



# **ANNUAL POLICY REPORT 2008**

## **HUNGARY**

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## EXECUTIVE SUMMARY

The Annual Policy Report 2008 of Hungary aims to highlight and summarize the most significant developments that took place in the fields of migration and asylum. The reference period of the report is the period from 1<sup>st</sup> January 2008 until 31<sup>st</sup> December 2008.

There were no major political changes in 2008, apart from the fact that some of the ministers changed and a new minister for justice and law enforcement was appointed in February 2008. According to the relevant acts in Hungary, the minister of justice and law enforcement is responsible for migration and asylum issues. The appointment of the new minister had an impact also on the structure of the Ministry of Justice and Law Enforcement and the previously separate Department of Migration merged with the Department of Cooperation in Justice and Home Affairs in July 2008. As of July 2008 the Department of Cooperation in Justice and Home Affairs and Migration is in charge of migration, asylum and the integration of migrants and also for citizenship issues within the Ministry.

As regards institutional changes, the Hungarian Border Guards was integrated into the Police as of 1<sup>st</sup> January 2008 which required both legislative and structural changes.

The Hungarian national EMN network was established also in the course of 2008 and involves stakeholders working in this field, such as governmental and non-governmental organisations, independent experts and researchers. The national network includes among others the Ministry of Labour and Social Affairs, the Ministry of Education and Culture, the Ministry of Foreign Affairs, the Office of Immigration and Nationality, the National Police Headquarters, the Budapest Metropolitan Court, the Central Statistical Office Demographic Research Institute, the Office of the Ombudsman, IOM, UNHCR, the Hungarian Helsinki Committee, Artemisszió Foundation and the Hungarian Interchurch Aid.

Concerning legislative developments, in the field of migration the transposition of the relevant EU directives was carried out already in 2007, therefore we cannot highlight many legislative developments in this area. However, the accession of Hungary to the Schengen zone at the end of December 2007 required important legislative amendments, such as the introduction of the SIS alert and the changes regarding the rules on visas, for instance the consultation procedure with the visa authorities of other Schengen countries or the introduction of a new type of visa, namely the visa for entitlement to receive a residence permit.

The relevant EU directives in the field of asylum were transposed into national legislation with Act LXXX of 2007 on Asylum (hereinafter referred to as new Act on Asylum) that entered into force on 1<sup>st</sup> January 2008. The act incorporates the provisions of the Qualification Directive (Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection), the Procedures Directive (Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) and the Reception Directive (Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers). It introduced the concept of subsidiary protection into the Hungarian legislation and simplified the procedural rules of recognition as a beneficiary of temporary protection. The refugee status and the subsidiary protection are determined in a single unified procedure in accordance with the provisions of the Procedures Directive.

## Political Developments in Hungary<sup>1</sup>

### 1.1 General structure

#### 1.1.1. Governmental level

On the basis of the Hungarian Constitution, several acts, such as Act LV of 2006 and Act LVII of 2006, regulate in detail the structure of governmental and other bodies, and also the rights and obligations of the respective ministers. These acts state that in Hungary the Minister of Justice and Law Enforcement, and thus the Ministry of Justice and Law Enforcement (hereinafter referred to as MoJLE) has the main responsibility in the field of migration, integration and asylum.

Before **July 2008** a separate department within the MoJLE, namely the Department of Migration was responsible for migration and asylum-related issues until it was merged with the Department of Cooperation in Justice and Home Affairs. **Since July 2008** the department is called **Department of Cooperation in Justice and Home Affairs and Migration** and it is under the competence of the State Secretary for EU Law. According to the Operational and Organizational Rules of the MoJLE, this department is responsible for the elaboration and representation of the Hungarian position in the relevant Council working groups at EU level and in the working groups of the European Commission in the areas of migration, asylum and integration. The department prepares the relevant international agreements and is also in charge of drafting the necessary legal instruments and their amendments in these fields and of supervising their implementation by the Office of Immigration and Nationality (hereinafter referred to as OIN). Furthermore, the department coordinates the governmental measures related to the promotion of the integration of foreigners with the help of a specific working group. The department is also responsible for the professional questions related to the European Integration Fund, the European Refugee Fund and the European Return Fund. The department maintains close working relations with all relevant organizations working in the field of asylum and migration, such as the United Nations High Commissioner for Refugees Regional Representation for Central Europe (UNHCR), the International Organization for Migration (IOM) and other NGOs. In the MoJLE the Department of Law Enforcement Supervision and Planning under the State Secretariat for Law Enforcement is the responsible unit for the supervision of the Police Headquarters.

#### 1.1.2. Implementing bodies

As the new Act on Asylum entered into force on 1<sup>st</sup> January 2008, several institutional changes occurred in the structure of the implementing bodies as well.

The **OIN** has an overall responsibility concerning the decision-making in admission procedures (certain types of visas, residence permits and permanent residence permits) and in asylum procedures; the implementation of the Dublin Regulation; tasks related to illegal immigration and the Country of Origin Information System and database; citizenship-related tasks; the central visa, asylum and immigration register; the management of reception centers, temporary

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<sup>1</sup> The Hungarian EMN NCP submitted the study on the „Organisation of Asylum and Migration Policies”, therefore only a short summary will be provided under this section and the most important actors are mentioned. More detailed information can be found in the study available under the link <http://emn.sarenet.es> and under [http://irm.gov.hu/EMH\\_eredmenyek/cikk/Tanulmanyok.htm](http://irm.gov.hu/EMH_eredmenyek/cikk/Tanulmanyok.htm).



accommodations and community shelters. Its Director General is working under the supervision of the Minister of Justice and Law Enforcement.

In 2008 the activities carried out by the OIN were determined and largely influenced by the new legal instruments, namely by the new Act on Asylum and its implementing governmental decree which entered into force on 1<sup>st</sup> January 2008.

Although Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence, Act II of 2007 on the Admission and Residence of Third-Country Nationals and their implementing decrees entered into force on 1<sup>st</sup> July 2007, some amendments had to be introduced due to Hungary's Schengen accession in December 2007. Therefore, several changes occurred in the activities of the OIN related to the new tasks after Hungary's accession to the Schengen area or to the changes in the parish register.

#### Asylum system:

The institutional system changed significantly and the harmonization of the asylum and the migration areas continued in 2008. Currently in Hungary there are 3 reception centers in operation and their function was modified in compliance with the new legal environment. Before 1<sup>st</sup> January 2008 there were no strict differentiations between the centers regarding the accommodated groups of persons and the centers accommodated asylum-seekers, recognized refugees and persons authorized to stay. Due to the specialization of the reception centers, one center (in Békéscsaba) hosts asylum-seekers who are in the preliminary assessment procedure phase of the asylum procedure, another centre in Debrecen accommodates asylum-seekers who have entered the in-merit procedure, while the third centre in Bicske is a pre-integration center for recognized refugees and beneficiaries of subsidiary protection. As the structure has changed, the leverage of the centers has also changed and the set-up of the centers had to be adapted to the new rules (e.g. in Békéscsaba the fence had to be strengthened as it became a closed reception centre).

The new asylum legislation states that unaccompanied minors have to be accommodated separately; therefore the Shelter for Unaccompanied Minors in Bicske was established.

The statistical asylum and migration register was also adapted and slightly modified as the legislative background has changed. The office routine and coordination suffered some delays as the new documents and certificates had to be produced within a relatively short timeframe. This caused tensions in the Debrecen reception centre: in June 2008 beneficiaries of subsidiary protection strongly demonstrated against these delays<sup>2</sup>. The uniformity in the implementation and the interpretation of the new rules was not completely smooth in the first 6 months of 2008.

#### Migration system:

The uniform implementation and interpretation of the migration legislation (Act I and II of 2007) developed in the course of 2008, and also new tasks arose as a consequence of Hungary's accession to the Schengen zone. The most important field of improvement was the enhancement of cooperation regarding the issue of visas (the SIRENE and visa consultation procedure) with national and international institutions.

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<sup>2</sup> <http://index.hu/bulvar/atj080611/>



In 2008 the number of pending cases regarding naturalization was reduced significantly through over-time work in the OIN.

The **Police Headquarters** fulfill its tasks under the supervision of the MoJLE. The main tasks are carried out by the Border Policing Unit which operates at central (General Directorate for Policing), regional (County Police Headquarters, Ferihegy Airport) and local level. At central level it is the Department of Border Policing under the General Directorate for Policing which is responsible for data collection, analysis and evaluation concerning illegal migration and asylum. It is also responsible for proceedings in case of readmission agreements falling under its competence, for the acquisition of the necessary documents for the removal by deportation of third-country nationals and the professional supervision of detention in the community shelters. **January 2008** can be regarded as an **important milestone** in the history of the Hungarian Border Guards, since the Border Guards was integrated into the Police Headquarters. In order to make the integration of the two organizations possible, necessary legal amendments and also changes with regard to the number of personnel had to be carried out already in the course of 2007. Both the number of personnel of the Border Guards and of the Police were significantly cut.

Other important implementing bodies in the field of migration and asylum are:

- The **Public Employment Service** consists of the National Employment and Social Office and seven regional labour centres. The regional labour centres are responsible for issuing work permits to third-country nationals, for granting unemployment benefits, for labour exchange and other employment services and for adult training activities.
- The **Hungarian Central Statistical Office** conducts surveys; processes, stores and disseminates data relating to migration and asylum. The Office provides data for the Parliament and public administration, social organizations, local authorities, scientific bodies, economic organizations, the general public and the media, as well as for international organizations and users abroad. Official data regarding the socio-economic situation as well as the changes in the population of the country are published by the office. The Hungarian Central Statistical Office is a professionally independent administrative body under the direct supervision of the Hungarian Prime Minister's Office.

### 1.1.3. International organizations

There are two main international organizations working in the field of migration in Hungary, namely the **United Nations High Commissioners for Refugees** and the **International Organization for Migration**.

### 1.1.4. Non governmental organizations

There are over hundred NGOs working in Hungary aiming to provide different types of services to migrants or asylum-seekers, refugees or those in need of international protection. These NGOs vary depending on the size, the specific aims and target groups. The main and most active actors in this field are the following: **Menedék – Association for Migrants**, **Artemisszió Foundation**, the **Hungarian Helsinki Committee** and **Hungarian Interchurch Aid**.



## 1.2 General political developments

In **February 2008** Mr Tibor DRASKOVICS was appointed as the minister of justice and law enforcement, therefore he was the minister responsible for migration and asylum issues in 2008.

## 1.3 Institutional developments

The Hungarian national EMN network was established in 2008 and involves stakeholders working in this field, such as governmental and non-governmental organisations, independent experts and researchers. The national network includes among others the Ministry of Labour and Social Affairs, the Ministry of Education and Culture, the Ministry of Foreign Affairs, the Office of Immigration and Nationality, the National Police Headquarters, the Budapest Metropolitan Court, the Central Statistical Office Demographic Research Institute, the Office of the Ombudsman, IOM, UNHCR, the Hungarian Helsinki Committee, Artemisszió Foundation and the Hungarian Interchurch Aid.

## 2. Policy and Legislative Developments in the area of Migration and Asylum

### 2.1 General structure

The development of migration and asylum policy and legislation was largely shaped by Hungary's accession to the EU in May 2004 and to the Schengen zone in December 2007. In order to comply with the *acquis*, necessary changes in the legislation and in the structure of the authorities had to be carried out both during the harmonisation process before the EU accession and by transposing the relevant EU directives that were adopted after 2004 at EU level.

Regarding the legal system and the relevant legislation in the fields of migration and asylum, the most important steps were taken in the course of 2007. On 1<sup>st</sup> of July 2007 two new pieces of legislation with regard to immigration entered into force which replaced the previous single Act XXXIX of 2001 on the Entry and Stay of Foreigners. The personal scope of this previous act covered both EU nationals and third-country nationals.

**Act I of 2007** and its executing Government Decree 113/2007. (V.24.) regulate the entry and residence of persons enjoying the right to free movement and the entry and residence of their family members; whereas **Act II of 2007** and its executing Government Decree 114/2007. (V.24.) regulate the entry and residence of third-country nationals.

The new Act on Asylum, namely **Act LXXX of 2007** and its implementing Government Decree 301/2007 (XI. 9.) entered into force on 1<sup>st</sup> of January 2008 and replaced the previous Act CXXXIX of 1997 on Asylum. The new act sets down the basic principles and the most important guidelines to be followed in the area of asylum fully in line with the relevant EU directives.

In Hungary there is no single act in force in the field of integration, and the relevant provisions are laid down in sectoral legal instruments.

As regards the institutional aspect and the main actors involved, it is the **MoJLE** which is responsible for setting the policy guidelines and for carrying out legislative tasks in the areas of migration and asylum. It is working in close cooperation with **other relevant ministries**, such as the Ministry of Social Affairs and Labour, the Ministry of Foreign Affairs and the Ministry of Education and Culture. The most important **executing authorities** are the OIN and the National Police Headquarters. Relevant international organizations, such as UNHCR and IOM, also contribute to the work of the MoJLE with their expertise and close collaboration is maintained with them and with NGOs as well.

## **2.2 General overview of the main policy and/or legislative debates.**

The relevant acquis in the field of **migration** was transposed into national law already in the course of 2007. Main changes in the legislation in 2008 occurred due to the Schengen accession of Hungary and to the application of the local border traffic agreement with Ukraine.

In the field of **asylum**, 2008 was an important milestone, since the new Act on Asylum entered into force on 1<sup>st</sup> January 2008; however, the legislative work was carried out before this date, in 2007.

The academia has expressed the need for a migration strategy on the occasion of conferences, public debates.

## **2.3 Specific policy and legislative developments**

### **2.3.1 Control and Monitoring of Immigration**

#### **2.3.1.1. Schengen accession**

Hungary is a member of the Schengen zone since 21<sup>st</sup> December 2007<sup>3</sup>, therefore the necessary legislative changes entered into force already on that date. However, the year 2008 can also be regarded very important, since most of the experience and practice are from this year. Regarding legislative developments, since 21<sup>st</sup> December 2007 Hungary issues Schengen uniform visas (type B transit visas and type C short-stay visas), which – with a few exceptions – are valid in the whole Schengen Area. The procedural background for the consultation mechanism had to be provided in the legislation as well and provisions to determine the cases when the visa issuing authorities shall issue a visa with limited territorial validity had to be laid down. Provisions enabling Hungary to conclude international agreements with Schengen partners on representation also had to be drafted and can now be applied.

Due to the full Schengen membership, the system of long-term visas and residence permits had to be amended. Previously those third-country nationals who wished to stay in Hungary, had to apply for a so-called residence visa at the Hungarian consulate in their country of origin. These visas were valid for up to a year. Since December 2007 the residence visa no longer exists; therefore foreigners can apply for a residence permit at the consulate. If the permit is granted, they can travel to Hungary in the possession of a special visa (visa for entitlement to receive a residence permit), and get their residence permit in the territory of Hungary. Those third-country nationals, who are entitled to travel to Hungary without a visa, can apply for a

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<sup>3</sup> As of March 2008 for air borders.

residence permit in Hungary at the OIN.

Since the Schengen accession, the Hungarian list of entry bans is transferred to the Schengen Information System, preventing illegal aliens to re-enter the Schengen Area through another Schengen State.

When controls at the internal borders were abolished – according to the figures available so far – the previously predicted “security deficit” has not materialized itself, the security of the Schengen Area has not deteriorated. As regards illegal migration, pressure has increased on the external borders though, and acts and offences linked to illegal migratory activities are being uncovered in greater numbers. Such crimes detected by the Hungarian Police at the external border sections have increased compared to the previous year.

Comparative figures from 2007 and 2008 show the following tendencies:

5187 cases of offences linked to illegal migration were detected in the period since December 2007. Compared to the data of the previous year, this means a decrease of 24 %, but the breakdown is more revealing: at the internal borders, the decrease of uncovered cases is 80%, at the external borders there is a 23% increase.

At the Serbian border section, compared to the data from 2007, the increase is 90%, a total of 1469 cases of illegal migration were detected. The reason for this increase is primarily Serbian and Kosovo citizens attempting illegal border crossing in ever growing numbers, mostly at the green border.

As regards the Romanian border, compared to the similar period of 2007, there was an increase of 64 %, altogether 1396 offences were detected that could be linked to illegal migration (27 % of total national figures). The increase is explained by increasing migration pressure from the side of Moldavian, Turkish citizens, and an increase of counterfeiting offences perpetrated by Romanian citizens.

At the Ukrainian border section the increase was only of 3 %, a total of 1468 offences linked to illegal migration were detected.

### **2.3.1.2. Changes in issuing residence permits: Local border traffic agreement and permits**

The local border traffic agreement between Hungary and Ukraine was signed in September 2007 which required legislative changes. The relevant legal provisions concerning the rules for issuing local border traffic permits were introduced by Government Decree 327/2007. (XII.11.) into the Hungarian legislation, namely into Government Decree 114/2007 (V. 24.).<sup>4</sup> Although the legal provisions entered into force already on 15<sup>th</sup> December 2007, until **18<sup>th</sup> January 2008** they were applied only provisionally, as the internal procedures required a longer time. Two consulates of the Republic of Hungary in Ukraine are designated in the agreement for issuing such permits and the holder of the permit is entitled to multiple visa-free entries into the territory of Hungary and to reside for maximum three months within a six months period in the settlements listed in an Annex. The minimum validity period of the permit is 1 year, while the maximum validity period is 5 years. Regarding statistics, in 2008 altogether 32 670

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<sup>4</sup> Government Decree 114/2007. (V.24.) on the implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals



applications were submitted at the two consulates and 32 066 permits – 98 % of the applications – were issued.

### 2.3.2 Refugee Protection and Asylum

In May 2007 the Government presented a proposal for a new Act on Asylum to the Hungarian Parliament. The need for the reform of the Asylum Act arose due to the entry into force of the EU Qualification Directive and the Procedures Directive, as well as the new Hungarian Act on the General Rules of Public Proceedings and Services. **The new Act on Asylum** was adopted by the Parliament in June 2007, and **entered into force on 1<sup>st</sup> January 2008**.

The act incorporates the provisions of the Qualification Directive (Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection), the Procedures Directive (Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) and the Reception Directive (Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers).

It introduced the concept of subsidiary protection into the Hungarian legislation and simplified the procedural rules of recognition as a beneficiary of temporary protection.

The refugee status and the subsidiary protection are determined in a single unified procedure in accordance with the provisions of the Procedures Directive. The new act introduced a two-phased procedure: in the first phase – in the preliminary assessment procedure – the OIN shall decide whether it is the competent authority to examine the claim under the so-called “Dublin Procedure” (Council Regulation 343/2003/EC) or whether another Member State is responsible for the examination of the claim and the asylum seeker shall be transferred to another Member State. Provided that the Refugee Authority decided that Hungary is the responsible Member State for the examination of the application, the Refugee Authority shall decide on the admissibility of the claim in that phase of the procedure. The timeframe of the preliminary assessment procedure is 15 days, during which the applicant is obliged to stay in the reception centre which is designated for this purpose and is located in Békéscsaba. Before the adoption of the new Act on Asylum there was no separate reception centre to accommodate persons undergoing preliminary assessment procedure. Since the entry into force of the new act the three reception centres reflect the different phases of the asylum procedure. The reception centre of Debrecen has the duty of hosting the applicants whose claim was referred to the in-merit procedure, while recognised refugees and beneficiaries of subsidiary protection are transferred to the reception centre situated in Bicske. Additionally, the separate shelter to accommodate unaccompanied minors previously situated in Nyírbátor was moved to Bicske.

The preliminary assessment procedure is followed by an in-merit procedure under the time-limit of sixty days. At the end of the in-merit procedure the Refugee Authority shall in its decision recognize the applicant as a refugee or as a beneficiary of subsidiary protection or reject the claim and decide in the question of non-refoulement. Persons who would be subject to persecution or to serious harm in case of their return, but who do not qualify to either refugee status or subsidiary protection will be recognized as persons authorized to stay by the Aliens Policing Authority. There is no administrative remedy against the decisions of the Refugee Authority but they are subject to appeal before the Metropolitan Court of Budapest.

As mentioned previously, the implementation of the new legislative acts was not smooth in all

areas. Some authorities – mainly those which are not specialized asylum institutions but mainstream ones – had difficulties in the beginning of 2008 in the legal interpretation of the new legislative acts and measures. This was due to the applied codification technique: the new Act on Asylum states that unless a rule of law or government decree expressly provides otherwise, a beneficiary of subsidiary protection shall have the same rights and obligations as a refugee. This is the same technique as applied in case of recognized refugees, since their rights and obligations are ensured in conjunction with citizens' rights and obligations. The advantage of this technique is that only justified restrictions or exceptions are laid down explicitly, otherwise if a legal instrument mentions refugee, beneficiaries of subsidiary protection are meant as well.

The officers of certain offices were not always aware or trained/notified properly about the changes in the asylum legislation, and the fact that the abovementioned general provision appeared solely in the new Act on Asylum and not in the specific sectoral acts applied in their daily work caused problems. As they did not find the target group “beneficiaries of subsidiary protection” listed explicitly under the scope of the specific act they worked with, these offices did not consider the beneficiaries of subsidiary protection as persons entitled to such rights. These problems also led to demonstrations of asylum-seekers on 11 June 2008 in Debrecen as they demonstrated for documents the respective authority failed to provide in time due to legislative interpretation uncertainties. Another reason of the demonstrations (asylum-seekers climbed up on top of a mobile phone transmitter mast) was the conflict between different cultures in the reception centre of Debrecen.

### **2.3.3 Unaccompanied Minors (and other vulnerable groups)**

As a consequence of the new asylum legislation which entered into force on 1 January 2008, a separate shelter to accommodate unaccompanied minors previously situated in Nyírbátor was moved to Bicske.

### **2.3.4 Economic Migration**

#### **2.3.4.1. Legislative developments concerning the employment of third-country nationals and persons enjoying the right to free movement**

Ministerial Decree 8/1999. (XI.10.) was amended as of 1<sup>st</sup> January 2008<sup>5</sup>. This decree regulates the employment of foreigners in Hungary and contains provisions on the different types of work permits and the procedural rules. Before 1<sup>st</sup> January 2008 the validity period of an individual work permit was maximum 1 year, while the amendment made it possible to issue such a permit for maximum 2 years. The main reason of the amendment was to make the rules more flexible and to reduce the administrative burden of employers. By extending the validity period of the individual work permit to 2 years, employers do not have to submit an application for a work permit every year and the validity period became more harmonized with the validity period of the residence permit<sup>6</sup>.

Government Decree 355/2007. (XII. 23.) on the provisional arrangements of the free movement of labour applicable to persons enjoying the right to free movement and residence entered into

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<sup>5</sup> Amended by Ministerial Decree 39/2007. (XII. 29.), paragraph 2

<sup>6</sup> The validity period of the residence permits issued for gainful employment or for family reunification can be 3 years.

force on 1<sup>st</sup> January 2008<sup>7</sup>. The decree contains the rules on the employment of persons having the right to free movement within the EU and the rules on the employment of their family members. It listed those EEA nationals (eg. Austrian, German, Swiss, Bulgarian, Romanian), who had to be in possession of a work permit and also those cases when an exemption from the work permit obligation could be provided. The decree set down that in case of the employment of other EEA nationals (eg. Czech, Polish, Italian, Dutch nationals) the employer was only obliged to register the beginning and the termination of the employment. The decree was amended once in November 2008, as French nationals did not need a work permit anymore; only registration was required in their cases.

#### **2.3.4.2. Directives in the field of economic migration**

Two proposals were submitted by the European Commission in 2007 in the field of economic migration and the negotiation of both of them started in January 2008. One proposal concerned the entry and admission conditions of highly-qualified third-country nationals, while the other proposal will lay down common rules on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and will also contain a common set of rights.

Though the future adoption of the latter directive will entail the complete change of the current Hungarian system<sup>8</sup>, this proposal did not get as much attention in 2008 as the proposal on highly-qualified workers. In the framework of the cooperation between the Parliament and the Government in EU matters, the proposal on highly-qualified workers was put on the agenda of the Parliamentary Committee of EU Affairs and the Ministry of Justice and Law Enforcement provided information for this Committee about its position that was represented during the negotiations at the Council Working Groups. Since one of the admission conditions laid down in the proposal included an income threshold, the proposal was discussed in the National Council for the Reconciliation of Interests<sup>9</sup> which is a macro-level, national forum for tripartite cooperation of workers' and employers' representatives and the government. Its competence covers all issues related to the world of labor, including any major economic policy issue that has an implication on the distribution of state revenues.

#### **2.3.4.3. The impact of the economic crisis**

There were no specific policy or legislative developments in 2008 as an impact of the economic crisis. Concerning statistics, the Ministry of Social Affairs and Labour carried out an assessment in the beginning of 2009 on the impact of the crisis and examined data from 2008. These data show that there was a change in the number of registrations of foreign employees and in the number of work permits issued to foreigners. The most significant change was detected in the number of registrations of Slovakian workers, this number in November and December 2008 constituted only 7-12 % of the number in January 2008. There was an increase also in the number of foreign workers who were registered as job-seekers.

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<sup>7</sup> The decree was amended significantly as of 1<sup>st</sup> January 2009 abolishing the work permit obligation for all categories of persons enjoying the right to free movement.

<sup>8</sup> There are two separate procedures for issuing residence permits and work permits, therefore in Hungary there is no single procedure and no single permit for the time being.

<sup>9</sup> Országos Érdekegyeztetési Tanács (OÉT)

## 2.3.5 Family Reunification

### 2.3.5.1. Family reunification in the field of asylum

Changes in the legal framework concerning family reunification took place in several steps from 2007 to 2008.

In Hungary family reunification in the field of asylum is a „special visa procedure” in the course of which both the refugee authority and the immigration authority have competencies. In other terms the rules of this procedure fall under the scope of refugee as well as immigration laws. Its speciality lies in the preferential terms applicable to the family members of the person granted international protection. As a visa procedure it starts with the application for a long-term visa or a residence permit for the purpose of family reunification submitted by the family members of the person granted international protection at the closest embassy of Hungary to the residence of the family member. Only certain family members determined by law of a person granted international protection are entitled to lodge an application for family reunification.

In 2007 family members could be reunited only to recognized refugees.

In 2007 Act CXXXIX of 1997 on Asylum (hereinafter referred to as: previous Act on Asylum) regulated the status of the family members of a recognized refugee as follows. The previous Act on Asylum defined immediate family member as: „the spouse and minor child of a foreigner, in the case of a minor applicant, the parents”. It stipulated that: „In order to ensure the unity of the family, the immediate family member of the person seeking recognition as refugee shall be recognized as a refugee if

- a) the application has been jointly submitted, or
- b) the immediate family member has submitted such a request with the consent of the primary applicant, before the decision on the status of primary applicant refugee status has been made.

The immediate family member shall not be recognized as refugee in order to ensure the unity of the family, if

- a) any of the reasons for exclusion defined in Article 1 F of the Geneva Convention is applicable to him/her;
- b) his/her stay or activities in Hungary violate the interest of national security or seriously endangers public security/safety, provided that this presumption has been found to be well-founded in a procedure according to Article 32(2) of the Geneva Convention.”.

Before 1<sup>st</sup> of July 2007 Act XXXIX of 2001 on the entry and stay of foreign nationals (hereinafter referred to as: Foreigners Act) regulated family reunification to recognized refugees.

The Foreigners Act determined the family members eligible for family reunification to a refugee as follows:

- the spouse of a refugee if their marriage was contracted before the entry of the person with refugee status into the territory of the Republic of Hungary;
- the minor child (including adopted children) of a refugee and his/her spouse;
- the minor child, including adopted and foster children, of a refugee where this refugee has parental custody and the children are dependent on him/her;
- the minor child, including adopted and foster children, of the spouse of a refugee where the



spouse has parental custody and the children are dependent on him/her;  
- the parents of unaccompanied minors with refugee status, or their legally appointed guardian.

According to the legal regulations, the preferential terms of the family reunification to a recognized refugee were the following.

- The family relationship can be certified in any credible way.
- A decision rejecting an application for family reunification with a person with refugee status may not be based solely on the fact that documentary evidence of the family relationship is lacking.
- The requirements of accommodation, livelihood and health insurance shall be proved by the family member applying for family reunification only if he/she submits the application three months after the recognition of his/her family member as a refugee.

On 1<sup>st</sup> of July 2007 new legislation entered into force in the field of immigration, namely Act II of 2007 on the entry and stay of third country nationals (hereinafter referred to as: Third Country Nationals Act).

This Act extended the scope of family members of a refugee who may be granted a long-term visa or a residence permit on the grounds of family reunification by:

- the parents of the refugee who are dependent on him/her and
- the siblings of the refugee, if they are unable to provide for themselves due to health reasons.

The preferential term concerning the time frame within which the family member applying for family reunification does not have to prove the requirements of accommodation, livelihood and health insurance was extended from three months to six months, therefore this preferential term became even more favourable for the family member of a refugee.

In 2008 the previous Act on Asylum was modified and the new Act on Asylum entered into force on 1<sup>st</sup> of January. The new Act on Asylum – in compliance with our obligation as a Member State to transpose the relevant directives of the European Union in the field of asylum – introduced the status of beneficiary of subsidiary protection as a new form of international protection. According to the new Act on Asylum, beneficiaries of subsidiary protection – unless expressly provided by an act of parliament or government decree otherwise, and with the exceptions concerning exclusion criteria – shall have the same rights and obligations as refugees. The main change concerning family reunification is based on this legal provision of the new Act on Asylum. As there is no distinction made by any act of parliament or government decree between a refugee and a beneficiary of subsidiary protection concerning the procedure of family reunification as described above in the Third country nationals Act, from 2008 (since the entry into force of the new Act on Asylum) family members could be reunited not only to recognized refugees but also to beneficiaries of subsidiary protection.

The new Act on Asylum regulates the status of family members of refugees and of beneficiaries of subsidiary protection as follows.

Except for the cases of exclusion, for the purpose of maintaining family unity, upon application, the family members of a foreigner recognized as refugee shall be recognized as refugees. The recognition of a refugee's family member is automatic, meaning that the asylum authority does



not examine whether the conditions of recognition as a refugee are met by the family member. The refugee authority has to establish only that the family relationship is certified. In this case the family member arrives after the recognition as a refugee of the “sponsor”.

Except for the cases of exclusion, for the purpose of maintaining family unity, upon application, the family members of a foreigner recognized as a beneficiary of subsidiary protection shall also be recognized as beneficiaries of subsidiary protection if

- a) the application for recognition has been jointly submitted, or
- b) the family member submitted the application for recognition with the consent of the foreigner recognized as a beneficiary of subsidiary protection before the decision on the primary applicant’s subsidiary protection status has been made.

In this case, the recognition as a beneficiary of subsidiary protection is conditional. The recognition is automatic on the condition that these requirements are met. This means that the family members have to arrive before the recognition as a beneficiary of subsidiary protection of the “sponsor”.

Beside these acts the OIN has a Directorate General’s Order which is only for internal use and regulates the detailed rules on the cooperation between the immigration and the refugee authority within the OIN concerning family reunification to beneficiaries of international protection. This document contains an obligation for the refugee authority to inform the beneficiary of international protection on the possibility and the procedure of family reunification at the time of the announcement of the decision on recognition. Furthermore, the beneficiary of international protection must be interviewed on his/her intentions concerning family reunification. The order regulates the process of information exchange between the Asylum Department and the Visa Department. The procedure of family reunification starts with the personal submission of an application for a long-term visa or a residence permit on the grounds of family reunification by a family member of the beneficiary of international protection determined as eligible for family reunification by the law. The Visa Department is obliged to inform the Asylum Department if a family member of a beneficiary of international protection lodges an application for a long-term visa or a residence permit on the grounds of family reunification at an embassy of Hungary. Upon this information the Asylum Department shall check in its records whether the certain person is really a beneficiary of international protection and whether this beneficiary of international protection made any statement about his/her family member submitting the visa application during the asylum procedure. These checks are necessary in order to avoid abuses of family reunification procedure. On the basis of these checks the Asylum Department shall make a proposal for the Visa Department concerning the application for a long-term visa or a residence permit on the grounds of family reunification. Furthermore, the refugee authority shall send its decision on recognition and the relevant documents containing any data or statements of the beneficiary of international protection to the Visa Department in order to help the family member of the beneficiary of international protection to certify the family relationship in any credible way. The Visa Department is not bound by the proposal of the Asylum Department when bringing its decision on the application for a long-term visa or a residence permit on the grounds of family reunification.

The refugee authority does not collect statistical data on family reunification procedures. However, according to the files, the number of requests from the Visa Department in cases of family reunification to refugees or – since 2008 – to beneficiaries of subsidiary protection in which the Visa Department informs the refugee authority that a family member of a refugee or a

beneficiary of subsidiary protection submitted application for family reunification in the period of 2003- 2008 is the following:

Year	Number of requests
2003	5
2004	13
2005	11
2006	3
2007	13
2008	91

From 2003 to the first half of 2007 the refugee authority did not collect data on the number of successful family reunifications concerning refugees or beneficiaries of subsidiary protection as the issuance of the long-term visa or a residence permit on the grounds of family reunification falls under the responsibility of the immigration authority and the immigration authority does not collect these data regarding refugees and beneficiaries of subsidiary protection separately from other third country nationals. Data on the number of successful family reunifications in the field of asylum are available only from the second half of 2007, which are the following:

Second half of 2007	
Requests	7
Positive decisions	7

2008	
Requests	91
Positive decisions	40
Negative decisions	41
Suspended procedures by the court	1
Pending cases	9

These data show that the number of requests for family reunification in the field of asylum multiplied because the new legislation extended the personal scope of the right to family reunification to beneficiaries of subsidiary protection. From 2007 to 2008 the number of positive decisions also increased significantly.

The entry into force of the new Act on Asylum caused some problems in the legal practice regarding family reunification in the field of asylum. The article of the new Act on Asylum stipulating that “beneficiaries of subsidiary protection – unless expressly provided by an act of parliament or government decree otherwise, and with the exceptions concerning exclusion criteria – shall have the same rights and obligations as refugees” was misinterpreted by the OIN. Therefore the OIN did not apply the preferential terms of family reunification to the family members of the beneficiaries of subsidiary protection. This way the beneficiaries of subsidiary protection could not exercise their right to family reunification under the same conditions as refugees. Fulfilling the normal terms caused serious difficulties to the family members of

beneficiaries of subsidiary protection and hindered their family reunification procedure. Since family reunification is a key factor regarding integration beneficiaries of subsidiary protection having family members in the country of origin lost their motivation for integration and became very frustrated. These frustrations ended up in several demonstrations in 2008. Beneficiaries of international protection demonstrated for their right to family reunification before the OIN and asked for the help of UNHCR and the Hungarian Helsinki Committee. In reaction to these demonstrations and complaints the MoJLE, as the professional supervisory body of the OIN started discussions with the OIN. In these meetings the MoJLE clarified the interpretation of the new Article in question of the new Act on Asylum and the OIN set forth its arguments and opinion on family reunification in the field of asylum. As a result, the OIN accepted the interpretation of the MoJLE and followed its legal practice concerning family reunification in the field of asylum according to this interpretation.

### **2.3.5.2. Commission report on the transposition of Directive 2003/86/EC on the right to family reunification**

The Commission produced a report on the implementation of the directive. Hungary examined the draft report and provided the Commission with its remarks.

### **2.3.6 Other legal migration**

No significant policy or legislative developments occurred in 2008 regarding legal migration channels other than economic migration.

### **2.3.7 Citizenship and Naturalisation**

No major policy developments or legislative measures took place in 2008. Concerning structural changes in this particular field, in 2008 the constitutional and operational rules of the Ministry of Justice and Law Enforcement were modified and the modification entered into force on 20<sup>th</sup> of July 2008. The tasks undertaken by the State Secretary for Public Law with regard to citizenship applications were transferred under the competence of the State Secretary for European Union Law. However, the State Secretary for Public Law is still responsible for the procedures of modifying names in relation to naturalization cases.

Concerning statistics, the number of citizenship applications decreased from 10 230 in 2007 to 9 633 in 2008. The latter includes the number of applications for naturalization and repatriation, the number of declarations aiming at acquiring Hungarian citizenship, the number of declarations renouncing Hungarian citizenship, the number of applications determining citizenship and a few number of other cases. The number of **applications for naturalization and repatriation** shows a significant (24%) decrease from 5 437 in 2007 to 4 143 in 2008. The **number of applications determining citizenship** was 4 958 in 2008 which shows a slight increase of 16% in comparison to the previous year when it was 4276. The **number of declarations aiming at acquiring Hungarian citizenship** decreased from 85 in 2007 to 68 in 2008. The **number of declarations renouncing Hungarian citizenship** decreased from 82 in 2007 to 69 in 2008. The number of applications for naturalization and repatriation submitted to the **President of the Republic** shows a significant decrease (40%) from 7 294 in 2007 to 6 571 in 2008. At the end of 2008, the procedure of examining the applications were still in progress in 6 592 cases. The main countries of origin of the applicants were Romania (60%) which shows a slight decrease of 7% in comparison to the previous year, Ukraine (15%) which shows a slight increase of 2% in

comparison to the previous year and Serbia (12%) which shows a slight increase of 1,5% in comparison to the previous year. Both in 2007 and 2008, 85 % of the naturalized people referred to their Hungarian origin when applying for citizenship.

### 2.3.8 Integration

#### Equal opportunities and fighting against discrimination

No major policy developments or legislative measures were taken in 2008<sup>10</sup>.

The Equal Treatment Authority (hereinafter referred to as: Authority) was established by Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities and its implementing Government Decree 362/2004. (XII. 26.). The Authority started its work on 1<sup>st</sup> of February 2005 and was set up by the Hungarian Government to receive and deal with all individual and public complaints about unequal treatment and to implement the principles of equality and non-discrimination in an efficient way. Two complaints were submitted to the Authority in 2008 by migrants: in the first case the complaint was withdrawn by the complainant during the procedure, while in the second case it ended with an agreement.

#### Education policy

No major policy developments or legislative measures took place in 2008.

Concerning statistics, **in the academic year 2007/2008** the number of migrant children attending Hungarian public educational institutions was **10 916** from which 4 802 third-country nationals and 6 114 EU nationals participated in public education.<sup>11</sup> 1 603 children attended nursery, 4 399 children attended elementary school, 2 234 children attended grammar school, 633 children attended trade school and 2047 children attended vocational school. In the academic year **2008/2009** the number of migrant children attending Hungarian public educational institutions was **10 376** which is 0,6 % of the total number of children.<sup>12</sup> From them 1 629 children attended nursery, 4 224 children attended elementary school, 2 125 children attended grammar school, 448 children attended trade school and 1 950 children attended vocational school. The numbers include asylum-seeker and refugee children as well. Another important fact which should be mentioned here is that approximately 45-87% of migrant children enrolled in public education in Hungary are ethnic Hungarians coming mostly from Romania, Slovakia, Serbia and Ukraine.

**In the academic year 2006/2007** the number of foreign students participating in higher education in Hungary was 15 110 from which 6 552 students were third-country nationals and 8 558 students were EU nationals<sup>13</sup>. **In the academic year 2007/2008**, the number of foreign

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<sup>10</sup> More information on integration measures can be found in the study on “The organisation of asylum and migration policies in Hungary.”

<sup>11</sup> Data provided by the Ministry of Education and Culture, available in Közoktatási statisztikai kiadvány 2007 at [http://db.okm.gov.hu/statisztika/ks07\\_fm/index.html](http://db.okm.gov.hu/statisztika/ks07_fm/index.html) (2008.08.14.)

<sup>12</sup> Data provided by the Ministry of Education and Culture, available in Közoktatási statisztikai kiadvány 2008 at [http://db.okm.gov.hu/statisztika/ks07\\_fm/index.html](http://db.okm.gov.hu/statisztika/ks07_fm/index.html) (2009.07.3.)

<sup>13</sup> Data provided by the Ministry of Education and Culture, available in Felsőoktatási statisztikai kiadvány 2006: at [http://db.okm.gov.hu/statisztika/fs06\\_fm/](http://db.okm.gov.hu/statisztika/fs06_fm/) (2008.08.14.)

students participating in higher education in Hungary was 15 459 from which 6 955 students were third-country nationals and 8 504 students were EU nationals<sup>14</sup>.

### **Employment<sup>15</sup> policy**

According to the number of permits issued by the Employment Centres, the total number of foreign workers in Hungary was 55 230 in **2007** while it was 42 457 in **2008** which shows a significant decrease of 27 %. Concerning the total number of work permits, registrations and green card certificates<sup>16</sup> issued in 2007, 46 % of the foreign employees (25,485 persons) were Romanian, 18 % of the foreign employees (9,944 persons) were Slovakian and 15 % of the foreign employees (8,073 persons) were Ukrainian nationals. In 2008, 36 % of the foreign employees (15,136 persons) were Romanian which shows a significant decrease of 41% in comparison to the previous year, 17 % (7,265) of the foreign employees were Ukrainian which shows a slight decrease of 10 % in comparison to the previous year, while 15 % of the foreign employees (6,358) were Slovakian nationals which shows a significant decrease of 36% in comparison to the previous year<sup>17</sup>.

In 2008, 27 % of the foreigners holding a work permit worked in the construction sector, while 10% of the foreigners holding a work permit worked in the catering/tourism sector. The rest of the foreigners worked in the following sectors in descending order: agriculture, retail trade, other economic services, wholesale trade etc.

The minister responsible for labour and social affairs – with the agreement of other competent ministers – is entitled to set the highest number of work permits to be issued to third-country nationals. This quota may not exceed the requested workers reported during the previous year. The maximum number of work permits is determined for the whole territory of Hungary, **in 2008** the quota was 65 000.

### **Housing policy, reception and pre-integration system**

The most significant change occurred on 1<sup>st</sup> of January 2008 when the new Act on Asylum and its implementing Government Decree entered into force. Due to the new Act on Asylum a reform was introduced concerning the reception system. The reception model became in line with the actual stages of the asylum procedure which means that from the 1<sup>st</sup> of January 2008, the three reception centres host the asylum-seekers, refugees and beneficiaries of subsidiary protection at three different stages of the asylum procedure. The newly arrived asylum-seekers are accommodated in the *screening centre* (in Békéscsaba) during the period of the preliminary assessment procedure. If it ends with a positive decision, the process continues with the in-merit procedure and the asylum-seekers are moved into the *accommodation centre* (in Debrecen) where they can stay till the end of the in-merit procedural phase. When asylum-seekers become recognised refugees or beneficiaries of subsidiary protection they shall move to the *pre-integration centre* (to Bicske) where they can participate in different courses and

<sup>14</sup> Data provided by the Ministry of Education and Culture, available in Felsőoktatási statisztikai kiadvány 2007: at [http://db.okm.gov.hu/statisztika/fs06\\_fm/](http://db.okm.gov.hu/statisztika/fs06_fm/) (2009.07.3)

<sup>15</sup> Information provided by the Ministry of Social Affairs and Labour on 13 July 2008 on the basis of data provided by the National Employment Office

<sup>16</sup> The so-called “green card certificates” were issued to EEA nationals and to their family members, who normally would have needed a work permit (nationals of Austria, Liechtenstein, Germany, Switzerland, Denmark, Belgium, Norway, Bulgaria and Romania and their family members) but at the time of Hungary’s accession to the EU or in case of Romania and Bulgaria, at the time of their accession to the EU, they had been already or from that date on they were legally employed in Hungary for at least 12 months.,

<sup>17</sup> This decrease is linked to the economic crisis, which mostly affected Slovakian nationals. See also above under the section on economic migration.

receive supports in order to start a new life. All three reception centres provide accommodation and the necessary provisions (meals, washing and cleaning devices, clothes) free of charge.

Concerning the Hungarian reception system, asylum-seekers are entitled to several provisions and subsidies, for example donation, travel benefits, reimbursement of costs of medical treatment and medication, reimbursement of costs of mandatory schooling and accommodation in a dormitory, schooling benefits, pocket money. In addition to these provisions, refugees and beneficiaries of subsidiary protection are entitled to free Hungarian language training courses, language exam, translation costs, living costs subsidy and several types of housing subsidies. For being able to move into a house, the implementing governmental decree of the new Act on Asylum assures for the refugees and beneficiaries of subsidiary protection several types of financial subsidies [housing benefit (for covering the rental fee) one-off settlement aid, subsidy for a new home (including buying, constructing, renovating, making larger a new home)]. Besides these subsidies, they are also entitled to provisions provided by the governmental decree 12/2001. (I. 31.) on the state subsidies for housing. In addition to that, Hungary promotes the housing of these groups with the help of the ERF. Concerning the supports and benefits given to asylum-seekers, recognised refugees and beneficiaries of subsidiary protection, with the entry into force of the new Act on Asylum, the system of supports and benefits became more detailed and differentiated, the amount of applicable supports and benefits increased. The most significant change in the asylum support system is that the scope of the potential beneficiaries of provisions was extended to the beneficiaries of subsidiary protection beside refugees.

Government Decree 12/2001. (I. 31.) on the state subsidies for housing provides preferential credits for buying a house, allowance for buying or constructing a house, loan for allowance of buying or constructing a house, subsidy for buying a house already used provided for young persons, subsidy for disabled people, loan for constructing a new house, loan for buying or renovating a house for the so called “supported” people. Before 2<sup>nd</sup> February 2008, the scope of the so-called “supported” people included Hungarian citizens and employees falling under the 1612/68/EEC Decree and having a valid residence permit for the period of employment.

After 2<sup>nd</sup> February 2008, the scope of the supported people included Hungarian citizens; persons who according to a separate act have the same rights as Hungarian citizens (refugees and beneficiaries of subsidiary protection in general); persons having the right to free movement and residing in Hungary for a period longer than three months and have registered residence; immigrants according to the previous Act on Aliens and settled persons according to the Third Country Nationals Act; stateless persons recognized according to the Third Country Nationals Act.

Before the modification, in case a foreigner (except he/she had a Hungarian spouse) applied for housing subsidies, the minister in charge of regional development had to give her/his permission for granting the subsidy. The modification deleted this kind of permission from the conditions of granting housing subsidies and therefore facilitated the access to subsidies. After the modification, the examination of the conditions of eligibility for housing subsidies falls under the competence of the credit banks. According to the modification, the foreigner applicant has to verify that she/he, her /his spouse, child, co-habitant partner or family member does not have a house in his/her property.

## **Language training**

The new Act on Asylum extended the scope of getting free language courses and free language exam from refugees also to beneficiaries of subsidiary protection and beneficiaries of temporary protection. The new Act on Asylum increased the number of lessons from 360 to 520 hours which can be pursued at intermediate and advanced level. The new Act on Asylum prolonged the period during which the language course can be pursued; it was increased from 12 months to 24 months from the date of granting international protection status in the institution assigned by the refugee authority. The previous act provided free language exam only at basic level, while the new Act on Asylum introduced the opportunity to pass an intermediate language exam which is free of charge.

The new Act on Asylum extended the scope of free special pre-school language training course to beneficiaries of subsidiary protection besides beneficiaries of temporary protection and refugees. It also completed the list of schools which persons subject to mandatory schooling should attend for being entitled to special pre-school language training with the schools for handicapped children.

## **Health care system**

Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance and Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for these Services contain detailed rules on the health care system. A relevant modification of the latter act, which entered into force on 1<sup>st</sup> January 2008, is that social security insurance does not cover the visitors of members of international organizations enjoying immunity and their family members (spouse, children) living in the same household in case they are entitled to the social security system of the international organization concerned.

## **Family support system**

Act LXXXIV of 1998 on the support of families and Act XXVI of 1998 on the provision of equal opportunities and rights of handicapped people contain the detailed rules on the family support system. Both of them were modified in 2007 with regard to their scope. Before 1<sup>st</sup> January 2008 the acts were applicable to (a) Hungarian citizens, (b) immigrants (according to the previous Act on Aliens), settled persons, refugees, beneficiaries of subsidiary protection, stateless persons, (c) those persons who fall under Directive 1612/68/EEC, their family members having the right to free movement and family members having the right to free movement of Hungarian citizens if they reside in the territory of Hungary for a period longer than three months and have registered residence according to Act LXVI of 1992 on the registration of residence and personal data; (d) those employees having the right to free movement who fall under Regulation 1408/71/EEC and reside in the territory of Hungary when applying for a provision and have registered residence according to Act LXVI of 1992 on the registration of residence and personal data. The modifications of the two acts extended the scope of their point (c) to all persons having the right to free movement. The modification entered into force on 1<sup>st</sup> January 2008.

## **Rights to political and social participation**

No major policy developments or legislative measures took place in 2008<sup>18</sup>.

### **2.3.9 Illegal Immigration**

No regularisation measures were carried out in 2008. So far there has only been one regularisation that took place in 2004 before the EU accession of Hungary. There have been no changes in policy towards illegal entry and stay.

### **2.3.10 Actions against human trafficking**

The Government adopted Government Decision 1018/2008. (III. 26.) on the national strategy against human trafficking for the period 2008-2012. The Government considers the prevention of human trafficking, the protection of victims and the persecution of perpetrators as the common interest and task of the society. The Government Decision states that the minister of justice and law enforcement should draft an action plan for the implementation of the strategy and should create a coordination mechanism with the participation of governmental actors, NGOs, international organizations and churches.<sup>19</sup> The strategy includes inter alia the relevant definitions, the legislative background, statistical data, the results achieved so far, the activities in progress, the objectives and priorities of the strategy itself and the implementation mechanism.

### **2.3.11 Return Migration**

No regularisation measures were carried out in 2008. There have been no changes in the respective policy either. However, it is worth mentioning that in the course of 2008 Hungary drafted the Multi-Annual Programme for the period 2008-2013 and the Annual Programme 2008 for the European Return Fund and both programmes were approved by the European Commission at the end of the year.

As regards voluntary return measures, the Government and the OIN kept on cooperating with the International Organization for Migration.

### **2.3.12 Other policy areas/topics**

Hungary considers the issue of statelessness very important, and besides Spain, Hungary is the only EU Member State that has legislation concerning stateless persons and a procedure for determining this status. We also deem it important to join regional international conventions with this regard; therefore Hungary acceded to the 2006 Council of Europe Convention on the avoidance of statelessness in relation to state succession. The Convention was promulgated by Act XCVIII of 2008 by which the Convention has now binding effect in Hungarian national law.

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<sup>18</sup> More information on the context of political and social participation could be found in the study on “The organisation of asylum and migration policies in Hungary.”

<sup>19</sup> More information on the coordination activities of the MoJLE regarding trafficking in human beings, the national strategy and other materials are available at [http://irm.gov.hu/emberkereskedelem\\_elleni\\_koordinacio](http://irm.gov.hu/emberkereskedelem_elleni_koordinacio).

### 3. Implementation of EU legislation

#### 3.1 Transposition of EU legislation in the field of migration and asylum into national law and administrative practices during 2008

##### 3.1.1. Asylum

- *Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC (OJ L 144 of 6 June 2007, p. 1);*
- *Commission Decision (2007/599/EC) of 29 November 2007 implementing decision No 573/2007/EC of the European Parliament and the Council as regards the adoption of the strategic guidelines 2008 to 2013 (OJ L326, 12 December 2007, p.29);*
- *Commission Decision of 19 December 2007 laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund<sup>20</sup> (OJ L 7 of 10 January 2008, p. 1);*

Regarding legislative developments, Ministerial Decree 3/2009. (II.13.) of the Minister of Justice and Law Enforcement – issued with the agreement of the Minister of Finance – on the creation of the institutional, management and control systems and on the fundamental regulations of the use of the funds deriving from the 2007-2013 General Programme “Solidarity and Management of Migration Flows” was being drafted in the course of 2008 and it came into force on 15 February 2009. The scope of the decree covers the European Refugee Fund, the European Fund for the integration of third-country nationals, the European Return Fund and the External Borders Fund and includes rules inter alia on the institutional system, the selection of projects, financial administration, provision of data and the control of the use of the Funds.<sup>21</sup>

Regarding administrative practices, Hungary drafted both the Multi-Annual Programme for the period 2008-2013 and the Annual Programme 2008 for the European Refugee Fund in accordance with Decision 573/2007/EC and Commission Decision 2007/599. When drafting the programmes, the stakeholders were consulted appropriately and the European Commission approved the programmes officially at the end of 2008.

- *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50 of 25 of February 2003, p.1)*

Article 23 (1) of the Regulation provides for the opportunity that Member States may, on a

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<sup>20</sup> Notified under document number C(2007)6396.

<sup>21</sup> Since the European Return Fund, the European Fund for the integration of third-country nationals and the External Borders Fund are also under the scope of Ministerial Decree 3/2009. (II. 13.), no further reference will be made to this legislative instrument in the sections concerning these Funds.

bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of the Regulation, in order to facilitate its application and increase its effectiveness. Hungary puts special emphasis on concluding administrative agreements with other Member States in order to increase cooperation between the responsible authorities and in order to determine, as quickly as possible, the Member State responsible for examining the asylum application lodged in either of the signatory states. Such agreements were concluded with Austria in 2005, with Slovenia in 2007 and **three new agreements followed in 2008**. The administrative agreements of 2008 were concluded with Romania<sup>22</sup>, Slovakia<sup>23</sup> and Bulgaria<sup>24</sup>. Due to the international nature of these administrative agreements and the Hungarian rules concerning these types of agreements, after having been signed by the Parties, they had to be promulgated in the form of Government Decrees in order to have binding effect.

### 3.1.2. External borders

- *Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405 of 30 December 2006, p. 1. Corrigenda published in OJ L 29 of 3 February 2007, p. 3);*

The Hungarian-Ukrainian local border traffic agreement was signed in September 2007 and the relevant legal provisions were introduced by Government Decree 327/2007. (XII.11.) into the Hungarian legislation, namely into Government Decree 114/2007. (V. 24.).<sup>25</sup> Although the legal provisions entered into force already on 15<sup>th</sup> December 2007, until **18<sup>th</sup> January 2008** they were applied only provisionally, as the internal procedures required a longer time. An application for a local border traffic permit can be submitted in two consulates of the Republic of Hungary in Ukraine. The holder of the permit is entitled to multiple visa-free entries into the territory of Hungary and to reside for maximum three months within a six months period in the settlements listed in an Annex. The minimum validity period of the permit is 1 year, while the maximum validity period is 5 years. Regarding statistics, in 2008 altogether 32 670 applications were submitted at the two consulates and 32 066 permits – 98 % of the applications – were issued.

### 3.1.3. Visa

- *Council Decision 2007/340/EC of 19 April 2007 on the conclusion of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 129 of 17 May 2007, p. 25);*
- *Council Decision 2007/821/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 84);*

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<sup>22</sup> Promulgated by Government Decree 144/2008. (V. 22.)

<sup>23</sup> Promulgated by Government Decree 247/2008. (X. 14.)

<sup>24</sup> Promulgated by Government Decree 291/2008. (XII. 10.)

<sup>25</sup> Government Decree 114/2007. (V.24.) on the implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals

- *Council Decision 2007/822/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 96);*
- *Council Decision 2007/823/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 108);*
- *Council Decision 2007/824/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Former Republic of Macedonia on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 120);*
- *Council Decision 2007/825/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 136);*
- *Council Decision 2007/826/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 168);*
- *Council Decision 2007/840/EC of 29 November 2007 on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas (OJ L 332 of 18 December 2007, p. 66).*

The Hungarian Government adopted Government Decision 2159/2008. (XI. 12.) on the amendment of certain visa facilitation agreements. The Decision only confirms that the Government agrees with the amendments and the texts of the protocols presented to it. On the basis of the Government Decision, the Government – and specifically the minister responsible for justice and law enforcement – can proceed with submitting the proposals to the Parliament. The Decision concerns the following agreements:

- the 1999 Agreement between Hungary and Morocco on the visa-free entry of Hungarian nationals and the exemption from the visa fee obligation of Moroccan nationals who wish to reside in Hungary for a short-time period,
- the 1991 Visa Agreement between Hungary and Albania,
- the Agreement between Hungary and Bosnia-Herzegovina on the mutual visa exemption of their nationals holding a diplomatic passport,
- the Agreement between Hungary and Macedonia on the mutual visa exemption of their nationals holding a diplomatic passport,
- the 2003 Agreement between Hungary and Serbia (and Montenegro) on the travel conditions of their nationals,
- the Agreement between Hungary and Moldova on the mutual visa exemption of their nationals holding a diplomatic passport,
- the Agreement between Hungary and Russia on the mutual visa exemption of their nationals holding a diplomatic passport,
- the 2003 Agreement between Hungary and Ukraine on the travel conditions of their nationals.

These international agreements have to be promulgated in the form of acts and will then be part of national law. The adoption of the relevant acts are foreseen in the course of 2009, however, the Government Decision mentioned above was the first and necessary step in the process.

#### 3.1.4. Immigration / Admission

The relevant acquis in the field of migration was transposed into national law already in the course of 2007.

- *Council Decision N° 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows, (OJ L 168 of 28 June 2007, p. 18);*
- *Commission Decision (2007/599/EC) of 21 August 2007 implementing Council Decision 2007/435/EC as regards the adoption of strategic guidelines for 2007 to 2013 (C(2007)3926);*
- *Commission Decision (2008/457/EC) of 5 March 2008 laying down the rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the integration of third-country nationals for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (OJ L167, 27 June 2008, p. 69)*

Hungary drafted the Multi-Annual Programme for the period 2007-2013, the Annual Programmes 2007 and 2008 for the European Fund for the integration of third-country nationals in accordance with Decision 2007/435/EC and Commission Decision 2007/599. When drafting the programmes, the stakeholders were consulted appropriately and the European Commission approved the programmes officially in November 2008.

#### 3.1.5. Immigration / Fight against illegal migration and return

- *Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" (OJ L 144 of 6 June 2007, p. 45);*
- *Commission Decision (2007/837/EC) of 30 November 2007 implementing Decision No 575/2007/EC of the European Parliament and of the Council as regards the adoption of strategic guidelines for 2008 to 2013 (OJ L 330 of 15 December 2007, p. 48);*
- *Commission Decision (2008/458/EC) of 5 March 2008 Laying down the rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (OJ L167, 27 June 2008, p. 135).*

Hungary drafted both the Multi-Annual Programme for the period 2008-2013 and the Annual Programme 2008 for the European Return Fund in accordance with Decision 575/2007/EC and Commission Decision 2007/837. When drafting the programmes, the stakeholders were consulted appropriately and the European Commission approved the programmes officially in November 2008.

### 3.1.6. Schengen / SIS

Hungary is a member of the Schengen zone since 21<sup>st</sup> December 2007<sup>26</sup>, therefore the necessary legislative changes entered into force already on that date. However, the year 2008 can also be regarded very important, since most of the experience and practice are from this year. Regarding legislative developments, since 21<sup>st</sup> December 2007 Hungary issues Schengen uniform visas (type B transit visas and type C short-stay visas), which – with a few exceptions – are valid in the whole Schengen Area. The procedural background for the consultation mechanism had to be provided in the legislation as well and provisions to determine the cases when the visa issuing authorities shall issue a visa with limited territorial validity had to be laid down. Provisions enabling Hungary to conclude international agreements with Schengen partners on representation also had to be drafted and can now be applied.

Due to the full Schengen membership, the system of long-term visas and residence permits had to be amended. Previously those third-country nationals who wished to stay in Hungary, had to apply for a so-called residence visa at the Hungarian consulate in their country of origin. These visas were valid for up to a year. Since December 2007 the residence visa no longer exists; therefore foreigners can apply for a residence permit at the consulate. If the permit is granted, they can travel to Hungary in the possession of a special visa (visa for entitlement to receive a residence permit), and get their residence permit in the territory of Hungary. Those third-country nationals, who are entitled to travel to Hungary without a visa, can apply for a residence permit in Hungary at the OIN.

Since the Schengen accession, the Hungarian list of entry bans is transferred to the Schengen Information System, preventing illegal aliens to re-enter the Schengen Area through another Schengen State.

When controls at the internal borders were abolished – according to the figures available so far – the previously predicted “security deficit” has not materialized itself, the security of the Schengen Area has not deteriorated. As regards illegal migration, pressure has increased on the external borders though, and acts and offences linked to illegal migratory activities are being uncovered in greater numbers. Such crimes detected by the Hungarian Police at the external border sections have increased compared to the previous year.

Comparative figures from 2007 and 2008 show the following tendencies:

5187 cases of offences linked to illegal migration were detected in the period since December 2007. Compared to the data of the previous year, this means a decrease of 24 %, but the breakdown is more revealing: at the internal borders, the decrease of uncovered cases is 80%, at the external borders there is a 23% increase.

At the Serbian border section, compared to the data from 2007, the increase is 90%, a total of 1469 cases of illegal migration were detected. The reason for this increase is primarily Serbian and Kosovo citizens attempting illegal border crossing in ever growing numbers, mostly at the green border.

As regards the Romanian border, compared to the similar period of 2007, there was an increase of 64 %, altogether 1396 offences were detected that could be linked to illegal migration (27 % of total national figures). The increase is explained by increasing migration pressure from the

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<sup>26</sup> As of March 2008 for air borders.

side of Moldavian, Turkish citizens, and an increase of counterfeiting offences perpetrated by Romanian citizens.

At the Ukrainian border section the increase was only of 3 %, a total of 1468 offences linked to illegal migration were detected.

### **3.2 Experiences in the implementation of EU legislation**

Regarding the implementation of the already adopted legal migration directives, Hungary actively took part in the Contact Committee meetings organized by the European Commission. Hungary raised no specific questions during these meetings; however, we always tried to help other Member States by answering their questions and by summarizing our practices.

As regards concrete experiences with the already adopted legal migration directives, one Contact Committee dealt with the question of EC long-term residence permits and several Member States expressed that this type of permit is not really popular and the number of issued permits are relatively low. This is due to the fact that several Member States maintained their national permanent residence permit regime and these permits can be granted under favourable conditions as EC long-term residence permits. The holders of national permanent residence permits can submit an application for citizenship already some years after having acquired this permit.

Hungary has also maintained its national regime and issues national permanent residence permits as well which can be granted under more favourable conditions regarding the required duration of residence. On the basis of the statistical data from 2008 it can be concluded that the number of issued national permanent residence permits exceeded that of EC residence permits and it was more popular among the applicants. According to nationality, mainly Chinese, Ukrainian and Serbian nationals were among the applicants of national permanent residence permits; however, Chinese nationals were also on top of the list among the applicants for EC permanent residence permits. There were no Ukrainian nationals among those who asked for an EC permanent residence permit in 2008.

Hungary participated in the expert meetings concerning the implementation of Directive 2004/38/EC. Concerning the Metock-case, Hungary was of the opinion that such solutions should be found and preferred that do not require the amendment of the directive.

As mentioned above in the study, the implementation of the new legislation on asylum was not smooth in all areas. Some authorities – mainly those which are not specialized asylum institutions but mainstream ones – had difficulties in the beginning of 2008 in the legal interpretation of the new legislative acts and measures. This was due to the applied codification technique: the new Act on Asylum states that unless a rule of law or government decree expressly provides otherwise, a beneficiary of subsidiary protection shall have the same rights and obligations as a refugee. This is the same technique as applied in case of recognized refugees, since their rights and obligations are ensured in conjunction with citizens' rights and obligations. The advantage of this technique is that only justified restrictions or exceptions are laid down explicitly, otherwise if a legal instrument states refugee, beneficiaries of subsidiary protection are meant as well.

The officers of certain offices were not always aware or trained/notified properly about the changes in the asylum legislation, and the fact that the abovementioned general provision

appeared solely in the Act on Asylum and not in the specific sectoral acts applied in their daily work caused problems. As they did not find the target group “beneficiaries of subsidiary protection” listed explicitly under the scope of the specific act they worked with, these offices did not consider the beneficiaries of subsidiary protection as persons entitled to such rights. These problems also led to demonstrations of asylum-seekers on 11 June 2008 in Debrecen as they demonstrated for documents the respective authority failed to provide in time due to legislative interpretation uncertainties. Another reason of the demonstrations (asylum-seekers climbed up on top of a mobile phone transmitter mast) was the conflict of different cultures in the reception centre of Debrecen.

## **Annex – Methodology, terms and definitions**

### **A1.1 Methodology**

In Hungary the *Department of Cooperation in Justice and Home Affairs and Migration* within the MoJLE is appointed as the national contact point for the EMN. Since this department is also responsible for formulating the policy in the fields of migration and asylum, and is in charge of legislative tasks as well, mainly the colleagues of the department contributed with necessary information to the Annual Policy Report. Other ministries were contacted as well in order to provide more precise replies to some of the questions. Cooperation with these ministries was effective and was built on already existing working relations and on the national EMN network. With regard to the questions concerning economic migration, the member of the national EMN network within the *Ministry of Social Affairs and Labour* was contacted. The *Ministry of Foreign Affairs* coordinates the work of the consular services; therefore it was this ministry that had exact statistics on the number of applications for local border traffic permits and on the number of permits issued. Statistical data concerning education was provided by the Ministry of Education and Culture and the statistics of the OIN were consulted as well.

HU EMN NCP has not encountered any problems when drafting the report, which is also due to the fact that it is the Department of Cooperation in Justice and Home Affairs and Migration that is responsible for the issues addressed by this report. Therefore, HU EMN NCP already had most of the information needed at its disposal. The study on the “Organisation of Migration and Asylum Policies in Hungary” was also consulted in order to draft this report.

### **A1.2 Terms and Definitions**

The terms and definitions used in the report are in compliance with the ones given in the EMN Glossary and with the definitions that appear in the respective national legislation.