

REPORT
on the Free Movement of Workers
in Hungary in 2010-2011

Rapporteur: Prof. Judit Tóth
University of Zseged

October 2011

Contents

Introduction	
Chapter I	The worker: Entry, residence, departure and remedies
Chapter II	Members of the family
Chapter III	Access to employment
Chapter IV	Equality of treatment on the basis of nationality
Chapter V	Other obstacles to free movement of workers
Chapter VI	Specific issues
Chapter VII	Application of transitional measures
Chapter VIII	Miscellaneous

Introduction

The standard inflow to the dualistic structure of the Hungarian labour market can be detected: partly unskilled or manual workers from the adjacent states and partly highly skilled labourer from the EU15. On the basis of registry of employed workers from EU26 proves *decrease* (rate of reduction was 33% in 2010 mainly from Austria, Romania, Slovenia) and a shy increase from Slovakia (800 workers plus). Looking at the stock data (number of employed workers from EU26 on 31 December 2010) it meant a growing rate (9%) in 2010. Hence the total number of registered labourers was about 45 000 from the EU26. This growing trend in the first quarter of 2011 is going on.¹ However, the stock and flow data of residing non-national participants in the labour market as workers and self-employed persons with family members have been *uncertain* or depended on sources (there are 6 different registries of residing non-nationals made by the immigration, taxation, statistical, labour and population registry data authorities).² The standard rate of EU citizens among the residing non-nationals has been 56-71 %.³

Based on various statistical data sources the share of the Hungarian nationals involved in foreign employment for a shorter or longer period in the space of the European Union can be estimated as high as 2 % in 2010.⁴ That is, the share of labour emigration may reach around 5% of the employed population. Differences are considerable across the preferred destination countries, however. The *labour emigrants* who are employed in Germany are more likely employed for a longer period and become resident in the destination country while those who are employed in Austria or in the UK and in other EU 15 countries are more connected to the home country. They regularly see their family and more frequently return to the home labour market or commute between the home and the foreign labour markets. Hungarians traditionally prefer to Germany and Austria as main destination countries for labour migration and skilled labourer are most likely involved in labour movements. The more recent magnet countries for labour emigration, mainly the UK and some other EU 15 countries (Spain, Italy, The Netherlands, Ireland, Sweden) attract more qualified labour with secondary or higher education. The jobs offered are less qualified; however, over-qualification of the migrant labour is common in these countries.⁵

According to the recent survey (Tárki, 2011) the *migration potential, namely the rate of adult population planning to migrate for employment abroad is growing*, it is 17% (including short-term jobs as well as some years to be hired) while 7% of the adult population in-

1 The number of registered non-national workers includes certain groups of TCN and EU26, see A külföldi állampolgárok magyarországi munkavállalásának főbb jellemzői 2010-ben. Nemzeti Foglalkoztatási Szolgálat, Budapest (Jósvai Zoltán); 2011. első negyedévi adatok, NFSZ, Budapest.

2 The sources and data (from the residence, population, labour, tax authorisation, census and labour force survey) are analysed from the perspective of labour market capacity in Hungary by Hárs, Ágnes: Migráció és munkaerőpiac Magyarországon. Tények, okok, lehetőségek. In: Változó migráció – változó környezet. Szerk. Hárs, Á. – Tóth, J. MTA Etnikai-nemzeti Kisebbségkutató Intézet, Budapest, 2010. 15-53.

3 Hárs, Ágnes: Migráció harmadik országokból a statisztikai adatok tükrében. In: Az idegen Magyarország. Bevándorlók társadalmi integrációja. Szerk: Örkény Antal – Székelyi Mária, Eötvös Kiadó, Budapest, 2010. 15-48.

4 The forthcoming census (November 2011) may provide controlling stock data but rules are improper. See Tóth, Judit: Census in Hungary in 2011: migrants or ethnicity? *Minorities Research*, Lucidus, Budapest, No.13 (2011) 9-26.

5 Hárs, Ágnes: Magyarok külföldi munkavállalása. Kopint-Tárki kutatás, Budapest, 2011.március.

tends to emigrate undefined period.⁶ Naturally, the individual plans and facts are differing but the outflow migration is projected due to high unemployment level (almost 12%), to the liberalised labour market in Austria and Germany (since 1 May 2011) and budget cuts. The postponed reform in health care provokes not only individual strategy to seek employment in another member state but also collective requirements. For instance, the Association of Young Medical Doctors (without specification) and the Chamber of Medical Doctors are urging immediate salary reform. Their desperation is proved by taking the notice to labour contract termination of many young doctors and experienced specialists into public notary's deposit that enters into force in December 2011. According to this migration wave (of about 2000 doctors within a year) their deficit is hardly tolerable.⁷ On the other side, the shortcut in social benefits and the missing results in Roma integration may contribute to labour, jobseeking migration of unskilled persons. Furthermore, the racism is growing not only in the criminal statistics⁸ but in rural areas by the extremist, paramilitary, vigilant (militia) groups threatening the Roma neighbours. Although the government and the legislation passed amendments in Penal Code and Decree on Minor Offences in May-June 2011, the special rapporteur of the UN on the modern forms of racism and xenophobia, Githu Muigai summarised on his press conference after a week visit in places of Roma conflicts and paramilitary marches in Hungary: there is no distinct progress in local life of Roma in the field of employment, housing, education and health care. Despite of numerous international human rights obligations, anti-discrimination rules, the Decade for Inclusion and Roma Strategy at the European level - the political commitment in Hungary has been absent how to put them into practice.⁹

After the general elections (April 2010) the newly formed parliament started to prepare a regulatory concept of the constitution. It was published in January 2011 but another was finally discussed in the plenary session. The Parliament adopted the Basic Law (25 April 2011) replacing the Constitution by the votes of the ruling coalition power. It enters into force on January 2012 until 32 organic laws (passing with two-third majority of votes) and 32 statutory laws shall be passed by the legislation. This upgraded legislative work is combined with the ongoing public policy, administration and fiscal reforms. During the extended spring session and at latest in the autumn session in 2011 new laws will be passed – inter alia - on Labour Code, Pension Scheme, Tercier Education, Public Education, Municipal System and the social or unemployment benefits.¹⁰

The Basic Law regulates the Union relevant issues, such as

- that Hungary is participating in the establishment of the European unity, and as member state of the EU, certain powers based on own state sovereignty are practicing together with other member states or through the institutions of the Union but only in the necessary scale in order to implement the rights and obligations determined in the founding

6 Sik, Endre (Tárki research leader) interview made by Rádai Eszter, *Élet és Irodalom*, 17 June 2011, p. 7. The Tárki-Omnibus survey has measured the migration potential since 1993, and the complex migration potential in 2010 was 13% and the share of planning emigration for undefined period was 5%. www.tarki.hu.

7 Danó Anna: *Kétezren mentek el idén – Orvoshuíány a migráció miatt*. *Népszabadság*, 30 May 2011. Moreover, you can see the Appendix 2 on the FMOW seminar in Szeged.

8 Athena Institute, Budapest published a report, accordingly 75 percent of hate crimes were motivated by racism and 25 percent by racism and antisemitism in the first quarter of 2011. *Népszabadság*, 4 June 2011.

9 *Átfogó intézkedéseket hiányolt a megbízott*. *Népszava*, 28 May 2011.

10 See the homepage of the Parliament www.parlament.hu.

HUNGARY

- treaties or connected international agreements. The Union – within the frame of the founding treaties – is entitled to adopt generally binding rules. (Art.E);
- each union citizen in full age residing in Hungary (with an address card) has a passive and active voting right in local (municipal, mayor) and Union (EP) elections as well as on referendum. However, the nominee shall be in possession of full voting right according to the national rules of the state of own nationality, and s/he must meet other requirements as would be determined by an organic law (Art XXIII);
 - *nullum crimen sine lege* and *nulla poena sine lege* of Hungary, international law or the binding act of the EU is provided. (Art XXVIII);
 - referendum is prohibited, for instance on the content of the law concerning the election of the members in the EP (Art 8c);
 - the Parliament may request information on the governmental position relating to the draft made in the institutions of the EU, and it may adopt own position in each point on those agenda. The non-binding mandate given by the parliament means a compass to the Government in the EU institutions (Art 19).

The Venice Commission (Council of Europe) gave opinion on the non-democratic preparatory of the Basic Law, and it has investigated the substance how the Basic Law is compatible to the international commitments. It can be judged only in part, because the Basic Law does not contain all provisions regulating issues of the highest importance for the functioning of the state and protection of fundamental rights pushing majority of rules to lower level norms.¹¹

In order to reduce the budget and social insurance deficit the government decided to nationalise the private pension scheme with an offer to members in the private pension funds: either they would remain members but without their additional rights to the state pension scheme, or they would terminate their membership and the accumulated asset would be involved into the state pension fund preserving some additional rights. The majority of members joined to the state pension scheme, the private funds must be fused or ceased, while a reform of the whole pension regime is going on. The national tripartite (and social reconciliation) system was demolished, it is replaced by the National Economic and Social Council.¹² The amendments in workers' rights (e.g. reduction of the benefit being on the sick list, termination of age preferences in pension scheme with retrospective effect) and the planned further limitation of labourers' rights altogether explain on more and more demonstrations, strikes and protest by the trade unions in an economy with high unemployment and low economic activity rate.

The recent modification of the Act on Hungarian Nationality¹³ provides preferential and accelerated naturalisation without residence in Hungary for ethnic Hungarians fully tolerating the dual nationality of all applicants. Due to this modification the number of applicants for naturalisation was over 100 000 within 6 months and the number of naturalised persons on an accelerated way has reached 10 000¹⁴ while the total number of naturalised persons in

11 See European Commission for Democracy through Law (Venice Commission) CDL-AD(2011)016, Strasbourg, 20 June 2011 Adopted Opinion on the new Constitution of Hungary, point 144, 148.

12 Megszüntette az OÉT-ot a kormány. MTI, 28 May 2011.

13 Act LV of 1993 that was amended by the Act XLIV of 2010 entered into force on 1st January 2011.

14 Kossuth Rádió, 27 June 2011 – statement of the ministerial commissioner of naturalization.

HUNGARY

2009 was 8787 in Hungary.¹⁵ It would contribute to further jobseekers in the labour market including the public sector based on nationality criterion.

¹⁵ EUROSTAT data published in June 2011. In comparison the total number of naturalised migrants in 27 member states (2009) was 776 000. Cited also in Népszava 11 June 2011

Chapter I: The worker: Entry, residence, departure and remedies

Regulation in force:

- 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 being entitled to free movement and right to residence] amended recently by the Act XI of 2010 and Act CXXXV of 2010 (FreeA)
- 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 implementing the Act I of 2007] amended recently by the Government Decree 327 of 2007, 11 November, No. 341 of 2008, 30 December, No. 182 of 2009, 10 September, No.96 of 2010, 31 March, No.290 of 2010, 21 December (FreeD)
- 32/2007. (VI. 27.) EüM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek és a harmadik országbeli állampolgárok magyarországi tartózkodásával összefüggő közegészséget veszélyeztető betegségekről [Ministerial Decree of Health Care No. 32 of 2007, 27 June on diseases of third-country nationals and persons being entitled to free movement and right to residence endangering public health] modified with Government Decree No. 118 of 2008, 8 May and No.10 of 2011, 30 March (NEFMI) entered into force on 31 March 2011(SanitD)
- 25/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény, valamint a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról [Ministerial Decree of Justice and Law Enforcement No. 25 of 2007, 31 May on executive rules of Act I of 2007 and Act II of 2007] amended by the Government Decree No.118 of 2008. 8 May, No.41 of 2009, 15 September, No.12 of 2010, 23 December (FreeMD)
- 28/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjáról [Ministerial Decree of Justice and Law Enforcement No.28 of 2007, 31 May on fees paid by persons being entitled for free movement and residence relating to entry and residence authorisation] amended by the Ministerial Decree (IRM) No.12 of 2010, 2 April and Decree (BM) No.12 of 2011, 18 February(FeeD)

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS¹⁶

Preconditions of entry are regulated by FreeA (Art. 3, 5)

EEA citizens with a valid travel document or personal identity card are entitled to enter the territory of Hungary. 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

¹⁶ Art. 7(1a); art. 7 (3 a-d); art. 8(3a); art.14 (4 a-b), art.17, art. 24 (2) of Directive 2004/38.

HUNGARY

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. Moreover, 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.

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

EEA nationals shall be entitled to residence for more than 3 months if:

- a. the purpose of residence is paid employment;
- 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 PublicA and HighA 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.

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 endless based on paid employment for at least one year and for less than one year as long as they are paid job-seeker support as defined under separate act but at least for 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.

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. The *right of residence shall cease* if: they no longer fulfil the conditions for the right of residence; or they have provided false data in order to obtain this right and liability by penal law is judged, or they are prohibited from entry and residence.

FreeA defines how EEA nationals obtains permanent residence (Art 16-19)

It shall be provided for EEA nationals who have resided legally in the territory of the Republic of Hungary for five years without interruption. The following shall not constitute inter-

HUNGARY

ruption 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).

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:

- 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 including the prior period of paid employment in another EEA state;
- 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 including the prior period of paid employment in another EEA member state;
- their inability to work is the result of an industrial accident or occupational illness entitling them to treatment as defined in separate legislation; or
- 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 (UnemplA); or is not in paid employment as the result of accident or illness or for other objective reasons.

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

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

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 93rd 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 monthly minimal pension¹⁷ per capita – about 105 € – 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 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

¹⁷ It is decided by the Government Decree, so yearly its amount is changing, however since January 2008 it has unchanged: 28 500 HUF.

HUNGARY

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. The fee of the registration certificate costs 4 € (FeeD).

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 otherwise its validity is endless. Its fee is 6 € by FeeD.

S/he shall report *his/her first home (address) in Hungary* 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, 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.

*Departure refers on the following issues (Art. 15(2)-(4), 33-34, 38-48, 64 of FreeA):*¹⁸

If the right of residence ceases, the EEA national 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.

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

¹⁸ Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May on alien police detention was modified by the Ministerial Decree No. 51 of 2007. 11 December that entered into force on 1 January 2008. It contains procedural provisions, e.g. claim for compensation of unlawful detention. The Government Decree No. 118 of 2008, 8 May amended the Ministerial Decree of Justice and Law Enforcement No. 26 of 2007, 31 May on deportation provisions since 16 May 2008.

HUNGARY

society, particularly public order, public security or public health. Return and expulsion shall respect for non-refoulement (protection against torture, death penalty, persecution).

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.

The competent authority may *expel an EEA national or family member* prohibiting entry up to 1-5 years who:

- who has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
- who 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;
- whose residence endangers directly and severely the national security of the state as it is stated in the request of the competent law enforcement authority. However a penal court judgement automatically does not mean grounds of expulsion;
- who 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 (SanitD), 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;
- who has no permanent residence right in Hungary with exception of the case of severe threat to the national security and not minor (unless expulsion takes place in the interest of the minor), or
- who has legally in the country for less than 10 years and not minor (unless expulsion takes place in the interest of the minor).

The authority in expulsion case must evaluate the nature and severity of the action 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. According Art 61/A the final decision on expulsion shall be executed within 59 days.

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.

HUNGARY

An EEA national 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.

An EEA national 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.

The ‘*unreasonable burden*’ as regularly returning exclusive preconditions means that EEA national or family member has not at least the minimal lawful old age pension per month per capita in the family – as the general threshold for social benefit – or has obtained for at least 3 months (continuously or in parts within a calendar year)¹⁹

- regular social allowance,
- regular age benefit, or
- nursing 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 21 and 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*²⁰ and not per capita per day. 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.

Residence of EEA national shall meet *public health conditions*. The OIN may contact with epidemiologic authority in favour of controlling or defining certain behaviour for family member. According to the SanitD *public health is endangered by the following diseases*, or in being of the pathogen condition of:

- tuberculosis,
- HIV-infection²¹,
- Lues,
- Typhoid or paratyphoid in pathogen condition, or
- hepatitis B.

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

19 Section 21 of FreeD was amended by the Government Decree No.395 of 2007, 27 December, No.34 of 2008, 30 December in order to use the same reference on benefits in changing SocialA.

20 Section 25 of FreeMD.

21 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.

Right to residence is guaranteed through the exceptional measure of expulsion of the union citizen. The Supreme Court stated in a trial of a Romanian national charged for the organised crime of man smuggling of 38 persons via Hungary (to Austria): expulsion can be implemented as additional punishment for an offence that is punishable for more than five years by the Penal Code regardless how many years of imprisonment is sentenced in final judgement²². The same interpretation was issued in another trial against a Romanian offender that was sentenced additionally to expulsion but it was annulated in the final judgement because he committed a simple theft, so he could not be expelled.²³

2. SITUATION OF JOBSEEKERS

The most relevant provisions can be found in FreeA Art. 6 (1)a, 9 and 18 of FreeA, Section 28 of FreeD and Art 24-30, 36, 36/A-B of UnemplA.

On ceasing paid employment, an EEA national shall retain right of residence as a worker, if s/he has become a job-seeker, as defined in separate act, following the cessation of paid employment; s/he retains their right of residence endless based on paid employment for at least one year, and in case of less than one year as long as they are paid job-seeker support as defined under separate act but at least for 6 months. The Explanatory Report to the Bill (to the FreeA in 2007) explains that ‘job seekers are considered as persons residing for a purpose of gainful employment. Taking into account the case law of the ECJ the Bill determines no time limit of lawful seeking because only reasonableness is the guiding principle until genuine chance for a job can be proved. [*Antonissen*-case, C-292/89].’

Furthermore, 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:

- 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 including the prior period of paid employment in another EEA state.
- 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 including the prior period of paid employment in another EEA member state;
- their inability to work is the result of an industrial accident or occupational illness entitling them to treatment as defined in separate legislation; or
- 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 (UnemplA).

²² BH 2009:196 refers back to the Penal Code [Art 61(6)] and Act I of 2007. His final imprisonment takes 4 year and 10 months but the compliable term for smuggling of human being is up to 8 years.

²³ BH 2008:289 refers back to the Penal Code [Art 61(6)] and Act I of 2007.

HUNGARY

An EEA national who is no longer engaged in any gainful employment shall retain his/her right of residence if s/he has registered for the period of eligibility for job-seeking assistance as prescribed in UnemplA. Accordingly, s/he shall be registered upon his/her request if in previous four years s/he had one year period of employment relation, and assistance is available for up to 270 days. While the FreeA regulates on job-seeking assistance in the context of preserved right for residence, the UnemplA provides assistance to private entrepreneur assistance for EEA national, too. On the other side, it considers a person in an active to be a job-seeker who is able and ready to be employed undertaking the co-operation with the Labour Service in job seeking and to be registered by the Labour Service. This definition shall be implemented on all persons under the ambit of the FreeA (EEA nationals and family members). Also the UnemplA determines that its rules shall be implemented on migrant workers, self-employed (private entrepreneur) persons, students, pensioners and self-sufficient persons and their family members in accordance with the EC law (in particular in job-seeking assistance for EEA nationals, family members and other persons under the Community preferences).

How job-seeking position is documented? [FreeD (Art 20 (1), 28 (3))]

If the purpose of stay is to engage in gainful employment, the applicant shall supply as proof for a person seeking employment, document to evidence that he/she is actively seeking employment, and there is a probability of entering into gainful employment'. No declaration of support of the family member is required if the EEA national or the Hungarian citizen is engaged in gainful employment.

Upon receipt of any information concerning the termination of gainful employment, in particular from the employer, the EEA national affected shall provide proof for the right of further residence when so requested by the competent OIN regional directorate. Where an EEA national retains his/her right of residence as job-seeker he shall verify compliance with the conditions for residence by a certificate issued by the relevant labour office (employment centre) concerning the payment of job-seeking assistance when requested by the OIN regional directorate. In this case the certificate shall indicate the projected date until which the job-seeking assistance will be provided.

3. OTHER ISSUES OF CONCERN

Due to relatively fast and simple procedure of registry for right to residence and low threshold for living conditions there is no information on legal disputes on free movement. However, the income threshold to eligible for social benefits provided by the 3200 municipalities is over the required minimal monthly income for EEA nationals. On the other side the amount of job-seeking assistance in average is below the minimally accepted life standard. Hence the 'unreasonable burden' indirectly requires additional sources from jobseekers in self-subsistence. This contrast would be more significant if job-assistance eligibility (its period and amount) is cut as the Government is planning in near future.

4. FREE MOVEMENT OF ROMA WORKERS

The unemployment is the biggest difficulty for Roma citizens in Hungary, so they are migrating to maintain the family from salary or small (lawful or semi-lawful or illegal) business. Some of them are asking asylum in overseas. However, international migration including circular migration and commuting is affordable only for Roma in better (social, economic) position because it requires embedded to a social, communication network, accumulated capital for travelling, living cost in the new place of residence or for small business. In absence of ethnic statistics on labour or migration there are only some fragmented data based on surveys.

The newly adopted Roma Framework Strategy (19 May 2011 by the EPSCO) and in June 2011 by the Council the scheme of integration for unemployed Roma and returnee would be developed in 2011-2012.

Recent literature

Sik Endre – Várhalmi Zoltán: A diszkriminációs tapasztalat forrásai. In: Az idegen Magyarország. Bevándorlók társadalmi integrációja. MTA NKI – Eötvös Kiadó, Budapest, 97-122.

Illés Sándor (2010) A magyarországi nemzetiségek demográfiai viszonyai. In: Gyulavári Tamás – Kállai Ernő (szerk.) *A jövevényektől az államalkotó tényezőkhöz. A nemzeti közösségek múltja és jelene Magyarországon*. Országgyűlési Biztos Hivatala, Budapest, 2010, pp. 144-175.

Tóth, Judit: The Incomprehensible Flow of Roma Asylum-seekers from the Czech Republic and Hungary to Canada. CEPS 'Liberty and Security in Europe' publication series, Brussels, November 2010 1-42. ISBN 978-94-6138-063-0

Tóth Judit: Az európai romabefogadás és –stratégia integrálási esélyei – csak hosszabb távon. *Európai Tükör*, 2011/3: 20-32.

Tóth Judit: Lehet-e normatív a migrációs politika? In *Változó migráció – változó környezet*. Szerk. Hárs – Tóth, MTA Etnikai-nemzeti Kisebbségkutató Intézet, Budapest, 2010. 193-220.

Chapter II: Members of the family

Regulation in force:

- 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 being entitled to free movement and right to residence] amended recently by the Act XI of 2010 and Act CXXXV of 2010 (FreeA)
- 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 implementing the Act I of 2007] amended recently by the Government Decree 327 of 2007, 11 November, No. 341 of 2008, 30 December, No. 182 of 2009, 10 September, No.96 of 2010, 31 March, No.290 of 2010, 21 December (FreeD)
- 32/2007. (VI. 27.) EüM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek és a harmadik országbeli állampolgárok magyarországi tartózkodásával összefüggő közegészséget veszélyeztető betegségekről [Ministerial Decree of Health Care No. 32 of 2007, 27 June on diseases of third-country nationals and persons being entitled to free movement and right to residence endangering public health] modified with Government Decree No. 118 of 2008, 8 May and No.10 of 2011, 30 March (NEFMI) entered into force on 31 March 2011(SanitD)
- 25/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény, valamint a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról [Ministerial Decree of Justice and Law Enforcement No. 25 of 2007, 31 May on executive rules of Act I of 2007 and Act II of 2007] amended by the Government Decree No.118 of 2008. 8 May, No.41 of 2009, 15 September, No.12 of 2010, 23 December (FreeMD)
- 28/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjáról [Ministerial Decree of Justice and Law Enforcement No.28 of 2007, 31 May on fees paid by persons being entitled for free movement and residence relating to entry and residence authorisation] amended by the Ministerial Decree (IRM) No.12 of 2010, 2 April and Decree (BM) No.12 of 2011, 18 February(FeeD)

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

FreeA and the legal practice of the OIN differentiate the following categories of family members:

- spouse of EEA national or Hungarian national;
- dependent descendant below 21 of EEA national or Hungarian national or of his/her spouse;
- dependant ancestor of EEA national or his/her spouse;
- ancestor of Hungarian national or his/her spouse;

HUNGARY

- person entitled for parental supervisory right on a minor Hungarian national;
- person whose entry and residence is allowed by the OIN on the ground of attendance for severe health ground, age or financial support under the same roof if the householder is actually is taking care or before arrival Hungary at least during one year was supported him/her living in the same household in the country of departure. This one-year threshold before arrival Art 1(1)da of FreeA is applicable only for family member of Hungarian national.

It shall be emphasised that Hungarian law does not contain reverse discrimination as regards family members of Hungarian nationals. Since the adoption and entry into force of the FreeA (1st of July 2007) family members of EEA nationals and family members of Hungarian nationals are put on the same footing. Both categories fall within the personal scope of the FreeA, both enjoy the rights attached to family member status. The Act clearly regulates in Article 1 (1) that Hungary guarantees the right to free movement and the right of residence to family members of EEA nationals (also of 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*' (Article 1(1) involved). However, the Art (1)da as new requirement (December 2010) combating false marriage means distinction in treatment.

FreeA changed the personal scope of several very important acts upon its entry into force (1 July 2007). 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 2008 some new areas of law lifted family members into the category of migrant workers (family, social and disability benefits). These legislative steps generally contributed to the enhanced rights of family members.

2. ENTRY AND RESIDENCE RIGHTS

2.1 *Entry and residence not exceeding 3 months*²⁴

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 law²⁵ 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 in the country of departure, 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 EEA.

²⁴ Art. 3-5, 36-38 of FreeA.

²⁵ Reg. 539/2001/EC.

The Schengen Borders Code shall also apply to entry and visa issuing including the reconciliation in visa authorisation between the responsible authorities of Schengen members (Art 3(7) of FreeA). The genuine family relationship of the applicant to EEA/Hungarian national shall be proved and checked avoiding abuse (Art 4(1a) of the FreeA). Refusal and withdrawal of visa not exceeding for three months of residence can be appealed (Art 20(1a)). 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.

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.

The modified FreeD provides further opportunity for adjacent state nationals²⁶ as family member of EEA/Hungarian national obtaining a *small border traffic permit* at consular office (Section 18/A-C). Applicant living permanently in the border zone may claim this permit completing a format and showing a valid passport to which the permit is inserted.

2.2 Residence exceeding three months²⁷

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 (enrolment to accredited training programme in public education, vocational training school or in high-level education)²⁸ if at the time of entry, sufficient resources for him/herself and family members (only student's spouse or dependent child) are provided not to become an unreasonable burden 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.

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.

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 left country 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

²⁶ Reg. 1931/2006/EC and bilateral treaties.

²⁷ Art 6-8, 10-15(1) of FreeA.

²⁸ Tight conditions entered into force on 24 December 2010.

HUNGARY

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.

The family member obtain *own right to residence*

- 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,
- 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.
- the right to residence of spouse of the EEA/Hungarian national shall retain despite of marriage is dissolved or annulated 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;
- 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;
- 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;
- 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;

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.

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 s/he provided false data in authorisation process, 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.

2.3 Right to permanent residence²⁹

It shall be provided for

- family members who have resided legally in the territory of Hungary for five years without interruption,
- 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;
- children born in Hungary to a parent with the right of permanent residence,
- 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,
- 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,
- 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 and job-seeking),
- 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.

The recent amendment provides (Art 18 (2a) of FreeA) that period of employment (remunerating activity) in another EEA state shall be added to the time of economic activities in Hungary in order to obtain the right of permanent residence.

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 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 two years; or declaration of a ban on entry and residence.

²⁹ Art. 16-19 of FreeA.

2.4 Documentation proving the right to residence³⁰

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 10 working days by the consular office, 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.

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 93rd 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. Fee for the residence card including its renewal or change issued for family member of Hungarian national is 40 € and for EEA national's family member is 6€ by the FeeD (it is about the same as ID fee for nationals). This distinction between family members on the ground of sponsor's nationality entered into force in May 2011.

Since 1 October 2009 the submitted documents in the residence card procedure shall be accepted in the original language by the OIN instead of authentic translation in Hungarian³¹. 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 monthly minimal pension³² per capita – about 100 € - 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. The format of the card fits to the requirements of 1030/2002/EC Reg., and the 380/2008/EC Reg.

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. Fee is the same as for residence card (6 €) by FeeD.

³⁰ Art.20-26(1) of FreeA.

³¹ Government Decree No. 182 of 2009, 10 September.

³² It is decided by the Government Decree, so yearly its amount is changing, however in 2008-2010 was fixed in 28 500 HUF.

The family member shall report his/her first home (address) in Hungary during the procedure for issuing a residence card. The residence card holder is obliged to request address card and personal identification number from the local registry office as nationals (e.g. valid, existing address can be controlled by the list of existing addresses, legality of living also has to prove by a rental contract or property certificate concerning the apartment/house).

2.5 Other issues

Departure of family member and other restrictive measure can be implemented against him/her not meeting the preconditions of right to residence:³³

If the right of residence ceases, the 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.

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).

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.

The competent authority may *expel an EEA national or family member* and s/he must not return to Hungary up to 1-5 years who:

- has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
- 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 upper cases 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

33 Art. 15(2)-(4), 33-34, 38-48, 64 of FreeA), Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May on alien police detention was modified by the Ministerial Decree No. 51 of 2007, 11 December that entered into force on 1 January 2008. It contains procedural provisions, e.g. claim for compensation of unlawful detention. The Government Decree No. 118 of 2008, 8 May amended the Ministerial Decree of Justice and Law Enforcement No. 26 of 2007, 31 May on deportation provisions since 16 May 2008.

HUNGARY

Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin;

- 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;
- has legally stayed in the country for less than 10 years and not minor (unless expulsion takes place in the interest of the minor), or
- has committed an offence and the court imposed the expulsion.

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.

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.

A 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 not at least the minimal lawful old age pension per month per capita in the family – as the general threshold for social benefit – or has obtained for at least 3 months (continuously or in parts within a calendar year)³⁴

- regular social allowance,
- regular age benefit, or
- nursing 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 21 and 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

³⁴ Section 21 of FreeD was amended by the Government Decree No.395 of 2007, 27 December, No.34 of 2008, 30 December in order to use the same reference on benefits in changing SocialA.

1000 HUF (4 €) for residence *per entry*³⁵ and not per capita per day. 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.

Residence of family members shall meet *public health conditions* that are proved by a declaration of the visa/card applicant. However, the OIN may contact with epidemiologic authority in favour of controlling or defining certain behaviour for family member. According to the SanitD *public health is endangered by the following diseases*, or in being of the pathogen condition of tuberculosis, HIV-infection,³⁶ lues, typhoid or paratyphoid in pathogen condition, or hepatitis B. If the sanitary authority recognized one of these, this fact is noticed officially to the OIN regional office as a general alien policing rule.

3. IMPLICATIONS OF THE METOCK JUDGMENT

Application of *Metock* judgment means that previous lawful residence in another member states is not required from family member of the union citizen. The OIN confirmed that residence card is issued without previous lawful residence. However, family unification (visa) is not an automatic opportunity.

4. ABUSE OF RIGHTS, I.E MARRIAGES OF CONVENIENCES AND FRAUD

The marriage of convenience (Art.35 of Directive 2004/38/EC) is a joint task of the OIN and consular office but share of responsibility in practice has not been defined clearly. Issuance of visa for TCN family member is discretionary decision of the OIN upon proposal of the consular officer. Art. 3 (6) and 4 (1) requires consultation upon request between Schengen national visa authorities before issuance of visa for short term (not exceeding 3 months) and applicant has to meet the requirements as defined in the Schengen Border Code (Art.5 (1) a, c-e. points).

For instance, the Ombudsman receives a complaint from a Hungarian national whose couple living in Egypt (as local national) cannot obtain visa although there is a valid marriage (in Cairo they managed and lived a shorter period and the wife had to return to Hungary to keep own job up) and common life standard, and the husband has never left own state, so there is no signal in SIS. According to the complaint the visa refusal was explained by ‘*supposed false marriage*’ but without personal scrutiny and reasoning.³⁷

In a court case³⁸ of registered partnership between a Hungarian national and his partner from Vietnam the OIN regional unit refused the application for registration card despite of proved family life, joint household for years (2004-2008) saying that the one year joint life as minimal criterion (Art 8(1) in FreeA to the entitlement for family member status for TCN) was not documented from the address and alien police registration. Hence the woman was

35 Section 25 of FreeMD.

36 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.

37 Dr. Haraszti Katalin head of unit, Ombudsman Office (31 March 2009) pending case.

38 EBH 2010/2196. Supreme Court Decisions, 2010/1.

noted to depart from the country within 90 days (in December 2008). The Capital Court annulled the OIN decision requiring a repetitive administrative procedure in which the OIN regional unit was obliged to implement the Art 3(2) of the Dir. 2004/38/EC evaluating all personal conditions and available evidences. The OIN argued that partnership (marriage) by definition means the existence of common and registered, documented address, place of residence at least for one year of the couple – and other evidences belong to the margin of appreciation of the authority. The Art 8(1)a of the FreeA entitles the OIN to provide residence permission to a family member of a Hungarian national if s/he is dependent from him/her or they have been living under the same roof in a common household at least for one year. According to the Section 1d and 27(1) of the FreeD the joint life in a common household is not enough, this shall be proved by the address registration. The Capital Court accepted this argument, and added that dependency would be proved by sponsorship declaration approved by the public notary or medical doctoral documents of the couple in caring or a officially documented joint life in common household at least for one year before arrival of the family member in another state from which they were living together. The Supreme Court stated that the Capital Court fact finding was correct but its legal conclusion was wrong. The common household and living together is one component to permission but its other component of documented address registration is a statutory, connecting requirement. The Art 3(2) of the Directive concerning the individualisation of cases – e.g. in the issue of ‘genuine household’ – is in harmony with the requirement of documentation. Hence the order to depart of the OIN had to be executed.

5. ACCESS TO WORK

The Hungarian labour market has been fully opened with effect from 1st of January 2009. Article 2 (2) of the UnemplA lays down that ‘... *persons falling within the personal scope of the FreeA shall enjoy the same rights and obligations as Hungarian nationals*’.

The term ‘*persons falling within the personal scope of the FreeA*’ encompasses the family members of EEA nationals and the family members of Hungarian nationals as well. The definition of family member derives from the FreeA (Article 2 (b)), the UnemplA does not have an independent term for family member.

It shall be underlined that Hungarian law is in full compliance with Directive 2004/38/EC, in particular Article 23 thereof, that states that equal treatment shall be accorded to the family members of EEA nationals irrespective of their nationality. As a main rule, family members of EEA nationals and of Hungarian nationals can freely enter the Hungarian labour market, there are no nationality restrictions.

Article 59 (1) of the UnemplA expressly confirms the obligation of equal treatment. It states that for matters falling within the ambit of the Act (the registry as a job-seeker, and for the grant of cash benefits) the rules of EC law shall be applied to any union citizen and his/her family member. In this regard union citizens’ family member is put on the same footing as Hungarian nationals.

Further on, Article 58 (9) of the UnemplA provides equal treatment for any legal employment relationship that is valid and effective according to the national law of *another* Member State must be equally treated in terms of supports as a Hungarian employment relationship (active labour market measures). This kind of support targets on employers in favour of wider, lawful employment. However, discretion is exercised by labour offices but the

evaluation must focus on the merit of the application and can not reject it just because the planned work place is outside Hungary.³⁹

PuboA deals with the family members of EEA nationals. Art. 7 (1) states that civil servant shall be only Hungarian nationals. As an exception, Art. 7 (8), however, declares that lower ranked civil servant might be ‘a *person being entitled to free movement and right to residence*’, if the work at issue is not confidential or it is not a leadership, and the person possesses the language skills necessary to perform the tasks.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

The rule of EC law is that persons who exercise their right to free movement are entitled to install themselves in another member state and they are also entitled to bring their family members with them. It means that if the union citizen obtained in Hungary the registration certificate, s/he is entitled to bring his/her family members under the criteria set forth for his category.

The family members shall be granted the residence card in due time on the basis of the FreeA. If the residence card is issued, access to work is granted irrespective of whether the union citizen is a job-seeker or an economically inactive person. Neither Directive 2004/38/EC, nor the Hungarian law sees a difference in the status of the family member based on the status of the union citizen of whom s/he is a family member.

There are no restrictions but there are no benefits available.

Recent literature

Pap András László: *Mozgásszabadság. Alkotmányjogi és nemzetközi jogi alapok* [Freedom of movement – its constitutional and international legal basis]. L'Harmattan, Budapest, 2009.

Örkény Antal – Székelyi Mária: *A bizalom szerepe a bevándorlók sikeres társadalmi integrációjában*. In: *Az idegen Magyarország. Bevándorlók társadalmi integrációja*. Szerk: Székelyi – Örkény, MTA NKI – Eötvös Kiadó, Budapest, 2010. 123-168.

³⁹ Discretion power is essential for labour authority in budget cutting periods and in bottleneck situations in active labour market supports. It was confirmed by the Labour Office representative in Szeged (10 May 2009).

Chapter III: Access to employment

Regulation in force:

- 2011. évi XXIII. törvény az egészségügyben működő szakmai kamarákról szóló 2006. évi XCVII. törvény módosításáról [Act XXIII of 2011 amending Act XCVII of 2006 on professional chambers functioning in the health care sector] with effect from 1 April 2011
- 2010. évi LVIII. törvény a kormánytisztviselők jogállásáról [Act LVIII of 2010 on the Legal Status of Government Officials] in effect from 6 July 2010 and modified by the Act LII of 2011 entering into force on 1 June 2011
- 2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st August 2010 repealing Act CLII of 2009 on Act on Simplified Employment in effect from 1st April 2010 upon 31st July 2010.
- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA) that was amended by Act LXXVII of 2010, with effect from 1 May 2010.
- 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] (EqualD) that was amended by the Government Decree No. 332 of 2006, 23 December entering into force on 1st January of 2007;
- 2001. évi C. törvény a külföldi bizonyítványok és oklevelek elismeréséről [Act C of 2001 on Recognition of Foreign Diplomas and Qualifications] (QualA), that was amended by Act XCVII of 2009 with effect from 21 November 2009.
- 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
- 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 XLIII. törvény a fegyveres szervek hivatásos állományú tagjainak szolgálati viszonyáról [Act XLIII of 1996 on Working Position of Officers in Law Enforcement]
- 1992. évi XXXIII. törvény a közalkalmazottak jogállásáról [Act XXXIII of 1992 on Legal Standing of Public Servants] (PubsA) modified by the Act CXXVI of 2009 and Act CLXXV of 2010
- 1992. évi XXIII. törvény a köztisztviselők jogállásáról [Act XXIII of 1992 on Legal Standing of Public Officials] amended by the Act I of 2007 (PuboA)
- 1992. évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code] that has been amended twice during 2010 but not in the context of this report
- 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA) amended of by Act CXXXIV of 2009 with effect from 1st January 2010 and by Act CLXXI of 2010 with effect from 1st January 2011.

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1 *Equal treatment in access to employment*

Access to employment in the private sector is free for union nationals and their family members. Usually employment is not subject to additional conditions. However, in certain cases affiliation to a certain chamber is required for the pursuit of a given profession (e.g. Chamber of Attorneys) union citizens are entitled to register. Due to recent changes (with effect from 1 April 2011) the health care professionals (doctors, pharmacists etc.) are again required to be affiliated to their respective chamber as a pre-condition of their lawful exercise of activity. The mandatory affiliation was terminated in 2006 and was criticised continuously, that is why one of the first actions of the new government was to restore the mandatory membership which contributes to professional supervision and credibility.

Equal treatment in private employment services is ensured by law and authority control. The private employment agencies must be registered at county labour authority meeting the requirements as determined in Government Decree covering on labour force lenders and manpower intermediary entrepreneurs⁴⁰. Accordingly, the number of private employment agencies dealing with workforce lending was 123 while 90 companies were managing manpower intermediary for migrant workers in 2009.⁴¹ The rate of success in worker's intercession from Hungary to another state was reducing significantly in 2009, and only 2722 nationals were transmitted to employment abroad, their 72% to NL, Germany, Cyprus, UK, France, Austria, and the others to Switzerland, USA and Israel. From them the number of doctors and skilled health care workers was 45 persons while the ratio of manual/physical labourers was 88%. Also in 2009 from the successfully transferred 402 residing non-nationals 174 were employed in Hungary and 216 in another member state of the Union (in Germany, Cyprus, Slovakia, France, UK, Czech Republic and Austria). The 84% of these non-national labourers were highly qualified. One year later the number of workforce lending was also dropped, there were only 235 labourers lent abroad from Hungary to 68 companies in 2010 (in NL, Denmark, UK, France)⁴² while their number was 290 labourers in 2009. These examples may represent the impact of economic recession.

The equal treatment in accession to employment was violated by a complaint submitted by a non-national to ETA.⁴³ Accordingly, a private company advertising mechanic jobs but he was refused being a foreign citizen. The ETA tested the facts by non-national and national testers and this practice was confirmed. The representative of employer set up the complicated conditions of foreign citizens' employment as a defence, and he offered a compromise: the company would apologise for non-nationals, promise the equal treatment in accession and its manpower officer was trained in labour law course to become familiar with legal rules on employment of foreigners. The compromise was accepted and bound by the ETA decision.

40 Government Decree No.118 of 2001, June 30 and modified by No.182 of 2009, 10 September and No.285 of 2009, 11 December on labour force lender (kölcsönző) and manpower intermediary (közvetítő).

41 Összefoglaló a magán munka-közvetítők 2009.évi tevékenységéről, Budapest, Foglalkoztatási és Szociális Hivatal (Pénzné Somogyvári Zsuzsanna).

42 Összefoglaló a munkaerő-kölcsönzők 2010.évi tevékenységéről, Budapest, Foglalkoztatási Hivatal (Pénzné Somogyvári Zsuzsanna).

43 EBH case 25/2010. www.egyenlobanasmod.hu/jogesetek/hu/25-2010.pdf.

1.2 Assistance of employment agencies

UnemplA regulates the eligibility conditions for labour market services and job assistance subsidies. 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, temporary work book). Employers can not any more apply for general social security contribution exemptions (from 1 January 2011, due to Act CLXXI of 2010 amending the UnemplA), only the so-called START benefits of the individual workers can be taken into account.

When employing career starters with a START card (contribution relief for the employment of career starter young people), if the employee has basic or medium level qualification, the benefit can be used for 2 years, and the public dues payable are 10% in the first year and 20% in the second year. Those having higher level qualification can request the START card for 1 year, and public dues are 10% in the first 9 months and 20% in the last 3 months. Persons returning to work from childcare or caring for a family member may claim the benefit for 2 years, the rate of the benefit being 10% in the first year and 20% in the second year. In the case of employers taking on long-term jobseekers above 50 years old, public dues are 0% in the first year and 10% in the second year. All benefits can be used up to the contribution base equal to double the minimum wage as a maximum, above that amount general contribution payment rules apply. If a person with a START card or selecting Ekho is employed in a job which entitles to early retirement, the employer must pay an early retirement contribution in addition to the reduced contributions payable. The Act CXXIII of 2010 amending the Act CXXIII of 2004 extended these benefits to young workers up to the age of 30, disadvantaged workers of labour force (over 50, handicapped persons, long-term unemployed), young mothers and trainee including residing EEA nationals.

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 of 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.

It is worth mentioning that there is no statistical data on how many union citizens took part in active labour market measures. The statistics are built-up according to the sex – age – schooling of the job-seekers but not on the basis of their nationality.

1.3 Simplified employment

Hungarian law contains specific rules aimed at simplifying the administrative surroundings of atypical employment. Between 1997 and 2010 there has been the instrument of the Temporary – Working – Book (TWB) that provided for a very flexible way of employment for both the employer and the employee. Simplified administrative procedures, reduced labour law consequences and special social security arrangements were attached to this form, however, the too many abuses and the very difficult ways of state control made it subject to ongoing debates. In the first half of 2010 the prior government modified (the Act CLII of 2009) and in the second half of the same year the present government passed a new Act on the new rules of atypical employment, called ‘*simplified employment*’. It was modified by the Act CXXXIX of 2011.

At present the Act LXXV of 2010 on simplified employment is applicable. It enables an employee-employer relationship to be established in a simplified manner for seasonal work in agriculture, tourism or casual work. Simplification here means that only the most important labour law rules (e.g. minimum wage) need to be applied. The administration for registering the start and end of employment is also less. The daily wages for persons in simplified employment are the same as for regular workers. However, the public dues are less: HUF 500 for agricultural seasonal work, HUF 500 for tourism seasonal work and HUF 1 000 for casual work.⁴⁴ There are numerical limits for the number of workers and days that can be employed in simplified employment. For example if an employer employs 5 workers the maximum number of workers in simplified employment is 2. The same employee can only be employed with the same employer for a maximum of 120 days.

The rules are equally applicable to Hungarian and union citizens (and their family members).

1.4 Language requirements

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*).⁴⁵ 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.

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) defines 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*

⁴⁴ http://www.apeh.hu/adoinfo/inffuzet_2011/fuzet_46.html Download: 21 May 2011.

⁴⁵ 379/87 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.

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.

Section 8 of Ministerial Decree No.31 of 2004 on the recognition of health care diplomas 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.

The Ministerial Decree issued by the Ministry of Economy and Trade (GKM) No.17 of 2008, 30 April determined the language requirements for skilled workers in air navigation service that is operated by private company. Due to traffic security the employment criteria, testing method, language ability in English and Hungarian, its evaluation system of stagier, junior and senior worker are clearly regulated (see its Section 14 and Annex).

Otherwise, the private sectors' practice is unknown and not explicitly regulated – with some exceptions. 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.

1.5 Recognition of professional experience for access to the private sector

There are some legal rules on self-employed or contractual driven occupations of which the evidence of professional experience are determined. For instance, the Government Decree No.244 of 2006, 5 December contains the preconditions of how to practice the building and technical superintendent. Although the membership in the relevant chamber is optional, the exam on entitlement by the national chamber is required in order to practice lawfully these professions and to be put on the list of entitled professionals. The appendix to the Decree regulates the exam procedure and minimum abilities of the applicant. EEA national has to submit his application to the Capital Chamber of Engineers or Architects attaching the documents of paid fee, prior practice(s) in other member state(s) also in Hungarian translation, professional CV and references.

According to the Ministerial Decree issued by the Ministry of the Interior No.22 of 2006, 25 April, the lawful operation of private investigator, safeguard and bodyguard requires his/her individual licence issued by the police authority, membership in the responsible chamber (consolidated Act CXXXIII of 2005) or as a company in possession of a permission issued by the police authority. The applicant may be also a registered local office of a company established in another EEA state or as EEA national in possession of individual entrepreneurship card. In case of non-national applicants the documents shall be translated into Hungarian and clean criminal record issued by the place of (foreign or Hungarian) residence shall be also attached. In case of EEA national entrepreneur with licence issued in another EEA member state, only its validity and expiring data can be controlled in police authorisa-

tion. It means that there is no specific criterion of prior professional practice of applicant if it means a cross-border service supply.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 *Nationality condition for access to positions in the public sector*

The public employing about 20 percent of workers became more heterogenic in 2010. The publicly financed and regulated group shall be divided into the following sub-groups by law:

1. Certain elected positions defined by public law;
2. Officers in defence;
3. Officers at law enforcement (officers of police, prison, fire brigades and catastrophe dissolution, customs, secret services);
4. Government officials,
5. Public officials;
6. Administrators of justice (court, public prosecutor office) has own regulation on employment;
7. Public servants.

The *Hungarian nationality* is tightly required in (1), (2) and (3) sub-groups. It can be said that dual nationality means a hindering status that would be exempted by the competent minister. The decision making workers in (4), (5) and (6) predominantly shall be nationals but *mechanic file-keepers or non-leading positions can be fulfilled by union citizens and family members* (persons entitled for right to move). Finally, employees in (7) can be either nationals or EEA national, long-term migrants (TCN) *equally* but exceptionally in certain branches or positions they shall be nationals or Hungarian speakers. Taking into frequent amendments in public sector provisions, we can see opposite trends. On one side the list of elected positions excluding non-nationals has become longer. On the other side, accession to the public sector became partly easier. However, the reasons of exclusion are not explained in Bills or proposals. For instance, the local escort in environment protection had to be a national but it was modified including the residing EEA nationals and long-term migrants (TCN) to this employment.⁴⁶ At the same time auctioneer as leader of mart⁴⁷ or executive director in publicly financed media⁴⁸ shall be a Hungarian citizen.

Elected positions defined by public law: Certain positions shall be fulfilled by exclusively by Hungarian national. For instance, member of the Constitutional Court,⁴⁹ mayor or chair of county municipal.⁵⁰ 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 nationality⁵¹). According to the

46 Ministerial Decree on guards of natural protection No.33 of 1997, 20 November (KTM) modified in 2010 (KvVM).

47 Ministerial Decree No.16 of 2001, 26 October (IM).

48 Act CLXXXV of 2010 on market and publicly financed media services, Art 103 (1).

49 Act XXXII of 1989. on he Constitutional Court, Art. 5.

50 Act XX of 1949, Art. 71.

51 Act LXXVI of 2011, Art. 7.

Act on National Bank of Hungary, the member of the Monetary Council and Inspectoral Board shall be a Hungarian national.⁵²

Officers in defence: The Act XCV of 2001 on legal standing of professional and mercenary (fixed-time) members of the National Defence requires nationality as precondition in all jobs additional to clean criminal record, determined qualification, proper health conditions and permanent residence in Hungary [Art 7(2), 41 (1)]. For this reason, the legal relation is terminated in case of ceasing nationality or acquisition of another nationality. Moreover, the director of National Defence University shall be a national.⁵³

The Constitutional Court annulled *pro futuro* the provision of the Act that bans on recruitment dual nationals to the army as incompatible with the Constitution.⁵⁴ Accordingly, the security screening and check that is statutory to entry of decisive positions can explore the risks in the candidate's personal conditions. Consequently the automatic exclusion of applicants with multiple nationality means unconstitutional limitation in right to work or other fundamental rights because the citizen's allegiance to the state and defence is a moral but not a legal phenomenon. I have to add that provision terminating the intentionally acquired second citizenship of an officer is undisturbed in the Act – it is confusion of this logic. Otherwise, I guess that the annulment of the exclusive rule concerning the dual nationals in defence entry will radiate to legal positions of officers at law enforcement.

Officers at law enforcement (police, prison, fire brigades and catastrophe dissolution, customers, secret services) are regulated in the Act XLIII of 1996 that was amended more times. This Act covers on members of police, national security services, 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 s/he 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.⁵⁵ 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)]

The *government official* as a new status was introduced by the new government (Act LVIII of 2010 amended by the Act LII of 2011) providing wide manoeuvring room for the employers (Prime Minister Office, ministries, central and regional offices, agencies or law enforcement units) to remove and dismissal of their skilled workers (previously public officials that were re-labelled by the Act as government officials in great extent) and to provide more prerogatives for leaders. The government officials with university degree are entitled to practice public power thus labourers with secondary education can be employed as additional, physical, administrative or technical worker.

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

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

54 Constitutional Court Resolution No.52 of 2009, 30 April.

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

The *public officials* were decimated in 2010 with introduction the legal standing of government officials. Thus only the labourers in municipal authorities and non-governmental agencies (State President Office, Audit Office, Parliament, Constitutional Court, Ombudsman Office, National Media and Communication of Information Authority, National Competition Office, Financial Inspector Office, Secretariat of the Hungarian Academy of Sciences, National Public Procurement Office, etc.) belong to this regime. Their dismissal, removal were also unburdened by the Act CLXXIV of 2010. Hence in April 2011 the Constitutional Court annulled the rules on dismissal of officials without reasoning as incompatible to the Constitution violating human dignity.⁵⁶ Preventing the further annulment the Parliament modified (Act LII of 2011) the PuboA and the Act on government officials determining at least formal criteria and reasoning of employment termination by the employer.

Public officials are empowered to implement public power taking measures in legislation, disputes or conflicts. According to the PuboA 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 exam⁵⁷ since 1 January 2009. 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.⁵⁸ While the nationality is a general requirement, persons under the personal scope of FreeA and ‘nationals of party states of the European Social Charter’⁵⁹ 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 2007.⁶⁰ It is important that non-nationals are exempted from the entry exam that will be deleted in near future (September 2011) for all.

Administrators of justice (court, public prosecutor office) has 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. Thus 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 for a leading and confidential position.⁶¹ Moreover, only a Hungarian national may be appointed to judge at court,⁶² public prosecutor, drafter, secretary and investigator at prosecutor office⁶³.

56 29/2011. (IV.7.) AB határozat.

57 Art 7(1) of PuboA, and its Annex 6.

58 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).

59 The revised Charter (1996) is published by the Act VI of 2009.

60 Act LXXXIII of 2007.

61 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.

62 Act LXVII of 1997 on legal standing and remuneration of judges, Art. 3.

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.⁶⁴ In brief, the key position means implementation on power of justice (such as judge, member of tribunal, public prosecutor) that shall belong to nationals together with their assistance in a wide circle.

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 executive decrees on branches. The Hungarian national and residing EEA nationals (persons under the ambit of FreeA) and long-term migrants (TCN with open-ended residence permit) are eligible to public servant employment. However Art 20(3) delegates the regulation in two directions: either to require nationality and Hungarian/foreign language knowledge, or to liberalise the general conditions in jobs. The Government is entitled (Art 85(3) to regulate on the public health sector, on public education, on high-level education, on the academic researchers, in national defence, in law enforcement and in artist, culture and public collections in this respect determining *working positions* in which applicant is to be a Hungarian national with clean criminal record in full age, or proper Hungarian language knowledge. Without definition of specific task or protected public interest this delegated legislative power is not compatible with constitutional rule-of-law. Moreover, all public servants determined by law shall take regularly declaration on assets since 2007. The consequence of appointment in absent of pre-conditions means invalidity of contract on employment [Art.10 (1)]. According to the recent modification public servant's position shall be fulfilled by a competition procedure with certain exceptions. The purpose of this modification was to make the public service sector more competitive and transparent through the public tenders of jobs.⁶⁵

The executive Decree requires in certain positions the requirement of Hungarian nationality or/and Hungarian language.⁶⁶ For instance,

- 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.⁶⁷ This acceptance is totally discretionary, there are no substantial preconditions. This provision was modified requiring Hungarian citizenship from all public servants employed in archives, and security checked positions in cultural heritage collections of defence.⁶⁸
- 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. Before amendment upon re-

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

64 Act LXVIII of 1997 on legal standing of workers in administration of justice, Art 11 (3) amended by the FreeA.

65 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.

66 See in particular Ministerial Decree (HM) No.27 of 2008, 31 December, Government Decree 356 of 2008, 31 December, Government Decree No. 84 of 2011 26 May, Ministerial Decree without portfolio No.4 of 2008, 31 December, Ministerial Decree (IRM) No.10 of 2009, 17 April.

67 Government Decree No. 150 of 1992, 20 November, Section 2 (2).

68 Government Decree No.354 of 2008, 31 December entered into force on 1 January 2009.

quest of local leader of the unit the minister could issue an acceptance.⁶⁹ However, the Ministerial Decree (Section 2) determines that 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 its Training Centre.

- Only Hungarian nationals are eligible for public servants in all positions that are based on security checking at Police, Penology institutions, Internal Security Service of the Police, Office for Immigration, Forensic Sciences Institutions and Law Enforcement Training Centre. Moreover, in other positions – with exception of manual workers, and waiter, cooker, cleaner, hostess and kitchen helper – only Hungarian nationals must be employed as public servant at Penology Institutions and refugee centres. This modification⁷⁰ extended the circle of employment that is eligible only for nationals because previously only the prison-guard and service-men had to be a national.
- The recent amendment maintains nationality preconditions in all jobs that shall be fulfilled after nationality checking in *each unit of National Defence* without exception.⁷¹

2.2 Language requirements

At first, the rules In QualA dealing with language requirements are found in Part III on recognition of EEA diplomas of EEA nationals and their family members shall be equally implemented if worker needs the qualification or degree to the job.

As regards public servants the knowledge of Hungarian language is not expressly required. However, the PubsA delegates the legislative power to ministers determining further preconditions in public servant jobs. In this public servants belonging to law enforcement sector the *Hungarian language knowledge* is required for employment⁷². Previously the ‘proper level of Hungarian language knowledge that is needed to his/her working task’ was enough. Beyond this restrictive modification neither formal nor informal ways of language competence, its testing method has been developed. In fact it would hinder the free movement of non-Hungarian speaking workers.

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 person in terms of the 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

69 Ministerial Decree of the Interior No. 62 of 1997, 7 November amended by the Ministerial Decree 10 of 2009, 17 April.

70 Ministerial Decree of the Justice and Law Enforcement No.10 of 2009, 17 April replacing the Ministerial Decree of the Justice No.7 of 1993, 9 March.

71 Ministerial Decree of Defence No. 25 of 1992, 25 November was modified by the Ministerial Decree of Defence No.27 of 2008, 31 December and No.7 of 2010, 23 April entering into force on 8 May 2010.

72 Ministerial Decree of the Justice and Law Enforcement No.10 of 2009, 17 April, Section 2(1)a.

means that the knowledge of Hungarian language is evident, while neither formally, nor informally the Hungarian language competences of foreigners and the testing method has been developed. Despite of the ongoing reform in public administration it is 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.

2.3 Recognition of professional experience for access to the public sector

It is apparent that the *Burbaud* ruling is important only for those Member State that have similar systems or training methods. It shall be emphasised at the outset that Hungary introduced a similar entry exam for applicants of public officials only in 2009. However, it will be as a precondition to the employment as public official only for nationals, and non-nationals are exempted by law. 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 regard⁷³but the near future in would change in a segment that has been rather exceptionally open for EEA nationals and family members. According to the draft regulation the whole recruitment to public administration will be reformed, so the entry exam is ceased in September 2011.

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

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT IN DRAFT REGULATION

In order to transpose the interim modifications of Dir.2005/36/EC in particular its annexes due to the change of qualifications and degrees, the Government is drafted the amendment of the Act C of 2001 on recognition of foreign diplomas and certificates.⁷⁴ The Ministerial Decree issued by the Health Care Ministry No.4 of 2008, 16 January or the Ministerial Decree issued by the Public Education Ministry No. 35 of 2007, 13 November provides the implementation of the Directive sectorally.

The Bill on amendments of certain labour and connected acts⁷⁵ aims to insert the rules of Blue Card scheme to the UnemplA and to limit the rights of labourers safeguarded by the Labour Code. The universal restrictions are not discriminative but means erodation of existing labour law safety.

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

74 See the homepage of the Government <http://www.kormany.hu/>.

75 T/3404. számú törvényjavaslat egyes munkaügyi tárgyú és más kapcsolódó törvények jogharmonizációs célú módosításáról.

Recent literature

- Lipták Katalin: Economic and legal background of atypical employment form in Hungary. Conference paper on 'Spring Wind 2010', 25-27 March 2010, Pécs (Association of Hungarian PhD and DLA Students)
- Várhalmi Zoltán: Magyarországi migránsok kapcsolathálójának típusai, jellegzetességei. In: Az idegen Magyarország. Bevándorlók társadalmi integrációja. Szerk. Örkény – Székelyi, MTA NKI – Eötvös Kiadó, Budapest, 2010, p. 169-188
- Prugberger Tamás: A munka-, a pihenőidő és a szabadság módosított magyar szabályai az Európai Unió normáinak módosulása tükrében. *Magyar Jog*, 2010. vol. 57. no. 8, p. 468-473
- Berke Gyula: Magyar munkajogi tárgyú ügy az Európai Bíróság előtt. *Pécsi Munkajogi Közlemények*, 2010. vol. 3. no. 2, p. 81-92
- Alkotmányellenes a kormánytisztviselők jogállásáról szóló törvény, Kocsis Miklós. *Közjogi Szemle* 2011/1, p. 68-69

Chapter IV: Equality of treatment on the basis of nationality

Regulation in force:

Labour Code

- 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 (MusD)
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act on Social Administration and Social Benefits] amended by Act CXXI of 2007, the consolidated text entered into force 1 January 2008 (SocialA)
- 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] amended by Act CXXI of 2007, the consolidated text entered into force 1 January 2008 (DisabledA)
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [Government decree on the Housing-related State Subsidies] as amended by Government Decree 74/2011 (V.2.) entering into force 5 May 2011 (HouseD)
- 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] (TransD) that was amended by the Government Decree No. 172 of 2010, 13 May with effect from 1 July 2010
- 17/2005. (II. 8.) Korm. rendelet a diákigazolványról [Government Decree No. 17 of 2005, 8 February on the Student Card] amended by Government Decree 118 of 2008, 8 May (CardD)
- 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] (StudD)
- 86/2006. (IV.12.) Korm. rendelet a Diákhitel Központtól [Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre] (LoanD)
- 152/2005. (VIII.2.) Korm. rendelet az Útravaló Ösztöndíjprogramról [Government Decree on the Scholarships for promoting the equal opportunities of disadvantaged Groups] amended by the Government Decree No. 157 of 2010, 6 May with effect from 9 May 2010 and repealed by 30 June 2011
- 1995.évi CXVII.törvény a személyi jövedelem adóról [consolidated Act on Personal Income Tax] (TaxA)
- 2003.évi XCII.törvény az adóeljárás szabályairól [consolidated Act on Taxation Procedural Rules] (TaxPA)

1. WORKING CONDITIONS – DIRECT AND INDIRECT 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 activi-

ty 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 there from.

The main pillars of Hungarian law as regards the principle of equal treatment in employment relations are: the Labour Code, the Act on Labour Control or Penal Code as well as other provisions, action plans together intending to provide equal access to remunerating work.

The personal and institutional scope of the EqualA *covers also on private and public labour relations* thus all definitions of prohibited behaviours (direct/indirect discriminative, segregation, harassment, retorsion, instruction for discriminative action) and sanctions shall be applicable on this part of life.

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 work⁷⁶. 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.⁷⁷ 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*’.⁷⁸ 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 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.

76 (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.

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

78 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.

HUNGARY

Chapter III of the EqualA (Arts. 21-23) determining further specific requirements 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:

- a) access to employment, especially in public job advertisements, hiring, and in the conditions of employment;
- b) a provision made before the establishment of the employment relationship or other relationship related to employment, related to the procedure facilitating the establishment of such a relationship;
- c) establishing and terminating the employment relationship or other relationship related to employment;
- d) relation to any training before or during the work;
- e) determining and providing working conditions;
- f) establishing and providing benefits due on the basis of the employment relationship or other relationship related to work, especially in establishing and providing wages;
- g) relation to membership or participation in employees' organisations;
- h) the promotion system;
- i) the enforcement of liability for damages or disciplinary liability.

The principle of equal treatment is not violated if

- a) the discrimination is proportional, justified by the characteristic or nature of the work and is based on all relevant and legitimate terms and conditions, or
- b) the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.⁷⁹

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. All of these complaints for discriminative actions may be submitted to the competent administrative authority (e.g. labour inspector, local registrar office) or to the ETA implementing the EqualD imposing fine, and as a remedy to the Ombudsman or to the judicial revision (to the Capital Court).

Act XXXVIII of 2009 (entered into force on 1 November 2009) modified the rules on public list of employers that violated the EqualA (Art 17/A). Accordingly, the ETA puts the data of the employer and the case of violation to its homepage, if the court states the violation repeatedly within two years upon request of ETA. In this way the prior list of trespassing companies was deleted and this page of ETA is empty⁸⁰ – this condition is out of practice. However, the yearly report of ETA⁸¹ refers on that the majority of violation are released in the employment also in 2010: equal treatment was violated on the grounds of age (over 45), motherhood (young mother with small child), Roma origin and handicap. Thus the majority of fine was imposed against companies (about 40 in 2010). In order to enriching the

⁷⁹ Art. 23 of EqualA.

⁸⁰ <http://www.egyenlobanasmod.hu/cikkek/rendezett-munkaugyikapcsolatoknak-megnemfelelo-munkaltatok>.

⁸¹ http://www.egyenlobanasmod.hu/data/2010tevekenyseg_szamok_tukreben.pdf.

accession to ETA the network of regional advisers was set up in 2010 financed from the ESF project (TÁMOP 5.5.5.) providing free legal advice for potential clients, victims of discrimination and free courses for representatives as employers in municipalities and companies. Due to this lawyers' activity the number of cases is growing a bit.

The Advisory Board of the Equal Treatment – compensating the limited independence of ETA – is recruited from experts in NGOs and academics. It is entitled to issue guidelines to the ETA and its equal treatment investigations. For instance, the ABET Decision No. 288/4/2010, 21 June on the implementation of the equal treatment requirements of the EU law and ECJ case law in ETA procedure. It explains that ETA is entitled and obliged to submit requests for preliminary ruling at ECJ if the interpretation of a provision in the EU law is necessary to a pending legal dispute laying on the table of ETA.

The non-equal labour conditions can be observed only through the Labour Inspectors' report because the legal rules require the same treatment for all employee. Due to limited capacity of National Labour Safety and Inspecting Authority (OMMF) that was inserted to the county governmental offices in 2011⁸², had to select the most endangered industries or fields of employment. The building industry has been the most infected by illegal and unsafe employment: 62% of checked employers and 58% of labourers violated more or less the labour law provisions in 2010. These rates were a bit worse in 2009: 65% and 63%. But *'the results of labour inspecting concerning the employment of non-nationals were bad, 70% of checked labourers meant violation of rules in building industry while 15% of unlawful work force lending were observed in building industry.'*⁸³

1.2 Specific issue: Working conditions in the public sector

The principle of equal treatment shall be observed also in the public sector. The main rules applicable on public servants, officials, officers, government officials, staff in administration of justice prohibit discrimination and unequal treatment as the Constitution (Art 70/A and 70/B) EqualA and Labour Code requires.

However it is important to mention that

- provisions on recognition of professional experience for the purpose of determining the grade – and through it the salary and career perspectives – are not existing, or they are considered as can be performed only in Hungary. The transversal mobility inside the public sector among different statuses is very restrictive for all workers regardless nationality⁸⁴.
- rules inside the public sector and outside on the free labour market are different in the right to strike, right to be nominated in local and general elections, right to joint political party are limited by law and they are eligible to be tested confidentially by anti-corruption and reliability.⁸⁵

82 Government Decree No.314 of 2010, 27 December.

83 Data and citation from OMMF Közelmény: Betonszürke építőipar. 7 April 2011 CONSTRUMA Fair by Bokros, József Director and Arató, Zoltán chief labour safety senior official.

84 For instance, clerk at municipal office cannot be replaced to another public administration office, see dr. Németh Erika: A jegyzői jogviszony és a közigazgatási áthelyezés. *Jegyző* 2010/5. (26 October).

85 Modifications entered into force on 1 July 2010 by the Art 37 of Act XLIII of 1996, Art 7/A-C of Act XXXIV of 1994, Art 21(6) of PuboA.

2. SOCIAL AND TAX ADVANTAGES

A general observation to be made is that the Hungarian social protection is quite generous in terms of granting benefits to eligible EEA nationals on the same footing as for Hungarian nationals (see below in detail including some distinctions in the field of study grants in another chapter). However, what is lacking, is the accessibility of this information by EEA nationals. Usually the public approach of EEA nationals themselves to these issues is that ‘only Hungarian nationals are entitled to benefits’. The access to information and the spreading of in other languages than Hungarian would be of vital importance in this field.

As second, social advantages are highly dependent upon the documentation of residence. If the EEA national or the family member disposes of right of residence in Hungary and can verify it with a residence document, s/he is entitled to apply for benefits. Except frontier workers, other persons are excluded from social advantages if their residence status is not properly documented. This is the same as in most of the Member States: the residence status becomes constitutive even if it is clearly settled case-law that it should be declarative.

2.1 General situation as laid down in Art. 7 (2) Regulation 1612/68

Since 1 January 2008, in accordance with the personal scope of FreeA several social laws and governmental decrees have been amended. The former approach based on the requirement of economic activity has been revisited in a number of cases and the concept of union citizenship has been pronounced.⁸⁶ In this spirit not only Community workers and their family members but every union citizen and their family members (including the family members of Hungarian nationals) became entitled to claim social advantages if they are residing lawfully in Hungary and are properly registered.

In this sense Hungarian law went *beyond EC law* that does not require full equal treatment for economically inactive persons. It shall be emphasised, however, that the practical implementation of the concept of social advantages is still very difficult for it concerns potentially the whole body of law, and inequalities might remain hidden for quite a time.

Most importantly, union citizens (including Hungarian citizens)⁸⁷ and their family members residing lawfully in Hungary for more than three months and being registered in the permanent address register can be entitled to all benefits enshrining in the SocialA. The Act contains both cash and in kind benefits, the most of which are means tested and awarded by the self-governments.

However, benefits from the social assistance system are subjected to the limitation that the person can not be an unreasonable burden to the social assistance system of the host Member State. The SocialA and FreeA reading together, interprets in Hungarian national law the ‘unreasonable burden’. According to Article 21 (1) of Government Decree No. 113 of 2007, 23 May– in line with Article 8 (4) of Directive 2004/38/EC – a person has sufficient resources, if the income per capita in one household reaches the minimum amount of the old age pension (in 2008 it was 28 500 HUF per capita). According to Article 35 (1) of the Government Decree,

⁸⁶ Most prominently Act CXXI of 2007 on social laws.

⁸⁷ The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.

HUNGARY

‘an EEA citizen or a family member becomes an unreasonable burden on the social assistance system of Hungary if he/she receives

- a) old age allowance (as set out in Art. 32/B Para 1 of Social Act)
- b) benefit for persons in active age (as set out in Art. 33 of Social Act)
- c) nursing allowance depending on the income (as set out in Art 43/B of Social Act) for more than three months.’

In accordance with this provision a condition for obtaining the right of residence for longer than three months – in case they are not workers or self-employed persons, or are not following a course of study – is not to become a burden on the social assistance system of Hungary during their period of residence. In case a person is entitled to the right of residence for longer than three months, s/he is entitled to have recourse to the social assistance system as well. Such benefits are old age allowance, benefit for persons on active age, nursing allowance, home maintenance support, temporary assistance, funeral support, public funeral, public health care card, debt management service.

A typical form of benefits for active persons not having sufficient income and for their family members is the benefit for persons in active age. As a type of benefit for persons in active age for those being able to be employed within the meaning of the SocialA wage subsidizing allowance can be granted. Wage subsidizing allowance can be granted to those who have already exhausted their entitlement for unemployment benefit, or have not even been entitled for such a benefit due to the lack of required eligibility period.

In case the beneficiary receives old age allowance, benefit for persons in active age or nursing allowance depending on the income for more than three months, the clerk in municipal (notary) has to report this fact to the immigration authorities. As a result the immigration authorities decide on a case by case basis whether the person has sufficient resources in order not to become an unreasonable burden on the social assistance system of Hungary. During such verification the criteria set out in Article 21 (4) of Government Decree No. 113 of 2007, 23 May (executive rules to FreeA) needs to be taken into account (number of persons having income or assets in a household; number of dependants in a household; whether the applicant is the owner, beneficiary or user of the real estate providing accommodation for the applicant and his/her family members).

Further cash benefits and benefits in kind specified in the SocialA can be obtained without verifying whether the person concerned would become an unreasonable burden on the social assistance system of Hungary.

The non-equal treatment concerning the social advantage was mentioned on the base of nationality in complaints to the ETA:

- the preferential price of Harkány spa is available only for resident pensioners with Hungarian citizenship.⁸⁸ Despite of a prior binding decision of ETA imposing fine in 2007 and the judgement of the Capital Court in 2008 to stop discrimination – upon the claimant of a residing German pensioner – the spa owned by the local municipal has continued the discriminative practice since 2004. The case was also targeted by the European Parliament session. Its representative referred on tight preference because the equal treatment for Union citizens ‘*would extremely open this benefit for non-national retired*

88 EBH case 1054/2010. www.egyenlobanasmod.hu/jogesetek/hu.1054-2010.pdf.

- persons*'. ETA again imposed a fine (5600 €) and ordered to equalise the entry price within 90 days, and to publish the whole decision on the homepage of ETA;
- the price of services was different for foreign clients in a private clinic because they have to pay an *extra fee* for consultation.⁸⁹ The patient complained for this practice because he is speaking Hungarian. The representative of the clinic referred on the plus expenditures concerning the translation of medical documentation and oral communication between the doctor and the non-native patient, and the costs of marketing was also contributed to this extra fee. However, the case of patient speaking Hungarian is discriminative regardless his/her citizenship, so the clinic offered to modify the advertisement, the homepage and treatment with patients. This compromise including the repaid extra fee for the claimant was approved by the ETA;
 - the *service conditions* were different for nationals on a private entrepreneur's fishing lake⁹⁰. The claimant could not accept the shorter service hours for nationals and a more convenient hours for non-nationals. During the ETA process the Austrian owner expressed his troubled experiences with Hungarians fishermen, so he had to reduce their time of service - but it was considered as a discrimination. Hence the decision of ETA prohibited him to continue this practice, and he was forced to provide equal accession for nationals publishing this decision on the homepage of ETA.

2.2 Distinct sectors

DisabledA aims at mitigating the disadvantages suffered by disabled by enhancing their equal opportunities and by changing the attitude of the society towards disabled issues. The purpose of the DisabledA is to define the rights of people with disabilities, to determine the instruments of asserting such rights, to regulate comprehensive rehabilitative services to be offered to persons with disabilities, and as a result, to ensure an independent living and active involvement in social life for persons with disabilities. The Act has a general personal scope 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'.⁹¹

The definition of disabled is determined without referring to nationality. Article 23 that concerns cash benefit for the disabled states that every union citizen residing lawfully in Hungary for more than three months and being registered in the permanent address register is eligible to apply for the cash benefit for disabled. The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.⁹² If the beneficiary leaves for another EU Member State the benefit is not withdrawn until benefit is granted in that other Member State.

89 EBH case 28/2011. www.egyenlobanasmod.hu/jogesetek/hu.28-2011.pdf.

90 EBH case 713/2010. www.egyenlobanasmod.hu/jogesetek/hu.713-2011.pdf.

91 DisabledA, Art.4 (a).

92 Act CXXI of 2007 (its 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 than 3 months is eligible.

Act LV of 1994 on arable land contains provisions for the acquisition of ownership title of non-arable lands (housing). From 1 May 2004 free access to EU nationals to housing has been provided.⁹³ According to the Act EU nationals, legal persons and unincorporated entities established in any Member State of the EEA or Switzerland may acquire title of ownership of non-agricultural land under the same conditions as Hungarian nationals (without special permission). This free acquisition refers to the 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 four years in Hungary. It means that permission of the county administration office is not needed from 1 May 2009.⁹⁴ The residence in Hungary shall be proved by the OIN certificate.

Impacts of free accession to the real estate market can be seen. For instance, in the Slovak-Hungarian and Romanian-Hungarian border zones more and more commuting, frontier workers from Slovakia and Romania⁹⁵ have purchased property that upgrades price level of houses in a depressive border zone in Hungary. This comparative attraction of low price level in Hungarian side means awake of aged population in almost inhabited villages by commuting workers,⁹⁶ especially after the introduction of euro in Slovakia, or enjoying lower prices and better loan conditions here than in Romania.

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*’. As from 1 February 2008 union citizens (including Hungarian nationals) and their family members can qualify as supported persons in terms of the Government Decree if their residence is lawful and they are registered in the permanent address register.

The new Act IV of 2009 on collateral assurance by the state concerning house loans also provides equal treatment. Art 1(10) entitles union citizens and family members living in Hungary and are registered in the permanent address register are eligible to obtain guaranteed credit or loan for house purchase or lintel credit.

TransD regulates the advantages available in public passenger transport. A general revision of benefits has been started in 2009 due to the economic crisis and to make the whole system more transparent. For instance, the long-distance free travel is available if passenger buys a ticket free of charge in order to register his travel. (Before this amendment pensioners got in the train without ticket and their right to benefit based on their age on the ground of identity card but without concrete registration of travel – causing a harsh dispute on state subsidy sum between the Treasury and the travelling company.)

There have not been severe changes in the legal rules during 2010, however, controls in public transport have been strengthened that resulted in more income for transport companies (e.g. the registration ticket free of charge issued before travel was introduced for pensioners).

93 Act XXXVI of 2004 amended the LandA, Art. 88/A – 88/D

94 On the other side, the prohibition on free purchase of arable land will be maintained in future. This prohibition expires in 2011, however the Parliament adopted a resolution (2/2010, 18 February) requesting prolongation of this transition measure from the EU at least up to 2013.

95 Invázió a keleti határon. http://penzcentrum.hu/lakas/roman_invazio_keleten.1012960.html

96 Szlovákiai vevők kalandoznak a határ mentén. MTI, 2008.október 31.; Egyre több román lakásvásárló hazánkban <http://osztrakhitel.hitel.co.hu/egyre-tobb-roman-lakasvasarlo-hazankban/> (29 June 2009)

HUNGARY

As regards advantages in public passenger transport, TransD grants benefits for certain groups of persons using the inland public transport facilities. The 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, internationally protected persons,
- workers at publicly financed institutes or private foundations, churches,
- ethnic Hungarians' card holder (from Serbia and Ukraine),
- disabled, or
- persons travelling in groups.

There are travel fare exemptions or reductions for long-distance and local travel facilities. Transport exemptions or reductions are as a main rule attached to the status of the person (such as student, job-seeker participating on a supported re-training, applicant for international protection, refugee, pensioner obtaining pension from the national pension scheme) not to his/her nationality. For instance, students or job-seekers are entitled to the advantages irrespective of whether they are Hungarian or EEA nationals. TransD contains two exceptions to this rule:

- in case of persons exceeding 65 years of age. In accordance with FreeA EEA nationals and their family members, family members of Hungarian nationals and persons possessing permanent residence in Hungary being above 65 years of age are horizontally free to travel. Elderly persons not having these nationalities are required to pay. Here, albeit TransD mentions nationality condition, union citizens and their family members are put on an equal basis with Hungarian nationals.
- It embodies rather a positive discrimination in content. Pursuant to Art. 3 (1) point h) students who qualify as '*entitled person*' in terms of FreeA – consequently having the nationality of an EEA state (including Hungarian), being family members of those or of Hungarian nationals – *and* who study full time in an EEA state or in Switzerland can avail themselves of the same benefits as students studying in Hungary. This means that if a German student of the Humboldt university comes to Hungary as a tourist she is to enjoy the benefits. Equally, if a Hungarian national studies in Paris, when she is at home, she can refer to these benefits as well.

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 applied for, and entitles the holder for travelling only together with the seasonal ticket. These students may travel on unlimited occasions too. The Act LXXXVII of 2003 on consumer price-supplement 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.

Non-native family members of union citizens attending public education may obtain a special pedagogical programme for a year in order to catch up the Hungarian language cur-

ricula. The ministerial decree⁹⁷ provides financial contribution to this programme per capita upon the schools' request. It means yearly 1600 € per student. However, this amount would mean a limited inspiration for plus work of teachers unless the number of non-native students is higher.

Government Decree No. 157 of 2010, 6 May regulates scholarship possibilities for students and their tutors who are qualified as being severely disadvantaged or lives in a child protection institution. There are four types 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 for three types of scholarships. For the fourth type (Road to Science) Hungarians, permanent residents and EEA nationals and their family members can apply. There is no discrimination based on EEA nationality in accordance with Directive 2004/38/EC.

MusD has been amended by Government Decree 281 of 2007, 25 October with effect from 1 January 2008 by which 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 and 50 percent reductions into museums for the nationals of the EEA including Hungarian nationals. It is worth noting that family members are not mentioned in the personal scope of the Government decree.

As regards social advantages a substantial body of law (in form of self-governmental decrees) is created by the local self-governments, for instance on the base of entitlement given in the SocialA. Thereby the personal scope of these rules is of outmost importance hence local entitlements are laid down in these regulations. There are 3200 self-governments in Hungary and therefore a general compliance of these rules can only be presumed but not fully asserted. Moreover, the set of all local self-governments' decrees does not exist, thus a regular survey is not possible.

Concerning the social advantages those are hardly controlled whether equal treatment is provided for union citizens and family members in decentralised municipal regulation system. 3200 municipalities are entitled to regulate local social affairs, including parking tariff and benefits. For instance, a mixed-couple (German father and Hungarian mother) that were living and working in Sopron complained to the Ombudsman for discrimination on the ground of father's nationality.⁹⁸The local municipal's Decree (No.23 of 2006, 29 June) provides a newborn baby-support (150 €) to young parents if child is Hungarian national and parents are permanent residents and they have address in the town Sopron. The couple's request was refused because of the father non-national status, and finally the clerk in municipal and mayor confessed that due to the economic recession and budget deficit there was no cover. The modification of the Decree was promised. The investigation has not finished yet. However, the other local Decrees in Sopron (on housing subsidies, on car parking, on study grant, on implementation of SocialA, etc.)⁹⁹ avoid nationality as precondition for social advantages but all of those are based on registered address and (permanent, regular or at least 5 years continuous) residence in the town.

⁹⁷ Decree of the Minister of Culture and Education No.15 of 2009, 2 April OKM rendelet.

⁹⁸ NEK723/2011, June 2011 OBH.

⁹⁹ See the rules on the Sopron municipal homepage <http://pmkh.jogtar.hu/jr/gen/start-frjmp.cgi?dbnum=81&ev=null&szam=null&tipus=null&pr=null&fun=null&menubar=y&toolbar=y>.

The Advisory Board to the ETA issued a Statement¹⁰⁰ on the interpretation on discrimination on the grounds of ‘other condition’ (Art 8 of the Act EqualA). In accordance with the non-discrimination rule in the Constitution (Art.70/A) the Act prohibits discrimination on the grounds of exemplified reasons but without mentioning the citizenship. Thus the list of protected features of human beings is not exhausted, and at the end of the list of prohibited discriminative actions one can read ‘and for other reasons’. The Advisory Board’s Statement underlines that ‘nationality’ is a frequent reason for discrimination according to the complaints. ETA has to control whether the authority, public service suppliers in concern respect for international undertakings (human rights treaties) and EC law implementing also the proper transposing national laws. The size of protection against discriminatory actions is varying in branches of national law, and procedural rules in anti-discrimination cases shall be applied on the general provisions of evidence.

2.3 Tax advantages

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), 3 (2)]. The taxation procedure also covers on all subjects of taxation including on-line service providers making 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.¹⁰¹

However, other issues as regards deductibility from income tax for resident or non/resident tax payers are worth mentioning. The TaxA provides for the possibility of tax refund in several cases (Art. 7). These exemptions are applicable to persons who are liable to submit their income-tax return in Hungary. In this sense no discrimination is foreseen between Hungarian and other union citizens. Issues relevant from the perspective of free movement are the deductibility of *life insurance and voluntary retirement and sickness insurance fees*.¹⁰² 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. Act XCVI of 1993 on the Voluntary Mutual Insurance Funds defines 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. Accordingly, funds formed under laws of other Member States do not fall within this category, namely the payments for and from these funds are out this exception mentioned above. Hence these payments are

100 Egyenlő Bánásmód Tanácsadó Testület 288/2/2010.(IV.9.) TT.sz.Állásfoglalása

101 Government Decree No. 7 of 2004, 22 January.

102 Prior to January 2007 several exemptions derived from payment of credits on immovable property (flat, house) these exemptions have been, however, erased and only ongoing loans may give rise to exemptions.

HUNGARY

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* (C-204/90) shows justification may be given if the cohesion of the applicable tax system explains this discrimination. Taking into account the reasoning laid down in *Bachmann* (and the C-150/04 *Commission v Denmark* case) Hungarian law has several common features with Belgian law in terms of life insurance fees that is why it seems that Hungarian 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.

As regards the free movement of persons and companies, the TAO 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].¹⁰³ 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. Furthermore, the diverse practice and regulation of 3200 municipalities also raises questions. For instance, the Ombudsman stated that a municipal (in Somogy county) and its taxation department violated the residing EU nationals because it prohibited to use the clients' mother language in the taxation procedure, their translator was refused by the official, and their tax exemption was neglected although they were eligible to exemption as other similar but national proprietors in the village. Its investigation disclosed that abusive practice has been accomplished for years against other union citizens living in the village not only against the complaining German national. The Ombudsman noticed to stop this discriminative legal practice.¹⁰⁴

Finally it shall be noted that the European Commission brought an action against Hungary (case C-253/09, 8th of July 2009) on the differential treatment in Hungary of the purchase

103 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. Bódi Levente és Sebestyén Tibor a szlovákiai cégalapításról [Slovakia: a tax-paradise. How to establish companies – by attorney at law] *Ügyvédkalauz* 2007/10:14-15.

104 MTI 30 June 2011 Elmarasztalt egy somogyi önkormányzatot az ombudsman.

of residential property in Hungary on the sale of residential property in another State. Decision is awaited during 2010.

2.4 Specific issue: the situation of jobseekers

Based on what has been put forward in point 2.1. job-seekers are entitled to social advantages on the same basis as other union citizens and their family members.

In the *Collins* case 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 jobseeker's allowance. Hungarian law is not as much sophisticated as it would be allowed by the ECJ because it grants benefits for workers even if they have no real and sufficiently close links to Hungary.

The *Ioannidis* case declared that a tide-over allowance which is intended to facilitate the transition of young people from education to employment can not be linked to the fact that the applicant must have completed his/her studies in the respective Member State. In Hungary there is no such requirement, unemployment benefits are only dependant upon former insurance periods.

As regards the *Vatsouras* case Hungarian law makes no distinction as regards the receipt of unemployment benefits on the basis of the legal status of the migrant. If the person had a legal employment and obtained the registration certificate, s/he is eligible for benefits. It is worth mentioning that in Hungary only insurance-based unemployment benefits are due. In the social assistance sphere the same rule applies, if the EEA national or the family member is in need, if they possess the registration certificate, they have to apply for social assistance benefits. However, this is not really used by EEA nationals in fact the number of EEA nationals applying for social assistance benefits is so low that this is statistically simply not traceable.

Recent literature

Balogi Anna: Jóléti migráció. Külföldiek Magyarorszára telepedése. In: Változó migráció – változó környezet. Szerk: Hárs – Tóth, MTA NKI – Budapest, 2010, p. 245-262

Ember Alex: Migráns munkavállalók szociális biztonsága az Európai Unióban. *Acta Universitatis Szegediensis. Acta juridica et politica*. Tomus 72. Fasc. 1-22., 2010, p. 61-84

Futó Gábor: Nyugdíjazási kézikönyv. A nyugdíjazás küszöbén - élet a nyugdíjazás után. [A nyugdíjra jogosultság feltételei, a nyugdíjszámítás menete, a nyugdíjasok keresőtevékenysége, az Európai Gazdasági Térségben szerzett biztosítási idő beszámítása, a nyugdíjasok egészségügyi ellátásra való jogosultsága itthon és az Európai Unióban.] Lezárva: 2010. ápr. 15. Hessyn Informatikai és Oktatási Kft., Budapest, 2010, 188 p.

Kiss György: A Domnica Petersen ügy tanulságai a kor szerinti diszkrimináció versus igazolt nem egyenlő bánásmód körében - hazai összefüggésekkel. *Pécsi Munkajogi Közlemények*, 2010. vol. 3. no. 1, p. 105-118

Chapter V: Other obstacles to free movement of workers

1. DRIVING ISSUES

Non-national are facing troubles in examination on driving ability in the process of accession to driving license. The training schools and the press has targeted the new provisions in two points:

- The entry to the training and examination is eligible for persons with – inter alia – ‘*qualification obtained in basic (elementary) public school that shall be documented as the ministerial decree defines*’ (Section 3/A in the Government Decree No.70 of 2005, 21 April modified by the Government Decree No. 205 of 2010, 29 April). The amendment in the preconditions of preparatory course and examination for personal car driving entered into force on 1st January 2011. However the entitled minister in his executive regulation (The Ministerial Decree issued by the Traffic and Trade Ministry (GKM) No. 24 of 2005, 21 April) preserved the intellectual criteria for entry to the exam: ‘*the applicant can write and read*’. [Section 10(1)c] At the same time, the Appendix No.8 of the Ministerial Decree defines the procedure in details sharing the responsibility between the National Traffic Authority (its regional units) and the training schools in the view of controlling the eligibility of applicants. Due to this liability the schools refuse all non-national applicants who cannot document the Hungarian basic school certificate. For instance, diploma from the Oxford University or Sorbonne is considered improper and the certificate issued foreign public schools is forwarded to recognition or equivalence procedure to the Public Education Office.
- The non-native examinee is entitled to involve a translator to the written test of traffic rules and driver’s knowledge but recruitment and training of translators have not been controlled, defined and institutionalised as a marginal issue. The cited Ministerial Decree (Section 12) contains nothing on this guarantee.

The lobby of car-driving schools as profit-making companies has forced the NTA, Ministry and the Government to review the fast amendments together with the other components of the driving exam and traffic authorisation changes (e.g. introduction the e-examination and e-preparatory regime) that were regulated without previous reconciliation with professionals and public debate. The representatives of the NTA and the Ministry finally were consulting with the car-driving schools – and promised the withdrawal of the modifications in June 2010.¹⁰⁵

A criminal case (February 17, 2010.)¹⁰⁶ also drew the attention to the confuse in regulation: 26 Romanian citizens were arrested for fraud with official documents taking traffic and driving exam in Hungary but they are illiterate and non-Hungarian speakers, using the opportunity of translation in the test phase of the exam. They ‘managed’ own translators or paid bribe assisted them to take successful examination, while their practice ability in driving was perfect. This gang was charged due to the co-operation between the Romanian and the

105 <http://civishir.hu/belfold/torli-a-kormany-a-jarmuvezeto-kepzes-modosito-rendeletet/0623085753> download 30 June 2011.

106 <http://civishir.hu/tetthely/az-analfabeta-is-szerezhet-jogositvanyt/0217153738> download 30 June 2011.

Hungarian police authorities when the Romanians requested the recognition of their driving licence in Romania.

According to the Ministerial Decree of the Interior No. 35 of 2000, 30 November on Road Traffic Administration Tasks and on the Issuance and Withdrawal of Road Traffic Licenses the driving licence is eligible only for resident national and non-national residing at least for six months in Hungary prior to the application. This (lawful) period of residence shall be testified by the document/data provided by the registry office for population address. The EEA national furnished with driving licence issued by another EEA member state is entitled to use own licence until its validity meeting the requirements of issuance. In case of expiring driving licence the EEA national residing in Hungary is exempted from the documentation of prior six months staying but s/he has to declare that his/her regular residence is in Hungary (Section 17). The driving licence issued by another EEA authority for an EEA national can be changed, replace or recover upon request if the applicant has a regular residence in the country. The principle that one person – one driving licence is respected equally for nationals and non-nationals because replaced, recovered, withdrawn, invalidated licences issued by another state shall be forwarded to its authority. Hence the returned Hungarian citizen is obliged to change the driving licence within 6 months of his/her return sending back the invalidated document to the foreign authority [Section 19(1)] These rules are problematic because migrant workers are not in awareness of change, registered address, its documentation and taking repeated exam or medical check if requirements are different. Naturally the fee and language barriers in authorities would tackle the simple implementation of rules.

The *Hans van Lent* case, the *Commission v Denmark* case (together with the *Nadin and Nadin-Lux* case¹⁰⁷) declare that Member States can not require the registration of company vehicles which are used by their residents in connection with their employment relationship *predominantly* in the other Member State if the vehicle is properly registered in the seat country of the employer. In so far the legislation and administrative practice do not allow employees who are employed in a neighbouring Member State and resident in another Member State to use for business or private purposes a company vehicle or motor vehicle registered in that neighbouring Member State where the undertaking of their employer is established the Member State infringes Article 45 of the Treaty of Rome.

The *Hans van Lent* case might be of importance for Hungary hence the law seems not to definitely preclude that residents shall *register their vehicles* even if the registration already occurred in another Member State. It seems also that the core of the issue is the interpretation of the concept of ‘predominant use’. Act I of 1988 on Road Traffic, Act LXXXIV of 1999 on the Register of Road Traffic, Act CX of 2003 on Motor Vehicle Registration Duty handle the issue of vehicle registration in Hungary. The mentioned Ministerial Decree of the Interior No. 35 of 2000 handles the status of number plates.

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Art. 23 (6) of Act I of 1988 on Road Traffic, if the car has been registered abroad – it has a foreign number plate – and the car *is intended to be used in inland traffic*, the proprietor is obliged to apply for the putting into circulation within 30 days of bringing the car into Hungary. If the proprietor is an EEA national and s/he *intends to use the car in inland traffic*, the upper mentioned Decree of the Minister of the Interior No. 35 of

107 C-151-152/04.

2000 lays down that the application for putting into circulation shall be submitted within 30 days of obtaining legal residence or of bringing the car into Hungary [Section 40(5)]. The putting into circulation means the award of a Hungarian number plate and the payment of the registration tax in accordance with the Act of 2003 on Motor Vehicle Registration Duty. The law speaks, first, of the obligation of the *proprietor*, second, of cars intended to be used in inland traffic. This implicitly means that, if the EEA national living in Hungary is not the proprietor of the car, moreover, if the car is not intended for inland traffic only, the provisions shall not be applicable.

However, if the EEA national owns the car, lives temporarily in Hungary (but keeps another residence somewhere else) works also partially abroad (the intended use is *partially* in Hungary) s/he is required to register the car in Hungary instead of keeping it registered in another Member State. Hence *Hans van Lent* treats cases when the person only lived in the country and the *actual usage has occurred in another Member State* (that of registration), it might be that there is no contrast with EC law. In case the usage is intended to be *partly* in Hungary, the law, however, might be in contrast with EC law hence than registration shall be effected by the proprietor.

In practice this rule is difficult to apply hence the actual wording of the law – ‘intended for inland usage’ – is unclear.

In brief, the requirements of taking exam and participation in the preparatory course are indirectly discriminative for non-nationals. Moreover, the rules on change of driving license, number plate and registry of personal car in Hungary can hinder the free movement of workers and family members.

Upon numerous complaints the Ombudsman investigated in 2007 and in 2010 the confusing rules of registry that has been required for used cars bought in another member state of EU. In order to put into traffic the car has to be certified its original, lawful property (avoiding the business with stolen cars) and fee of *registry and number plate* shall be paid. It means that the owner must attend three authorities participating on a long process and pay a high sum. Despite of certain changes in authorisation the Ombudsman second investigation confirmed the high fees, the absence of one-stop-shop procedure and e-registration practice but yet in vain.¹⁰⁸

5.2 Draft regulation

The recent Bill on the modification of – inter alia – the Act I of 1988 on the Road Traffic¹⁰⁹ introduces fine that will be imposed if the proprietor (or operator) of vehicle with residence in Hungary is using the vehicle with plate number issued by foreign authority more than 30 days in Hungary. Exemption is available only for companies seated abroad but its regular activities are relating to Hungary, or the proprietor (operator) of the vehicle has regular residence abroad that are documented during the prompt authority (police) checking. During the ongoing procedure of changing number plate, registry and duty procedure – the latter is required – the exemption is also available if it perfectly documented. The Bill is aiming to force proprietors (operators) to apply the Hungarian tax and fee system in car registry and

108 ÁJB-1793/2009 www.obh.hu/allam/aktualis/htm/kozlemeny20100103_3.htm.

109 T/3298 az egyes közlekedési tárgyú törvények módosításáról www.parlament.hu.

HUNGARY

plate number requiring much more amount of money than in adjacent states, plus the car parking fines will be successfully executed. However, the costs of these transactions are not reduced. Finally the traffic of these cars will be prohibited. These provisions would be problematic for frontier workers and all non-residents to prove easily their address and domicile abroad by proper documents. The amendments enter into force on 1st September 2011.

Chapter VI: Specific Issues

Regulation in force:

- 1998.évi LXXXIV. törvény a család támogatásokról [the consolidated Act LXXXIV on Support of Families] FamA
- 2004.évi I. törvény a sportról [consolidated Act I of 2004 on the sport] SportA modified by the Act LVI of 2009, Act LXXXIII of 2010 and Act LXXXVII of 2011
- 2005.évi CXX. törvény az egyszerűsített közteherviselési hozzájárulásról [consolidated Act on Simplified Public Contributions] EkhoA
- 2005. évi CXXXIX. törvény a felsőoktatásról [Act CXXXIX of 2005 on high-level education] (HighA)
- 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] amended by the Government Decree 372 of 2007, 23 December with effect from 1 January 2008 (StudD)
- 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 No. 10 of 2008, 26 January with effect from 29 January 2008 (LoanD)
- 328/2009. (XII.29.) Korm. rendelet a szakiskolai tanulmányi ösztöndíjról [Government Decree No.328 of 2009, 29 December on Scholarship for Students in vocational training] entering into force 1 January 2010 (VocD)
- Labour Code

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES),

From the HU-LFS data it can be seen that (potential) frontier workers, commuters are concentrated to the Austrian-Hungarian border zone, and their growing rate is correlated to the unemployment ratio. Hence the unemployed Hungarian workers in neighbouring area do not seek jobs inside the country but much more in next Austrian provinces, but Austria as destination is less been targeted farther from the border zones.¹¹⁰ The Slovak and the Romanian border zone would play certain role according to the experiences of EURES agents.¹¹¹ However, the regional transborder co-operating consortium involving the labour offices, municipalities, economic chambers and vocational training centres was only established for SK—HU and AT—HU relations. The recently initiated RO—HU consortium has been postponed since March 2008 due to the absence of mutual interests.¹¹² Accordingly, the direction of movement is from Romania to Hungary basically by seasonal workers and low-skilled persons, Only 10-15 percent of commuting job-seekers means skilled and missing labour force in the region concerned (such as nurse, doctor, baker or biologist).

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. Article 2 d) defines clearly

110 Hárs, Ágnes: Migráció és munkaerőpiac Magyarországon. Tények, okok, lehetőségek. In: Változó migráció – változó környezet. Szerk. Hárs. Á. – Tóth, J. MTA Etnikai-nemzeti Kisebbségkutató Intézet, Budapest, 2010, 15-53.

111 Presentation of Bíró, Tímea on the 27-28 April 2011, FMOW seminar in Szeged.

112 Presentations of Bíró, Tímea and dr. Horesnyi, Júlia on the 27-28 April 2011, FMOW seminar in Szeged.

that the residence condition is waived for frontier workers. 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 (*Hartmann and Geven*, C-212/05 and C-213/05) because it grants benefits for the workers even if they have no real and sufficiently close links to Hungary. The volume of frontier workers claiming family benefits is rather marginal (about 0.1 percent of all family benefit beneficiaries yearly).

2. SPORTSMEN/SPORTSWOMEN

The SportA and relating applicable rules were modified for three reasons:

- the transposition of the Directive 2006/123/EC requires some amendments for service providers in sport sector;
- the Government intends to provide extra benefits in corporation taxation and asset fee for football, handball, basketball, water polo and ice-hockey clubs as ‘spectacle sport branches’. Accordingly, the financial supports given by the sponsors to each club playing in the first lines of the national championship in ‘*spectacle sport branches*’ as member of the given sport federation are exempted from the corporation tax (Act LXXXI of 1996 on the Corporation and Dividend Tax) contributing to the reinforcement and new supplies of young talents, development of these sport branches or to extend the cooperation with municipalities and universities in sport. This exemption is available if the support is transposed through a specific public fund set up in this scheme that will control the aims of payments and the lawful operation of the sponsor (for instance, it has no revenue deficit). In case of investment to the capacity building of ‘spectacle sport branches’ the real estate transfer is also exempted from the statutory fee (Act XCIII of 1990 on Fees and Duties), thus a sport club does not pay fee, e.g. for obtaining a new sport stadium financed by sponsors if it will be operated for 15 years at least. These rules can enter into force upon approval by the European Commission accepting this new scheme of subvention – beyond the existing state sport subventions¹¹³ as defined in the SportA - exclusively to the ‘spectacle sport branches’. The Act LXXXVII of 2011 entering into force on 1 July 2011 delegating the technical regulation to the Government and to the responsible minister determining the provisions on accountancy, control, sponsorship certificate and its fee¹¹⁴.
- through the extended EkhoA to the qualified sport experts¹¹⁵ and athletes – including EEA nationals – optionally would become self-employed persons since 2011.

113 Betting duties and bookmakers’ tax provide the basis to the sport subventions [Art 56 of SportA] and direct budget contribution to the National Olympic Committee.

114 See the Government Decree No.107 of 2011, 30 June and Ministerial Decree (NEFMI) No.39 of 2011, 30 June.

115 Defined by the SportA, Art. 77 (p) and Government Decree No.157 of 2004, 18 May modified by the Government Decree No.256 of 2009, November 20.

EkhoA exempt sport experts and professional sportsmen 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 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 sport expert falls within the ambit of the EkhoA if they realize an income reaching the yearly minimum wage but not exceeding HUF 50 million (180 000 €) and the first class athletes qualified by the national sport federation if his/her yearly income is below HUF 100 million (360 000 €) without VAT from the sport activities. A person meeting the requirements of the Act is entitled but not obliged to make a declaration and register as an ekho-payer.

Due to this optional tax paying scheme, professional athletes accomplish sport activity for regular income either as entrepreneur (self-employed, free-lance professional) or as employee (Art 1(4) and Art.8 of SportA). In possession of a valid racing certificate issued by the sport federation 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 from the Labour Code as determined by the SportA. The athlete's participation on sport event is lawful only in possession of racing permit issued by the responsible sport federation.

By-laws of sport federations shall determine the requirements for racing certificate and racing permit including the amount of fee to be paid [Art 3(1),(3)] Although the *nationality* of athlete (e.g. directly or indirectly through a quota) is not mentioned among the criteria of issuing, it is not restricted, it belongs to the margin of appreciation of each sport federation taking into account the internal efforts and the international federations' guidelines or rules¹¹⁶. However, issuing the racing permit for 'Hungarian athletes' participation on foreign sport event and for foreign athlete's participation on Hungarian race' as well as to regulate the transfer of athletes also belongs to the competence of sport federations [Art 22(2)b, 23(1)b] Responsibility for and finance of national teams, national eleven is part of sport federation tasks [Art 22(1)d, 26(3)]

Appeal to the presidency of the responsible sport federation within 8 days from refusal and withdrawal of certificate or permit is ensured, and judicial review is available within 30 days against the final refusal and withdrawal of the sport federation.[Art 3 (6)] Moreover, the lawful operation and business of sport federations is controlled by the Public Prosecutor [Art 27]

The sport club 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 its final sum 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. Transfer of racing right can be prepared and managed by commercial agents as a lucrative activity if agent obtaining a licence from the international sport federation is

116 For instance, the UEFA executive body modified the Transferring Code (MTI, 24 March 2010) and the Hungarian Football Federation's Presidency passed some amendments (14 April 2010, 19 January 2011).

HUNGARY

registered at the national sport federation. The sport manager agent's role in transfer is also regulated by (inter)national sport federation by-laws. Any other share in transaction costs (beyond the athlete's compensation, commission, fee and sport federation) is invalid. [Art.11(2)]

According to the Hungarian Football Federation's Statute of registration, racing right and transfer of athletes:¹¹⁷

- In case of international transfer of athlete the FIFA Regulation on the Status and Transfer of Players (e.g. transfer in possession of International Transfer Certificate, action managed in Transfer Matching System) shall be applied together with HFF by-laws. It includes that hosting or transferring club shall respect for the '*direct and indirect interests of the HFF and the national football*'.
- In case of international transfer of non-national player to a Hungarian club – including the lending of athlete - the official translation of the contract shall be attached, and the fee paid by the hosting club must be clearly defined in the contract. Under the full age of non-national player's transfer shall be refused if his/her movement is out of family reasons.
- Player's transfer to abroad – including the lending of the athlete - is authorised by the HFF upon request of the clubs in concern with submission of the international transferring format completed with required data from the contract and racing right. All disputes in transferring action belong to the FIFA Players' Status Committee.
- In case of national athlete's return to Hungary – including the terminated lending contract – the racing certificate from the HFF shall be obtained, and all rules on transferring are applicable.
- Fee for the authorisation of (national and international) transfer shall be paid either the hosting or the lending/sending club to the regional unit of the HFF but fee from transaction of non-national player is paid directly to the HFF. The compensation duty, the payment for agent and the transferring fee are also determined in the Appendix (without VAT that is changing yearly) regardless the nationality of players: the main determinant is the playing class (championship score of the club and the athlete). Complaint and appeal for unlawful decision is ensured inside the HFF (Presidency).
- Application for authorisation of racing right and transfer of non-national player shall contain the '*document of lawful residence and labour permit – unless s/he is exempted by law*'. Furthermore, '*residence permit is not required for minor player (below the age of 18) if his/her home or the hosting club location is within 50 km zone from the state border and s/he is living at home, thus the distance between his/her home and the hosting club is not exceeding 100 km. The racing permit issued for non-national minor player is valid without residence permit until reaching the full age. These conditions are controlled by the HFF.*'

The Hungarian Handball Federation's Rules on registration and transfer of players entered into force on 1 August 2010. Accordingly,

- The authorisation of transfer of athletes belong to the the HFF if the athlete is non-national or s/he is playing in the first class of the national championship. The '*handball*

¹¹⁷ Adopted by the HFF Presidency decision No.58 of 2009, 16 April and amended by No.125 of 2009, 26 June, No.67 of 2010, 14 April and No.2 of 2011, 19 January.

HUNGARY

Hungarian covers on third country national in possession of long-term migrant position or valid residence or labour permit and of continuous racing authorisation for at least 36 months in the national championship; in transfer s/he is considered as a national'. Hence the 'handball genuine Hungarian is a foreign, third country national player in possession of a residence permit with at least one year validity or a long-term migrant status (proved by identity card).'

- The registration document of professional player who is Hungarian national is white and in case of non-nationals it is yellow.
- Applicant for international transfer authorisation shall attach own international racing permit and the contract made between the transferring and hosting clubs. The non-Hungarian citizen player transferring to Hungary shall respect for the rules of the International Handball Federation and the European Handball Federation together with the national statute. The legal contact of non-citizen player with the hosting club is terminated within 12 months after the expired HHF authorisation in transfer. After 3 years in continuous playing in a Hungarian club the athlete shall be *considered as national* in the implementation of rules on transfer.
- Until the payment of the fee and duty in transfer authorisation is not accomplished, the application is pending, and its amount is growing in the official rate of inflation/6 month.
- Appeal for refusal in the international transferring authorisation may be submitted within maximal 6 months to the special committee of HHF.

The Hungarian Boxing Federation adopted in August 2009 the Statute on registration, racing right and transfer in 2010 that defines

- the period of transfer. Out of that transfer is authorised by the HBF upon consent of all stakeholders;
- how the national athlete can race in foreign club. Upon joint request of the athlete, the sending and hosting clubs the HBF can issue a racing permit and *'it can determine conditions for member in the national team taking into account the interests of the national team and sending club'*;
- how the non-national athlete can race in a Hungarian club. In authorisation of his race the yearly racing rules shall be implemented. The dual or multiple nationality is irrelevant in transferring procedure if he is also a Hungarian citizen;
- fees in authorisation that are partly determined in the Appendix regardless nationality of the athlete, while the other components belong to the consent of the clubs in concern. In absent of consent in costs of reinforcement of young talents the special committee of the HBF defines the duty in transfer authorisation. Legal remedy against refusal and amount of duty is ensured by the presidency of the HBF.

For instance, the Hungarian Wrestling Federation passed own Statute on Transfer and Registration (16 August 2005) contains some outdated rules because it is also speaking on *national and foreign players*.

- The non-national player in racing authorisation shall be documented by valid residence permit or labour permit. Furthermore, he can participate on the national team championship only as guest athlete in possession of the permit issued by the HWF if the yearly racing rules allow it. The non-national player in possession of racing right in a Hungarian club can participate in the national individual championship.

HUNGARY

- The international transfer of national athlete's racing right abroad for a season is allowed with the authorisation of the HWF. The fee depends on the country of hosting club and the class of championship, e.g. 500 €/season to the German 1st class, 100 €/season to the Austrian 2nd class.

There is another example of outdated rules can be cited from the Rules on racing and transferring passed by the Presidency of the National Swimming Federation (April 2009).it also differentiates between *national and foreign player*.

- Hence athletes representing Hungary, a Hungarian club or region in a sport event can participate without authorisation of the NSF but member of the national team shall obtain the authorisation from the team's captain to race and training abroad. The racing permit shall be issued for other professional players if they meet the requirements determined in the Rules and 'not interfering the interests of the national assorted team'.
- With exception for athletes from the club in membership of FINA federation, each non-national needs racing permit issued by the NSF to participate in Hungarian sport race. It shall be issued if s/he is in possession of approval from own national federation. Non-national with long-term migrant status after 30 days from issuing his/her open-ended residence permit is eligible for a racing permit, however the participation in the yearly national championship can be conditional determined in the NSF.

3. THE MARITIME SECTOR

As the Appendix 1 details neither the nationality, nor the residence of seafarers, navigators, sailors are required in shipping employment of EU26 and EEA nationals in Hungary (or on vessels under the Hungarian flag).

4. RESEARCHERS/ARTISTS

The EkhoA also covers on EEA nationals, and its provisions benefit EEA nationals paying their social insurance contributions in other EU member states. The popularity of the EkhoA is explained that it exempts artists from the general rules on taxation and payment of social security contributions (9.5 % personal income tax and 3.9 % of pension while 1.6 % of health care social insurance contributions) and gives them the opportunity to opt for the payment of a fixed-rate public contribution 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 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.

This 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, designer. They fall within the ambit of the Act if they realize an income reaching the yearly minimum wage but not exceeding HUF 25 million (90 000 €) from the enumerated artistic activities. A person meeting the requirements of the Act is entitled but not obliged to make a declaration and register

as an ekho-payer. The basis of the pension amounts to 50 percent of the yearly income. In 2008 the taxation authority in a circular clarified the scope of the EkhoA: the beneficial taxation can not be coupled with other taxation benefits.¹¹⁸ It also published a simplified registration form for echo-payers.¹¹⁹

The nationals of the EEA are entitled to opt for the ekho on the same footing as Hungarian nationals if they work in Hungary. EEA nationals are entitled to choose the payment of ekho also in those cases when their social insurance obligations arose in other EU Member States. It means that an EEA national can pay the beneficial 9.5 % tax in Hungary even if s/he is not insured in Hungary in terms of social security. However, only EEA nationals are eligible to apply for the Ekho and their family members are excluded.

As a main rule artists of EEA nationality and their family members are granted free access to the Hungarian labour market. Hence artistic occupations are subject to a diploma. Pursuant to the general administrative rules employers are obliged to report the competent labour centre the employment of EEA nationals and their family members.

Act XXIII of 1993 lays down the rules on tendering operation of the National Cultural Fund that is a completely state-financed fund. 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.

The researchers' mobility is supported by the data and information basis, beyond the EURES. For instance, the E-Care National Seminar (Hungarian Science and Technology Foundation – T&T) put on the agenda of actual results of the E-Care and Euraxess relating to the mobility and carrier-development of Hungarian academics, scholars and ers.¹²⁰ This comparative basis would be also ensured by an international conference held by the Euraxess, Hungarian Science and Technology Foundation, National Innovation Centre (28-29 June, 2011, Budapest, EPW5 5th General Assembly) debating the training, career and mobility of researchers in the Innovation Union.¹²¹

In 2010 the EchoA was extended to the sport sector but researchers are not so influential to enjoy this tax and contribution benefits.

5. ACCESS TO STUDY GRANTS

Students attending the vocational school (15-18-21) are eligible for scholarship regardless their nationality or legal status if they participate in study of missing craft. The list of crafts, occupations in shortage is determined by the regional Vocational Training Centre with consultation of chambers and employment agencies. According to the VocD the scholarship is financed from the Labour Force Public Foundation through the administration of the National Vocational and Adult Education Institution on the grounds of contributions of employers. The monthly 10-30 000 HUF (37-110 €) is available for each student whose study result in average is reaching the 2.52 from his/her enrolment up to the time of the designated first

118 2008/4. Adózási kérdés (ekho választása mellett nem alkalmazható a START-kártyás kedvezmény) [Ekho and START can not be applied for simultaneously], 14072/5/2007. AEÉ 2008/1.

119 APEH tájékoztató az egyszerűsített közteherviselési hozzájárulás választásához alkalmazandó nyilatkozat mintájáról. [Form for the notification of Ekho] 2008/3. Adó és Ellenőrzési Értesítő.

120 See the presentation of Szolenszky, Ágnes and Molnár, Ádám, 7 June 2011, Budapest.

121 See the programme and presentations <http://www.tetalap.hu/eumobility/>.

HUNGARY

professional examination. The VocD provides the grant for the student independently from other financial support that s/he is obtained.

High-level education encompasses universities and colleges founded or recognised by the state in the territory 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 including the free service provider's operation in Hungary that is established in another member state [Art 116 (7)]. 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*'. Their yearly quota is determined by the Government but its maximal length takes 12 semesters and plus 4 semesters for handicapped students [Art 55 (2)] Hence studies beyond this period shall be financed by the student. However, foreign institutions operating also in Hungary can be entitled to normative financing only on the basis of international agreement. [Art 116 (4)]

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)]. In fact the conditions of preferential entry are available basically for nationals (e.g. segregated student, young mother, handicapped person or outstanding talent with awards during the secondary schooling age) or native persons [Art 40, 42] Furthermore, only Hungarian citizens are eligible to support to studies abroad/at foreign institutions getting scholarship from the state (ministerial grant that would be provided upon application, grant for studies in mother language of minority in the kin-state). The student loan is portable only for Hungarian citizens if they study in another EEA member state. These students are eligible to student card. [Art 118]

EEA nationals and their family members can be entitled to social maintenance payments and other study grants, contribution to their books and accommodation as students taking part in education financed by the state [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,¹²² according to which in certain cases a Member State is obliged to endure that a legally resident student faces financial difficulties. Moreover, the HighA expressly delegates the power to the Government to regulate the conditions of foreign students' studies in Hungary. [Article 119 (3)] It regulates the issue in

- StudD (Section 7, 26-28) that enumerates the benefits which are generally available for students determining the system of supports payable to foreign nationals who study in Hungary. It stipulates that persons falling within the scope of the FreeA (EEA nationals and their family members included) shall be treated on an equal footing with Hungarian

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

HUNGARY

nationals as regards rights and obligations in terms of fees and benefits. The education minister is entitled to provide grants for non-state financed foreign students [Section 27(1)]

- LoanD aims at providing for long-term and subsidized study loan construction for students in high-level education. The Study Loan Centre is responsible for granting the loan to the student who meets the requirements laid down in the Decree. The following categories form the personal scope: Hungarian nationals, refugees, TCN persons with permanent residence permits, and in turn, pursuant to Article 3 (1) (b) ba) EEA nationals who exercise an economic activity are entitled to apply for the study loan. Furthermore, pursuant to Article 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 (Art. 3 (1) (b) bd). Enrolment to the high-education institution (student relationship with the institution), *residing registered address* in Hungary are the main preconditions under the personal scope of the LoanD. The student loan is available for maximum 10 semesters up to his/her age of 40 monthly up to 60.000 HUF (220 €). In brief, the Hungarian rule is in compliance with Article 24 (2) of Directive 2004/38/EC. The loan shall be started to repay in monthly instalments after termination of the student relationship with the institution on the basis of his/her monthly income (about its 8%) and in case of unemployment the reimbursement amount fits to the lowest lawful salary. The rate of interest is solid due to state subvention and prudent operation of the SLC.

The other grants financed by ministries, municipals, NGOs or churches are aiming to support

- PhD students,
- segregated but busy, talent students,
- religious students,
- kin-minority youngsters or
- Roma pupils and students.

Their common character is that nationality and residence condition is directly or indirectly is required. The grants for young/experienced academics and professionals may be provided by applications and its procedure is evaluated, administered by the National Scholarship Body (MÖB).¹²³

The fragmented supporting system is tried to be re-structured by ther Parliament, thus the Government has started to develop a national programm on talent management.¹²⁴ The yearly schedule defines the necessary measures and responsible ministers, public bodies but the acession to certain social adcóvantages for EEA nationals and settled migrants is not yet determined.

Additional information can be seen in the Study Grants in Hungary – FMOW Report (January 2011).

¹²³ Government Decree No.147 of 2002, 29 June.

¹²⁴ Resolution of the Parliament, No.78 of 2008, 13 June and its implementation is outlined in the Government Resolution No.1120 of 2009, 23 July.

HUNGARY

The following Table may represent the diversity of existing public grants.

Name of the grant	Purpose and eligibility	Remarks
Endowment (Útravaló) Supporting Programme	It assists the poor, segregated pupils and students in age of 12-26 to get profession, maturity or decree by scholarship and tutoring system – <i>eligible for EEA nationals and long-term TCN migrants with student relationship (residence) in Hungarian public education</i>	Government Decree No.152 of 2005, 2 August
Bursa Hungariaca	Supporting poor students in high-level aducation - in practice only for Hungarian citizens	Government Decree No. 51 of 2007, 26 March
Republic Scholarship	Given by the senate of the terciar education institution for the best students	Government Decree No. 51 of 2007, 26 March in 2010 monthly 126 € /er capita for 10 month
Klbelsberg Kunó Study Grant	Supporting the publicity of the Hungarian cultural herritage abroad	Government Decree No.15 of 2010, 14 December
Minority Students' Study Grant	<i>Only for Hungarian citizens</i>	Ministerial Decree No.11 of 2011, 28 March (KIM)
Eötvös Grant	Supporting postgraduate studies abroad <i>only for Hungarian citizens</i>	Government Decree No.54 of 1994, 13 April
Bólyai János Grant	Supporting postdoctoral employment of young academics	Government Decree No.156 of 1997, 19 September
Deák Ferenc Grant	Supporting PhD students and young academics	Governmnet Decree No. 101 of 2007, 8 May and Governemtn Resolution No.1083 of 2003, 15 August
Lippai Balázs Scholarship	Supporting poor but talent Roma students attending military and law enforcement schools – in practice only for Hungarian citizens	Order of the Minister of Defence No. 18 of 2011, 18 February
Hungarian Public Administrators Grant	Supporting the training of young professionals in other EU member state – <i>only for Hungarian citizens (public officials)</i>	Government Decree No.336 of 2010. 27 December The programme contains salary as employee (stagier 360 €/month) in ministries and training abroad (210-240 €/week covering the expenditures)
Béri Balog Ádám Scholarship	Supporting the best pupils attending the military courses at secondary schools	Order of the Minister of Defence No. 61 of 2011, 2 June
Visegrád Grant	Visegrád Fund (SK, CZ, HU and PL) provides grants for students, young academics visiting courses mutually -- for own citi-	Government Resolution No.2322 of 2002, 24 October

HUNGARY

	zens	
Ady Endre Scholarship	Supporting the ethnic Hungarian students across the borders in adjacent states	Government Resolution No.1082 of 2010, 31 March

6. YOUNG WORKERS

The Labour Code (Act XXII of 1992 in a consolidated version) contains the most universal provisions on persons enter into an employment relationship, and other legal sources must respect for the Labour Code providing more guarantees or specific requirements in certain sectors (in public sector, such as for public servants, public officials, or for seasonal workers, athletes, etc.). Accordingly,

- all persons – regardless nationality - entering into an employment relationship as employees must be at least *16 years of age (valid age of employee)*. For the purposes of employment-related matters, employees under 18 years of age shall be construed as young workers [Art 72(3)]. In accordance with international treaties (e.g. ILO conventions) there are certain protective rules on *young workers (16-18 years of age)* in the Labour Code. However, the relevance of these protective rules is losing because the age of obligatory schooling reaches the age of 18 just in 2010 for all persons. The Act on Public School has gradually extended the schooling age from 6-14 to 5-18 , and all children born after 1992 and residing in Hungary - regardless nationality - today must attend the elementary and secondary school up to 18 years of age.
- It shall be implemented duly if young worker is working either in employment relationship or on the basis of civil law (e.g. by an assignment contact). In this latter case employer shall control the aging threshold of the worker and other conditions determined by legal rules.
- As regards the employment - by virtue of agreement with a third party – of a foreign employer's employee in the territory of Hungary shall be subject Hungarian labour laws in terms of equal treatment and – inter alia – access to employment or work by young people. These provisions shall be duly applied to the foreign posting (assignment, hiring-out) of workers employed by Hungarian employers if these aspects are not covered by the laws of the country where the work is performed – unless there are more labourer is subject to more favourable regulations by virtue of the relevant labour law or the parties' agreement to the contrary. As regards employers engaged in construction work that involves the building, remodelling, maintenance, alteration or demolition of buildings, thus particularly excavating, earthwork, actual building work, the assembly and dismantling of prefabricated components, fitting and installations, renovation, restoration, dismantling, demolition, maintenance, upkeep, painting, cleaning works and improvements, their workers employed for these activities shall be subject to collective agreements covering the entire industry or an entire sector in the stead of legal regulation, provided the given collective agreement provides more favourable conditions concerning the entitlement in question. [Art 106/A (1)(2)] Moreover, the agreement between the placement agency and the user enterprise shall be made in writing. For the duration of placement the user enterprise shall be deemed employer in terms of the regulations on the employment of young people. [Art 193/G]

HUNGARY

- Young workers shall be employed – in accordance with the Dir. 94/33/EC on protection of young employee
 - exclusively by way of means of employment contract; [Art 72/A].
 - in work which may not result in detrimental effects with a view to their physical condition or development;
 - on the basis of a preliminary medical examination in certain jobs requiring specific working conditions that is determined by legal regulation [Art 75(1)]
 - in working time not exceed 8 hours daily or – 40 hours weekly. The working time cycle of young persons shall not be longer than one week. For the purposes of working time limits, the time of work performed for several employees shall be accounted on the aggregate;
 - providing 30 minutes of break-time if working time is over four and half hours daily;
 - providing daily resting period at least 12 hours;
 - out of work night hours, out of extra work, special duty or on-call duty; [Art 129/A]
 - providing five extra days of vacation time each year, the last time such benefit applies shall be the year when the young worker reaches 18 years of age; [Art 132]
 - the amount of damages awarded to a young worker shall be reviewed upon his reaching 18 years of age or after one year following his graduation from vocational training, and the damages for the subsequent period shall be established in accordance with any changes in his capacity to work and in his qualifications. [Art 184(2)]
- Regardless the nationality of young workers, the employment relationship may be entered into by a person of at least 15 years of age pursuing elementary school, vocational school or secondary school full-time studies *during the school vacation period*. Their lawful, valid employment requires the consent of their legal guardians (parent) up to the age of 16. Over 16 years of age this consent is not required. Young persons subject to compulsory full-time schooling may be employed by way of derogation from the provisions on the minimal age of employee (15 or 16 years of age) for the purposes of performance *in artistic, sports, modelling or advertising activities* upon prior authorization by the competent authority. [Art 72(7)] The responsible ministers are entitled to regulate these sectors [Art 203] but only the minister responsible for sport has used this entitlement.

The consolidated Act LXXIX of 1993 on public education requires how provisions of Labour Code shall be in harmony with the rules on students participating in vocational training. For instance, students in age of over 16 can be employed only on the grounds of a student contract implementing all rules on labour protection, equal treatment, working conditions determined in the Labour Code. The vocational training and employer shall conclude insurance contract in favour of each student. [Art 11(2)(5)]

The ministerial decree No.7 of 2001, 4 October (ISM) shall be implemented on the employment or working with assignment contract by youngsters in schooling age in sport sector. Accordingly, these young workers are allowed to be employed/work as professional athlete only in sport branches in which professional racing system exists. Employment relationship/working contract requires the authorization by the city guardianship authority and parental consent. The following documents shall be attached to the application to the authority: the draft of the employment/labour contract, the certificate of the responsible sport federation on exiting racing system; the official note issued by the sport federation on his/her lawful

HUNGARY

and possible employment as professional athlete; and medical certificate on his/her physical conditions issued by the sport doctor.

In order to support young holders of diploma, certificate or qualification the Act CXXIII of 2004 (modified in 2010) introduced a 'programme getting labour experiences' through fixed-time employment or as stagier paying reduced social insurance contributions by the employer. This programme contains no nationality requirement. There is no data on success of this form but these persons are in practice out of the age of 'young workers' defined in the Labour Code.

Since January 2010 the Act on Labour Inspection has been applicable on investigation of the age of employee in the employment relations and all guarantees related to young workers (Act CXXVI of 2009). The number of young workers with EEA nationalities in Hungary has been almost invisible. In absence of specific check on EEA or young workers by the responsible labour authority, their obstacles in free movement cannot be identified.

Chapter VII: Application of transitional measures

Regulation in force:

- Act of Accession, Annex X.
- 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 being entitled to free movement and right to residence] FreeA,
- 1991.évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act on Job Assistance and Unemployment Benefits] that was amended by Act CXXXIV of 2009 with effect from 1st January 2010 and by Act CLXXI of 2010 with effect from 1st January 2011 (UnemplA);
- 2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st August 2010 repealing Act CLII of 2009 on Act on Simplified Employment in effect from 1st April 2010 upon 31st July 2010.
- 355/2009. (XII. 30.) Korm. rendelet a harmadik országbeli állampolgárok Magyar Köztársaság területén történő engedélymentes foglalkoztatásának szabályairól [Government Decree No. 355 of 2009, 30 December on free access to the labour market of the Republic of Hungary by third-country nationals]
- 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] that was amended by Government Decree No.355 of 2009, 30 December with effect from 1 January 2010.
- 16/2010. (V. 13.) SZMM rendelet a harmadik országbeli állampolgárok magyarországi foglalkoztatásának engedélyezéséről [Decree No. 16 of 2010, 13 May of the Social and Labour Affairs Minister on Work Permits Issued to third-country Nationals in Hungary] that repealed the Ministerial Decree 8/1999 (XI. 10.) SZCSM and entered into force on 28 May 2010.

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

Since 1st January 2010 the Hungarian labour market has been fully opened, the formerly existing rather complicated system was annulled.¹²⁵ The UnemplA has been changed also in its spirit by emphasising that all EEA nationals and their family members are treated as Hungarian nationals and their family members.

The UnemplA now clearly lays down (Article 2 (2)) that ‘refugees, asylum seekers, displaced persons, immigrants possessing permanent residence permits and persons falling within the personal scope of the FreeA shall enjoy the same rights and obligations as Hungarian nationals’.

¹²⁵ Government Decree No. 322 of 2008, 29 December.

HUNGARY

The term ‘persons falling within the personal scope of the FreeA’ encompasses the family members of EEA nationals and the family members of Hungarian nationals as well. The definition of family member derives from the FreeA (Article 2 (b)), the UnemplA does not have an independent term for family member.

Albeit there is a general clause that in an Act or a Government decree the legislator can pass differing rules, at present this possibility is not applied, no diverse rules are existent. The Labour Code and the new Act on Simplified Employment treat EEA nationals and their family members on an equal footing with Hungarian nationals.

Article 7 (1) in UnemplA in force stresses that the necessity of applying for a work permit to enter the labour market is essentially imposed only on third-country nationals. The wording is clear: ‘*third-country nationals falling within the ambit of Act II of 2007 on the entry and residence of third-country nationals can enter the Hungarian labour market only with a work permit*’. However, due to the obligations flowing from EC law special exemptions are granted to several categories. The exemptions are enumerated in Government Decree No. 355 of 2009, 30 December, while the ministerial decree on work permits (Ministerial Decree No. 8 of 1999) is now solely applicable to third-country nationals.

The National Tax and Customs Authority (TAO) needs to be notified by the employer at least one day before the employment of every single worker in Hungary (irrespective of the nationality of the worker). However, the employment office shall only be notified if the workers’ nationality is one of the EEA member states (or s/he is a family member). I still think that this is an administrative burden hence the TAO is a state organ and has the data already. It is a double checking to impose on the employer the obligation to notify the worker to another state organ as well. The employer still has to make a special record, submit it to the authorities and keep the record for 3 years. Obviously it embodies an additional obligation requiring time, energy and thereby also bears financial consequences.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

Due to the liberalisation there are no specific rules on A2 workers in the Hungarian labour market.

3. STATISTICS

The National Employment Office is responsible for collecting and analysing data on international labour migration. They have recently published the summary for foreign workers in the Hungarian labour market in 2010.¹²⁶ The decline in the number of foreign workers continued. Foreigners have never had a real substantial share on the Hungarian labour market (in the most active years it reached 1,2% of the working population) but *in 2010 their total number went below 25.000*. It decreased to 24.535, while a couple of years ago it was above 50.000.

126 http://www.afsz.hu/engine.aspx?page=stat_kulf_munkavall_mo-on Download: 23 June 2011.

HUNGARY

Romanian nationals took the lead in Hungary just as in previous years. However their number declined from 12.566 in 2009 to 6889 in 2010 (almost half). Romanian nationals were followed by Ukraine nationals (4024 persons) and Slovak nationals (3294 persons). In 2009 the number of Slovak nationals were only 2493, so their solid increase can be seen. It has always been stressed in the previous reports that the number of workers from the EU15 countries was always very low. In 2010 only 1729 persons were notified to the authorities.

A feature that is worth mentioning is that two-third of the foreign workers are frontier workers (both union citizens and non-union citizens).

The Hungarian is responsible for providing statistical data on the recognition of health diplomas in Hungary. The number of recognition can give some limited guidance on how many migrants are received in the health care sector.¹²⁷ In 2010 only 125 persons required the recognition of their diplomas, out of whom 64 were Hungarian nationals, meaning that not the person but the diploma was 'foreign'. 81 persons belonged to the young age cohort (between 25 and 39). 41 doctors, 23 dentists, 7 pharmacists, 34 nurses, 1 midwife and 19 others arrived. 37 Romanian nationals and 9 Slovak nationals submitted their requests. These numbers show that the *incoming health care migration is practically non-existent*.

¹²⁷ http://www.eekh.hu/index.php?option=com_content&task=view&id=10&Itemid=2 Download: 23 May 2011.

Chapter VIII: Miscellaneous

RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68

1.1 Family benefits of self-employed Hungarians working in Germany

In terms of relationship between social security and migration there have been some cases where, in the view of the Hungarian party, some discriminative rules were in force in Germany on the basis of Regulation 1408/71/EEC. Albeit this regulation has already been repealed by Regulation 883/2004/EC, in terms of legal consideration, some pending cases require attention. Especially where a Hungarian father who is registered as self-employed in Germany, whilst the mother resides in Hungary with a child/children, without receiving salary or any similar remuneration, is not granted the same amount of family benefits as a German self-employed person.

Article 62 (1) of the Act on Taxation (Einkommensteuergesetz, hereinafter: EStG) defines three categories of natural persons who are entitled to 'kindergeld': (i) those who reside in Germany – in the cases concerning to Hungary the fathers are working in Germany but living together with their family in Hungary and therefore, they only stay in Germany for the purposes of work; (ii) those who are German citizens and *de jure* unlimitedly obliged to pay tax (Article 1 (2) of EStG); and (iii) those who are to be considered as taxpayers unlimitedly according to Article 1 (3) of the EStG upon request. The Hungarian self-employed persons without permanent residence in Germany qualify for this latter category *upon their request* and not by virtue of the law.

Germany takes the view that Regulation 1408/71/EEC covers only self-employed insured persons who are insured obligatory under the statutory scheme. For the definition of self-employed they refer to Article 2 of this Regulation and Annex I E. (b). Consequently, they argue, the Hungarian self-employed – as they are not obliged to pay but are insured upon request - does not fall under the scope of the Regulation. By this self-employed persons from another country whose family resides outside Germany are falling out of the scope of the social security coordination by referring to the German law. For the reason that, according to Annex I, the Regulation only applies to those who are under the statutory scheme, but –as mentioned above – the group of Hungarian workers in question is not obliged to pay contributions.

Hence, in parallel with the community social security coordination and irrespective of it under the Regulation, family benefits are granted to the German citizens and to those self-employed persons who reside in Germany. At the same time, to those self-employed persons who are not German citizens and their family resides in a different State benefits are not granted. This seems to be contrary to the community law and caused contradictory with regard to the initial sense and goals of the social security coordination.

Germany also states that according to Article 65 (1) of the EStG the German authorities must not pay 'kindergeld' for children who receive similar type of benefit in another country. They assume that Hungary is competent and grants family benefits, and that is why they do not deem themselves competent. However, not to pay benefits is contradictory to the will of

the legislator of the Regulation, therefore in light of a judgement of 2002¹²⁸, Germany pays half of the benefit for the claimants.

In conclusion, it is reckoned that Annex I (E) (b) contradicts to 1408/71/EEC, to Article 24 of Directive 2004/38 on non discrimination and free movement as well as to Article 8 and 14 of the ECHR. In my view the German legislation and Annex I (E) also opposes to Article 1 (a) (i) of the Regulation on defining employed and self-employed persons. In addition, it is contrary to the social security coordination and the said regulations, that - according to Article 65 (1) - the EStG applies to EU citizens in terms of comparability and granting benefits. Social security coordination rules apply to all benefits, without comparing the schemes. Thus, no authority is entitled to declare the benefit of the other state 'similar' and - by that - exclude its responsibility.

The number of cases is unknown but I can estimate hundreds. This is a general matter of the problem seeks for high level solution because there is a breach of fundamental principles here.

1.2 Supervision of pensions claims

Both in the 2008 and 2009 reports it was already highlighted that there was a problem between Romania and Hungary as regards the denial of Romania to supervise pension claims. This situation still exists and no development can be traced.¹²⁹

There is a concrete set of cases in which the relationship between Regulation 883/2004/EC and Regulation 1612/68/EC together with union citizenship plays an outstanding role. The essence of the cases is as follows. Until 31st of October 2006 there has been a bilateral agreement between the two countries. Pursuant to this agreement the country where the person resided when s/he reached pensionable age was responsible for the payment of benefits. In fact it meant that Hungary was (and still is) responsible for the payment of pensions where no payment of contributions at all took place in Hungary but only in Romania if the person has finally chosen Hungarian residence. This is contrary to the principles of Regulation 883/2004/EC that is based on the *lex loci laboris* principle.

Both Regulation 1408/71/EEC and Regulation 883/2004/EC provides for the possibility of supervision of pensions for these cases. However, Romania opposes to effectuate the supervision stating that the Regulation does not apply hence these persons only belonged to the legislation of one Member State (Romania). In their view there is a lack of cross-border element. In a number of cases supervision would result in a higher pension for the person so the denial of supervision is equivalent to loss of rights.

The responsible ministry in Hungary can not share this view. In its view persons who worked only in Romania but receive pension from Hungary fall within the personal scope of the Regulation. Moreover, these persons as migrant union citizens are entitled to receive the highest possible pensions.

Romanian authorities do not pass any decisions on the applications for supervision and therefore no legal remedies are available. Persons do not have the right to appeal, conse-

¹²⁸ Bundesfinanzgerichtshof, 13 August 2002, VIII R 54/00

¹²⁹ Thanks to the information given by Ágoston, Erzsébet (a chair of a civil organisation of pensioners from Romania) and Conference on social rights of migrants (October 2009) financed by the EIF.

quently they are deprived from their rights under Regulation 883/2004/EC and union citizenship. This approach rules out the effectuation of rights.

In my view this is contrary to the principle of free movement of workers.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

2.1 *Relationship between residence and entitlement to health care for migrants*

The Act on Social Insurance (Act LXXX of 1997) distinguishes basically four categories from the point of view of eligibility to health care benefits:

The insured persons fall within the first category, who, based on their economic activity and the related payment of contributions, are entitled to all sickness insurance benefits, including both in kind (medical) and cash benefits.

The so-called ‘entitled persons’ belong to the second category, who, based on their former insurance (e.g. pensioners) or on their actual status (e.g. minors or students), are entitled to in kind benefits, *without* being obliged to pay the health service contribution.

The persons who are obliged to pay the health service contribution and who can only have access to in kind benefits, based on individual contribution payment, fall within the third category; they pay 5.100 HUF (19 €) per month.

Persons who enter into agreement with the Health Insurance Fund, based on their discretionary decision, belong to the fourth category are entitled to in kind benefits – with the parallel application of some restrictive rules. The range of benefits provided by the contract is narrower.

- a. In the first six month of entitlement the beneficiary is limited to the emergency ones, unless the person concerned pays the six month contribution in one sum. There are three further restrictions for people in contractual relationship.
- b. The person concerned is only entitled to emergency dental services.
- c. The person in question is not entitled to reimbursement of cost for medical attendance which became necessary in the territory of a third state (outside the territory of EEA) in case of life-threatening danger or a danger against physical integrity, or if the process of requiring a benefit in an EEA State infringed the community law. In the contractual relation the person concerned can not be beneficiary to such benefits that are not accessible in Hungary on the expense of the Hungarian insurance fund in a different country.
- d. The person concerned is not entitled to medical treatments abroad. This sum is the 50 percent of the minimum salary for adults (36.750 HUF = 133 € in 2010 and 39.000 HUF = 142 € for 2011), 30 percent for children (22.050 HUF = 80 € in 2010 and 23.400 HUF = 85 € for 2011).¹³⁰

The precondition for the entitlements in point II and III is that the person in question – according to Act LVI of 1992 on the registry of citizens’ data and residence – must be a resident in Hungary. Usually EEA nationals do not fall within category II (hence they are not family members or minors) but can fall under point III or IV. Point III is more favourable

130 Tullius Kft. Social booklet, page 6., Budapest 2010. www.munkajogok.shp.hu.

HUNGARY

hence the person is required only 5.100 HUF (19 €) per month, not 50 percent of the minimum wage (39.000 HUF = 142 € per month). That is why several EEA nationals urge to be included in point III.

To be more specific and to counterattack social dumping, the Hungarian legislator decided to set as a pre-condition for group III that the person has been residing in Hungary for at least one year prior to the request [Article 39 (3)]. If special conditions are met, a 90 day period can be included even if the person did not have registered place of stay. This article was inserted to the Act on Social Insurance in 2009 (by Article 27 of Act XXXV of 2009) on the modifications of tax rules and the related legislation, with effect from 1 July 2009.

In this case the National Tax and Customs Office (hereinafter: TAO) examines the existence of the minimum one year residence.¹³¹ If sufficient data is not in the disposition of the TAO, it will contact the Central Office for Administrative and Electronic Public Services (henceforward: COE) in order to get more information on residence. Concerning the documents (09T1011) submitted after 1st July 2009, the TAO must supervise whether the person has a registered residence for the previous one year period (a maximum 90 day period can be included when the person did not have any registered place of stay). The TAO is informed from the COE on addresses. However, the information can be inaccurate due to the fact that the COE examines only the current place of residence at first. If the one year criterion is not fulfilled, - in order to aggregate periods - it should be examined whether previously a different place of residence was registered. This information is given upon the request of the TAO.

In light of the social security coordination rules, any residence in an EEA Member State is aggregated when calculating this one year period. As a certificate, a special document (formerly E 104) has to be presented. If the one year period can not be evidenced the person can only be entitled to enter into a contract with the Health Insurance Fund to receive benefits.

According to the rules of EU law a person can only be affiliated to one Member State's legislation. It means that if a person affiliates to another Member State's social security system, it will automatically loose its ties to the previously competent Member State. However, in case of bilateral agreements with third countries, double insurance is not prohibited. That is indeed the practice of Hungary that persons who work in a third country can retain their affiliation in Hungary.¹³²

In 1962 Hungary and Russia (Soviet Union) concluded an agreement on social security. The principal rule of the agreement on application reads as follows: when a citizen moves to the other state in order to take up employment, the rules of the place of employment will be applicable. Thus, if an employee takes an unpaid leave (insured, pending legal relationship) in Hungary, then contributions must be paid exclusively in Russia.

It is noteworthy that however the social security relationship in Hungary is pending, there is another category (insured resident) according to which the Hungarian citizen is obliged to pay social security contributions, irrespective for his/her leave abroad, if s/h has a residence in Hungary. In principle this means a leave for over 3 month. In case of the abandonment of this obligation, the person can be sanctioned for maximum 30.000 HUF (105 €). The person is entitled to keep his/her residence status, because of repeating returns. This is possible, provided that s/he submits a declaration to the TAO and pays the monthly 5100

¹³¹ www.apoh.hu.

¹³² http://www.oep.hu/portal/page?_pageid=34,35207&_dad=portal&_schema=PORTAL Download: 1 June 2011.

HUF (19 €) contribution. If this is not the case, then s/he has to report the move abroad to the notary of the concerned local municipal or to the concerned embassy/consulate abroad. In this case the 5100 HUF contribution is not due. In practise, the TAO recovers the due contributions, which is 60000 HUF (220 €) per 12 month.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

The most important issue among ‘Miscellaneous’ has been definitely the emigration of health care professionals in the recent years while incoming migration in this field is non-existent. On the contrary, the emigration of health care professionals reaches high numbers that is, indeed a huge problem for the country. In 2010 already 1777 health care professionals asked for the so-called ‘professional certificate’ that is the pre-requisite for them to leave the country with the aim of taking up employment in another country.¹³³ In 2009 this number amounted to 1614. In 2010 578 persons left for the UK, 354 persons for Germany, 94 for Sweden, 66-65 persons to France and Italy. This is a very sensitive loss for Hungary hence the education of these persons requires huge financial and professional investment, and it goes in vain and even the high level health care services can not be maintained in the long-term planning.

Labour migration from Central and Eastern European (CEE) countries has increased strongly in recent years. This made several Member States of EU15 to think about possible counter measures. One of the pioneers of this legislation is the Netherlands. They recently issued a non-paper on labour migration focussing on several points.¹³⁴ They argue that according to most recent estimates there are now approximately 200,000 migrant workers in the Netherlands and this will increase. However, they admit the economically beneficial side of migration (active workers in vacancies that are hard to fill), but stated serious drawbacks as well. ‘We must avoid a situation whereby migrants stay here for longer periods, while they do not work and therefore do not integrate into society’ – they highlighted. They think this leads to public nuisance and recourse to social provisions – such as benefits and shelter - which are not intended for them. The Dutch equally emphasised that action must also be taken against exploitation, unfair competition and too many people living in accommodations. On behalf of the offended CEE countries, Poland and the European Commission addressed concerns and questions to the Netherlands.¹³⁵

At the beginning of May 2011 Poland has sent reflections on the Dutch non-paper with general and specific comments. They emphasised that the increased number of migrants (around 0.5 percent of the population, according to the Dutch statistics) is the result of very high demand for migrant workers. Poland argues that there is a trend in the EU15 to create the impression that the majority of migrants engage in problematic behaviour. Before introducing measures on migrant workers, it is essential to analyse and indicate the extent of the

133 http://www.eekh.hu/index.php?option=com_content&task=view&id=10&Itemid=2 Download: 23 May 2011. ‘Célország szerinti megoszlás’.

134 <http://www.government.nl/dsc?c=getobject&s=obj&objectid=128170> Download: 2 June 2011.

135 <http://www.eurasiareview.com/poland-exposes-dutch-plans-to-expel-eu-citizens-02052011/> Download: 2 June 2011.

problem caused by migrants in relation to the same behaviour among the Dutch population. It is also more appropriate to state that migrant workers are 'subject' rather than 'prone' to exploitation, unfair competition and bad accommodation. The Netherlands seemingly aims to limit economic immigration from CEE countries. Poland reckons that the measures are discriminatory and undermine the principle of equal treatment of EU citizens regardless their nationality. The document is often disproportionate to the situation and there is no evidence that could justify this alarmist tone.

Poland emphasised that the free movement of persons is crucial for the proper functioning of the European Union. Any attempts to limit it are contrary to the idea of European integration, and would have an adverse effect on the whole EU. Poland worries that the Dutch proposal to tighten and extend the integration policy for workers from EU Member States makes them equivalent to citizens of third countries. Placing EU citizens who enjoy the right to free movement within the EU into the framework of the European integration policy for citizens of third countries is inconceivable. Poland shares the view that migrants are obliged by law to fulfil their obligations towards their host country by registering their stay. It is known: the conditions for registration, the right to appeal should be based on the relevant provisions of the 2004/38/EC directive. However, it seems reasonable to establish the precise method of their application, which would be adapted to the respective social characteristics of the Member States. The measures for preventing the exploitation of CEE workers are mainly voluntary commitments. Poland argues that we cannot speak of 'abusive cases' with regard to the unexpected number of immigrants coming from CEE countries. According to the provisions of the 2004/38/EC directive, the expulsion of EU citizens from Member States other than their own cannot be done for economic reasons. Expulsion cannot become an instrument for solving economic and social crises. The only legal and justifiable grounds for the expulsion of EU citizens, also accepted by Poland, are public policy, public security and public health.

For the joint request of the CEE countries Commissioner Viviane Reding and also László Andor tackled upon the issue.¹³⁶ Their expressed concerns (especially on the field of social assistance and social security benefits) are related to the comparability of the Dutch measure with EU law on the free movement of EU citizens and workers in combination with the non-discrimination principle. The Commissioners were particularly interested in some questions relating to the request of sufficient resources from migrants, excluding from social assistance in case of sufficient resources, registration of migrant workers, social assistance granted depending of Dutch knowledge, exclusion from social benefits in case of frontier worker status, bogus self-employment and underpayment.

With the purposes of protecting the labour market, Austria has adopted a new regulation in May 2011 (Lohn- und Sozialdumping-Bekämpfungsgesetz).¹³⁷ The timely adoption can be linked to the fact that from the 1st May 2011 Austria and Germany abolished the work permit requirement of for the EU8 countries. The new law aims to guarantee the same minimum requirements in terms of working conditions and salary for all EU25 citizens. In case of an infringement of the law, serious sanctions might be implemented. The previous authorisation in terms of posting is also abolished, but the posted worker has to be equipped with the necessary documents. An authority to supervise that all conditions are met shall be set up. In

136 <http://www.rnw.nl/english/bulletin/eu-warns-netherlands-about-poland> Download: 24 May 2011.

137 See for details www.buak.at Download: 3 June 2011.

HUNGARY

case of an infringement, at first, a written notice is sent to the company. Then – if the situation remains unchanged or in case of a repeated act – administrative sanctions will be implemented.

Also, according to my information, if a Hungarian undertaking posts its workers to Austria or Germany with the S1 or E101 form issued by the Hungarian National Health Insurance Fund (hereinafter: NHIF) these workers are required to pay a monthly contribution to the BUAK (Bauarbeiter-Urlaubs and Abfertigungskasse) amounting to in certain cases 700-900 €. This practice as regards posting, namely the payment obligation to BUAK, seems to be a burden for the employers and employees posted from Hungary. It is not settled clearly that for what purposes they collect the contribution for BUAK and it has to be paid monthly which is a clear financial burden. Nevertheless when the minimum wage (1200 €/month) is paid together with the high contributions (1200-1400 €/month) by the Hungarian undertaking, it cannot be understood why does not the posting permit (issued by the NHIF) guarantee that a posted worker fulfils his/her tax paying obligations by paying the obligatory social law contributions.

These examples show that there is indeed a change in attitude that can be attached to the date of total liberalisation (1 May 2010) for A8 countries. Until now the CEE migrant workers could not require full equal treatment (let us refer to the UK practice with the Habitual Residence Test), they were mostly denied residence based social benefits. Hence the total free access would also encompass social benefits (if necessary, because it shall not be forgotten that most of the migrants are workers and not ‘social dumpers’), the EU15 Member States now prepare several joint actions to hinder this process. During the EPSCO Council on the 17th of June the UK minister made a declaration in this regard. I can only hope that free movement will be able to gain a full format for CEE workers – without limitations and severe stereotypes.

The central data basis of the EURES was tested for labour migration research in February 2011.¹³⁸ According to the 4 existing data files (jobseekers details; education of jobseekers, profession of jobseekers and their required work location) an analysis was made on the role of EURES in job seeking from the perspective of Hungary in 2010:

- 19 000 persons (potential labourers) were seeking jobs in another member states of EU/EEA (93% Hungarian citizens, 2% of residing Union citizens and 5% others);
- Hungary as a destination was designated by almost 10 000 persons (mainly from Hungary, Romania, Italy and Spain), it means that also internal job-seeking is going on through the system;
- almost half of EURES service users were qualified (with degree from tertiary education), and this rate was 56% among the female service users. This feature is differing from the mainstream of migrants consisting from non-highly qualified persons. Thus the EURES is mostly applied by better educated persons;
- the most preferred destinations were Austria, UK and Germany, and the attracting force of the Netherlands, Switzerland and Ireland was a bit dropped.

For the FMOW reporting system, it would be wise to deal with not only immigration but also emigration that is equally relevant topic for the CEE region.

138 Hárs, Ágnes: Magyarok külföldi munkavállalása. Kopint-Tárki kutatás, Budapest, 2011.március.

3.1 Integration measures

The result of a research on migrants' integration regardless their nationality was published in 2010.¹³⁹ Although there is no an explicit integration and migration policy of Hungary, a deliberative method of reception involving civil groups and academics was useful. This research explained the roots of high prejudice level against non-nationals in Hungary¹⁴⁰ while their presence in Hungary is below the half the average of EU-27, and the rate of Union citizens residing in the country is also lower than in average inside the member states. The integration of migrants was considered as a marginal issue, in particular of Union citizens. Hence neither the migration measures, nor interdisciplinary research financed by the EIF have covered on integration of residing Union citizens, workers.

It was also explained from another publication¹⁴¹ that acquisition of Hungarian citizenship and political rights or participation in social dialogue has not belonged to the major motivation of Union migrants. Consequently the political integration is less motivated for Union labour migrants urging the municipals or governmental efforts.

3.2 Immigration policies for third-country nationals and the Union preference principle

The ECJ and the Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC have not been transposed to the Hungarian rules.

Although the appearance of Turkish workers has been limited (see below) the entry, residence and labour authorisation cannot ensure their preferential treatment in accordance with Ankara Agreement, Association Council's Decision (1/80) or the referred Decision.

There were 58 work permits issued, and the number of employed Turkish nationals during the first three months of 2011 are rather stable: 413 persons were employed in Hungary on 31 March 2011. It is a bit reduction comparing to the same period in previous year.¹⁴²

139 Lengyel, György – Göncz, Borbála – Tóth, Lilla – Kállay, Gábor – Várnagy, Réka: Civil tanácskozások a bevándorlók integrációjáról. In. Az idegen Magyarország. Bevándorlók társadalmi inetrgációja. Szerk. Örkény, Antal – Székelyi, Mária. Eörtlvös Kiadó, Budapest, 2010. 251-279.

140 The Eurobarometer 69 refers on 10% of population accepted that 'Immigrants contribute a lot to Hungary' while the average of acceptance was 44% in each concerned member state.

141 Magyarra válni. Bevándorlók honosítási és integrációs stratégiái. Szerk. Kováts, András, MTA Etnikai-nemzeti Kisebbségkutató Intézete, Budapest, 2011.

142 A külföldi állampolgárok magyarországi munkavállalásának főbb jellemzői 2011 első negyedében, Nemzeti Foglalkoztatási Szolgálat, Budapest (Jósvai Zoltán).

HUNGARY

The solid growth of residing Turkish nationals¹⁴³

	2003	2004	2005	2006	2007	2008	2009	2010
Turkish nationals as residence permit holders	455	557	615	756	886	1120	1145	1662
Turkish national acquired Hungarian citizenship by naturalisation	3	3	7	4	8	13	9	n.d.
Turkish citizens in possession of valid labour permit	n.d.	139	179	187	325	391	466	412
% of the total labour permit holders	---	0.2%	0,4%	0.4%	0.8%	1,4%	2,3%	2,4%

What are the applicable rules on Turkish workers?

- According to the UnemplA each TCN worker is employed lawfully in possession of valid labour permit (and visa) unless the EmplA or the Government Decree provides exemptions. It is problematic that EmplA refers on neither international commitments widely as treaties in general, nor EU law and obligations.
- The exemptions are determined in the Government Decree No.355 of 2009, 30 December. However among the 24 exempted reasons there is no direct reference on the gradually free accession of Turkish workers to the Hungarian labour market, and the abstract, closure of preferences is also missing.
- Finally, the Ministerial Decree issued by the Social and Labour Ministry No.16 of 2010, 13 May determines the labour authorisation for TCN differentiating the general requirements, the conditions for seasonal workers permission, regime without labour market test (on the grounds of 17 reasons) and the rules applicable for family members – but without clear reference on Turkish workers.

In brief, there is a high risk that law practitioners in Hungary neglect the implementation of the gradual preference system for entry, residence and employment of Turkish workers, and rights for family members (spouse and child).

3.3 Return of nationals to new EU Member States

The labour migration in rather circular in Hungary, and the world economic recession has been contributing to the identical growth of emigration and of return.¹⁴⁴ A significant part of

¹⁴³ Based on the data of the Central Statistical Office, the Office for Immigration and Citizenship Affairs and the National Labour Service.

¹⁴⁴ Hárs, Ágnes: Magyarok külföldi munkavállalása. Kopint-Tárki kutatás, Budapest, 2011.március, p.1-52.

returnees is registered as unemployed but they can hardly find a convenient job and they are unemployed during the transition period while they are looking for a good job at home or return abroad.

(a) On the basis of HU-LFS data analysis made by Hárs the direction of labour migration (to Austria, Germany and UK together 70-76% of all) was unchanged during the recession (2007-2010) and its size was stable¹⁴⁵. Although there was a small drop of labourers in Germany but the general trend has been a continuous solid increase of Hungarian workers in EU15 before and even in crisis period overlapping with the start of economic restraints at home. In parallel of growth of emigration the process of return was also upgraded, the data are partially available. We have information only on registered returners as unemployed persons. In 2010 their number meant one fourth of emigrants. The number of returnees in 2008 was 3 000 persons, in 2009 it was 5 000 persons and in 2010 it was 15 000 persons (mainly from the UK and Germany). Among the returnees (2007-2010)

- there were more female than among the emigrants differing from the migration strategy of male. Women were seeking jobs at home after a shorter working period abroad;
- there were more and more young persons;
- there were more semi-skilled or less qualified labourers also differing from the growth of qualified migrant workers. Inside the growing emigrating workers the rate of secondary and tertiary educated persons is increasing.

(b) On the basis of E301 format (on facts and times for pension scheme) analysis made by Hárs in February 2011 can provide information also on returnees registered as unemployment (N=23503). Accordingly,

- majority of returnees from EU15 were employed in less and un-qualified work, in particular labourers from Austria;
- returnees from new member states were employed in medium-qualified work (mechanic, repair, industrial jobs),
- returnees from Mediterranean states were employed mainly as unqualified jobs in services,
- the number of returnees employed in highly qualified work was marginal;
- the average period of employment in EU26 is 2 years;
- the majority of returnees were migrating from the Austrian border zone, from the capital and cities.

There is neither special labour service, employment, social supports nor re-integration assistance for returnees.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The Ombudsman has received complaints for maladministration, discrimination and non-equal treatment in 2010-2011. Some of those are relevant to free movement of workers:

¹⁴⁵ See also <http://epp.eurostat.ec.europa.eu/portal/>.

HUNGARY

- Members in the private pension fund scheme residing abroad were discriminated because many of them could not declare on continuation of membership in absence of certified permanent employment or studies. The consular offices – upon the changing instructions of the National Pension Directorate and the responsible ministry - refused the declarations of members in the private pension funds if properly non-clarified documents were not attached to the declaration, so these persons had to travel back to Hungary or they lost automatically their membership due to the terminated private pension funds. These outcomes violated the equal treatment of workers with membership in this pension scheme regardless their citizenship – as stated the Ombudsman.¹⁴⁶ Hence the appealing period was opened again for these claimants.
- A reverse discrimination was stated due to the shortage in toll-paying system. Namely, the non-paid toll by driver trafficking in Hungarian highways with foreign number plate car cannot be forced in absence of proper legal rules, thus the officials of the National Trafficking Agency have developed unlawful practice (e.g. confiscating the vehicle or stopping the driver).¹⁴⁷ The Ombudsman proposed a universal development of camera and data recognition in toll-paying system and the same, applicable legal consequences for non-paying regardless the ‘nationality’ of number plates in regulation.¹⁴⁸
- The Ombudsman reading the terrible score of the education of migrants in Hungary inside the third wave of Migration Integration Policy Index, contacted with the leader of the complaint officer in the responsible ministry. The MIPEX in the public education strand proves that multicultural education, language training for migrants’ children (including kids of migrant workers from the EU26) are not available in public schools. Hence the Ombudsman and the representative of the responsible Ministry decided a joint investigation how to identify the shortages and what to do in favour of non-national, non-native pupils in 2011.¹⁴⁹

5. SEMINARS, REPORTS AND ARTICLES

The regional seminar of FMOW (27-28 April 2011, Szeged) negotiating the Romanian and the Hungarian experiences in free movement of workers¹⁵⁰ is attached to the Appendix.

The IDEA project (6th Framework Programme) analysed the Mediterranean and Eastern European countries as new immigration destinations in the EU¹⁵¹. The labour migration results including the position of migrant workers in the Hungarian labour market were published in Hungarian in 2010 by Hárs, Ágnes. She concludes that (labour driven) immigration in Hungary has been at the early stage and the economic stagnation cannot determine the genuine shape of a migration model. Neither the defensive, corporative nor a liberal, pro-

146 OBH Közlemény 11 February 2011 www.obh.hu/allam/aktualis/htm/kozlemeny20110211.htm.

147 The toll-paying is executed only for cars with Hungarian number plate regardless citizenship of owners. In fact the majority of non-payers are non-nationals but avoiding the high tax and fee in car and plate number registry there are more and more residents in Hungary that request traffic documents and number plate in adjacent states. Consequently the rate of cars with foreign number plate is growing.

148 AJB 3677/2010, OBH 1162/2009.

149 Statement by dr.Aáry-Tamás, Lajos, on MIPEX conference (14 April 2011 Central European University, Budapest).

150 Tóth Judit: Az uniós munkavállalók mozgása és annak néhány akadály. *Föld-rész*, 2011/1: 47-69.

151 See the homepage of IDEA www.idea6fp.uw.edu.pl.

migration model has been established for qualified, semi-qualified workers. Although this region and economic sectors are not monolithic or homogeneous, for instance the immediate reaction for labour need was the Slovak-border regional commuters to Hungary, the global economic recession and the absence of an explicit migration policy impedes growth in (labour) immigration. The social, local and migration policy analysis is available in a collective book edited by Hárs and Tóth (2010).

The Public Fund for Employment (OFA) financed a research on migrant labourers from Hungary to Finland, Norway, Sweden and Denmark.¹⁵² The results of the research (interviews, network-analysis, comparative social and labour law analysis) provide starting point of migration activity and lawful employment integration to the Scandinavian job supply (2001-2008)

- during the enlargement period, the peak of jobseekers was detected in 2007 since the figures has been decreased;
- during the temporary restrictions (transitional measures) in some concerned states,
- and before the economic recession. The main motivation of respondents was a better carrier, family relations, freindly contat keeping, better labour conditions much more than the high salary or the unemployment. The research gathers the practice of equal tratment in accession to work, in labour conditions and social adavntages in these countries.

The Jean Monnet Project (2010-2011) supported the regional conference on ‘Central and Eastern European Countries after and before the accession – Possible ways of co-operation’ (28-29 April, 2011, ELTE Faculty of Law and Political Sciences, Budapest).¹⁵³ Beyond the plenary sessions there were two working sessions dealing with the application of the EU law by national jurisdictions discussing this complex issue from the perspective of Hungary, Romania, the Czech Republic, Slovakia, Slovenia and Croatia. The working session provided presentations and debate on free movement of persons and workers on the basis of experiences in CEE.. The FMOW rapporteurs from Hungary and Romania summarised the recent trends while a colleague from the Catholic University (Budapest) presented the possible impacts of family reunification also to the labour market.¹⁵⁴In the synthesis of free movement Éva Lukács¹⁵⁵ after stating that the field of free movement of persons has always been troubled with stereotypes and fears, on the one hand, sending countries are mainly concerned with brain-drain while, on the other hand, receiving countries fear social dumping and loss of work places by home workers, she emphasises that EU Member States – old and new together – face economic threats not from each other but from global competition (from China, India, the US and others) and they need to adjust together. She tackled upon the volume and effects of East-West migration between 2000 and 2010. Migration after the accession in 2004 and 2007 was absolutely not over-excessive in the light of push factors. Forecasts that

152 Magyarok munkavállalása Skandináviában. A magyar állampolgárok munkavállalása az EU északi tagállamaiban – Svédországban, Finnországban és Dániában – illetve az EFTA tag Norvégiában. Szerk: Gellérné Lukács Éva, Tullius Kiadó, Budapest, 2011, p. 205.

153 <http://jmce.elte.hu> (Project home page).

154 The conference provided a book of key-speakers’ paper: Central and Eastern European Countries after and before the Accession. Vol.1. Somssich, Réka and Szabados, Tamás (eds.) Faculty of Law, ELTE Dept. Of Private International Law and European Economic Law, Budapest, 2011, p.264.

155 http://jmce.elte.hu/index.php?option=com_content&view=category&id=4:free-movement-of-persons&Itemid=13&layout=default Download: 22 June 2011.

envisaged migration between 200-300,000 migrants yearly have become the realistic scenario. Migration has not nearly reached the high levels expected. Laura Gyeny examined the implementation of the family reunification directive in some countries. She concluded that albeit the implementation went smoothly, the overall practical benefits stemming from this directive and the other third-country directives are not measurable in this region.

The European Integration Fund supporting some research projects that provide conferences and papers:

- on measuring the integration of migrants (2009-2010) was discussed in an interdisciplinary team involving statistical, economic, legal and sociological methods by experts taking into account the indicators passed by the Sweden and Spanish presidency period by member states for TNC.¹⁵⁶ The labour market as integration aspect was also detailed not only for the non-EU nationals.
- on nationality law and the role of acquisition of citizenship in residing migrants' integration strategy in Hungary (2010-2011, Hungarian Academy of Sciences).¹⁵⁷ The survey covers also on labour migrants and the strategy of settled immigrants in accession the Hungarian citizenship. The surveys (made by Örkény, Melegh, Kováts) proved that migrants with most stable economic status and activities are less interested in the naturalisation than others. Furthermore, the authorisation of entry, residence and naturalisation as well as the behaviour of administrators towards immigrants are evaluated really negatively by potential applicants for acquisition of nationality.
- integration of third country national researchers in Hungary (2011-2012, Tullius Co.). Although it intends to investigate the TCN researches through interviews and social analysis it would be compared to the experiences gathered inside the Euraxess¹⁵⁸ and E-Care¹⁵⁹ Network.

The Hungarian Section of FIDE (International Legal Association) held a conference on six years experience of the EU law implementation, how the ECJ case law radiates on national jurisprudence (5 November 2010, ELTE). They complained that requests for preliminary ruling and judgements of first instance courts are not available, consequently the development or progress in legal practice cannot be evaluated in Hungary.

The Hungarian results of the third MIPEX survey (2010) was discussed on an international conference together with the UNHCR, MPG, British Council and the CEU (Central European University, Budapest, 14 April 2011). According to speakers (Hárs Ágnes, Tóth Judit, Kemény Gabriella, Fekete, Rita) dealing with the labour market there is a stagnation, there is no progress in employment for migrants in the contemporary Hungary. Its strand score was 36 (2007) and recently 41 points in average (it means 70 points in accession, 33 in access to general support, 13 in targeted supports and 50 in workers rights).¹⁶⁰ Hence the labour market mobility policies little prepared for future migration needs, despite new equal

156 Tóth Judit: A külföldiek integrációja: célok és mérhetőség európai szinten. A statisztikai rendszer fejlesztése című kutatás keretében (IRM, 2010) EIF A/2007/3.2.3.1. Kézirat.

157 Magyarra való. Bevándorlók honosítási és integrációs stratégiái. Szerk. Kováts, András, MTA Etnikai-nemzeti Kisebbségkutató Intézete, Budapest, 2011.

158 www.euraxess-hungary.hu.

159 Caring for researchers' careers, trans-national collaboration among ERA-more members (EU7th programme, 2007-2013) <http://www.ecare-project.eu/>.

160 Migrant Integration Policy index III p.100-101. www.mipex.eu.

access to self-employment. The public sector can only hire long-term residents, unlike 12, including AT, CZ, DK and ES.

The MONA Foundation initiated and managed a public debate with members of the parliament and civil organisations, academics on prostitution, and human trafficking in Hungary and Hungarian victims of these forced movements in Europe (4 November 2010, Budapest, Képviselői Irodaház). This segment of sexual employment and practical exploitation as well as violation of human rights were investigated in a joint research (2006-2009 financed by the Norwegian Fund and 4 Hungarian NGOs).¹⁶¹ The participants supported the draft on a parliamentary resolution on a national action plan and necessary amendments in Penal Code, Social Support Act, Police Act, Minors' Protection Act and Free Legal Aid and Victims' Support Act. There has been echo neither from the government, nor the parliament despite of numerous international commitments in human trafficking and minors' prostitution.

The Centre for European Studies, University of Szeged together with the French Embassy and the French Institute organised a conference on demographic policy in the EU (Szeged, 18 February 2011) for academics. The French and Hungarian lectures were concerned with the labour market impacts of naturalisation policy, migration policy as well as the family, child care measures in France and in Hungary.¹⁶²

Recent literature

Magyarok munkavállalása Skandináviában. A magyar állampolgárok munkavállalása az EU északi tagállamaiban – Svédországban, Finnországban és Dániában – illetve az EFTA tag Norvégiában. Szerk: Gellérné Lukács Éva, Tullius Kiadó, Budapest, 2011. pp.205

Éva Lukács: Free movement of persons – a synthesis. In: Central and Eastern European Countries after and before the Accession. Vol.1. Somssich, Réka and Szabados, Tamás (eds.) Faculty of Law, ELTE Dept. Of Private International Law and European Economic Law, Budapest, 2011, 11-50.

Laura Gyenyey: The implementation of the 2003/86/EC Dir.on family reunification in Austria, Hungary, Romania and Slovenia. In: Central and Eastern European Countries after and before the Accession. Vol.1. Somssich, Réka and Szabados, Tamás (eds.) Faculty of Law, ELTE Dept. Of Private International Law and European Economic Law, Budapest, 2011, 51-101

Modernised EU Social Security Coordination one year later – Looking forward. Conference Report, Gödöllő, 28-29 April 2011. Ministry of National Resources, Éva Lukács G., Réka Kovács and András Lopussny (eds.)

Változó migráció – változó környezet. Szerk. Hárs Á. – Tóth, J. MTA Etnikai-nemzeti Kisebbségkutató Intézet, Budapest, 2010. 285 oldal

Hárs Ágnes: Migráció és munkaerőpiac Magyarországon. Tények, okok, lehetőségek. In Változó migráció – változó környezet. Szerk. Hárs – Tóth, MTA Etnikai-nemzeti Kisebbségkutató Intézet, Budapest, 2010. 15-53.

161 Jog, jogvédelem, ellátás. Szakmaközi együttműködés kiépítése Magyarországon a prostitúció és szexuális kizsákmányolás céljából folytatott emberkereskedelem leküzdése és az áldozatok segítése érdekében. Egy projekt eredményei. Szerk. Bethlen Anna – Matolcsi Andrea – Balogh Lídia. MONA – Magyarország Női Alapítvány, 2010.

162 See the presentations of the conference by Gyémánt, Richárd, Stefan-Makay, Zsuzsanna, Tóth, Judit and Gyenyey, Laura <http://www2.u-szeged.hu/etk/letolt/2011.pdf>.

HUNGARY

- Tóth Judit: Az uniós munkavállalók mozgása és annak néhány akadálya. *Föld-rész*, 2011/1: 47-69.
- Jog, jogvédelem, ellátás. Szakmaközi együttműködés kiépítése Magyarországon a prostitúció és szexuális kizsákmányolás céljából folytatott emberkereskedelem leküzdése és az áldozatok segítése érdekében. Egy projekt eredményei. Szerk. Bethlen Anna – Matolcsi Andrea – Balogh Lídia. MONA – Magyarország Női Alapítvány, 2010
- Tóth, Judit: Census in Hungary in 2011: migrants or ethnicity? *Minorities Research*, Lucidus, Budapest, No.13 (2011) 9-26.
- Tóth Judit: Az idegen Magyarország. Recenzió Örkény Antal – Székelyi Mária szerk.. Az idegen Magyarország – a bevándorlók integrációja. Budapest, MTA NKI – Eötvös Kiadó, 2010 című könyvéről) *Magyar Tudomány*, 2011/5: 636-638.
- Örkény Antal – Székelyi Mária szerk.. Az idegen Magyarország – a bevándorlók integrációja. Budapest, MTA NKI – Eötvös Kiadó, 2010
- Tóth Judit: Az állampolgárság szerepe a migránsok beilleszkedésében. In: Magyarrá válni. Bevándorlók honosítási és integrációs stratégiái. Szerk. Kováts András, MTA Etnikai-nemzeti Kisebbségkutató Intézete, Budapest, 2011, 13-64.
- Körtvélyesi, Zsolt – Tóth, Judit: Exclusion by ethnic preference in the Hungarian naturalisation procedure. *Open Citizenship Vol. II*, Berlin 2011 (in press)
- Fazekas Flóra – Szilágyi Emese: Hat év tapasztalatai az uniós jogalkalmazásban. Konferencia a FIDE Magyar Tagozatának szervezésében. *Közjogi Szemle* 2011/1: 70-74

Appendix I

On seafarers

The National Traffic Authority (its Road, Railway and Shipping Office) is entitled to decide at first instance, for example on recognition of qualification in shipping, issuing the certificate for navigator and sailor, their renewal, authentication and registration. The NTA or the responsible minister is the appealing organ.¹⁶³

Neither the nationality nor the residence of seafarers, navigators, and sailors is required in shipping employment.

- However, the shipping activity shall be authorised in advance for vessels under the Hungarian flag abroad or vessels under the non-Hungarian flag on internal water:¹⁶⁴ The permit can be issued for the owner or operator of the vessel (company registered in Hungary) of which leader proves own personal reliability – he was not implied by shipping fine within the recent 5 years, and he is not forbidden for vessel driving for committed crime or minor offence - and he testified the proficiency taking an exam on shipping with certain exemptions, such as 5 years working practice in past 10 years in shipping inspector position. The certificate on proficiency in shipping issued by the authority of another member state of EU/EEA shall be accepted. The exam rules are determined by the NTA published in Official Gazette and homepage, and the NTA manages preparatory course for applicants. The financial stability shall be also attested for business activity. The permit is valid for 5 years.
- The seafarer, navigator driving vessels under the Hungarian flag abroad or inside waters must be qualified. This requirement is applicable on all technical workers on board.¹⁶⁵ The rules and fee of examination are determined in the Ministerial Decree taking into account the requirements of the STCW Agreement and accreditation of the exam (for instance, the terminology of shipping shall be known in Hungarian and in English). Exemptions in taking exam are ensured for skilled sailors, navigators and shipping engineers or technicians. Clean criminal record and good health conditions shall be certified – if it is issued in another member state of EU/EEA that shall be accepted. The qualification and required experiences can be testified by the navigator official booklet together with its notes also made by non-Hungarian shipping/trafficking authorities. The exam for non-native applicants can be taken through an interpreter without shipping qualification. The NTA finally issues a certificate on shipping qualification in a document in Hungarian, German and English.
- The shipping qualification of seafarer, navigator issued in a member state of EU/EEA automatically is recognised to the shipping in internal waters and under the Hungarian flag if the owner of the vessel is in possess of certificate required to the given water line. The NTA is entitled to withdraw or invalidate the issued shipping qualification if requirements are not met.

¹⁶³ Government Decree No.263 of 2006, 20 December

¹⁶⁴ Ministerial Decree issued by the Trafficking and Water Minister No.28 of 2000, 18 December

¹⁶⁵ Ministerial Decree issued by the Trafficking and Water Minister No.15 of 2001, 27 April

HUNGARY

List of shipping qualifications:

- Master on ships of 3,000 gross tonnage or more
- Chief mate on ships of 3,000 gross tonnage or more
- Master on ships of between 500 and 3,000 gross tonnage
- Chief mate on ships of between 500 and 3,000 gross tonnage
- Officer in charge of a navigational watch on ships of 500 gross tonnage or more
- Rating forming part of a navigational watch
- Chief engineer officer on ships powered by main propulsion machinery of 3,000 kW propulsion power or more
- Second engineer officer on ships powered by main propulsion machinery of 3,000 kW propulsion power or more
- Chief engineer officer on ships powered by main propulsion machinery of between 750 kW and 3000 kW propulsion power
- Second engineer officer on ships powered by main propulsion machinery of between 750 kW and 3000 kW propulsion power
- Officer in charge of an engineering watch on ships powered by main propulsion machinery of 750 kW propulsion power or more
- Rating of an engineering watch
- Electrician on ships with unlimited electrical power - non STCW approved certificate
- Electrician on ships of less than 750 kW electrical power - non STCW approved certificate

The rules and system of shipping qualifications mean the implementation of the EU law, namely of the Council Dir. 96/50/EC, Dir.91/672/EC, the EP and Council Dir. 2001/25/EC, and Dir.2003/103/EC.

Appendix II

Regional Seminar of the FMOW Network 'Hungarian and Romanian Experiences' April 27/28, 2011 Szeged (HU)

The aim of the seminar was to exchange the information on legal practice on free movement of union citizens in the contemporary labour market in adjacent states. The conclusions of the event can be summarised as follows:

- *The migration flow of Union workers has been limited into both states.* While the migrant workers have appeared at upper and lower level of the dualistic labour market in Hungary – in greater extent in semi- or not qualified jobs – only the presence of qualified and highly qualified workers from the EU 15 Member States can be detected in Romania (“managers’ migration). Hence the frictions can be detected only in the Hungarian labour market.
- *The outflow of migration to EU25 (rather to EU15) is significant, in particular from Romania.* These workers are less informed on their rights and obligations as labourers, union citizens. There have been numerous cases and stories on illegal employment, violation of labour and human rights, non-equal treatment, as well as exploitation of sexual workers in press and research in EU25. The private labour force agencies and networks operate out of the EURES – that requires much more independent management and language knowledge of the candidates. In this way the public awareness, consular assistance, trade union advocacy and labour inspectors’ checking would be upgraded soon in both states and in other destination states in prevention of human trafficking for exploitation, illegal employment and harsh violation of labour laws in destination and source states.
- *The economic recession after 2008 has manifold impacts on employment:* the number of persons, working in the informal economy (grey zone, illegal work) has grown. The size of remittances has decreased – this caused a significant loss in the Romanian GDP – and the Labour Force Survey (2010-2011) proves a little growth of returnees to Hungary.
- *The e/migration of health care workers becomes inevitable from this region to EU15.* The main push factors were discussed (eternal management reforms, de/centralisation of health care responsibility, missing financial cover, economic recession, unbearable salary, not respecting the Directive on working time, corruption as para-solvency to the staff from the patients, limited rights to strike, non-democratic operation and unhealthy working conditions, e.g. missing health checks for workers, dangerous medical instruments). There is no circular migration or labour immigration from non-EU states in this field. The rate of returnees is less observed.
- *The recognition of qualifications, occupation is relatively clearly transposed from Directives and regulated in both countries but the practical effects are different.* While the Romanian administration is better centralised, the number of disputed cases is minimal, but the Hungarian decentralisation (e.g. the recognition of basic, medium, professional, tertiary education certificates, diplomas is shared among at least 20 authorities and chambers) means alone more and more difficulties in interpretation, implementation of provisions. This decentralisation would provide more autonomy among these professional branches and specificities, but the government has failed to institutionalize a regular co-ordination among these responsible organs.

HUNGARY

- *The impact of the ECJ cases* can be detected in legislation and hardly in daily references on decisions of the public administration. However, there are certain efforts to distribute the text of main cases of the ECJ among the administrators.
- *The preferences and rights based on the EEC-Ankara Agreement and Decision.1/80 of the Association Council* have not been transposed to the labour and migration rules. Hence the Turkish workers are invisible in the Hungarian law (by statistics their number is 300-350 workers yearly) and in Romania as well. It is the fortune of Turkish that they are self-employed persons and entrepreneurs in this region.
- The known cases of abuse or violation of rights of Union citizen workers – rather from the EU8 - in Hungary and Romania are limited due to *few numbers and limited capacity of labour inspectors* in both states. For this reason the capacity building of labour inspecting authority must be upgraded.
- The Union citizen workers' *labour experiences and language requirements* are neither clearly regulated, nor implemented in a unified way in these states. It raises more questions in Hungary than in Romania because the role of the private sector in the employment of non-nationals is higher, and the autonomy of private companies is accepted.
- Finally, the fast transposition of EU law (mainly Directives) on free movement of workers into the Romanian and the Hungarian law means a very formal integration (adaptation) in legislation because the substance of regulation, the environment of the labour market, and the employment and economic needs are different. On the other hand, the *formal legal transposition* and labour migration in fact can be considered as instruments of modernisation.

According to the programme 4 lectures, 3 roundtables and discussions were managed attended by 150 participants (public officials at central and regional level involved in labour, immigration, public education and public health issues, equivalency authorities, chamber of engineers, health workers, trade union, academics from Hungary and Romania, embassy of Romania, Turkey, law students, PhD students, law practitioners). The main presentations were published in *Föld-rész* (International and European Public Law Review issued by L'Harmattan)¹⁶⁶ and made available for all participants.

May 2011. Szeged

166 Tóth Judit: Az uniós munkavállalók mozgása és annak néhány akadályja. *Föld-rész*, 2011/1: 47-69.

Appendix III***Abbreviations***

CardD	Government Decree No. 17 of 2005, 8 February on the Student Card
DisabledA	Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons
EqualA	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities
EqualD	Government Decree No. 362 of 2004, 26 December on procedural rules of the Equal Treatment Authority
ETA	Equal Treatment Agency (under the auspice of the Ministry of Public Administration and Justice)
FamA	Act LXXXIV of 1998 on Support of Families
FeeD	Ministerial Decree of Justice and Law Enforcement No.28 of 2007, 31 May on fees paid by persons being entitled for free movement and residence relating to entry and residence authorisation
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
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)
LoanD	Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre (including all amendments)
MusD	Government Decree on Benefits at Museum Admission
NTA	National Traffick Authority (its Road, Railway and Shipping Office)
OIN	Office for Immigration and Nationality Affairs (BÁH) under the subordination of the Ministry of the Interior (BM)
PuboA	Act XXIII of 1992 on Legal Standing of Public Officials
PubsA	Act XXXIII of 1992 on Legal Standing of Public Servants

HUNGARY

QualA	Act C of 2001 on Recognition of Foreign Diplomas and Qualifications
SanitD	Ministerial Decree of Health Care No. 32 of 2007, 27 June on sickness of third-country nationals and persons being entitled to free movement and right to residence endangering public health
SocialA	Act III of 1993 on Social Administration and Social Benefits
SportA	Act I of 2004 on Sport
StudD	Government Decree No. 51 of 2007, 26 March on benefits and fees of students in high-level education
TAO	National Tax and Customs Office
TaxA	Act CXVII of 1995 on Personal Income Tax
TaxPA	Act XCII of 2003 on Taxation Procedural Rules
TransD	Government Decree No. 85 of 2007, 25 April on Advantages in Public Passenger Transport
UnemplA	Act IV of 1991 on Job Assistance and Unemployment Benefits
VocD	Government Decree No.328 of 2009, 29 December on scholarship for students in vocational training