers concerned – may create a Decree to specify the highest number of foreigners to be employed in individual occupations in any county, the capital city, and in Hungary as a whole at any one time, the occupations in which no foreigner may be employed due to the then current trends and structure of unemployment. In 2005 the number of foreigners employed in Hungary can not exceed 87 000.<sup>144</sup> In turn, pursuant to Art.7 (3) of the UnempA the Minister of

<sup>143</sup> Switzerland has to be meant under this heading.

<sup>144</sup> Magyar Közlöny 2005/9. FMM közleménye.

## HUNGARY

Employment Policy and Labour shall lay down the detailed rules concerning the granting of the work permits, other procedural questions and the maximal amount of authorised foreign labourers. According to the Section 2/A of PermitD the ceiling of authorised permit holders in flow including received labourers on the base of bilateral agreements is not exceeding the monthly registered vacant places (workforce request) in average in prior calendar year. Moreover, this figure shall be published until 1<sup>st</sup> February of the going year in the Official Gazette.

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 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 (*Community preference* in the Hungarian law). 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 the employment of an internationally recognized foreign national in the field of education, science or art.

Article 3(1) b) implements the principle of *Community preference*. It means that a third-country national can only be employed in Hungary if there is no available Hungarian or EEA national applicant.

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.

## 5. 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.<sup>145</sup> “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.

## 6. ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 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 Romanian and Bulgarian accession 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.<sup>146</sup>

It 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.

---

<sup>145</sup> Pages 972-974.

<sup>146</sup> Hárs Ágnes – Sik Endre: Szempontok a román-bolgár Európai Unió csatlakozás magyar munkaerőpiacra gyakorolt hatásának értékeléséhez [Viewpoints on Hungarian labour market effects of the accession of Romania and Bulgaria] TÁRKI, Budapest, 2006. november. [www.tarki.hu](http://www.tarki.hu)

## HUNGARY

- 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”.

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.

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 (Metszéspon, October 2006) projected.

The decision of the Hungarian government – albeit the expert opinion was far from backing it up – took a rather cautious approach. The decision was based on the labour market forecast for 2006 (especially pages 108-109).<sup>147</sup> 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.<sup>148</sup> Due to labour shortages in certain sectors the competitiveness of our economy is endangered.

TraD1 on the transitory rules applicable to free movement of workers from Bulgaria and Romania 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 be made use of: e.g. philosopher, linguist and literature historian;

---

<sup>147</sup> Rövidtávú munkaerő-piaci prognózis 2006. évre, FMM, FH. [Short-term prognosis of the labour force to 2006] [http://www.afsz.hu/engine.aspx?page=full\\_afsz\\_rovidtavu\\_prognozisok\\_oldal](http://www.afsz.hu/engine.aspx?page=full_afsz_rovidtavu_prognozisok_oldal)

<sup>148</sup> Magyar Hírlap, 13 December of 2006; 15 February of 2007; Figyelő-Net 3 October 2006

- 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. At first 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.

Although the minimal and maximal fine for illegal employment (e.g. employment without labour permit) was lifted up in 2006 (its minimal amount is 2.000 € at first time, and repeated infringement of law it is 3.750 € 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.<sup>149</sup> The Government also decided to cut the really extended shadow economy recruiting more labour inspectors, joint checking team (including police, border guard, taxation and custom officers). Higher ceiling of fines, visible actions (e.g. before Christmas and springtime in 2007) resulted more incomes to the Treasury.

## 7. CHANGES IN POSITION WITH REGARD TO ROMANIA AND BULGARIA

As it has been pointed out above, already during the year of 2006 and also during the year of 2007 the necessity of the transitory measures towards the two newcomers have been severely criticised. Two extensive research projects took place both of which The Ministry of Foreign Affairs, together with the Hungarian Academy of Sciences and the Center for EU Enlargement Studies carried out a research project on the future directions of Hungarian foreign policy.<sup>150</sup> The interrelations between the Hungarian labour market and labour migration has also been scrutinised. The study dealing with this issue concluded that the system of illiberal transitory measures towards Romania and Bulgaria should be supervised and abolished. Moreover, four institutes of the Hungarian Academy of Sciences entered into an agreement to collaborate in order to analyse in an interdisciplinary and multidisciplinary pattern the most important social science topics.<sup>151</sup> Labour migration was one of the selected areas to examine

<sup>149</sup> A büntetés minimum egymillió [Fine up to 1 million HUF], *Piac és Profit*, 2006.3.29

<sup>150</sup> Magyar Külkapcsolati Stratégia (Hungarian Foreign Policy Strategy) <http://web.ceu.hu/cens/magyarkulstrat.html>

<sup>151</sup> Web page of the book in Hungarian <http://www.mtapti.hu/eumo/>

and the colloquium agreed that the conduct of Hungary was based on political considerations instead of an economically rational back-up.

Substantive change has not been effectuated by the Government during 2007. The respective TraD1 was once amended by the Government Decree No. 189 of 2007, 18 July but it only supplemented the list of 219 occupations with some new occupations, e.g.: biologist, ecologist, tailor while some have been deleted e.g. waiter, stockmen. Systematic changes did not enter into force and the effect of the amendment was very limited. The statistics for 2007 in the (originally adopted) 219 and additional posts showed a solid interest: 4931 permits have been issued for Romanian and Bulgarian nationals.

However, not only the scientific and independent sector but also the central administration took active steps to disclose more closely the real tendencies of the Hungarian labour market. The Hungarian Chamber of Commerce and Industry (HCCI) Research Institute of Economics and Enterprises together with the National Employment and Social Office carried out a labour market forecast for the year of 2007. One of the most important findings was that in 2007 the unemployment rate will slightly increase but a substantial increase is to be awaited in the unskilled sphere. According to the forecast apparent change in the context of the relationship between unemployment and schooling occurred. Unemployment growth hit the worst those with the lowest level of schooling of not more than 8 years in primary school.<sup>152</sup> A second important statement of the report is that the forecast envisages a change in the employment of foreigners. There was a slight slowdown in the pace of foreigners' employment after 2004, and, also as far as 2007 is concerned, companies are predicting a slight drop in expat employment.<sup>153</sup>

#### *Recent literature*

*Comparative Study of the Laws in 27 Member States for legal immigration including an assessment on the conditions and formalities imposed by each Member State for newcomers* (European Parliament – IOM) February 2008, 565 p. (on Hungary: p. 278-286)

Fóti, Klára, A magyar és uniós munkaerőpiac összefüggései. [Interrelations between the labour market of Hungary and that of the EU] 188-202. In: Fóti Gábor-Rácz Margit (szerk.), *Az Európai Unió előtt álló kihívásokról és a magyar érdekekről*, MTA VKI-CEU ENS, Budapest, 2007.

Gellérné Lukács, Éva, A magyar és az uniós munkaerőpiac összefüggései. A munkaerőmozgást érintő kérdések [Interrelations between the labour market of Hungary and that of the EU. Questions related to labour migration.] 203-223. In: Fóti Gábor-Rácz Margit (szerk.), *Az Európai Unió előtt álló kihívásokról és a magyar érdekekről*, MTA VKI-CEU ENS, Budapest, 2007.

Gellérné Lukács, Éva, Munkaerőszűrés a minőségért. [How to select the best in the labour market], *OFA – KSH Kutatási Jelentések*, Budapest 2007 (in press), p. 1-40.

Karcsics, Éva, A versenyképes munkavállaló kompetenciái az Európai Unióban és Magyarországon [Competences of the competitive employee in the EU and in Hungary], *Európai Tükör*, 2007/3: 128-140.

---

<sup>152</sup> Magyar Kereskedelmi és Iparkamara, Gazdaság- és Vállalkozáselemző Intézet – Rövid távú munkaerőpiaci előrejelzés, 2007 [Short-term labour force forecast made by the Chamber of Commerce and Trade – Institute for Analysis of Economy and Entrepreneurship] [www.gvi.hu](http://www.gvi.hu) (in particular p.18.)

<sup>153</sup> Ibid, p.20

- Pék, Miklós, 2007 – Bulgária első éve az EU-ban. Tagsági mérleg a közvélemény-kutatási adatok és a gazdasági mutatók tükrében [2007 – the first year of Bulgaria in the EU. Deliberations in light of public poll results and economic facts], *Európai Tükör*, 2008/3: 27-36.
- Szalay, Klára & Szabó Gergely, Románia európai uniós csatlakozása a Magyar Köztársaság Országgyűlésének munkájában [The accession of Romania in the work of the Parliament of the Republic of Hungary], *Európai Tükör*, 2007/10, p. 59-83.
- Tóth, Judit, Enlargement of the EU and Title IV. In: Steve Peers and Nicola Rogers (Eds.), *EU Immigration and Asylum Law. Immigration and Asylum Law and Policy in Europe*, Vol. 12, Martinus Nijhoff Publishers, 2006, p. 139-165
- Tóth, Judit, Is There a Strategy on the Foreign Labour Force in Hungary?, *Minority Research* (A Selection of Studies by Hungarian Authors), Budapest, 2008, No. 10, p. 9-24.
- Tóth, Judit, Munkaerőmozgás és az Európai Unió bővítése [Labour migration and the enlargement of the EU], In: Kovách Imre, Nagy Éva, Tibori Tímea, Tóth Ágnes (szerk.), *Európai Magyarország 2007 – társadalomtudományi áttekintés*, MTA Budapest, 2007, p. 310-319
- Traser, Julianna, *Who's Afraid of the EU's Latest Enlargement? The Impact of Bulgaria and Romania joining the Union on Free Movement of Persons*, ECAS, Brussels, Belgium, 2007 (Part on Hungary: p. 39-40.)

## Chapter IX Statistics

Statistical data are not necessary public, easily available and comparable with prior annual data. 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.

Neither the Act on Statistics<sup>154</sup> nor on Protection of Personal Data and on Free Accession to Information of Public Interest<sup>155</sup> contains concrete and standard method of implementation. The Act on Electronic Accession to Public Data<sup>156</sup> entered into force on 1<sup>st</sup> January 2006, and some progress can be seen on homepages of authorities, state agencies and publicly financed institutions, but labour statistics and up-to-date information are not available directly. Or proportion of *sex and age* of migrants, labourers from EEA and third country nationals is not available, maximum some years later, as well as data on seasonal workers and employment with temporary labour booklet. Although the Central Statistical Office homepage is really informative migration data is not up-to-date due to gathering system.

Migration trends can be outlined

- from the various data of authorisation (registration) of residence that shows a slight increase within one year but the rate of EEA nationals is attached to the changing status of Romanian nationals;
- from the statistics of employment that proves an absolute decrease in 2007 however the presence of Slovakian and Romanian workers are the most relevant. The role of workers from the EU15 is stable including there sectoral positions (qualified labourers).
- by a visible family members' movement but this growth is not reflected in the labour statistics,
- by estimations on illegality or latency of irregular employment (see the ARGO project and research).

Summing up, labour migration, in particular movement of the EEA nationals, has remained a marginal issue. But accession of Romania and gradual liberalisation of labour authorisation immediately appears in statistics. Due to the change of regulation in the middle of the calendar year (FreeA replacing some chapter of AlienA), the comparability of data is less and less: we have to use half year data and totally new legal categories in transpositions rules of 2004/38/EC, 2003/109/EC, 2004/114/EC, 2005/71/EC Directive. For this reason this chapter contains less reference on prior years' data than it would be logical. Upon request longer time-series can be produced with data under "similar" categories.

---

<sup>154</sup> Act XLVI of 1993

<sup>155</sup> Act LXIII of 1992

<sup>156</sup> Act XC of 2005

HUNGARY

Table 1: Rate of permit holders (31 December) by categories <sup>157</sup>

Type of residence permit (31 Dec 2007)	Persons	Persons (2006)
Immigration permit (open-ended)	49,198	52,666
Settlement permit (open-ended)	31,415	31,514
Residence permit (for fix period)	20,540	44,686
EEA residence permit	38,509	12,827
Registration for EEA nationals	22,408	n.d.
Permanent residence card for EEA nationals	2,113	n.d.
Family members of Hungarian nationals	1,580	n.d.
Family members of EEA nationals	125	n.d.
EC settlement permit	97	--
National settlement permit	704	--
Temporary settlement permit	4	--
<b>Total</b>	<b>166,693</b>	<b>141,693</b>

As Table 1 shows the total rate of immigration is slightly increasing according to absolute figures. However, there are two factors that have to be taken into account. At first the regulation changed in the middle of 2007 introducing new categories of residence authorisation, thus comparison is hard. Secondly, accession of Romania meant a movement of Romanian workers and nationals to another category. Namely, from residence permit (for fix period) and EEA residence permit numerous persons moved to the registration for EEA nationals or permanent residence card (about 20,000 persons). The further tables may prove the impact of Romania's accession.

Table 2: Rate of permit holders by nationality (TCN) on 31 December

Nationals of	Immigration permit (open-ended) holders		Settlement permit (open-ended) holders		Residence permit (for fixed period) holders	
	31-12-2007	31-12-2006	31-12-2007	31-12-2006	31-12-2007	31-12-2006
Romania	21,404	23,139	19,837	21,434	1,800	21,473
Serbia-Montenegro	6,826	7,497	2,085	1,868	2,042	2,216
Ukraine,	4,242	4,654	4,209	3,784	3,441	5,386
China	3,511	3,547	1,621	1,232	3,125	4,114
Ex/Soviet, Russian	2,410	2,642	436	388	n.d.	n.d.
Vietnam	1,311	1,402	508	380	1,382	1,601
USA	n.d.	n.d.	n.d.	n.d.	1,171	1,312
Others,	9,494	9,789	2,719	2,428	7,579	8,584
<b>Total</b>	<b>49,198</b>	<b>52,666</b>	<b>31,415</b>	<b>31,514</b>	<b>20,540</b>	<b>44,686</b>

We have to add that valid permits are not automatically changed or invalidated due to changing regulation, thus Romanian permit holders becoming from TCN to EU citizens can obtain the new documents gradually. Thus statistics preserve their certain groups in TCN stock. As Table 2 indicates presence of neighbours from Europe and Asia is standard in migration statistics but there is a decrease of residence permit holders in great extent due to Romanians.

<sup>157</sup> Data from the OIN statistics directly or those are re-calculated.

HUNGARY

Table 3: Rate of EEA residence permit holders by nationality on 31 December

Nationality of	31-12-2007	31-12-2006
Romania	13,750	---
Germany	8,906	4,528
Slovakia	3,748	2,060
Austria	2,386	978
UK	2,020	737
France	1,457	785
The Netherlands	n.d.	426
Others	6,242	3,313
<b>Total</b>	<b>38,509</b>	<b>12,827</b>

The growing presence of EEA nationals can be seen on Table 3 beyond the effects of enlargement. All nationals of the EEA countries cannot be found in the OIN statistics, thus sophisticated analysis is not possible.

Table 4 contains data since the FreeA entered into force (1<sup>st</sup> July 2007) until the end of the year. Before it some EEA nationals submitted applications thus number of issued registration documents were higher than the number of applicants within the indicated period. It is the first time when TCN family members of EEA nationals and separated the Hungarian nationals' family members are numbered. Although the regulation changed (due to transposition of 2004/38/EC Directive), the issued EEA residence permits remained valid. So we have to add to the group of about 38 000 EEA nationals the further EEA migrating persons of about 29,000.

As Table 5 indicates EEA nationals are migrating among the categories inside the law and statistics. It is embarrassing that transposition rules entered into force in the middle of the years, thus pending cases, re-named applications and genuine change of migration trends cannot be seen precisely. However, the less bureaucratic and faster procedure as it was introduced on 1<sup>st</sup> July 2007 attracted more EEA nationals and family members to the OIN and its regional units.

Table 4: Rate of EEA residing and registered persons by procedure in 2007

Status by FreeA	Applicants	Accepted	Rejected	Pending
Registration for EEA nationals	23,001	23,560	0	0
Nationality of applicants (23,001): Romanian: 16,102; German: 2,683; Slovakian: 1,359; Austrian: 465; French: 456; Others: 1,936				
Permanent residence card for EEA nationals	2,916	2,204	8	704
Family member of EEA nationals	168	152	0	16
Family member of Hungarian nationals	2,212	1,731	8	473
Nationality of TCN family members (2,212 + 168): Ukraine: 823, Serbian: 428, American: 111, Russian: 83, Nigerian: 79, Chinese: 10, Canadian: 7, Others: 839				
<b>Total</b>	<b>28,297</b>	<b>27,647</b>	<b>16</b>	<b>1,193</b>

HUNGARY

*Table 5: Rate of applicants for residence submitted by EEA nationals (2005-30 June 2007)*

<b>Nationals of</b>	<b>2005</b>	<b>2006</b>	<b>1<sup>st</sup> part of 2007</b>
Romania	---	---	18,561
Germany	4,600	4,528	1,651
Slovakia	2,411	2,060	808
Austria	970	978	352
France	875	785	327
UK	860	737	342
Others	3,342	3,739	1,693
<b>Total</b>	<b>13,058</b>	<b>12,827</b>	<b>23,734</b>

The Tables 6 and 7 raise the question why the number of labour permit applicants, holders either in stock or in flow data has decreased. The liberalisation of regulation and enlargement process also important but I guess the less inspiring environment (e.g. economic recession, inflation, less investment, political crisis, high debt level) may also explain it. According to an international survey indicates how expensive the employment of highly qualified workers in Hungary is.<sup>158</sup>

*Table 6: Motivation of applicants for residence authorisation (2004-2007)*

<b>Purpose of residence</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>1<sup>st</sup> part of 2007</b>
Employment	24,902	29,958	26,746	5,165
Study	4,855	4,693	5,297	1,876
Family unification	6,486	7,884	8,466	2,545
Money making	2,232	658	479	200
Visit	1,923	1,916	1,450	277
Official travel	79	105	109	78
Curative	61	68	40	12
Other	3,994	1,384	4,000	892
<b>Total</b>	<b>44,532</b>	<b>46,666</b>	<b>46,587</b>	<b>11,045</b>

<sup>158</sup> It analysed that 100,000 € yearly net salary is burdened by how many additional tax-and contribution paid by the employer. Among the 18 Member States Hungary is in the group of Germany, Czech Republic, Luxembourg and Ireland (39.4 – 43.1%). Source: BAK, Basel Economics – ZEW, Mannheim, 2007.

HUNGARY

Table 7: Labour migration of EEA and other nationals (2006-2007)<sup>159</sup>

Nationals of	Labour permits issued in 2006	Labour permit issued in 2007	Labour permits valid on 31 December 2006	Labour permits valid on 31 December 2007
Austria	316	204	246	164
Belgium	80	77	75	64
Czech Republic	0	0	0	0
Cyprus	0	0	0	0
Denmark	50	37	36	29
Estonia	0	0	0	0
Finland	24	0	22	1
France	318	324	270	270
Germany	710	593	631	465
Greece	5	0	4	0
Ireland	1	0	1	0
Italy	204	2	160	1
Latvia	0	0	0	0
Lithuania	0	0	0	0
Luxemburg	1	4	1	1
Malta	0	0	0	0
The Netherlands	136	54	117	45
Poland	0	0	0	0
Portugal	14	3	9	3
Slovakia	2	0	2	0
Slovenia	0	0	0	0
Spain	22	0	20	0
Sweden	0	0	0	0
UK	2	0	1	0
Switzerland	30	23	23	20
Norway	28	13	22	16
Iceland	0	0	0	0
Lichtenstein	0	0	0	0
<b>Total EU</b>	<b>1,943</b>	<b>1,334</b>	<b>1,640</b>	<b>1 079</b>
Romania	33,093	16,995	29,238	16 228
Bulgaria	272	53	224	39
Turkey	230	324	154	291
Croatia	n.d.	163	0	138
<b>Total (all countries)</b>	<b>52,414</b>	<b>18,869</b>	<b>45,865</b>	<b>17 775</b>

<sup>159</sup> Data based or re-calculated on data from the National Labour Service (ÁFSZ).

HUNGARY

Table 8: Number of employed EU nationals (registration, green-card holders) in 2007

Nationality of	By registration (31 Dec 2007)		By green card (31 Dec 2007)	
	Total	Family member	Total	Family member
Austria	1	0	100	1
Belgium	0	0	31	0
Czech Republic	229	0	0	0
Denmark	0	0	21	0
Estonia	11	0	0	0
Finland	0	0	8	0
France	1	0	147	0
Germany	5	2	382	1
Greece	0	0	2	0
Italy	0	0	54	2
Latvia	13	0	0	0
Lithuania	19	0	0	0
The Netherlands	0	0	44	0
Poland	1 027	2	0	0
Portugal	0	0	4	0
Spain	0	0	0	0
Slovakia	18 219	1	7	0
Slovenia	78	0	0	0
UK	1	0	2	0
Cyprus	2	0	0	0
Norway	0	0	2	0
Island	1	0	1	0
Lichtenstein	0	0	1	0
Switzerland	0	0	2	0
Romania	8	1	4	1
Bulgaria	1	1	0	0
<b>Total</b>	<b>19 633</b>	<b>13</b>	<b>820</b>	<b>5</b>

HUNGARY

Table 9: Valid labour permits by economic branches (31 December 2007)

National of	Agriculture	Processing industry	Building industry	Trade	Transport, telecom.	Finance + other	Education, culture, sport	Health care	Other	Together
	534	4 566	4 725	3 413	883	2 063	257	214	1 120	17 775
Belgium	0	7	7	7	1	40	1	0	1	64
Denmark	0	13	1	1	2	11	0	0	1	29
Finland	0	1	0	0	0	0	0	0	0	1
France	2	53	25	45	18	104	7	0	16	270
The Netherlands	0	15	0	1	8	19	1	0	1	45
Poland	0	0	0	0	0	2	0	0	0	2
Luxemburg	0	1	0	0	0	0	0	0	0	1
Germany	1	196	21	64	15	130	10	6	22	465
Italy	0	1	0	0	0	0	0	0	0	1
Austria	1	39	70	17	7	21	3	1	5	164
Slovakia	0	1	0	0	0	0	0	0	0	1
Norway	0	1	0	1	1	12	1	0	0	16
Switzerland	0	8	0	1	1	10	0	0	0	20
Bulgaria	0	1	0	1	29	4	2	0	2	39
Romania	196	415	448	248	56	118	14	48	124	1 667
Mixture of Romania and Bulgaria	1 728	3 458	6 973	3 148	708	1 691	105	337	307	18 455
Turkey	0	12	33	137	53	37	9	0	10	291
Croatia	3	42	5	23	18	23	4	1	19	138

HUNGARY

Table 10: Registrations by occupations (31 December 2007)

Nationals of	Total	Senior officials, managers	Professionals	Technicians & associate professionals	Clerks	Service workers & shop & market sales workers	Skilled agricultural & fishery workers	Craft & related trades workers	Plant & machine operators, assemblers	Elementary occupations
UK	1	0			0	0	0	0	0	0
Cyprus	2	0			2	0	0	0	0	0
Czech Rep.	197	30	38	34	21	41	2	22	3	6
Estonia	10	1	0	1	6	0	0	2	0	0
France	0	0	0	0	0	0	0	0	0	0
Poland	957	50	53	142	68	314	5	266	11	48
Latvia	11	0	3	1	4	0	0	2	0	1
Lithuania	19	2	1	13	2	1	0	0	0	0
Germany	5	2	2	1	0	0	0	0	0	0
Austria	1	0	0	1	0	0	0	0	0	0
Slovakia	17,690	109	358	730	193	368	139	2,030	10,972	2,791
Slovenia	63	10	8	31	6	2	1	4	1	0
Iceland	1	0	0	1	0	0	0	0	0	0
Bulgaria	1	1	0	0	0	0	0	0	0	0
Romania	7	0	2	1	0	0	0	0	1	3
<b>Total</b>	<b>18,976</b>	<b>207</b>	<b>468</b>	<b>958</b>	<b>302</b>	<b>726</b>	<b>147</b>	<b>2328</b>	<b>10,989</b>	<b>2,851</b>

HUNGARY

Table 11: Valid usual labour permits by occupations (31 December 2007)

Nationals of	Total	Senior officials, managers	Professionals	Technicians & associate professionals	Clerks	Service workers & shop & market sales workers	Skilled agricultural & fishery workers	Craft & related trades workers	Plant & machine operators, assemblers	Elementary occupations
Belgium	64	21	10	17	12	0	0	1	0	3
Denmark	29	8	2	11	0	1	0	6	1	0
Finland	1	0	0	0	0	0	0	1	0	0
France	267	88	63	60	35	10	0	5	2	4
NL	45	22	6	8	8	0	0	1	0	0
Poland	2	0	0	2	0	0	0	0	0	0
Luxemburg	1	0	0	0	0	0	0	0	0	1
Germany	464	110	138	93	32	12	1	56	15	6
Italy	1	0	0	0	0	0	0	1	0	0
Austria	164	37	33	28	7	5	1	29	17	7
Slovakia	1	0	0	0	0	0	0	0	1	0
Switzerland	20	8	7	3	1	0	0	1	0	0
Norway	16	4	2	2	8	0	0	0	0	0
Bulgaria	39	0	4	3	2	1	0	0	28	1
Romania	1,650	8	70	58	16	111	48	229	132	978
Turkey	290	17	35	28	12	104	0	22	7	65
Croatia	136	16	32	25	5	12	3	32	6	5
<b>Total</b>	<b>17,692</b>	<b>1,023</b>	<b>1,630</b>	<b>1,445</b>	<b>406</b>	<b>2,155</b>	<b>177</b>	<b>1,891</b>	<b>1,378</b>	<b>7,587</b>

HUNGARY

Table 12: Valid special labour permits by occupations (31 December 2007) for Romanian and Bulgarian nationals

Nationals of	Total	Senior officials, managers	Professionals	Technicians & associate professionals	Clerks	Service workers & shop & market sales workers	Skilled agricultural & fishery workers	Craft & related trades workers	Plant & machine operators, assemblers	Elementary occupations
Bulgaria	109	4	22	16	6	7	0	1	40	13
Romania	14,602	33	352	547	169	506	158	1,007	615	11,215
Total	14,807	39	380	566	177	521	158	1,011	661	11,294

HUNGARY

Table 13: The foreign nationalities making use of temporary work books (2007)<sup>160</sup>

Country	Number of working days	Out of these the nationals of:					
		EU nationals	Out of these: SK	Out of these: RO	Non-EU nationals	UKR	SRB
Budapest	3,456	2,664	286	2,234	456	455	1
Baranya	1,900	1,470	1	1,316	215	0	62
Bács-Kiskun	41,809	41,300	25	41,069	504	169	288
Békés	3,585	3,276	0	3,228	208	65	143
Bosod-Abaúj-Z.	980	597	243	317	348	348	0
Csongrád	17,255	15,811	0	15,614	1,373	50	1,322
Fejér	4,073	2,393	143	2,173	1,510	1,489	21
Győr-Sopron-M.	13,066	2,059	493	1,559	10,945	10,939	6
Hajdú-Bihar	3,924	2,455	73	2,342	1,370	1,156	214
Heves	3,382	3,209	173	2,949	118	118	0
Jász-Nagykun-Sz.	719	670	24	604	28	28	0
Komárom-Esztergom	26,667	26,455	25,610	835	171	171	0
Nógrád	1,151	1,112	665	412	39	36	3
Pest	12,542	11,921	582	11,300	506	505	1
Somogy	1,507	1,221	172	885	251	69	177
Szabolcs-Szatmár	5,438	1,292	0	1,292	4,115	4,083	32
Tolna	3,646	1,053	47	988	2,472	29	2,443
Vas	498	430	10	392	52	5	47
Veszprém	858	755	24	699	93	91	2
Zala	737	644	6	629	90	70	14
<b>TOTAL</b>	<b>147,193</b>	<b>120,787</b>	<b>28,577</b>	<b>90,837</b>	<b>24,864</b>	<b>19,876</b>	<b>4,776</b>

While the number of validated (not only issued by the labour authorities but also used) temporary working books (TWB) by foreigners amounted to 2236 in 2005, in 2007 this number reached 7043 meaning that the popularity of this kind of employment amongst foreigners tripled. Out of the 7043 TWBs 5096 have been validated by Romanian, 896 by Slovak and 687 by Ukraine nationals. While in 2005 2/3 of the temporary work books were used by Slovak nationals, and the remaining 1/3 by Romanians and Ukraine nationals, a change is to be perceived in 2007 in favour of Romanian nationals.

It is to be mentioned that altogether 34210 TWBs have been issued to foreigners, and only 20,3% of them have also been validated (used). The discrepancy between issuance and validation increased considerably in the last two years probably meaning that the efforts to whitening the grey economy has not fully been successful in this area.

The 7043 validated TWB equalled to 147193 days of employment by foreigners in 2007 the splitting of which is shown by the Table 13.

In first part of 2006 the number of requested temporary working book was 230 000. At least 4 million € as social insurance contribution and tax were paid through this channel.<sup>161</sup>

<sup>160</sup> Source: Állami Foglalkoztatási Szolgálat, Összefoglaló a 2007. évben felhasznált alkalmi munkavállalói könyvekről [Summary on the validated temporary working books in the year of 2007], [http://www.afsz.hu/engine.aspx?page=stat\\_osszefogl\\_alkalmi\\_munkvall\\_konyv\\_felhasz](http://www.afsz.hu/engine.aspx?page=stat_osszefogl_alkalmi_munkvall_konyv_felhasz) Table 15-16.

<sup>161</sup> Népszava, 2006.aug.21. MTI július 24.

## HUNGARY

As regard the migratory movement of EEA nationals, a slight decrease was observed in 2006. In 2007 the number of EEA nationals with TWB increased, hence Romanian nationals are to be accounted with in this category. In 2007 86.2% of all validated TWBs belonged to EEA nationals.

### *Recent literature*

Fazekas Károly & Kézdi Gábor (eds), *The Hungarian labour market. Review and analysis*, Institute of Economics, HAS – National Employment Foundation, Budapest, ETO-Print, 2007, 240 p.

Kelemen, Dóra, Keresetek, munkaerőköltség, minimálbér az EU-ban és Magyarországon [Salaries, labour expenses and lawful minimal wage in the EU and in Hungary] *Európai Tükör* 2007/4, p. 133-145.

Lehel, Zsuzsa, A gyermekek és a fiatalok az Unióban [Children and youngsters in the Union] *Európai Tükör* 2007/6, p. 114 – 121.

*A fenntartható fejlődés indikátorai Magyarországon* [The indicators of sustainable development by the Central Statistical Office]. KSH, Budapest, 2007, 141 p.



## Chapter X Miscellaneous

### 1. RESEARCH

The Hungarian Academy of Sciences (including the institutes of World Economy, Political Sciences, Sociology and Minority Issues) launched a comprehensive assessment of enlargement and European integration how its impacts appear on the Hungarian society, economy and policy. Academics intend to regularly analyse these trends. The first book of a series of conference<sup>162</sup> contains reports on

- the trade union and tripartite system in transition period; The collective bargaining is based on the local working place and the collective contract at industrial branch level is only additional in post-socialist trade union model that is rather informal and weak despite of better regulated. The tripartite system operates at national level, and at mezzo- and branch level is missing, while opposing the interests of the market economy, the state wishes to allocate an excessively strong role to itself in the national interest reconciliation council (OÉT), thus possibly denying the autonomous market actors the right to form the rules pertaining to their own work. Although the sectoral social dialogue committees (ÁPB) were set up, their legality, legal role is pending due to the Constitutional Court's proceedings, thus the corporate system has to iterate more to the continental model.<sup>163</sup>
- labour movement; Instead of a pro-active labour migration policy in an aging society with a bad structure of vocational training and extended higher education, Hungary follows a restrictive, bureaucratic and legally uncontrollable, contra-productive policy. Therefore it is political anxieties and prejudices that continue to be dominant in this issue.<sup>164</sup>
- transposition of directives on labour law; The impacts of 77/187/EEC, 2002/15/EC, 2003/88/EC Directive, the effects of the Simap-case and Jaeger case were analysed by law practitioners as examples. Due to ineffective co-operation of social partners, some missing guarantee in the Labour Code, rules on occasional working booklet and working hours in public sector, the overlapping rules that hinder the unified interpretation of provisions – the conformity in law and in practice requires further efforts.<sup>165</sup>
- non-discrimination rules in work; Taking into account the results of survey in Member States, the labour discriminations are significantly worse in Hungary than in other parts of the EU. 60 percent of respondents mention discriminative actions in work but not for nationality: the major reasons are related to race (ethnic origin of Roma), place of residence and health conditions (handicapped persons, too). The good practices on man-

---

<sup>162</sup> Európai Magyarország 2007. Szerk: Kovács – Nagy – Tibori – Tóth. Budapest, MTA pp. 1-369 [Hungary in Europe, 2007.] it contains summary in English, pp. 346-369.

<sup>163</sup> See the papers of Tóth András, Pataky Péter and Berki Erzsébet, pp. 291-309

<sup>164</sup> See the paper of Tóth Judit: Munkaerőmozgás és az Európai Unió bővítése [Labour migration in the enlarged EU] pp. 310-319.

<sup>165</sup> See the papers of Fodor T. Gábor and Neuman László, pp. 320-331.

agement of diversity in other Member States would be better disseminated in Hungary.<sup>166</sup>

The ARGO 2006 project aims to contribute to some Member States' combat irregular migration and irregular employment of migrants. It covers on Belgium, Finland, Germany, Ireland, Spain, Hungary, Poland and Romania. The project can promote policies and schemes that support legal economic migration as the best alternative for both migrants and the EU Member States and as one of the important components of their sustained economic competitiveness. Moreover, it assists to understand better the various aspects of irregular employment of non-nationals, too. The national report is based on desk research managed by the IOM. According to the Hungarian report the rate of undeclared employment is 21-24 percent but the presence of non-national workers is marginal. Thus the governmental efforts for a stronger labour inspector system and how to legalise the shadow, illegal and informal economy are not targeted migrant workers in a specific way. Further on, public opinion is more tolerant towards irregularity (e.g. stowaway in public transport, not paying taxation) in Hungary according to surveys.<sup>167</sup>

The Labour Public Foundation (OFA) launched a research on Hungarian labour migration. Its final volume<sup>168</sup> covers on three aspects of international migration as a form of allocation of human resources:

- labour migration authorisation (e.g. it is strongly proposed how and why a simplification of work authorisation system shall be managed soon);
- inflow and outflow of students and study migration (e.g. a strategy on reception of foreign students, their information on the Hungarian conditions is absent while only in high education the rate of non-nationals students is over 4.6%);
- tourism as catalyst of seasonal workers, visitors, real-estate purchase in a country facing (skilled) labour shortages and aging (e.g. it analysed the role of 36.500 foreign property in housing sector in 2006, how it may attract further family members and friends of the owners to visit Hungary).

The authors make proposals on policy, legislation and finance how to extend the capacity of human resources in favour of both migrants and receiving society.

## 2. GOVERNMENTAL PLANNING

In 2006 the Minister of Foreign Affairs launched a public and expert debate on the foreign relations strategy of Hungary. The unique project has remained in closed circle despite of electronically available sub-topic papers<sup>169</sup> and interactive exchange of views in web and at

<sup>166</sup> See the paper of Tardos Katalin: A foglalkoztatási diszkrimináció jellemzői Magyarországon és kezelése az Európai Unióban [Discrimination in labour and its treatment in Hungary and in the EU] pp. 332-337

<sup>167</sup> The results are discussed on the conference „*Combating irregular employment of immigrants in the enlarging EU*” (International Expert Conference 24/25 April 2008, Budapest). The national report was written by Endre Sik and Ágnes Hárs (Tárki) while the legal analysis of lawful migration of TCN by Judit Tóth (University of Szeged).

<sup>168</sup> Illés Sándor (szerk): *Hogyan növelhető az új tagállamok belső humán-erőforrást vonzó szerepe?* [How can the new Member States attract more human resources?] Zárótanulmány, KSH NKI, 2007. pp.141

<sup>169</sup> Sub-topic papers made by the Central European University and Hungarian Academy of Sciences are as follows: a. security interests of Hungary in a bilateral and multilateral framework, b. global environmental forecast in medium-term, c. economic aspects of security, d. strategic issues of a successful EU membership, e. neighbourhood policy and its tasks, f. national identity and its keeping up, g. cultural diplomacy, h. social and

local, academic or civil meetings. Connection to the common European foreign and security and defence policy limits substantially our democratic consent on a foreign strategy – as the Minister designates the finalisation of the discursive process.<sup>170</sup> Reading the available policy papers, labour migration is a marginal and not a strategic or comprehensively approached issue although it appears in each sub-topic paper. Regardless these limited discussions on foreign affairs strategy, the Government adopted a non-binding resolution on the Europe Policy (2 August 2007) – announced the spokesman of the Government. It contains solemn slogans, glittering principles and goals related to the EU not in harmony with above mentioned academic papers and debates. However, labour migration also indirectly appears wrapping into other themes. Summing up, the whole issue of migration and stream of workers have remained marginal and indirectly outlined.<sup>171</sup>

The Ministry of Justice and Law Enforcement is working on a Bill on Migrants' Integration. Its preparation is part of the national priorities supported by of the Integration Fund in 2007/2008.

### 3. LITERATURE ON LABOUR (MIGRATION)

The legal literature and authors analyses the following major topics in a broader context in 2007:

- whether working and breaking time in national regulation and legal practice is differing from the ECJ case law and the EU legal acts;<sup>172</sup>
- anti-discrimination rules and its practice in the labour market;<sup>173</sup>
- social rights and social co-ordinations;<sup>174</sup>

---

cultural implications of foreign policy. These reflect results of discussions, too. [www.kulugyminiszterium.hu/kum/ku/bal/kulpolitikank/kulcapcsolati\\_strategia/](http://www.kulugyminiszterium.hu/kum/ku/bal/kulpolitikank/kulcapcsolati_strategia/) The labour and migration papers made by Lukács Éva, Fóti Klára and Tóth Judit.

<sup>170</sup> At a press conference held on 19 February 2007 the Minister of Foreign Affairs announced that the government's new foreign relations strategy would be finalised by July.

<sup>171</sup> Judit Tóth: Is There a Strategy on the Foreign Labour Force in Hungary? *Minority Research*, No.10 (2008) 9-23

<sup>172</sup> Román László: A munkaidő és a pihenődő európai uniós és hazai szabályozásáról [Working and breaking time in the Hungarian legislation and in the EU] *Magyar Jog* 2007/2: 385-394.; Kollár László: A munkaidő szervezéséről szóló irányelv értelmezése kapcsán megindult közösségi szintű változások és problémák, valamint ezek kihatása a magyar ügyeleti rendszer szabályozására [Effects of the Directives on working time and time management in duty in Hungary] Országos Tudományos Diákköri Konferencia, állam-és jogtudományi szekció, 2007: 67-75; Sztancs Edit: A rendkívüli munkavégzés díjazásának szabályai, különös tekintettel az Európai Bíróság és a Legfelsőbb Bíróság ítélkezési gyakorlatára [Extraordinary work and its remuneration in case law of ECJ and Supreme Court in Hungary] *Debreceni Jogi Műhely*, 2007/3.; Román Róbert: Munkaidő-szabályozás az Európai Unióban – figyelemmel a magyar individuális munkajog rendelkezéseire [Rules on working time in Hungarian labour law and in the EU] *Studia iurisprudentiae*. 2007/8: 363-400; Jánosi Andrea: Túl sokat dolgozunk? Avagy a munkaidő irányelv [Are we working too much? About the working time in Directive] *Studia iurisprudentiae*. 2007/8: 169-189;

<sup>173</sup> A fogyatékos emberek jogai Magyarországon. A foglalkoztatás és a munkavégzés során alkalmazott egyenlő bánásmód általános kereteinek létrehozásáról az Európai Tanács 2000.nov.27-i, 2000/78/EK irányelve alapján [Handicapped workers and 2000/78/EC Directive in Hungary] Budapest, 2007; Kaltenbach Jenő et al.: Antidiszkriminációs Kézikönyv [Handbook on anti-discrimination] Szociális és Munkaügyi Minisztérium, Budapest, 2007; Otlakán Krisztián: Diszkriminálnak-e a hazai munkáltatók? [Are there discriminative actions of employers in Hungary?] *Munkaügyi Szemle* 2007/3: 25-28; Dános Anikó: A nők munkkerő-piaci helyzetének jellemzői az EU-ban és Magyarországon [Women in labour market in the EU and in Hungary] Regionális Politika és Gazdaságtan Doktori Iskola Évkönyve, 2007. 61-75.

<sup>174</sup> A módosított Szociális Karta és Magyarország. Szeminárium, Budapest, 2007. május 10. Szerk: Kőnczei György, Szociális és Munkaügyi Minisztérium, 2007. pp.131 [Hungary and the modified European Social Charta. Seminar material]; Hajdú József: A szociális biztonsági rendszerek koordinációjának alapkérdései az Európai Unióban. [The major dilemmas of social security co-ordination in the EU] *Munkaügyi Szemle*,

## HUNGARY

- work agencies and labour lending,<sup>175</sup>
- controlling the labour market.<sup>176</sup>

In brief, the migration of EU nationals and their presence, legality, equality in the Hungarian labour market as well as employment of nationals in another Member States has remained a marginal research or discussion topic also in 2007. However, the wider context of lawful and irregular migration was more actively investigated than in prior years. This change was partly inspired by the government policy making efforts.

### *Recent literature*

Kovach, Nagy, Tibori & Tóth (szerk), Európai Magyarország 2007, Budapest, MTA, p. 1-369 [Hungary in Europe, 2007]. It contains summary in English, p. 346-369.

Judit Tóth, Is There a Strategy on the Foreign Labour Force in Hungary?, *Minority Research*, No.10 (2008) 9-23

Hungarian Foreign Relations Strategy and the Policy for Trans-border Hungarians. Interview with historian László Szarka, *Európai Tükör*, Special Issue, August 2007, p. 47-56.

### *Internet sites of national legislation*

[www.irm.hu](http://www.irm.hu) (legal provisions related to justice) in Hungarian

[www.magyarorszag.hu](http://www.magyarorszag.hu) (legal provisions related to public administration)

[www.mhk.hu](http://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](http://www.bevandorlas.hu) (the most relevant rules on immigration are available)

### *Internet sites of judgements in Hungarian*

[www.mkab.hu](http://www.mkab.hu) (only the Constitutional Court's judgement are available in the net)

[www.lb.hu](http://www.lb.hu) (only the guiding judgements of the Supreme Court are available)

[www.birosag.hu](http://www.birosag.hu) (only the statistics of cases and major rules on justice are available)

---

2007/11-12: 81-83.; Hajdú József: The implementation of applicable legislation principle of the Ref. 1408/71. Bessenyei jubileum, 2007, Szeged, 217-235;

<sup>175</sup> Waldman Gábor: A munkaerő-kölcsönzésre vonatkozó szabályok változása [The changing rules on manpower] *Munkaügyi Szemle*, 2007/7-8: 77-78.; Hajdú József: Models and methodologies of temporary work agencies (TWA) in Hungary. *Studia iuridica Caroliensia*. 2007, 49-81; Kenderes György – Pruberger Tamás: Hozzászólás a munkaerő-kölcsönzés időszerű elméleti és gyakorlati problémáihoz [On theoretical and practical issues of manpower] *Magyar Jog*, 2007/1: 35-44.; Hollán Miklós: Feasibility of European quality labels for marriage bureaux to prevent trafficking in human beings. *Studia iuridica Caroliensia*. 2007, 95-103.; Mile Csilla – Hinek Mátyás – Torgyik Judit: A karrier irodák lehetőségei a fiatal diplomások elhelyezkedésének megkönnyítésében [How manpower agencies can assist for young qualified labourers to be employed] *Munkaügyi Szemle*, 2007/7-8: 18-24; Karcsics Éva: A versenyképes munkavállaló kompetenciái az EU-ban és Magyarországon [The competences of competitive labour force in the EU and in Hungary] *Európai Tükör*, 2007/3: 128-140.

□ Kun Attila: "Feketelisták" a munkaügyi hatóságok honlapjain – fokozódó transzparencia a munkaerőpiacon? [Blacklists on the homepages of labour authorities – for a better transparency of the labour market?] *Munkaügyi Szemle*, 2007/3: 46-48; Papp István: Merre tart a munkavédelmi ellenőrzés? [What is the direction of occupational safety control] *Ellenőrzési Figyelő*, 2007/3: 15-19; Papp István: Szigorodó munkaügyi és munkavédelmi ellenőrzés – az Országos Munkavédelmi és Munkaügyi Főfelügyelőség tevékenysége. [Stricter occupational safety and labour control in the activity of the National Labour Authority] *Ellenőrzési Figyelő*, 2007/2: 4-8.