

REPORT
on the Free Movement of Workers
in Hungary in 2009-2010

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November 2010

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Executive Summary

During the reporting period economic recession, crisis in budget balance and state debt was the main factor in labour migration than changes in legislation or in public administration in Hungary.

The number of issued registration documents for union citizens and family members including ones of the Hungarian nationals residing in Hungary was decreasing in 2009 comparing to 2008. However, the total number of issued documents for residing union citizens and family members since 2004 has been growing, so it takes the half of all residing migrants in Hungary. It means that Hungary's migration attractiveness has been rather stable producing 2 percent of total residing population by migrants. The labour migration from the EU15 was slightly increasing (from UK and Austria) while from the EU12 reduction of workers by Slovaks was compensated by growth of Romanians during the year. In brief, registered labourers from the EU26 covering on 18.485 persons means a reduction in 2009 comparing to the previous year. It happened in particular in the manufacturing industry. In parallel, the labour migrants from the non-EEA states was also decreasing in 2009 significantly. These data reflect significant reduction of their role in the industrial services and unskilled jobs while the direction of movement is attracted also to the capital and its environment.

The fully liberalised access rules to the Hungarian labour market were adopted on last days of 2008 that entered into force on 1st January 2009. Hence the whole rather complicated system of reciprocity in labour was finally annulated and all persons under the scope of the Act I of 2007 (on Union citizens and EEA nationals including Swiss nationals) can enjoy free access to the Hungarian labour market together with family members regardless their nationality.

Transposition of legal rules to the Hungarian legal system was going ahead (e.g. Act of XL of 2010 making easier the entry of EEA national's family member, Act CXV of 2009 on individual entrepreneurship providing the implementation of Dir. 2006/23/EC for union citizens, too). Perhaps this active legislative works hinders to develop the infrastructure of labour inspection, vehicle authority, migration statistics or integration of migrants. After the general elections the newly established government (May 2010) declares reforms in public administration, taxation, social benefits and vehement changes in public policy however labour migration, free movement has not been touch upon.

Introduction

Taking into account the new structure the report is shorter than in previous years. However the method has remained: legal sources and available documents on legal disputes, statistics on labour/migration, statements of certain authorities and the government mean the major sources together with additional news from the press. Naturally, relevant results from the academic circle are also inserted into the text but I have to underline here: the reporter cannot analyse the legal practice in its complexity but rather in parts.

Although Hungary is a unitarian state the realm of public administration as well as justice and legal protective organs is partly accessible, e.g. complaints to the Ombudsman or judgement of the courts are available in the anonym form, partially and not in up-to-date. The homepage of courts contains certain parts of judicial documents, the Constitutional Court files are prohibited for researchers. Regardless the capacity and competence of a researcher, the transparency and publicity of data in this more complicated legal sphere may hinder a comprehensive assessment.

Chapter I

The Worker: Entry, Residence, Departure and Remedies

Regulations 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 by the Act LXXXII of 2007 (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 by Government Decree 327 of 2007, 11 November, No. 341 of 2008, 30 December, No. 182 of 2009, 10 September (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 that entered into force on 18 May 2008 (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 entering into force on 16 May 2008, Decree No.41 of 2009, 15 September (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] (FeeD)

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS¹

1.1 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 the movement of persons across borders (*Schengen Borders Code*) shall also apply to entry.

1 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.

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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.

1.2 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 based on paid employment for as long as they are paid job-seeker support as defined under separate act (6 months), or
- c. is participating in vocational training for performing professional activities at a higher level, providing that he gained the practical experience stipulated for such vocational training during employment.

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 are prohibited from entry and residence.

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

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 interruption to residence: residence outside the country of no more than six months per year; absence for compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the EEA national stops exercising the right of residence in Hungary (leaving, disappearing).

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;
- 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;
- 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.

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

Documentation proving the right to residence is as follows (Art.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 pension² per capita – about 100 € - in the family, or proving assets, real estate or other

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

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 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.

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.

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.

We have to add that FreeD was modified by the Government Decree No.118 of 2008, 8 May however the relevant fees are stable. For instance, fee for registration card is 1000 HUF (4 €) and for residence/permanent residence card is 1500 HUF (6 € as fee for ID card of nationals). The Government Decree amended the FreeD in limited extent.

Departure refers to the following issues (Art. 15(2)-(4), 33-34, 38-48, 64 of FreeA):³

- 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 obli-

³ 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.

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gation 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* prohibiting entry 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 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 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 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.

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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)⁴

- 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*⁵ 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-infection⁶, 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.

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

4 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.

5 Section 25 of FreeMD.

6 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.

judgement⁷. The same interpretation was issued in another trial against a Romanian offender that was sentenced additionally to expulsion but it was annulled in the final judgement because he committed a simple theft, so he could not be expelled.⁸

2. SITUATION OF JOBSEEKERS

The most relevant provisions can be found in FreeA Art. 6 (1)a, (2), Art.9 (1)b (2), UnemplA Art 54, 58-59. All EEA nationals shall have the right of residence for a period of longer than three months if they intend to engage in some form of gainful employment. This right of residence shall be applicable for family members of EEA nationals. The Explanatory Report to the Bill (to the FreeA) 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].’

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 is the job-seeking position 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

7 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.

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

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. The restrictive interpretation of legal grounds for expulsion by the penal court is upper mentioned as a new phenomenon.

Recent literature

Tóth, Judit: Munkaerőmozgás és az Európai Unió bővítése az átmeneti rendelkezések tükrében. [Movement of workers and transitional provisions in the enlarged EU] *Romániai Magyar Jogtudományi Közlöny*, 2008/12, p. 5-10.

Gellérné Lukács, Éva: Munkavállalók szabad mozgása az Európai Unióban – Gondolatok egy 40 éves évfordulóra [Free movement of workers in the European Union– to the 40th anniversary] *Föld-rész*, 2009/1, p. 9-23.

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

Chapter II Members of the Worker's Family

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;
- 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 health, age or financial support under the same roof.

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 (Article 1 (1) b) point) that the Republic of Hungary guarantees the right to free movement and the right of residence to family members of EEA nationals (also of Swiss nationals) and pursuant to Article 1 (1) c) point) 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).

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*⁹

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

⁹ Art. 3-5, 34(4) of FreeA.

otherwise provided for in directly applicable European Community law¹⁰ or by international agreement, a valid (multi-entry) *visa*. It covers on dependant of a Hungarian/EEA national, or s/he has lived in the same household as a Hungarian/EEA national for at least one year, or is cared for in person by a Hungarian national upon serious health grounds. They can enter without visa, if they have a document proving the right of residence under this Act, or a residence card issued to them as a family member of an EEA national, having the nationality of a third country, by a signatory state to the Agreement on the EEA.

The Schengen Borders Code shall also apply to entry and visa issuing. The right to entry by visa shall cease if the conditions in the Code cease to exist. If entry is denied because the entry conditions have not been fulfilled, the border traffic authority shall, upon request of the (very probable) EEA national or family member the opportunity to obtain the necessary documents, or otherwise prove that the entry conditions have been fulfilled, within 72 hours of return being decreed.

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 nationals¹¹ 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 months¹²

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

10 Reg. 539/2001/EC.

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

12 Art 6-8, 10-15(1) of FreeA.

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Hungarian national for at least one year, or is cared for in person by a Hungarian national upon serious health grounds; or the said person was a dependant of an EEA national, or lived in the same household as an EEA national for at least one year, in the country from which they arrive, or who is cared for in person by an EEA national upon serious health grounds, where the EEA national was in a paid employment, had sources for subsistence or admitted to study. It is conditional, the authorisation shall cease: if those concerned no longer live together, the Hungarian national died, his/her Hungarian nationality terminated, EEA national died, lost or gave up the right of residence.

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 annulled by the court, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law. Moreover, the right of residence depends on length of valid marriage and prior residence: if the marriage lasted for at least two years prior to its dissolution or annulment, and the ex-spouse resided in the territory of the Republic of Hungary for at least one year of the marriage as a family member of the EEA or Hungarian national; if the ex-spouse is also accorded by the courts the right of parent or guardian over the child of the EEA national residing in the territory of the Republic of Hungary, or is responsible for the supervision of the child by agreement; or if so justified by exceptional circumstances, particularly if their spouse, being an EEA or Hungarian national, carried out an intentional offence against them during the marriage, or if they had the legal status of settler prior to the marriage; or if the ex-spouse has visiting rights in respect of the child by agreement or by court judgment, assuming that such visiting take place in the territory of Hungary under the terms of the agreement or court judgment;
- 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 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 residence*¹³

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),
- a person with the right of residence as a family member, if an EEA national in paid employment in Hungary dies before obtaining the right of permanent residence, and the EEA national resided in the territory of Hungary for two years without interruption prior to death; or the death was the result of an industrial accident or occupational illness.

If the family member surrenders the right of residence in the territory of Hungary and then returns for a period of more than three months, the period of time required for obtaining the right of permanent residence shall start again. The following shall not constitute interruptions to residence: residence outside the country of no more than six months per year; absence for compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the family member stops exercising the right of residence in Hungary (leaving, disappearing).

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

¹³ Art. 16-19 of FreeA.

2.4. *Documentation proving the right to residence*¹⁴

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 is 6 € by the FeeD (as fee for ID of nationals). 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 Hungarian¹⁵. 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 pension¹⁶ 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.

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.

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).

¹⁴ Art.20-26(1) of FreeA.

¹⁵ Government Decree No.182 of 2009, 10 September.

¹⁶ It is decided by the Government Decree, so yearly its amount is changing, however in 2008-2010 was fixed in 28 500 HUF.

We have to add that FeeD was modified by the Government Decree No.118 of 2008, 8 May however the relevant fees are stable. For instance, fee of visa for short visit by the family member of a Hungarian national was 60 €. The Government Decree amended the FreeMD in limited extent.

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:¹⁷

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

¹⁷ 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.

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- 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 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)¹⁸

- 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

¹⁸ 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*¹⁹ 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 member 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-infection²⁰, 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.

Application of *Metock judgement* 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. 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.²¹ 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 reasoning²².

3. 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

19 Section 25 of FreeMD.

20 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.

21 Dr. Imre-Sebök Réka, head of unit, Regional Directorate of OIN, Szeged (15 May 2009).

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

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.²³

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.

4. 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.

²³ Discretion power is essential for labour authority in budget cutting period and in neck-of-bottle situation in active labour market supports. It was confirmed by the Labour Office representative in Szeged (10 May 2009).

Chapter III

Access to Employment: a) Private and b) Public sector

Regulation in force

2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA) that was amended by Act XXXVIII of 2009, and Act CXXVI of 2009 with effect from 1 June 2009.
- 362/2004. (XII.26.) Kormányrendelet 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 LXXIV. törvény az alkalmi munkavállalói könyvvel történő foglalkoztatásról és az ahhoz kapcsolódó közterhek egyszerűsített befizetéséről [Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions]. (TWB.A) in effect until 31st of March 2010.
2009. évi CLII. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st April 2010.
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)
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];
1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA)

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

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 case 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.

1.1. 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 apply for social security contribution reductions.

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

1.2. 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*).²⁴ Article 7 (2) b) of the EqualA, in this spirit, lays down

²⁴ 379/87 *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.

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* 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. Ministerial Decree No.31 of 2004 on the recognition of health care diplomas, in its Article 8, regulates the language requirement in the same spirit. It declares that the competent authority informs the applicant in Hungarian or English language about the professional and ethical rules, the applicable social security laws and the possibilities on learning Hungarian language.

However, the private sectors' practice is unknown and not explicitly regulated. 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.

1.3. Simplified employment

Hungarian law contains specific rules aimed at simplifying the administrative surroundings of atypical employment. Since 1997 this has been an instrument to legalise in part the shadow economy and to rise up economic activity in working ages. The essence of this legal instrument (TWB.A) was to provide for a very flexible way of employment for both the employer and the employee to which simplified administrative procedures, reduced labour law consequences and special social security arrangements are attached. The recruitment and dismissal of the employee was easier than in a typical employment relationship, the amount of public contributions and the benefits obtainable from the social security system were also fixed at a reduced level.

Upon 1st of April 2010 there have been some restrictive modifications in the system, the rules are however equally applicable to Hungarian and union citizens (and their family members). The main change was to lift the level of contributions to the normal social security rates except for domestic employment not exceeding 31 days yearly. The rules are under amendment even now.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

The public sector has remained wide employing about 20 percent of workers. This heterogenic and publicly financed 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 (police, prison, fire brigades and catastrophe dissolution, customers, secret services);
4. Public officials;
5. Administration of justice (court, public prosecutor office) has own regulation on employment;
6. 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) and (5) 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 (6) can be either nationals or non-nationals equally but exceptionally in certain branches or positions they shall be nationals.

Taking into amendments in public sector provisions, we can see opposite trends. On one side the list of elected positions excluding non-nationals has become longer, while access to public servant positions was improved. For instance, the National Reconciliation Council – according to the Art.195-197 of the Labour Code - set up a Service providing counselling, mediation and it operates as arbitrage in collective labour disputes. This Service of Mediators and Arbitrage based on acceptance of its internal rules (e.g. Code of Ethic, Procedural Code)²⁵, recruits proper members with prior experiences in similar debates, in conflict management, psychological stability, good communication ability and – *Hungarian nationality*. The new announcement (2010-2014) for candidates requires nationality in submission of application to the Office for Employment and Social Affairs.²⁶ There is no explanation why this position requires nationality unless it is a synonym of Hungarian speaking person because the training for candidates as well as disputing actors are basically Hungarians.

On the other side, accession to the public sector as public servant became partly easier, partly more difficult in recent past.

Requirement of *Hungarian nationality as exception* is regulated, as follows:

- 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.²⁷ 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.²⁸

25 See on the page of www.tpk.org.hu.

26 Hivatalos Értesítő, 2010/10. [Official Gazette]

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

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

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- 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 request of local leader of the unit the minister could issue an acceptance.²⁹ 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 modification³⁰ 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.³¹

With respect to the nationality condition for access to positions in the public sector, the following principles govern the accession in each field:

Elected positions defined by public law: Certain positions shall be fulfilled by exclusively by Hungarian national. For instance, member of the Constitutional Court,³² mayor or chair of county municipal.³³ Each of them is regulated in separate acts requiring directly or indirectly (for instance, in case of the member of National Auditor Office the Parliament is entitled to elect the proper, qualified person regardless even his nationality). According to the Act on National Bank of Hungary, the member of the Monetary Council and Inspectoral Board shall be a Hungarian national.³⁴ The public sector covers on the independent body controlling the publicly financed radio and television broadcasting. The Act on Radio and Television Broadcasting regulates the tasks, responsibilities of programming services if the broadcaster has its corporate domicile in Hungary. Although before accession the Act was amended taking into account harmonisation, the task and component of the National Radio and Television Board has not changed. It shall protect and promote the freedom of speech by helping broadcasters to appear on the market, by breaking down any information monopolies and preventing the creation of new ones, by protecting the independence of broadcasters, too. It pays attention to the enforcement of the constitutional principles of the freedom of the press and shall inform Parliament thereof. The Board and its members are only subject to the

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

30 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.

31 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.

32 Act XXXII of 1989. on the Constitutional Court, Art. 5.

33 Act XX of 1949, Art. 71.

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

law, and cannot be instructed relating to their decision or activity. (Art.31). This approach may explain why the Board's office consists of civil servants. Moreover, the membership in the Board requires Hungarian citizenship beyond proper qualification, clean criminal record and at least five years' professional experience³⁵. The Parliament elects the Board members upon party group proposals (Art.34). The executive manager of the National Press Corporation and representatives of the owner and founder (the Parliament) shall be appointed by the President of the Republic only a national with clean criminal record, proper decree and at least five years practice³⁶. There is no reason to maintain these market-positions for nationals although the Act intends to define some public services provided by the Corporation (MTI).

Officers in defence: The Act XCV of 2001 on legal standing of professional and mercenary 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.³⁷

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.³⁸ 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)]

Public officials: It is also a gathering term of employees working at various local or central authorities according to the Act XXIII of 1992 (PuboA) on legal standing on public officials. 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 exam³⁹ since 1 January 2009. Moreover, for a stronger transparency and anti-corruption efforts, in certain confidential and

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

36 Act CXXVII of 1996, Art 6, 18.

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

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

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

leading positions a declaration on assets and a security checking on the whole family of the applicant is necessary.⁴⁰

While the nationality is a general requirement, persons under the personal scope of FreeA and ‘nationals of party states of the European Social Charter’⁴¹ 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 2007.⁴² It is important that non-nationals are exempted from the entry exam.

PuboA outlines⁴³ the scope of state organs in which the implementation is in full or in absence of specific provisions is obligatory. The recent modification⁴⁴ covers on entry exam, easier dismissal of officials, institutional scope of the PuboA, and it relates to the new concept of the governance.

Administration 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.⁴⁵ Moreover, only a Hungarian national may be appointed to judge at court⁴⁶, public prosecutor, drafter, secretary and investigator at prosecutor office⁴⁷. 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

40 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 be determined by the Government (Art 79 of PuboA).

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

42 Act LXXXIII of 2007.

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

44 Act XLIII of 2010.

45 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.

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

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

position⁴⁸. 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 Act XXXIII of 1992 on Legal Standing of Public Servants (PubsA) and decrees on ministerial branches. There is no nationality requirement in general preconditions of employment. However, the Art. 20 (2) entitles the ministers to define further pre-conditions to conclude a public servant contract beyond the general requirements in the Act. In this way the minister (in a decision, circular letter or in decree) may determine *working positions* in which applicant is to be a Hungarian national with clean criminal record in full age. Without definition of specific task or protected public interest this 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. The minister is also entitled to define specific requirements in application and in contract making beyond the general conditions by law (e.g. working practice to the given position and exemption from the probationary period). [Art 20/B and 20/A(5)] The purpose of this modification was to make the public service sector more competitive and transparent through the public tenders of jobs.⁴⁹

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 employment⁵⁰. 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 persons in personal scope of FreeA, but only if the (clerk's) work

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

49 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.

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

at issue is not confidential and the person possesses *the Hungarian language skills necessary to perform the tasks*. In case of public officials the knowledge of Hungarian language is not expressly required, either. However, Art. 74 declares that the public official is entitled to wage-supplement if he regularly uses a foreign language besides Hungarian. This means that the knowledge of Hungarian language is evident, 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

Essentially the issue in the *Burbaud* case is that, according to French law, only those persons can acquire a *stage* (post-secondary probation time in the public service) who successfully pass the entrance exam for and in the aftermath go through the training of the ÉNSP. Those who pass the final examination (for which there is no any formal document) obtain a permanent appointment as civil servant to the hospital public service. Apparently, those who pass the entrance exam to the ÉNSP are already civil servants (this is a form of recruitment), and they get a permanent status at the end of the training. (These posts are not necessarily qualified as an exemption in terms of Art. 39 (4) of the Treaty of Rome.) The first problematic issue in the main proceeding was whether this final examination can be regarded as a diploma within a meaning of Dir. 89/48/EEC. The ECJ declared that this final exam confirms that the person has successfully completed a post-secondary course that is why it can be regarded as a diploma (Section 1(a) of Dir. 89/48/EC). In effect the judgement declares that persons (French or EEA nationals) holding diplomas acquired in other EEA Member States can be required to have their diplomas mutually recognised. However, a second problem arises, namely how to channel persons holding an equivalent diploma from another Member State into this system. According to France, these persons have to pass the entrance exam, because that is the selection (competition) part, and after that they are exempted (in full or in part) from the training by an opinion of a committee. The ECJ acknowledged the importance of the entrance examination by selecting the candidates, however pointed out, that this exam checks skills of graduated students and not the acquired qualifications of professionals as in a usual recruitment process. Taking this special feature into account, the ECJ stated that the method proposed by France is liable to detract nationals of other Member States who already pursuing a profession and is therefore liable to be an obstacle to free movement of persons.⁵¹ The ECJ also pointed out that a kind of selection process might be worked out for such situations, similar to what is called the *du tour extérieur*, but that shall be proportional and appropriate.

It is apparent that the ruling is important only for those Member State that have similar systems or training methods. It shall be emphasised at the outset that Hungary 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 recruit-

⁵¹ Paras 100-101.

ment 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 regard⁵² but the near future in would change in a segment that has been rather exceptionally open for EEA nationals and family members.

It has to be added, however, that there is a scholarship construction in Hungary for students studying in high level education, on the basis of which the administrative body wishing to employ the selected students enters into a contract with the student with a view of at least 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.

Transparency of recruitment in public sector is improved due to more advertisement of vacancies in home pages of the given authority and the central portal of the Prime Minister's Office.

There are neither specific provisions on recognition of diplomas and certificates beyond the general rules (QualA), nor on recognition of professional experience in recruitment and professional advantages procedure in public sector. The existing provisions only determine the minimal qualification to the given task, working or leading positions.⁵³ We can conclude from these provisions the following:

- The required certificate or qualification shall be provided, exception is not allowed.⁵⁴ If there is an extraordinary case (e.g. a totally new qualification is introduced, thus a period of toleration is regulated).
- Nomination of qualifications or certificates is based on the nomenclature and structure of Hungarian vocational training and high degrees⁵⁵. There is no reference on 'equivalent' qualification obtained out of Hungary. Naturally, the recognition rules are applicable (in particular for public servants).
- There are no provisions how to evaluate or accept working experiences abroad.⁵⁶

However, a case⁵⁷ proves how the courts interpret the professional experience in public sector. A plaintiff's action in law was submitted for rejection of a job due to absence of two years minimal professional experience in public administration although he had experiences spending long years as police officer. The non-accepting judgement refers on specific legal commitments of police officers, regardless the general character of police that belongs to the public administration system. The judgement rendered the professional experience requirement in a really tight way, literally as Act on Public Officials defined.

During the launched reform of the public sector and administration in 2006, in the first phase a more competition oriented assessment system has been introduced for all increments of civil servants. The newly defined rules will aim at honouring the applicants' different

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

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

54 Section 6 of Government Decree No. 9 of 1995, 3 February clearly bans exceptions.

55 For instance, Interior Ministerial Decree 25 of 2005, 6 May on nomination of working tasks.

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

57 *Bíróági Határozatok* [periodical of published cases of the Supreme Court] 1488/2006.

abilities (professional, language, communication skills) including former employment relationships.

Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade) have not been developed. A case by case recognition is the most probable, in particular for public servants fulfilling burning vacancies in public health, tourism or social care. Reform of public administration is delays by the crisis and preservation of jobs are the focus of the trade unions. For this reason a more receptive rules on (foreign) workers are not possible in near future.

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).

Ékes, Ildikó: Az atipikus munka és jövője [The present and future of atypical work]. *Munkaügyi Szemle* 2009/1: 66-71

Kártyás, Gábor: A munkajog új kihívásai a XXI.század elején [Challenges to the labour law in early 21st century]. *Munkaügyi Szemle* 2009/1, p. 42-48

Horváth, István: Public service labour law. Questions of today and legislative recommendations. *Annales*, Budapest 2008/49: 259-283

Chapter IV

Equality of Treatment on the Basis of Nationality

Regulation in force

2005. évi CXXXIX. törvény a felsőoktatásról [Act on high-level education (Act CXXXIX of 2005)] (HighA)
2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] in a consolidated version (EqualA)
- 362/2004. (XII.26.) Kormány rendelet az Egyenlő Bánásmód Hatóság előtti részletes eljárásról [Government Decree No. 362 of 2004, 26 December on procedural rules of the Equal Treatment Authority] that was amended by the Government Decree No. 332 of 2006, 23 December entering into force on 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),
1997. évi LXXIV. törvény az alkalmi munkavállalói könyvvel történő foglalkoztatásról és az ahhoz kapcsolódó közterhek egyszerűsített befizetéséről [Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions]. (TWB.A) in effect until 31st of March 2010.
2009. évi CLII. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st April 2010.
- 1992.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code];
1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA)
1991. évi LXXXII. tv. a gépjárműadóról [Act LXXXII of 1991 on motor vehicle tax] (CarA)
- 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 391 of 2007, 23 December entering into force 1 February 2008 and by Government Decree No. 165 of 2008, June 27 entering into force 1 July 2008 (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 Gov. Decree 182/2009. (IX. 10.). with effect from 1 October 2009.

- 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 on Benefits and Fees of Students in High-level Education] amended by the Government Decree No. 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)
- 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 2009, 27 July with effect from 1 August 2009 (ScolD)

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 activity within the territory of another Member State with the same priority as nationals of that State and in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting there from.

The two main pillars of Hungarian law as regards the principle of equal treatment are: the Constitution (Art.70/A) and the EqualA. There have not been such amendments of these laws during 2009 that affect migrants.

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

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

The basic law settles down direction, methods of major non-discrimination policy and legislation. Labour Code, Act on Labour Control or Penal Code as well as other provisions, action plans together 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 work⁵⁸. 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.⁵⁹ 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*’.⁶⁰ 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.

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;

58 (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.

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

60 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.

- 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.⁶¹

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.

Specific issue: Working conditions in the public sector

- Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade, career perspectives)
- Taking into account of diplomas for determining working conditions (salary, grade, career perspectives etc)
- Equal treatment in relation to issues like civil servant status, trade union rights etc.

The principle of equal treatment shall be observed also in the public sector. The main rules applicable – described in other point – are similarly to be applied here. However it is important to mention that rules 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. However, transversal mobility inside the public sector among different statuses is very restrictive for all workers regardless nationality.

61 Art. 23 of EqualA.

2. SOCIAL AND TAX ADVANTAGES

2.1. General situation

Article 7 (2) of Reg. 1612/68/EEC requires Member States to provide for equal treatment in the field of social and tax advantages. There are a series of cases of the ECJ that deal with the definition of social advantages stating that ‘*social advantages should be interpreted as meaning all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community*’.⁶² The ECJ extended the scope of this term not only to the benefits available for the workers themselves, but for their family members too (educational rights, benefits for disabled children, loans etc.).⁶³ This concept essentially means that Community workers are *quasi* nationals in terms of the aptitude of their entitlements.

2.2. Social advantages

Prior to the EU accession, EEA nationals were not entitled to claim entitlements to *social advantages*. Relevant changes occurred firstly upon accession entitling Community workers and their family members to obtain the same benefits as Hungarian nationals. The date of 1 January 2008 was probably the second biggest milestone since the EU accession. Referring to the personal scope of FreeA several social laws and governmental decrees have been amended resulting in a clear extension of the circle of beneficiaries. From 1 January 2008 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.⁶⁴ 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 and their family members 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. Prior to January 2008 the benefits regulated in the SocialA were only granted to Hungarian nationals, refugees, persons with permanent residence permits and Community workers and their family members falling within the ambit of Reg. 1612/68/EEC.⁶⁵ With effect from 1 January 2008 the reference to

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

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

64 Most prominently Act CXXI of 2007 on social laws.

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

Reg. 1612/68/EEC has been deleted from the SocialA and the wording of the personal scope of FreeA is cited.⁶⁶ According to FreeA every union citizens (irrespective of economic activity) and their family members qualify as „*entitled persons*’ which is a departure from the concept concentrating on workers only. It means that from 1 January 2008 the personal scope has been extended, from this date not only Community workers and their family member but 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 social and family benefits. The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.

DisabledA aims at mitigating the disadvantages suffered by disabled by enhancing their equal opportunities and by changing the attitude of the society towards disabled issues. The purpose of 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*’.⁶⁷

The definition of disabled is determined without referring to nationality. However, in one Article that concerning the cash benefit for the disabled (Art 23 on disabled benefit) the DisabledA tightens the general personal scope. Prior to 1 January 2008 the benefits regulated in the DisabledA were only granted to Hungarian nationals, refugees, persons with permanent residence permits and Community workers and their family members falling within the ambit of Reg. 1612/68/EEC.⁶⁸ With effect from 1 January 2008 the reference to Reg. 1612/68/EEC has been deleted from the DisabledA and the wording of the personal scope of FreeA is cited.⁶⁹ According to FreeA every union citizens (irrespective of economic activity) and their family members qualify as „*entitled persons*’. 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.⁷⁰ If the beneficiary leaves for another EU Member State the benefit is not withdrawn until benefit is granted in that other Member State. The changing paradigm related to disabled persons and workers, namely from a medicalisation model to a social model based on adaptation to special needs of disabled persons as defined in the 2000/78/EC Directive and the case law of ECJ,⁷¹ has not happened in Hungary.

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

66 Art 100 of FreeA.

67 DisabledA, Art.4 (a).

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

69 Art. 116 of FreeA

70 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 that 3 months is eligible.

71 See *Sonia Chacón Navas* case, C-13/05.

been provided.⁷² 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 does not needed from 1 May 2009.⁷³ 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 workers from Slovakia and Romania 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,⁷⁴ 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’. Prior to 1 February 2008, pursuant to Article 1 paragraph (4) point 7 of the HouseD ‘supported persons’ were Hungarian nationals and Community workers in terms of Reg. 1612/68/EEC who possess a valid residence permit during their employment relationship. Government Decree No. 391 of 2007, 23 December amended HouseD in the spirit of FreeA. Following from this, as from 1 February 2008 union citizens and their family members and family members of Hungarian nationals 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 having address card are entitled to obtain guaranteed credit or loan for house purchase or lintel credit as in the personal scope of the FreeA.

As regard the advantages in public passenger transport, the TransD was modified three times in 2009⁷⁵ and certain amendments enter into force on July 2010. A general revision of benefits has been started 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.)

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

73 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.

74 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).

75 Government Decree No.98 of 2009, 24 April, No.182 of 2009, 10 September and No. 227 of 2009, 16 October.

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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:⁷⁶

- 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.

⁷⁶ Both introduced by Government Decree No. 115 of 2007, 24 May.

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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 curricula. The ministerial decree⁷⁷ provides financial contribution to this programme per capita upon 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.

ScolD regulates scholarship possibilities for students and their tutors who are qualified as being severely disadvantaged or lives in a child protection institution. ScolD has been amended during 2009 which changed the equal treatment segment but not in connection with EEA nationals and their family members. 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.

Summing up, the browsing of Hungarian law shows that Hungarian law clearly provides for the most important benefits attached to the concept of social advantages, namely social assistance, disability benefits, access to state subsidies, transport benefits. It is beyond doubt that the Hungarian legislator is fully aware of the existence of the concept and applies it. The reporter does not exclude the possibility of hidden restrictions that might come to light later.

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 local municipal decree in Győr (66 of 2003, 19 December) determined who had to pay the parking surcharge for irregular parking on public ground: at first the driver of the personal car, and in absence of this information the owner of the car registered in the registration book of the vehicle. This latter had to be applied also in case of foreign drivers. The Constitutional Court⁷⁸ ruled that discrimination based on nationality in parking fee could not be acceptable if extra fee had to be paid by owner of the personal car if

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

78 105 of 2009, 30 October AB határozat.

driver (committing the irregular parking) was a non-national, because this was not reasonable. Regardless nationality the main factor is whether a driver has an address and residence in Hungary or not, and subsidiary provision on responsibility of the owner is applicable in absence of this driver. Finally, the City changed the decree, and the pending court case in Győr Court had to be interpreted by the judge in the context of non-residing driver.

A German national residing in Hungary submitted a complaint to the Ombudsman for discrimination based on nationality. Her daughter also a German national attending the local elementary school had an accident but she could not obtain a compensation from the Insurance Company (Generali). The Company refers on a Government Decree⁷⁹ that provides compensation only for pupils' damage that are Hungarian nationals. This insurance construction is paid by the state budget instead of parents only for nationals. The Ombudsman requested the Inspection Authority of Financial Services to prepare the necessary measure⁸⁰ (e.g. to issue a circulation letter giving legal opinion equal treatment of residing union citizens to nationals, or to prepare an amendment of the decree).⁸¹

The ETA makes available decisions and yearly statistics. In 2009 the number of complaints were growing up to 1087, and from them committed discrimination was stated in 48 cases imposing fines and consensus was reached between the parties in 18 cases. Among these there was no discriminative case on the grounds of nationality⁸². However, the Advisory Board to the Equal Treatment Authority issued a Statement⁸³ on the interpretation on discrimination on the grounds of 'other condition' (Art 8 of the Act CXXV of 2003). 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. Change of residence documents

It is vital to emphasise that social benefits are conditional upon residence documents. Therefore, if a person – mostly affected are Romanians and Bulgarians – still possesses an 'old' residence document (open-ended residence permit) s/he needs to change it to a 'new' one in order to be able to prove her/his rights to social advantages. This is only an administrative burden, the rights are due. However it shall be done to avoid problems of eligibility.

79 Government Decree 119 of 2003, 14 August on general accident insurance for students below 18.

80 Art 4, Art 48/A of the Act CXXXV of 2007 on the Inspection Authority on Financial Services.

81 OBH B-14877/2009, Dec 10.

82 www.ebh.hu 25 January 2010.

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

2.4. Taxation

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.⁸⁴

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*.⁸⁵ 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 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

⁸⁴ Government Decree No. 7 of 2004, 22 January.

⁸⁵ 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.

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 APEH 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].⁸⁶ 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.

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

3. SPECIFIC ISSUE: THE SITUATION OF JOBSEEKERS

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 na-

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

tionals applying for social assistance benefits is so low that this is statistically simply not traceable.

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Chapter V

Other Obstacles to Free Movement

The *Hans van Lent* case, the *Commission v Denmark* case (together with the *Nadin and Nadin-Lux* case⁸⁷) declare that Member States can not require the registration of company vehicles which are used by their residents in connection with their employment relationship *predominantly* in the other Member State if the vehicle is properly registered in the seat country of the employer. In so far the legislation and administrative practice do not allow employees who are employed in a neighbouring Member State and resident in another Member State to use for business or private purposes a company vehicle or motor vehicle registered in that neighbouring Member State where the undertaking of their employer is established the Member State infringes Article 39 (now 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. Ministerial Decree of the Interior No. 35 of 2000, 30 November on Road Traffic Administration Tasks and on the Issuance and Withdrawal of Road Traffic Licenses handles the status of number plates (amended by Ministerial Decree of Justice and Home Affairs No. 6 of 2009, 1 July 2009).

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Art. 23 (6) of Act I of 1988 on Road Traffic, if the car has been registered abroad – it has a foreign number plate – and the car *is intended to be used in inland traffic*, the proprietor is obliged to apply for the putting into circulation within 30 days of bringing the car into Hungary. If the proprietor is an EEA national and s/he *intends to use the car in inland traffic*, the upper mentioned Decree of the Minister of the Interior No. 35 of 2000 lays down that the application for putting into circulation shall be submitted within 30 days of 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.

87 C-151-152/04.

Talks to the competent authority revealed that in practice this rule is difficult to apply hence the actual wording of the law – ‘intended for inland usage’ – is unclear.

A specific obstacle of free movement would be how to use and register the personal car of EEA workers. Due to complaints the Ombudsman investigated why all used cards from the other member states were so complicated, long procedure paying a high registration fee. On the ground of his proposals to the Government on simplification of procedure, reduce the fee and clarify the facts of each case, a repetitive investigation was launched in 2009.⁸⁸ It stated severe improvement in authorisation of these cars’ lawful traffic in Hungary, the adopted accreditation procedure includes the origin of vehicle, decision on fee and efforts made for e-administration together meant a progress. However, the threat of maladministration is also present in absence of one-stop procedure, so applicants have to request the accreditation of own vehicle at three different authorities. Thus he submitted the proposals on how to avoid maladministration to the Parliament.

The other group of complaints to the Ombudsman related to moped cars in 2007-2009. Retired and handicapped persons settled in Hungary from other member states and living in rural area or far from public transport – and companies intending to import mopeds to Hungary – have faced the rigid rules on what kind of cars can be authorised putting to traffic. Before 1 April 2009 moped was completely absent from the traffic nomenclature and a circulation letter of National Traffic Authority prohibited to give permission to moped owners to use this vehicle in public transport. The Ombudsman⁸⁹ urged transposition of the Dir. 2002/24/EC in a correct way into the Hungarian law (ministerial decree on nomenclature of types in motor vehicle) including a solid fee and simple procedure. Instead of it, the responsible minister modified the decree⁹⁰ requiring moped owners a driving licence on regular personal car, van or bus considering moped as regular personal cars. The Ombudsman criticised this regulation violating the equal treatment, principle of equivalence, mutual recognition⁹¹ in absence of mandatory requirements. Finally, he drew the attention also to transpose the Dir.2006/126/EC on driving license replacing the prior Dir. 91/439/EEG until 2013 January providing lawful and easy opportunity in alternative mobility for elderly or handicapped workers.⁹²

The extraordinary long procedure, missing information giving and unfair procedure was challenged in many complaints received by the Ombudsman concerning the pension portability cases. Applicants living in Hungary or in Austria, Slovakia, Romania had to wait for long months, years in working period certificate, decision on pension amount⁹³, so the Ombudsman urged a more transparent, improved procedure from the National Pension Directorate that was accepted. As he said these cases would have negative effect on mobility of workers.

88 OBH 4091/2007., AJB 1793/2009.számú jelentés.

89 OBH 5413/2007. számú jelentés.

90 14 of 2009, 31 March KHEM decree.

91 C-8/74. ECR(1974) 00837; C-120/78. ECR(1979) 00649.

92 ÁJB: Közlekedési projekt 2010/3 OBH 2010. Budapest.

93 OBH 1045/2008. számú ügy, OBH 1636/2009. számú ügy, OBH 5153/2008. számú ügy, OBH 2477/2009. számú ügy, OBH 4682/2008. számú ügy, OBH 1045/2008. számú ügy.

Chapter VI

Specific Issues

Regulation in force

2005. évi CXXXIX. törvény a felsőoktatásról [Act CXXXIX of 2005 on high-level education] (HighA)
2005. évi CXX. törvény az egyszerűsített közteherviselési hozzájárulásról [Act CXX of 2005 on simplified public contributions] amended by Act CXXXVI of 2007 (in 54-58. §) entering into force 1 January 2008 (EkhoA)
- 2004.évi I. törvény a sportról [Act I of 2004 on Sport] (SportA)
2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA)
- 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)

1. FRONTIER WORKERS

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) expressly lays down 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. Talks to officials revealed that the cases involving frontier workers are not problematic.

The volume of frontier workers claiming family benefits is rather marginal. There are around 35.000 family benefit cases related to EEA nationals among which 1000 affect frontier workers (almost exclusively Romanian and Slovak nationals mirroring the general employment trends). Compared to the yearly 1.2 million family benefit beneficiaries this means approximately 0.1%. However, it was also mentioned that the concept of entitlements for frontier workers is not acknowledged in every Member States causing inequalities and unjust situations.

2. SPORTSMEN/SPORTSWOMEN

The Government Decree No.157 of 2004, 18 May⁹⁴ regulates the *equivalent qualification* (certificate or diploma) in the field of sport (e.g. qualified or master trainer, human-kineologist, PET) including all types of amateur and professional sport activities, such as amusement, hobby, students' sport, dance and wellness. Since 2005 the list of certificates and degrees has become more complex thus the Appendix has to contain newer qualifications due to the internal legal changes in education system. The national sport federations in their internal rules have to define the affected sport positions in which these professionals should be employed in accordance with the qualification categories in the Appendix of the Decree. If an applicant is over 60 years old until 31 December 2009 and has at least five year outstanding activity in the given sport branch, s/he can be exempted from obtaining the professional qualification temporarily upon request of the sport federation up to 31 December 2012. (Section 3) This qualification of sport experts is relevant in the employment (Section 4): all professional sportsman or member of sport organisation have to meet this qualification Decree that shall be implemented 'in accordance with internal rules of the sport federations'. Because nationality requirement of applicant is not defined, this universal requirement of qualification shall be equally applied by EU and non-EU nationals. Each sport federation shall define (Section 5(6)) in own sport field and branch what qualification is considered as sport expert and what position shall be fulfilled by qualified or master trainer. This requirement is relevant in labour.

Professional athlete shall be *remunerated* exclusively on the base of the Labour Code regardless his nationality according to the Act I of 2004 on Sport (SportA). In possession of a racing permit s/he has to conclude on fix-time (close-ended) written *employment contract* with a sport club or association as a labourer with certain specific exceptions as defined in the Act (Art.8). This racing right is assigned from the athlete to the employer sport organisation that shall be registered by the sport federation on the base of internal rules. This transfer of racing right means a financial compensation for the athlete. Due to termination of employment this racing right returns free of charge to the athlete (Art.9). The sport organisation obtaining this racing right temporarily or permanently may transfer it to another sport club with consent of the athlete who is entitled to get *compensation* from the transferring sport organisation that can obtain a *fee* from the hosting sport organisation. Financial compensation and fee is *consensual* (Art 10) but 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 as employees. 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 registered at the national sport federation. The sport manager agent's role in transfer is also regulated by (inter)national sport federation internal rules. Any other share in transaction costs (beyond the athlete's compensation, commission, fee and sport federation) is invalid. (Art.11(2))

94 Recently amended by the Government Decree No.256 of 2009, November 20.

The Hungarian Football Federation published the racing requirements and conditions in the season of 2009/2010.⁹⁵ Accordingly, ‘participation of players as EU citizens and citizens from the party states of Cotonou Treaty enjoying the equal treatment at national championship is not limited. The maximal number of other foreign players is five who are playing in the same match on the ground. This limit is three on futsalle national cup match.’⁹⁶ The list of states whose nationals shall be equally treated with union nationals as well as the states in the ambit the Cotonou Treaty the League shall publish until 31 May 2008 taking into account the information sheet of the Ministry of Foreign Affairs.’ The list was published finally in 2010. The maximal number of players from non-preferred states shall not be more than 5 persons on a sport event.

The Statute of the HFF⁹⁷ also sets up Registry and Transfer Committee and a Committee that is responsible to issue licence for agent dealing with transfer of players’ contracts, rights and obligations in race. Accordingly, agent in sport can officially operate in transfer actions if s/he is registered by the FIFA and controlled by the Federation. Leading position (membership in presidency in the Federation, regional federation of clubs, Control Body) is eligible only for Hungarian nationals in full age and unlimited ability to perform. International transfer of racing right of athlete is performed with submission a completed ‘Player’s Passport’. It indicates the history of the athlete’s status (amateur, professional, from one club to another, from one state to another) after the age of 12. Furthermore, the certification on lawful residence in Hungary, labour permit – if it is required by law - , enrolment at public school – for minors below 18 –, document of paid fees and contract between the recipient and consignor clubs shall be attached to the application for transfer to Hungary.

According to the Rules on licence for sport manpower agent,⁹⁸ this economic activity is eligible for self-employed entrepreneur who is a Hungarian national, or a foreigner in possession of a residence permit having resided at least for two years in the country and of supporting letter issued by the Football Leagues (of amateurs and professionals).

The Hungarian Water-polo Federation’s Championship Regulation to 2009/2010⁹⁹ says:

- the Federation set up a Certification and Transferring Committee that is managing and making final decisions in disputes related to right to race and transfer this right between clubs.
- Athlete can race with licence only in one sport club during the season regardless his/her nationality, and ‘playing in ambit of a foreign club during the season - in absence of dual license – is excluded from the championship matches. Playing in foreign club is accepted with permit of LEN including racing in Europe and Israel.’
- The maximal number of foreign athletes will be three in a male/female team of a club on a sport event, or one further non-national athlete in the club in possession of the permit of LEN. A fine shall be paid for this violation or other sanction may be imposed. The number of licence for racing issued for foreign players in a sport event otherwise is not limited. The non-nationals’ citizenship shall be indicated well on the licence of race.
- There are progressive sanctions for spectators’ hate speech and aggressive behaviour (fine, exclusion from the championship of the club).

95 MLSZ elnöksége 92/2009. határozata (21 May 2009) www.mlsz.hu.

96 Futsal magyar kupa 2009/2010. www.mlsz.hu.

97 MLSZ Közgyűlése (26 May 2006). It was modified on 13 April 2007, 14 May 2008, 3 May 2009.

98 MLSZ Elnöksége 54/2009 (16 April 2009).

99 MVLSZ Versenyszabályzat www.mvlsz.hu.

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The Hungarian Handball Federation refers back to the IHF and EHF Regulations.

- Accordingly, national federation shall issue a certificate on race right for athlete, if s/he is a recognized refugee, a protection seeker with valid residence permit or s/he has an International Transfer Certificate. Membership in national assorted team requires 'nationality of the state of the assorted team; in exceeding three years the accession to national assorted team s/he was no member in another country's national assorted team; and at least in previous 12 months s/he has a right to race in the country concern'.
- Moreover, the Sample Contract offered by the HHF for athletes and clubs contains that club (sport association) allows membership in the national assorted team including the championship, preparatory and international matches according to prior agreement to the season
- Statute of the Handball Federation, adopted on 22 April 2006 says that leading body of the Federation shall consist of members 'with Hungarian nationals and migrants with open-ended residence (immigration) permit'.
- The international transfer of contractual rights and obligations inside Europe is based on the Charter on Transfer adopted by the European Handball Federation. Consequently, procedural and fee paid to the Federations are determined by the EHF rules¹⁰⁰. For instance, international transfer requires not only contract concluded between the bearer and recipient club but also approval of the national federation is necessary within 30 days. Fee for transfer depends on whether the athlete was a member of the assorted national team or not, his/her age, professional or amateur status.

The Hungarian Basketball Federation's Championship Regulation on 2009/2010 as well as by-laws on transferring issued by the HBF differentiates between nationals and foreign athletes. Procedure on transfer of foreign athletes¹⁰¹ and licence on race depends on whether s/he has ever played in a club under the ambit of FIBA or not (e.g. in USA or Canada) because the Letter of Clearance and its fee shall be managed by the Federation or by the sportsman individually. The fee for racing licence is exempted for athletes in European Club Race. Furthermore, the Hungarian Federation pays in advance the registration fee for the national federation of foreign athlete in procedure of transfer to Hungary (e.g. for the Federation in Serbia, Macedonia, Lithuania, Estonia, Croatia) accelerating the administration that shall be reimbursed by the recipient club.

The Hungarian Ice-Hockey Federation's Racing Rules¹⁰² the permit for professional foreign athletes participating on a sport season shall be based on a letter of approval (on transferring), address card on Hungarian residence, enrolment at public school (if applicant is a minor) and paid contribution to the education of new supplies. The Federation's Charter on registration, certification and transfer¹⁰³ differentiates also national and foreigner in transfer. The international transfer shall be based on IIHF by-laws on transfer (e.g. in possession of transfer card issued by the International Federation) from Hungary to abroad. Its fee is the same as inland. The transfer from a foreign club to a Hungarian one also shall be registered together with the certificate on race. There is no quota on the grounds of nationality, and fees related to the international transfer (administration, contribution to education of new sup-

100 It entered into force on 1 July 2006.

101 MKOSZ döntés (14 August 2008) www.mkosz.hu.

102 MJSZ elnöksége (June 2009) www.mjsz.hu.

103 MJSZ elnöksége (8 October 2007) www.mjsz.hu.

plies) are determined yearly by the Federation. The Federation keeps up a registry on professional athletes contracted with member clubs regardless his nationality. The register has no information on citizenship. This registration is paid by the club.

An expert in sport law drew the public attention to the closure on sport in the Lisbon Treaty: the sport being an amalgam of culture, amusement and business, the rules of free movement, free service providing and competition law of the EU shall be respected together overriding time to time the internal, home made rules in sport. He explained the impacts of the Meca and Medina case (2006) on the Hungarian sport provisions.¹⁰⁴

The sport as a complex issue at the cross-roads of public and private, international, EU and national law has to be researched actively and inserted into the curricula of law studies in Hungary.

In brief, the free movement of athletes can be hindered only in by-laws of (inter)national sport federations setting up quota in cup matches or/and in assorted team, in national eleven. The rules on transfer of right to play, national championship in the given season also may limit athletes' mobility but rather indirectly. However, export and import of sport experts and athletes as workers is in balanced in Hungary according to the available data.

3. THE MARITIME SECTOR

Hungary belonging to the group of states without seaside and flotilla, shipping in Danube and inland waters is centred in regulation much more. The modified Act XLII of 2000 on trafficking rules on water¹⁰⁵ deleting the precondition of Hungarian nationality for internal water or sea ship captain or first officer [Art 34 (3)] provides equal treatment for EEA nationals in these positions. Taking into account the ECJ interpretation, nationality as precondition was deleted, and the executive provisions ensure the transposition of Directives 2005/45/EC, 96/50/EC and 2001/25/EC. Accordingly the qualification of captains follows the requirements as determined by the STCW Code and EMSA.¹⁰⁶

The qualification conditions of captain and vessel driving (nautical) licence were changed on 1 May 2009.¹⁰⁷The previously issued certificates ('A', 'B' or on Danube lines) are applicable until 31 December 2010 – for captains at international passenger vessels up to January 2012 - and their owners have to put a new exam, proved health conditions requesting a renewal of the certificates. In absence of exam and renewal of the certificate it becomes invalid. The exam shall be organised only by accredited study centres taking into account in the curricula the requirements in STCW Code. The list of accredited study centres and members of the Exam Committee shall be published in the Official Gazette (Section 4, 6). Applicants for the theoretical and practical exam must submit the seaman's book approval of prior practice, documented health checking – if it is issued in another EEA state it is also acceptable – and clean criminal record. The language of the exam is not determined but it is prob-

104 Róka Géza: Európai unikum. Jogi esetek, amelyek fenyegetik a sport jövőjét. *Népszabadság*, 23 Dec 2009.

105 Act CX of 2006 is entering into force on 22 December 2006.

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

107 Ministerial Decree No.9 of 2009, 6 March KHEM r. means amendment of the Ministerial Decree on nautical qualifications No. 15 of 2001, 27 April KöVIM r.

ably Hungarian. However, the certificate on qualification including the water line certificate and ADN certificate shall be issued in English and Hungarian, and if it is applicable only for inland waters, also in German language.

Certificate on nautical driving qualification obtained in EEA states is *ex lege* acceptable in Hungarian water and on vessels under the Hungarian registration without any procedure if its owner has a water line exam. All other certificates issued in third countries shall be recognised by the authority in accordance with international agreement, laws or reciprocity practice.[Section 9 (1)-(3)]

The recognised or issued certificate by the Hungarian nautical authority becomes invalid if the owner is under barring the nautical profession in a final judgement or authority decision for (minor) offence; or s/he is not eligible for the professional health requirements yet. [Section 10]

Upon request all vessel drivers - including professional captains as well as boat-master of pleasure craft - can obtain a navigator or maritime (seaman's) book issued in Hungarian, Russian, German and English¹⁰⁸. This document is required for all workers shipping on vessels registered by the Hungarian authority and workers with Hungarian citizenship on vessels under the foreign registration - if otherwise is not regulated in international agreement. It contains the employment history proving the working practice. Practice of workers getting on the board of vessels under the registration of another EEA state shall be equally accept in Hungary if it is certified by the authority that was issued the seaman's book. (Section 8 (3)c)

Summing up, employment and working conditions – not repeating the generally applicable provisions of the Labour Code – take into account the equal treatment and non-discrimination rules for union citizens. The existing differences for workers from the non-EEA nationals are based on international agreements or reciprocity. However, the resident EEA nationals not speaking Hungarian taking the newly introduced exam in Hungarian would mean an obstacle in the employment in shipping sector here.

4. RESEARCHERS/ARTISTS

With effect from 1 January 2006 Hungarian law contains a special piece of legislation for most of the artistic activities in Hungary. The EkhoA amended by the Act CXXVI of 2007 applies from 1 January 2008 also covers on EEA nationals. The new provisions benefit EEA nationals paying their social insurance contributions in other EU member states.

EkhoA exempt artists from the general rules on taxation and payment of social security contributions and gives them the opportunity to opt for the payment of a fixed-rate public contribution 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.

This Act 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

108 Ministerial Decree No.26 of 2002, 29 November GKM r. It was modified in 2005, 2006, and recently by the Government Decree No.118 of 2008, 8 May.

not exceeding HUF 25 million (ca. 83 000 €) 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. In 2008 the employer or mandator is to pay 20 percent of social security contributions while the artist is to pay 15 percent ekho. The ekho contains 9.5 percent tax and 3.9 percent of pension while 1.6 percent of health care social insurance contributions. The beneficial nature of the ekho is to be understood in light of the general tax and social security contributions rates, namely the obligation of the employer to pay social security contributions being 29 percent while the tax and social security contribution load of workers is 18-36 percent tax and 15.5 percent social security contributions. The payment of the ekho entitles the artist to obtain in kind health care and accidental health care services (excluding cash benefits like sick-pay or maternity benefits), accident annuity and pension. The ekho does not cover unemployment benefits. The basis of the pension amounts to 50 percent of the yearly income. In 2008 the APEH in a circular clarified the scope of the Ekho. It made clear that the beneficial taxation can not be coupled with other taxation benefits.¹⁰⁹ It also published a simplified registration form.¹¹⁰

The nationals of the EEA are entitled to opt for the ekho on the same footing as Hungarian nationals if they work in Hungary. Prior to 1 January 2008 an EEA national who was insured in another EEA Member State and performed the artistic activity only temporarily in Hungary was obliged to pay taxes and social security contributions in the country of origin. However, with the new provisions of the EkhoA entering into force 1 January 2008 EEA nationals became 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 percent tax in Hungary even if s/he is not insured in Hungary in terms of social security.

It is worth mentioning that only EEA nationals are eligible to apply for the Ekho but 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.

Non-EEA nationals can only avail themselves of the possibilities laid down in PermitD. Very importantly, the general provisions of PermitD explicitly deal with artists without definition of artistic activity. As a main rule, a foreigner does not need a work permit if the duration of the artistic activity does not exceed five working days. Moreover, the work permit shall be issued without the assessment of the labour market if an internationally recognised foreigner wishes to perform artistic activity for a public community institution or a registered film-shooting company employs the foreigner.

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.

109 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.

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

As a main rule researchers of EEA nationality and their family members are granted free access to the Hungarian labour market. Hence research activities 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.

The non-EEA nationals can only avail themselves of the possibilities laid down in PermitD also without definition of researching activity. As a main rule, a foreigner does not need a work permit if the duration of the research activity does not exceed 5 working days (Art. 7 (1) m). Moreover, the work permit shall be issued without the assessment of the labour market if an internationally recognised foreigner wishes to perform research activity for a high-level educational establishment or a research institution.

5. ACCESS TO STUDY GRANTS

The HighA regulates the rights of migrants in the non-discriminative spirit. *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 (Art. 116). Only recognised/registered high-level educational institutions are entitled to normative financing from the state – among others – on the basis of the number of students who are qualified as ‘*students taking part in education financed by the state*’. Private Hungarian institutions enter into an agreement with the state on the number of their ‘students taking part in education financed by the state’ (Art. 129). Foreign institutions can be entitled to normative financing only on the basis of international agreement.

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

Pursuant to the HighA EEA nationals and their family members are entitled to enter into Hungarian high-level education under the same conditions as Hungarian nationals [Article 39 (1) a)]. As a main rule, all the provisions of the HighA shall be applicable, EEA nationals and their family members can be entitled to social maintenance payments and other study grants, contribution to their books and accommodation (Art. 119 (2) b). This rule is in full compliance with Art. 24 (2) of Directive 2004/38/EC which confirms that Member States are not obliged to provide for social maintenance payments for student before they obtain long-term resident status. It means that for a certain period of time the Member State is exempted. However, after obtaining the long-term resident status this obligation comes into force. Hungarian law benefits in general EEA nationals and their family members irrespective of the duration of their stay. Hungarian law also takes account of the *Grzelczyk* case,¹¹¹ according

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

to which in certain cases a Member State is obliged to endure that a legally resident student faces financial difficulties.

The HighA [Article 119 (3)] expressly delegates the power to the Government to regulate the issue of foreign students that is laid down by StudD. Article 7 enumerates the benefits which are generally available for students. Articles 26-28 regulate the system of supports payable to foreign nationals who study in Hungary. Section 28 (2) of the StudD 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 nationals as regards rights and obligations in terms of fees and benefits.

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, 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, moreover, 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) (d)). 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 Hungarian rule is in compliance with Article 24 (2) of Directive 2004/38/EC according to which Member States shall not be obliged, prior to the acquisition of the right of permanent residence, to grant students loans to persons other than workers, self employed persons, persons who retain such status and members of their families. The Hungarian rule meets the provisions of the Directive as regards workers and self-employed and with respect to family members. Moreover, the Decree refers to persons with permanent residence permit in terms of EC law.

Summing up, EEA nationals and their family members are placed on equal footing with Hungarian nationals as regards access to vocational training and to the benefits available under Hungarian law. The enjoyment of rights is not dependent upon the worker or self-employed status, moreover, not only long-term resident but every persons studying in a high-level educational establishment can qualify. Hungarian law is more beneficial than EC law. The system of study loans is in full compliance with EC law as well. Both EEA national workers and self-employed and their family members, and persons having the right of permanent residence can apply for the study loan. There are no residence conditions either.

Recent literature

Princzinger Péter: A sportjog művelésének helyzete és aktuális kérdései. [The actual topics in sportlaw] *Magyar Jog* 2009/9: 521-531.

Majtényi Balázs (szerk.), *Lejtős pálya. Antidiszkrimináció és esélyegyenlőség* [Anti-discrimination and equal treatment by the results of the EqualA], L'Harmattan Kiadó, Budapest, 2009.

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 the Act CVII of 2008 with effect from 1st January 2009, and secondly amended by the Act CXXXIV of 2009 with effect from 1st January 2010

1997. évi LXXIV. törvény az alkalmi munkavállalói könyvvel történő foglalkoztatásról és az ahhoz kapcsolódó közterhek egyszerűsített befizetéséről [Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions]. (TWB.A) in effect until 31st of March 2010.

2009. évi CLII. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st April 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.

8/1999 (XI. 10.) SZCSM rendelet a külföldiek magyarországi foglalkoztatásának engedélyezéséről [Decree No. 8 of 1999, 10 November of the Social and Family Affairs Minister on Work Permits Issued to Foreign Nationals in Hungary] that was amended by the Decree No. 37 of 2009, 30 December in force from 1st of January 2010.

Transitional measures in force in the reference period

As regard the reference period it shall be divided to two epochs: from 1st of January to 31st December 2009. A second epoch was started on 1st January 2010.

As it has been described in-depth in the Report of 2008 the Hungarian labour market has been fully opened with effect from 1st of January 2009. The formerly existing rather complicated system was finally annulled.¹¹² Consequently, all persons under the scope of the FreeA

¹¹² Government Decree No. 322 of 2008, 29th of December.

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(Union citizens and EEA nationals) can enjoy free access to the Hungarian labour market including their family members regardless of their nationality.

There are no transitional measures in effect in Hungary.

It shall be stressed that Hungarian law was on its way to reach complete free access already in 2008 hence in effect only occupations not subject to a diploma were reserved for the purposes of restrictions. (See the summary table below.)

The following table shows the changes between 1st of May 2004 and 31st of December 2008.

Categories	1 May 2004	31 December 2007	Changes in 2008
<i>No restrictions</i>	UK, IRL, SE	UK, IRL, SE, FIN, GR, ISL, PT, ES, IT, NL	As from 1 January 2008 LUX, as from 23 September 2008 FR has been added to this category.
<i>Occupations subject to a diploma, no restrictions</i>	-	-	AT, DE, DK, BE, FR, NO, LIE, CH, RO, BG
<i>Occupations not subject to a diploma</i> <ol style="list-style-type: none"> 1. <i>Work permit without assessment of the labour market</i> 2. <i>Work permit with assessment of the labour market</i> 			AT, DE, DK, BE, FR, NO, LIE, CH in general RO, BG in the agricultural and given sectors RO, BG in sectors different from agriculture and other given sectors

However, this last barrier has been removed upon 1st of January 2009 resulting in the prevailing free access.

The Act CXXXIV of 2009 with effect from 1st of January 2010 made also the law unified and transparent effecting several changes in the main UnemplA. As a result of the amendment Article 2 (2) of the UnemplA now clearly lays down 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*’.

It is worth emphasising that 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 Act on temporary working book¹¹³ shall be mentioned, and the Act on Simplified Em-

113 Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions.

ployment repealing it with effect from 1st of April 2010, that are special Acts regulating short-term, temporary employment relationships. Even these two acts treat EEA nationals and their family members equally.

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 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 (Decree No. 8 of 1999) is now solely applicable to third-country nationals.

The rules on registration of EEA workers also have been changed upon 31st of December 2008. A new structure of data collection was prescribed. Most importantly the employer is required to notify the competent local employment office of the number and nationality of every person falling within the personal scope of the FreeA. Article 6 of the Government Decree No. 355 of 2007, 23 December lays down that *'the employer is obliged to notify the employment of a person being entitled to free movement and right to residence to the competent labour office'*. It means that the notification requirement is already valid for not only to the EU8 countries (like it has been in effect in 2008) but to every EEA countries (including Switzerland). Registration must contain: the number of EEA nationals, their nationality, form of the legal employment relationship (for definite/indefinite period, full/part time, temporary work book etc.), the status of the worker as family member, the beginning and the termination of the employment. All this is anonym meaning that the name of the employee shall not be registered. Registration is not a constitutive condition of employment.

The APEH 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). We still think that this is an administrative burden hence the APEH 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 three 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

As it is indicated the transitional measures on workers from Bulgaria and Romania were deleted from 2009. This progressive change has no impact on mobility in statistics.

The National Social and Employment Office is responsible to collect and analyse data on international labour migration. They have published the summary for 2009 recently.¹¹⁴ It was no surprise that 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

114 http://www.afsz.hu/engine.aspx?page=stat_kulf_munkavall_mo-on.

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reached 1,2 % of the working population) but in 2009 their record went below a historical 0,7%. The total number of foreign workers decreased to 28.215, while a couple of years ago it was around 53.000. It is almost a 50 % decline totally.

Romanian nationals took the lead in Hungary just as in previous years. However their number declined from 15.136 in 2008 to 12.566 in 2009 (- 20%). In 2008 there has already been a dramatic decline in the number of Slovak nationals working in Hungary that continued in 2009. In 2008 all together the number of Slovak nationals working in Hungary was 6358 while in 2009 only 2493. It is worth mentioning that in 2004-2006 their number almost reached 20.000 while 678 German, 572 Polish, 426 Austrian nationals worked here, other nationalities do not even reach 400.

It has always been stressed in the previous reports that the number of workers from the EU15 countries was always very low. Interestingly, in 2009 the single increase appeared in their number: from 2037 in 2008 to 2146 in 2009. This is a 5,4 % increase. Of course, its impact on the labour market that is also true to the impact of EEA nationals as a whole is marginal.

Chapter VIII

Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68

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. This concerns the supervision of pension claims between Romania and Hungary¹¹⁵.

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, consequently 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

The word '*frontier worker*' construed in terms of free movement of persons appears only in social law, in effect in FamA. Article 2 d) expressly lays down 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 Com-

115 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.

munity 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.

In practice the cases involving frontier workers are not problematic. There is no specific scheme for frontier workers, or incentive to enhance frontier mobility. There is no debate on the issue of frontier workers at present in Hungary as this group is rather marginal in the Hungarian labour market. The volume of frontier workers claiming family benefits is rather marginal. There are around 35.000 family benefit cases related to EEA nationals among which 1000 affect frontier workers (almost exclusively Romanian and Slovak nationals mirroring the general employment trends).¹¹⁶ Compared to the yearly 1.2 million family benefit beneficiaries this means approximately 0.1%. However, it was also mentioned that the concept of entitlements for frontier workers is not acknowledged in every Member States causing inequalities and unjust situations.

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

The Semmerlweis University Health Services Management Training Centre has been doing research on potential impacts of physicians' emigration on the Hungarian healthcare system since 2003.¹¹⁷ It annually conducts survey among medical students and resident medical doctors by anonym and voluntary questionnaires on professional plans, migration and carrier. The data on the intention to work abroad (EU member states) shows that more than third of both medical students and residents consider this option among their plans on future medical carrier. From May 2004 each medical professional with such an intention has to apply for certification at the Office of Healthcare Authorisation and Administrative Procedures in Hungary. According to the statistics of OHAAP annually about 500-600 doctors apply for certification as a precondition to be employed abroad. It increased to almost 900 in 2009 representing young but also with a specialisation professionals. This trend raises the question: how the health care system will be sustainable in Hungary if many of those professionals choose to work abroad. The new government promises revision on sustainability providing proper conditions to the professionals' carrier here and return.

The procedure of recognition of university diploma issued in another member state in a non-regulated profession was challenged in justice. An applicant¹¹⁸ requested the recognition his Master 1 law degree obtained in Lyon in 2006. The first instance refusal was reviewed by the Capital Court that annulated the administrative decision and ordered a new administrative procedure for an entire fact finding in 2007. The final administrative decision also refused the recognition with reference on the French Contact Point's information that Master 1 mend not a degree but a document on the finished first year of the master education, that was not eligible for recognition on the ground of the Act C of 2001 on the Recognition of Foreign

116 Gellérné Lukács Éva – Gyulavári Tamás, *Szociálpolitika és foglalkoztatás* 199-215. Európai Tükör, Magyarország 5 éve az Európai Unióban, Különszám, 2009. március., p. 202.

117 Project is led by Szócska, Miklós, Eke, Edit and Girasek, Edmond.

118 BH 2008:348 was published in *Döntések Tára* and was available in 2009.

Diplomas and Qualifications [Art. 2 (2), 6 (1), 14 (2)] The Supreme Court had to evaluate the whole procedure and references on ECJ case law in the final judgement by the applicant. It said that C-224/98, C-340/89., C-31/2000. and C-313/01 cases¹¹⁹ were not relevant in this application, and the denied recognition by the administrative authority was compatible to the EC and national law. This case may indicate how easy to misinterpret the conditions to accession to a professional carrier and recognition of a diploma. However, this case forced the Supreme Court to reflect on ECJ case law – that has not been so frequent.

3.1. *Integration measures*

There has been adopted integration policy neither on third country national, nor other migrants.¹²⁰ The only document that defines some principles of legally residing migrant's integration are readable in the national strategy on co-operation in the field of freedom, security and justice to the period of 2009-2014.¹²¹ Accordingly, special integration programmes as well as measures in employment, housing and social affairs shall be developed (for third country nationals).

A project financed by the European Integration Fund summarized how to improve the integration of migrants through a never-explicit integration policy. It is based on interviews with bureaucratic stakeholders and meeting with migration groups, NGOs and municipalities (civic consultations)¹²². Accordingly, co-ordination among authorities and policies dealing with migrants shall be institutionalised and developed. Not only the economic adventures but also the cultural impacts of migrants have to be published raising the awareness in public opinion. The Hungarian language teaching for migrant students and adults shall be established at schools, at settlements that is almost totally absent. A cultural and information centre for all migrant groups (on-line contacts, newsletter, programmes and personal meeting) would be necessary for receiving society and newcomers preventing isolation and closure of ethnic enclaves. Moreover, recognition of professional practice, certificates and occupations shall be simplified at all level. This effort would be accompanied with setting up proper information centre on occupational and labour issues, preparatory courses for re/examiners, setting up consultation system with chambers, unions, liberal access to the labour market for all persons that obtained degrees and qualifications in Hungary. The personal consultation by phone or personally shall be organised at immigration and labour authorities providing authentic, free and personalised answers in foreign language, too upon re-

119 The *d'Hoop* case covers on finished secondary education completed in another member state; the *Vlassopoulou* case refers on a person who is already admitted to practice as a lawyer in her country of origin and who practices as a legal adviser in the other member state; the *Dressen* case's message shall be implemented in a complex evaluation of evidences; and the *Morgenbesser* case covers joint assessment of required diploma and professional practice.

120 Tóth, Judit: The Impacts of EU Enlargement on National Building and Citizenship Law. In: Elspeth Guild, Kees Groenendijk and Sergio Carrera, *Illiberal Liberal States – Immigration, Citizenship and Integration in the EU*. Ashgate 2009, p. 101-112.

121 Government Resolution No. 1057 of 2009, 24 April.

122 Civic Consultations on Migrants' Integration – Nov 2009. Prof. Lengyel, György (University of Corvinus) www.etkuni-corvinus.hu.

quest of migrant.¹²³ In order to extend the level of acceptance in society teachers, administrators shall be trained on multicultural issues, as well as forums with migrants and local inhabitants at municipalities, settlements would be performed. Today neither the social attitudes nor integration measures are receptive towards the migrants in Hungary – diagnosed the project. In other term, it means a selective exclusion model¹²⁴.

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

In brief, immigration policy supporting third country nationals and other migrants residing in the country has been absent in a consistent, explicit practice, principles or document. Indirectly it exists in legal rules (transposed provisions) and administrative measures that are based on ethnicity (kin-state and kin-minority relationship), criminalisation of (irregular) migration, security and non-economic rationale.¹²⁵

The emergency Government adopted a national strategy on co-operation in the field of freedom, security and justice to the period of 2009-2014.¹²⁶ This document was passed before the birth of the Stockholm Programme and trio-presidency priorities but the new provisions of the Lisbon Treaty were taken into account. The 20 pages determine the main directions of national priorities in AFSJ and its yearly action plans have to set up by the cabinet involving neither social partners, nor NGOs, academics. Immigration policy is based on labour force and demographic demands and security rationale. Thus combating illegal migration, extended data exchange and possible erosion of fundamental rights take much more attention than integration, or tolerance driven political and social dialogue. However, intra-European migration and external movements are marginal in the text, and kin-state ethnic relationship and supported kin-minority context is mentioned, while a multi-sectoral migration strategy of the country ‘is desirable that has to be developed’. (III/h.point) It declares that Hungary has not had a definitive migration policy yet. It can be mentioned that national strategy on youth (2010-2024)¹²⁷ supports a stronger student migration from Hungary that is one fourth than in average of the OECD states. The Parliament also encourages mobility of young volunteers, exchange programmes for youngsters as a good method for labour and language practice development.

3.3. Return of nationals to new EU Member States

Migration potential of nationals has been much more researched than return mobility and re-integration of nationals. The latter topics have been followed neither in statistics¹²⁸ nor popu-

123 It exists only in Hungarian on the net but this forum is public, so personal data would become also available for all – so anonym or not personalised questions and answers can be read on the homepage of the Office for Immigration and Nationality (OIN).

124 Migration Statistics and social indicators of integration project, 2009 supported by the EIF, led by Melegh, Attila (Demographic Institute – Central Statistical Office).

125 IDEA project, Academy of Sciences, 2008-2009 supported by the EIF, led by Hárs, Ágnes (HAS Institute for Minority Research).

126 Government Resolution No. 1057 of 2009, 24 April.

127 Resolution of the Parliament No.88 of 2009, 29 October.

128 According to the *Demographic Yearbook 2008* (Central Statistical Office) the number of returning nationals including citizens that were born abroad to Hungary was in 2004: 2134, in 2005: 2238, in 2006: 2163, in

lation registry at local level. Although citizen has to indicate own plan for a long-term residence abroad (more than 3 months) at local registrar office (Act LXXVI of 1992) this rule is out of practice without sanctions. In this way neither residence in fact nor residence abroad of nationals has been controlled providing the opportunity for double social transfer (on the grounds of work or/and residence) for migrant workers (for instance, family benefit shall be terminated if parent resides more than 3 months out of Hungary). The social co-ordination provisions propose a regular exchange of data on migrant workers with other member state authority but it operates only with Austria preventing their accession to double social transfers.

There are some sporadic news on return due to economic recession, such as Roma from the UK. Accordingly, Roma families deriving from Mohács town have to return to Hungary because local British workers are ready to be employed in chocolate factory or cold stores. About 500 Roma would return to the old community although many of them sold houses to cover the travel and accommodation.¹²⁹ Their refugee and labour migration started in 1990s towards France, Canada, UK and Sweden – with less and less success. There is no assistance to their re-integration or prevention becoming homeless. The unemployment rate among Roma is significantly higher than in the non-Roma population. In 2008-2009 the Ombudsman for Minorities prepared and distributed a leaflet to warn them not to migrate without proper information on rights of residence, obligations and opportunities in labour.

However, the National Public Health Authority launched a survey how to provide training for panel doctors in treatment dealing with returned migrants. It proves that returned labourers are overworked without relax and medical checking, dissimulated without necessary curative measures ('Sick but I am working') in order to send saving home and preserve the job, underfed (without proper components in nutrition and diet), isolated from local community and from family members. Thus somatic and mental problems may be accumulated that after return those shall be treated in a complex way together with family members that also are suffered from loss physically and mentally diseases, too.¹³⁰

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

The Ombudsman has obtained more complaints in the context of child rights. He decided to set up a special team dealing with systematic maladministration and violation of fundamental rights of child that investigates yearly defined specific topic. The personal scope of the Act on Child's Protection and Guardianship (Act XXXI of 1997) covers on nationals, recognised refugees and temporary protected migrant minors while children undefined status and they remain out from the basis protective measures and care of minors' home. The other minors

2007: 1754, in 2008: 1943. It is probable far from the real figures taking into account the mirror statistics in European states. The data of Eurostat indicate that emigration of Hungarian citizens from the European states in 2007: 20933 and immigration of Hungarian citizens to European states in the same year was 34382.

129 Hazajönnek a mohácsi romák, Független Hírügynökség, 18 March 2009.

130 Dr.Simek Ágnes, Országos Tisztiorvosi Hivatal: A külföldön alkalmi munkát vállalók és családtagjaik egészségügyi és szociális problémái. 3rd Conference on Migrant and Ethnic Minority Health in Europe. 27-29 May 2010, Pécs (held by the European Public Health Association).

would be protected by interim emergency measures. Thus the Ombudsman initiated modification of the Act, and the Parliament modified the personal scope in three steps.¹³¹

- a. Act shall be implemented on residing nationals, settled migrants, long-term residents, recognised refugees, internationally protected and stateless minors as well as persons entitled for lawful residence in accordance with the European Social Charter (Act I of 2007);
- b. On persons entitled for free movement implementing their right to residence in Hungary over three months registered their address at migration office and local registrar (Act CXXI of 2007);
- c. All non-national minors residing in Hungary if their temporary accommodation, education care or conditional guardianship is urgently required preventing a severe abuse or threat in harmony with the provisions of Reg.2201/2003/EC or international treaties (Act LXXIX of 2009).

The Ombudsman investigated how the babies born in Hungary from Union citizens residing in Hungary but not formally divorced at home, in Romania were registered at birth registry as persons with ‘*uncertain paternity and family status*’. (Paternity presumption shall be rebutted at Romanian court according to bilateral agreement, and without its judgement the biological father in Hungary cannot declare own paternity.) These mothers have new partners from Hungary as nationals but babies’ citizenship are considered on the base of their paternity, so as non-Hungarians. Furthermore, these babies cannot access to the public education in absence of proper documents. So the Ombudsman initiated to the government a revision of bilateral agreement and measures guaranteeing free accession to public education and other rights of child that reside in Hungary regardless ‘*uncertain family status*’.¹³²

In 2008-2009 the Ombudsman receiving some complaints for long procedure in family benefit cases of non-nationals launched a general investigation at Treasury that was responsible for its administration.¹³³ The ongoing modernisation of IT in administration requires online contact with applicants and up-to-date information system. The new national data bases on family benefits is going to be started in 2010 cutting the time of procedure. However, the Ombudsman offered to rationalise the procedure in other way. For instance, schooling certificate issued in another member states where minor attending school would be acceptable also in absence of authentic Hungarian translation, or a better information giving for applicants due to exchange of data among the Treasury and other social insurance units would be required preventing submission of numerous documents of the applicants. This electronic connection will be available in 2011.

5. SEMINARS, REPORTS AND ARTICLES

The project on social rights of third country nationals (2009-2010) financed by the European Integration Fund upgraded the knowledge of administrators in Treasury, Health Insurance Fund and Pension Fund on different applicable rules on persons with free movement (such as union citizens and their family members) and non-preferred third country nationals. The

131 AJB 7120/2009.számú jelentés.

132 OBH 1128/2007. számú ügy.

133 OBH 3855/2008. számú ügy, OBH 5927/2008.számú ügy.

training, seminars for administrators, the hand-book and brochures issued by the experts involved into the project were really updated. Furthermore, these events supported to clarify why numerous Romanian, Bulgarian residents were considered as settled migrants even after accession of Romania and Bulgaria: the documents of these persons have not been automatically changed in 2007. Consequently, until their invalidation or expiry of long-term migrant documents the social rights of the holders have been based on national provisions instead of the EU law. The handbook¹³⁴ gives examples and explanation on relationship between the European social rights (e.g. European Social Charter), the bilateral agreements on social security and the Reg.1408/71/EEC. The text contains cases as well as specimen of documents of various migrants. The results of the projects including its homepage with numerous documents and conference papers,¹³⁵ handbook and brochures were disseminated among 1500 administrators of the mentioned three organisations, and for NGOs and local self-governments.

Several research projects have been launched in 2008-2009 that brought their result in 2009 in the field of labour migration. The most intense impetus to these has been given by the Public Foundation OFA that financed a dozen of research projects in 2008-2009 including conferences.¹³⁶

In one of the projects the emigration of Hungarian nationals to the Northern countries of the EU has been investigated. The researchers concluded that the number of Hungarians migrating to the 4 respective Northern countries (SE, FI, DK, Norway) is relatively low (in total 15.000 persons) however, a very considerable number of the workers possessed high-level education or even PhD degrees. As second, it has been perceived that almost every worker was employed in a full-time relationship and was satisfied with his/her working conditions. 800 persons have been interviewed. Another research dealt with the migration to Austria led by Hárs, Ágnes. Finally I mention a research has tackled upon the employment characteristics of Ukraine citizens in Hungary particularly in the North Great Plain Region. The research concluded that the number of Ukraine workers will not increase in the coming years. As second, they work in the building industry, usually they fill gaps and find work corresponding to their qualification, albeit they are blue-collar workers.

The *Hadadi* case (C-168/08, 16 July 2009) covers jurisdiction in divorce of dual national couple.¹³⁷ The French-Hungarian national wife and husband had last mutual residence in France before separation and wife's return to Hungary. She launched a suit for divorce at a local Hungarian court while the husband did it also but in France. The preliminary ruling states there is jurisdiction of both state courts on the basis of mutual dual nationality of the applicant couple, in this case either in France or in Hungary. This optional 'forum-shopping' is in harmony with the Reg.2201/2003/EC (Art.3(1)b). The ratio decidendi would be relevant for free movement of nationals of member states inside the EU.

The assessment of Hungarian experiences of the first five years membership in the EU can be read in a book edited by the Ministry of the Foreign Affairs. It is published as a spe-

134 Gellérné Lukács Éva (szerk.) *A harmadik országbeli állampolgárok szociális jogai*. Tullius Kiadó, Budapest, 2009, 1-287.

135 Budapest, 3rd of December 2009, 'Social rights of migrants' – international conference. http://www.shp.hu/hpc/userfiles/szocialisjogok/eia_program_international_conference.pdf

136 For instance, Budapest, 11th November 2009. 'Labour mobility' – international conference. http://www.ofa.hu/index.php?WG_NODE=WebPageReader&WG_OID=PAGfbb11ef570c0ff6f8

137 Wopera Zsuzsa: A Hadadi-ügy. A kettős állampolgárság megítélése a házassági perek joghatósági szabályai-ban. *JeMa* 2010/1, p. 66-76

cial issue of the Európai Tükör (March 2009) containing 23 chapters on the main European policies and competences. A chapter on employment and social policy covers on analysis of anti-discrimination rules, certain aspects of the transposition of Dir.2004/38/EC and Dir.2008/104/EC, too.¹³⁸

The Institution for Demographic Studies held a conference on transnational communities and migration (17 May 2010) summing up all results on academic research in 2009. Illés, Sándor (IDS) gave data on circular migration: the most relevant age groups are in 20-39 coming and return 3-5 times within the last five years, mainly from Romania, Serbia, Ukraine, China and Mongolia. Turai, Tünde (Institute for Ethnography) managed a survey on domestic workers' migration from Romania and Ukraine to Hungary, in particular for elderly care. Their clandestine, informal labour has become more important in aging society in cities activating unemployed, disadvantaged women (e.g. less educated, in the age of 45-65) in the Hungarian labour market. Lovas Kiss, Antal (University of Debrecen) investigated the periphery Hungarian-Romanian border-zone (county Bihar/Bihar) that has been revitalised despite of economic crisis by the cross-border mobility and economic links. It includes purchase and renovation of houses by the Romanian nationals in villages in Hungary while they are employed in Oradea industrial area in Romania. This movement is similar to the Slovakian border zone in which also Slovakian commuters obtained apartments in the Hungarian side due to the price level difference, developed infrastructure and ethnically mixed local population. Girasek, Edmond (University of SOTE, Health Management Institute) and Hárs, Ágnes (Kopint-Tárki Co.) made surveys on emigration and migration potential of Hungarian labourers. The first team is managing the Health Prometheus project dealing with migration (rather inside the EU) of physicians, and the latter research covers on economic and statistical analysis on emigration from Hungary. While the recently proved migration potential of labourers from Hungary has been 24% in average, the young or experienced doctors' migration intention is a little bit lower (towards mainly to the UK, Germany, Austria, Norway and Sweden) but among the medical students it is about 70%. The presentations are/will be available in the periodical of *Demographia* and homepages.¹³⁹

A bibliography¹⁴⁰ containing 1100 items on developing co-operation with seven border-regions of Hungary (from them 4 neighbours are member states). The list covers on the Hungarian and foreign language publications dealing with regional labour migration, too.

The theory (definition, substance of) self-employment was established by the research of Dr.Gyulavári, Tamás (University of ELTE).¹⁴¹ It was missing because the labour law and Code of Labour was a heritage of socialist past, while the civil law could not give answer on numerous in-between situation (e.g. small entrepreneur is an independent worker but s/he works with the instruments of the sponsor). Due to transposition self-employment appears in the social provisions and taxation rules in Hungary but on an instable ground. This innovative monograph assists us to clarify regulation and terminology.

138 Gellérné Lukács, Éva & Gyulavári, Tamás: Szociálpolitika és foglalkoztatás. *Európai Tükör* különszám, 2009. március. Magyarország öt éve az Európai Unióban 2004-2009, p. 199-214.

139 www.tarki.hu.

140 Sikos, Tamás & Tiner, Tibor: *A kelet-közép-európai határ menti térségek kutatásának válogatott bibliográfiája*. [Selected bibliography of research concerning the border regions in Central-Eastern Europe] Selye János Egyetem Kutatóintézete, Komárom 2009.

141 Habititation work and presentation 29 May 2010, Budapest, ELTE.

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Appendix

SOURCES OF LEGAL INFORMATION

Internet sites of national legislation

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

Internet sites of judgements in Hungarian

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

Abbreviations

APEH	Hungarian Tax and Financial Control Administration
Constitution	Act XX of 1949 and modified by the Act XXXI of 1989 on the Constitution of the Hungarian Republic
CarA	Act LXXXII of 1991 on motor vehicle tax
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
EkhoA	Act CXX of 2005 on Simplified Public Contributions
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 Authority
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

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FreeMD	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
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
MusD	Government Decree 194 of 2000, 4 November on benefits at museum admission
OFA	National Employment Foundation
OIN	Office for Immigration and Nationality Affairs (BÁH) under the subordination of the Ministry of Justice and Law Enforcement (IRM)
PermitD	Decree of the Social and Family Affairs Minister No. 8 of 1999, 10 November On Work Permits Issued to Foreign Nationals in Hungary
PublicA	Act LXXIX of 1993 Public Education
PuboA	Act XXIII of 1992 on Legal Standing of Public Officials
PubsA	Act XXXIII of 1992 on Legal Standing of Public Servants
QualA	Act C of 2001 on Recognition of Foreign Diplomas and Qualifications
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
ScolD	Government Decree No. 152 of 2005, 2 August on the Scholarships for Promoting the Equal Opportunities of Disadvantaged Groups
SocialA	Act III of 1993 on Social Administration and Social Benefits
SportA	Act I of 2004 on Sport
StudD	Government Decree No. 51 of 2007, 26 March on benefits and fees of students in high-level education
TaxA	Act CXVII of 1995 on Personal Income Tax
TaxPA	Act XCII of 2003 on Taxation Procedural Rules
TransD	Government Decree No. 85 of 2007, 25 April on advantages in public passenger transport
TWB.A	Act LXXIV of 1997 on employment with temporary work book and the simplified payment of public contributions
UnemplA	Act IV of 1991 on Job Assistance and Unemployment Benefits