



**THE ORGANISATION OF
ASYLUM AND MIGRATION POLICIES IN HUNGARY**

HU EMN NCP STUDY 2009

EXECUTIVE SUMMARY:

Summarize the key findings and which we consider as the most relevant regarding this study

Hungary is a country with approximately 10 million inhabitants. Compared to the total number of the population, the proportion of migrants and refugees is not as high as in some other EU Member States, as during the recent years it equals to only 1.8-2 % of the host population. Immigration is mainly a demand-driven, sub-regional labour migration, often based on seasonal or temporary employment. Besides immigrants coming for employment purposes, the proportion of residence permit applicants wishing to stay for purposes of family reunification or studying has increased during the previous years as well.

The migration situation is also characterized by the fact that the majority of foreigners living in Hungary are ethnic Hungarians coming from neighbouring countries, however with Romania's and Slovakia's accession to the EU, their nationals are now EU citizens. Since immigration to Hungary in the 90s the population was mainly characterized by ethnic migration. The social integration of migrant groups was not extremely difficult, due to their already existing language skills and family relationships. The attitude of the host society and the legal background is also much more favourable for them than for other migrant groups. Due to the visa policy of the early 90s, a significant number of economic migrants came from Asia to Hungary (especially from China, Vietnam and Mongolia).

These figures and characteristics of migration trends all have to be taken into account when examining the organisation of asylum and migration policy in Hungary.

Regarding the legislative framework, the development of migration and asylum system and policy was largely shaped by Hungary's accession to the EU in May 2004 and to the Schengen zone in December 2007 and it was also influenced to a great extent by the relevant acquis. 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 since 2004 at EU level.

Important steps were taken in 2007 concerning legislation on immigration and asylum. On 1st 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 (hereinafter referred to as previous Aliens Act). Act I of 2007 and its executing Government Decree 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 regulates the entry and residence of third-country nationals. The new Act on Asylum, namely Act LXXX of 2007 entered into force on the 1st 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 follow in the area of asylum fully in line with the relevant EU directives.

After Hungary's accession to the European Union, the next important milestone occurred in December 2007 when the country joined the Schengen area which required legislative, structural changes and technical – including IT – developments.

As regards the institutional aspect, it is the Ministry of Justice and Law Enforcement (hereinafter referred to as MoJLE) which is responsible for setting the policy guidelines in the



areas of migration and asylum and it is working in close cooperation with other relevant ministries, the executing authorities and with the relevant international organizations and NGOs.

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INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

The aim of this study is to provide up-to-date, objective and reliable information in a comparable way on the institutional context of the asylum and migration policy of Hungary, including the relevant basic laws and regulations. The study contains a comprehensive but concise overview on how asylum and migration policies are organized and managed in Hungary highlighting the most important changes in the institutional and legal system. Therefore the study aims at representing a permanent value, meaning that it gives a solid, reliable picture which can be easily updated whenever it is needed. Another purpose of the study is to serve as a useful contribution to the Synthesis Report of the European Migration Network on this topic.

The historical aspects are presented in the study to an extent that is essential to achieve the aims of the study. Therefore the reference period of the study is up to the end of 2008, when the latest relevant changes of the institutional and legal system took place in the field of asylum and migration.

The study has an added value also from a national point of view since it gives a structured, concise overview on the organization of asylum and migration policies in Hungary by collecting and presenting in a single report the separately existing partial information on the Hungarian authorities and organizations dealing with immigrants and persons in need of international protection. Therefore, the study is very useful not only for the experts acting in the field of asylum and migration but also for the wider public and the media. It can also be used as a tool for raising the awareness of the Hungarian society regarding migration and asylum, which is the specific aim of this study.

With regard to methodology, this National Report was produced in close cooperation with the Hungarian National Contact Point (hereinafter: HU EMN NCP) and the Hungarian national network. Already before the preparation of the study, HU EMN NCP had maintained close working relations with most of the authorities, organizations and experts acting in the field of migration and asylum in Hungary and these relations were strengthened further with the establishment of the Hungarian national network. The Hungarian national network was established in 2008 and involves stakeholders working in this field such as governmental and non-governmental organisations, independent experts and researchers. In the framework of the first national meeting of the national network, HU EMN NCP invited all members of the national network to prepare a brief description about themselves, including the history, structure, tasks and competencies of their represented organizations. The following members of the national network contributed to this study: Ministry of Labour and Social Affairs, Ministry of Education and Culture, Ministry of Foreign Affairs, Office of Immigration and Nationality (hereinafter referred to as OIN), National Police Headquarters, Budapest Metropolitan Court, Central Statistical Office Demographic Research Institute and the Hungarian Interchurch Aid.

Besides contributions made by the members of the national network – for giving a clear picture on the size of the different categories of migrants and refugees – official databases and statistics were used in the drafting of the study. In order to provide structural descriptions and reliable information the websites of the relevant governmental and non-governmental organizations



were used as well. The sources of information are indicated as footnote throughout the study and they are listed in the Annex as well.

OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN HUNGARY

The Hungarian Constitution¹ states the basic rules and principles regarding the organization of asylum and migration policies in Hungary. The rights set down in the Constitution, such as the right to asylum, the freedom of movement, the right to appeal and the duties of the Government determine the organizational structure basically.

1) Institutional framework

a) Governmental level

On the basis of the Hungarian Constitution several acts regulate in detail the structure of governmental and other bodies, the rights and obligations of the respective ministers, such as Act LVII of 2006 on the central governmental bodies of public administration and the status of the members of the government and the state secretaries and the Act LV of 2006 on the Ministries of the Republic of Hungary.

The abovementioned acts state that in Hungary the Minister of Justice and Law Enforcement, therefore the **MoJLE** has the main responsibility in the field of migration, integration and asylum. Among others, the drafting of legislation falls under the general competence of the MoJLE. As for the Ministry's international duties, it is also responsible for the cooperation with the EU institutions and for representing the position of Hungary at the relevant Council Working Groups and other working groups.

The Ministry is lead by the Minister who is substituted by two Senior State Secretaries, the Senior State Secretary of Law Enforcement and the Senior State Secretary of Justice. They are assisted by six State Secretaries – all of them responsible for a specific field – and by the Head of Cabinet. The main task of the State Secretaries is to represent the professional point of view of the Ministry in the issues related to the work of the departments under their respective competence. The Ministry is divided into six State Secretariats which are the following: State Secretariat for Civil Law and Justice; State Secretariat for Public Law; State Secretariat for Coordination; State Secretariat for Criminal Policy; State Secretariat for Law Enforcement and State Secretariat for EU Law.

The State Secretariat for EU Law has three departments under its competence from which the Department of Coordination in Justice and Home Affairs and Migration has the overall responsibility in the area of freedom, security and justice. 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 and in the working groups of the European Commission in the area 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 supervising their implementation by the OIN. Furthermore, the department coordinates the governmental measures related to the promotion of the integration of foreigners with the help of a working group dealing with the integration of foreigners collecting all the relevant stakeholders working in this field. The department is also responsible for the elaboration of the Annual and Multi-Annual Programmes of the European Integration Fund, the European Refugee Fund and the European Return Fund, while the tasks of the administrative and financial management of these

¹ Act XX of 1949 on the Constitution of the Republic of Hungary, Articles 58 and 65



three Funds and of the External Borders Fund fall under the competence of the Department of Support-Coordination under the Ministerial Cabinet. 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.

The **Ministry of Labour and Social Affairs** is responsible for the employment, social, pension, family, children and youth policy. Furthermore, drug prevention, child and youth protection, consumer protection, vocational and adult training, the integration of Roma population, social dialogue and the issue of equal opportunities also belongs to the responsibilities of the Ministry. The European Integration and International Department has the main responsibility for elaborating and representing the employment policy in the field of migration and asylum. The Ministry is also responsible for determining the detailed rules on work permits including the cases where work permit is not required. The Ministry determines – in agreement with the other Ministries concerned – the highest number of work permits to be issued to foreign nationals at any given time and the professions. The implementation of the relevant laws belongs to the competencies of the Public Employment Service.

Within the **Ministry of Education and Culture** the Department for European Union Relations, operating under the supervision of the State Secretary for International Affairs, is responsible for issues related to the EU membership – except for the ones that arise from the coordination and planning of development policies financed by the Structural Funds – and issues concerning the harmonization of legislation. This department is primarily responsible for coordination in areas, such as the transposition of the EU acquis; mediating and coordinating policy tasks (Education and Training 2010 Work Programme) based on the open coordination method (OMC), including also dissemination activity, for which it draws on the cooperation of background institutions operating under the supervision of the Ministry and on that of professional, social partners and the professional and scientific “workshops”. In 2003 a working group on the education of migrant children was set up by the Ministry with the participation of all relevant stakeholders.

Within the **Ministry of Foreign Affairs** the Consular Department coordinates the work of the consular services of the Hungary including visa issuance to third-country nationals. Considering the importance of migration and other global security issues the aim of the Consular Department’s JHA Strategy Unit in cooperation with the MoJLE is to accomplish a well-managed migration policy by strengthening the synergies between migration and external relations of Hungary and the European Union. To achieve this goal, the JHA Strategy Unit follows and analyses all JHA Relex issues on international and EU level, and prepares strategies to strengthen the ability to react to the global challenges in the field of migration.

Within the **Ministry of Municipalities** the Department of Human Capacity and Civil Relations is responsible for managing the questions related to equal opportunities, for example it coordinates the sectoral tasks relating to equal opportunities, drafts legal instruments and prepares opinion concerning the Action Plan relating to equal opportunities.

Within the **Ministry of Health** it is the Department of International and European Affairs which is responsible for fulfilling all the tasks resulting from the EU membership.



b) Implementing bodies

The **OIN** has an overall responsibility concerning the decision-making in admission procedures (certain types of visas, residence permits and permanent residence permits); decision-making in asylum procedures; the implementation of the Dublin Regulation; tasks related to illegal immigration (decision-making and implementation of expulsion, obligation to leave the country, removal by deportation); decision-making in naturalization procedures; tasks related to the Country of Origin Information System and database, the central visa, asylum and immigration register and it delegates International Liaison Officers into third-countries. The OIN is responsible for implementing tasks arising from international conventions; for co-operation with international organizations, Hungarian governmental and non-governmental organizations; for the management of reception centres, temporary accommodations and community shelters.

The OIN is an independent budgetary organization which consists of one central and 7 regional directorates. Its budget is separated within the budget of the MoJLE. Its Director General is working under the supervision of the Minister of Justice and Law Enforcement.

The **Equal Treatment Office** handles the individual and public complaints concerning unequal treatment and it controls the implementation of the principles of equality and non-discrimination. It operates under the direction of the minister responsible for the issue of equal opportunities, currently this is the Minister of Labour and Social Affairs. However neither the government, nor the Ministry may give instructions to this office. Each natural or legal person has the right to lodge a complaint about the violation of equal rights to this authority.

The **Public Employment Service** consists of the National Employment and Social Office and seven regional labour centres. Each regional labour centre has a central organisation and a couple of branches, there are altogether nearly 160 branches all over the country. The regional labour centres are responsible for granting unemployment benefits, for labour exchange and other employment services, adult training activities and for issuing work permits.

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 the detention in the community shelters.

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.

c) International organizations



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

d) Non governmental organizations

There are over hundred NGOs working in Hungary aiming to provide different type 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 and it would be impossible to describe all of them therefore the following list contains the main and most active actors in this field.

Menedék – Association for Migrants was established in January 1995 and it operates as an independent non-profit organisation. The objective of the organization is to represent migrants (asylum seekers, refugees, temporarily protected persons, foreign employees, immigrants and other foreigners in Hungary). By means of targeted programmes it promotes the social and cultural integration of refugees and migrants who are planning to stay in Hungary. The organization also represents the interests and rights of migrants towards the political, administrative, governmental and municipal bodies and in the media.

Artemisszió Foundation has been operating since 1998 as a non-profit organization of public interest. The goal of the Artemisszió Foundation is to encourage continuous dialogue and interaction between culturally, ethnically and socially diverse groups and to foster their mutual understanding. The mission of the Foundation is to provide an opportunity for the society to take part in activities that strengthen relations among people, improve communication and conflict-resolution skills and contribute to the promotion of tolerance, mutual understanding and cooperation. It also supports the social integration of socially and culturally disadvantaged groups and implements intercultural training courses, disseminates educational materials and methods.

The **Hungarian Helsinki Committee** monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The organization strives to ensure that domestic legislation guarantees the consistent implementation of human rights norms. The Committee promotes legal education and training in fields relevant to its activities, both in Hungary and abroad. The main areas of activities focus on the protection of the rights of asylum seekers and foreigners in need of international protection, as well as on monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

Hungarian Interchurch Aid was founded in 1991. In the 1990's it supported asylum seekers by operating a counselling service in Budapest and a refugee camp in Erőspusztá. Afterwards it became one of the biggest NGOs operating in Hungary. Its goal is to support those in need regardless of their race, sex, nationality and faith. The five key activities of the organisation are: operating social institutions and implementing development programmes; international development activities; provision of humanitarian assistance; supporting refugees; awareness raising activities. In the upcoming year the major task of the organisation in the field of refugee care is to improve and to extend the support of unaccompanied minors and young adults in their integration process. The organisation operates the Home for the Unaccompanied Refugee Minors

and the Home for Young Adults at the reception center in Bicske.

2) Legal framework

On 18th December 2006, the Parliament of Hungary adopted **two new legislative acts in the field of migration** which implemented the relevant EU directives. Act I of 2007 on the Entry and Stay of Persons Enjoying the Right of Free Movement (hereinafter referred to as Free Movement Act) and Act II of 2007 on the Entry and Stay of Third-Country Nationals (hereinafter referred to as new Aliens Act) replaced the previous Aliens Act and entered into force on the 1st of July 2007. The Free Movement Act implements Council Directive 2004/38/EC, while the New Aliens Act contains the necessary provisions for the implementation of the EU and the Schengen acquis.

Concerning asylum-seekers, beneficiaries of international protection, beneficiaries of temporary protection and persons authorized to stay, the new Act LXXX of 2007 on Asylum (hereinafter referred to as **Act on Asylum**) entered into force on the 1st of January 2008 and replaced the previous Act CXXXIX of 1997 on Asylum. The new Act on Asylum and its implementing Government Decree 301/2007 (XI. 9.) lay down the basic principles and the most important guidelines to follow in the area of asylum fully in line with the relevant EU directives.

The provisions concerning the **integration** of migrants are laid down in sectoral legal instruments, such as:

- Act XX of 1949 on the Constitution of Hungary
- Act LV of 1993 on Hungarian Citizenship
- Act LXXIX of 1993 on Public Education
- Act CXXXIX of 2005 on Higher Education
- Act C of 2001 on the Recognition of Foreign Certifications and Degrees
- Act CXXV on Equal Treatment and Promotion of Equal Opportunities
- Act III of 1993 on Social Governance and Social Benefits
- Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services and its implementing Government Decree 195/1997(XI.V.)
- Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship
- Act IV of 1991 on Job Assistance and Unemployment Benefits
- Government Decree No. 8/1999 (XI.10.) on the Authorization of Foreigners to Work in the Territory of Hungary
- Governmental Decree 12/2001 (I.31.) on the State Subsidies for Housing

DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEM

After the elections in April 2006 **significant changes were carried out in the organizational structure** of the Hungarian ministries.

As part of the administrative reform in 2006, the Ministry of the Interior was dissolved and law enforcement tasks were reassigned to the Ministry of Justice, thereafter called MoJLE. Other competences of the former Ministry of the Interior were overtaken by the newly created Ministry for Local Governments and Territorial Development. Due to these organisational and structural changes, some of the competences of the former Ministry of the Interior, such as public security, border traffic control, citizenship, asylum, admission and residence of foreigners and registration of personal data and addresses were transferred to the MoJLE. As a consequence of this change, the law enforcement authorities: the Police Headquarters, the Border Guards and the penitentiary institutions were also relocated under the auspices of this ministry.

Until 1993 an organizational unit called Office of Asylum Affairs fulfilled the tasks in relation to asylum. In 1993 the Government decided to establish the Office of Asylum Affairs and Migration². Thereafter, as part of the inception phase of developing an integrated migration system, the Government established the Ministry of Interior and the OIN on 1st of January 2000. The OIN – based on Government Decree 162/1999 (XI. 19.) – is an independent central authority. Legal harmonization and institutional development were part of Hungary's preparation for the EU accession and in order to achieve these goals on 29th May 2001 the Hungarian Parliament adopted the previous Aliens Act and amended the Act CXXXIX of 1997 on Asylum. This removed the legislative barriers from the development of a unified migration organisation. The amendment made to the Government Decree 162/1999 (XI. 19.) on the OIN enabled the Government to set up the OIN's regional branches, the so-called Regional Directorates. Subsequent to the dissolution of the Ministry of the Interior, the OIN acts under the direction of the MoJLE according to Act LV of 2006 on the Ministries of the Republic of Hungary that entered into force on 9 June 2006.

Besides the OIN the other subordinated governmental body carrying out tasks related migration was the Hungarian Border Guards. January 2008 can be regarded as an important milestone since on that date the Border Guards was integrated into the Police Headquarters. In order to make the integration of the two organizations possible, necessary legal amendments and changes with regard the number of personnel had to be done. Both the number of personnel of the Border Guards and the Police were significantly cut. The preparation for joining the Schengen area took several years and the accession caused several changes not only as regards the structure but also in the border management tasks. Physical obstacles had to be removed at the internal borders, while border control had to be strengthened at the external borders and also information technology developments had to be done in order to install the SIS³.

Concerning the **migratory trends**, before the change of regime in 1989, Hungary was mainly a country characterized by emigration. After 1987, however, an increasing number of refugees started arriving in the country, at first mainly ethnic Hungarians from Romania, forcing the political leadership of that time to face a totally new situation. The Hungarian Government at first lent tacit support to people arriving from Romania and from East Germany as well. Later, under the pressure of the opposition and the church this acceptance and assistance became overt

² 43/1993. (III. 3.) Governmental Decree on the establishment of the Office of Asylum Affairs and Migration

³ Peter Futo: Country Report Hungary, Undocumented Migration, Counting the Uncountable. Data and trends across Europe, November 2008

official practice. Under the weight of such ‘necessity’ a significant improvement took place in terms of immigration and the question of refugees: in 1989 Hungary joined the Geneva Convention of 1951 as well as the UN Protocol Relating to the Status of Refugees of 1967 which regulates the situation of refugees defines the tasks of the receiving state and outlines the legal procedure that refugees are to be submitted to.

The democratization process was accompanied by the liberalisation of the rules pertaining to the border control, to the exit of Hungarian citizens and to the entry and stay of foreigners and Hungary became a transit and destination country of international migration. From the 90s the highly regulated and suppressed migration processes of the earlier period were replaced in Hungary by intense immigration which began with the above-mentioned wave of refugees arriving from Romania in 1988 and 1989. Besides changing legal conditions in Hungary migration processes were also made more intense by the change of regime in the surrounding countries. At the beginning of the 90s the armed conflicts in Yugoslavia led to a new wave of refugees. The government made a political decision to admit these refugees on humanitarian grounds. Most of them were granted temporary protection. This new wave of immigrants made it clear that Hungary’s situation had changed and the country had to face the challenges of migration and at the same time had to comply with the newest challenges related to changes in international law.⁴

As a consequence Hungary became transformed from a former sending country into a receiving and partly a transit country. Immigration peaked in 1990 when approximately 37 000 immigrants were registered (80% of them still from Romania). After this time the number of immigrants declined and between 1992 and 1998 it stabilised between 13-16 000. After a mild growth, the figure stabilised at the level of 18-20 000 between 1999 and 2004.

Between 1988 and 2004 all together 335 000 immigrants came to Hungary. Some of them have left the country since that time, another portion of them have been naturalized (between 1993 and 2004 almost 91 000 people were granted Hungarian citizenship) or their residence permit expired. Afterwards, according to statistical data, on 1st January 2005 142 000 foreigners, on 1st of January 2006 154 000, on the 1st of January 2007 166 000 while on 1st January 2008 174 000 foreigners resided in the territory of Hungary. According to the current migratory trends the proportion of migrants in relation to the host population is still very low compared to other European countries and it is estimated around 1,8% in 2008⁵. Nevertheless the number of foreigners legally residing in Hungary is increasing year by year.

Looking at immigrants with respect to their country of origin, in 1998 two-third of the foreigners living in Hungary came from the following four countries⁶: Romania (38%), the former Yugoslavia (11%), the former Soviet Union (13%) and China (5,5%). It is estimated⁷ that among those immigrants 90% of the Romanian citizens, 50-60% of the former Soviet citizens and 70-80% of the Yugoslavian citizens were ethnic Hungarians. Therefore we can conclude that the immigration to Hungary in the 90s was mainly characterized by ethnic

⁴ Irén Gödri: Demographics of foreigners in the participating countries and immigration policies at the time of the PPA surveys _ Hungary

⁵ Data provided by the Central Statistical Office; the data include those persons who reside at the territory of Hungary for a period exceeding one year. The data include persons enjoying the right of free movement and beneficiaries of international protection too.

⁶ Margit Feischmidt and Pál Nyíri (editors), *Nem kívánt gyerekek? Külföldi gyerekek magyar iskolákban* (Budapest Sík kiadó, 2006), p 19-20

⁷ *Ibid*, 19-20

migration. Besides this category a significant proportion of immigrants were of Asian (mainly Chinese origin) while the number of those coming from the American and African continents were not significant. Due to the visa policy of the early 90s, a significant number of economic migrants came from Asia to Hungary (especially from China, Vietnam and Mongolia)⁸. The change of the visa policy and the restrictions of the legal framework in the following years resulted in the decrease of this flow by the end of the 90s. However the accession of Hungary to the European Union made the country even more attractive for the citizens of the neighbouring countries and for the citizens of Asian countries⁹.

In terms of age structure between 1995 and 2006 most of the foreigners residing in Hungary were in the age group above 20 and below 50. Although there was a definite increase in the elder age groups, the explanation of this data could be that parents often joined to their children already residing in Hungary afterwards. Nonetheless, this just partially should be understood as elderly people moving into less affluent but more pleasant environment but mainly as the care for elderly within Hungarian families coming from neighboring countries¹⁰. In the sex composition of residing foreigners there is a notable increase in the ratio of women.¹¹ By 2001 it seems that women have caught up with men and even they achieved some kind of dominance. There has been a female dominance in the age groups of late tens and twenties, plus in the age groups above fifty. This might mean a change of gender patterns which is very much in line with the globalization but we have to make clear that only male superiority has disappeared and feminization is not so strong.

ORGANISATION OF POLICY

4.1. Asylum and Migration

For every third-country national there is an entry phase depending on the reasons they migrate. However a clear distinction should be made between those third-country nationals whose intention is to enter into and reside in the territory of Hungary for purposes based on the immigration legislation and those third-country nationals who are in need of international protection or beneficiaries of international protection therefore fall under the asylum legislation. This distinction is reflected in the sections below.

4.1.1. Entry Procedures

The first part of this section identifies the potential organizations in front of which the applicant may express his/her intention to submit an application. As it will be detailed below the competent organization dealing with asylum applications is the OIN (hereinafter also referred to as Refugee Authority). Only four Regional Directorates of the OIN deal with asylum matters: the Budapest and Pest County Regional Directorate, the Regional Directorate of the Northern Great Plain, the Regional Directorate of the Southern Great Plain and the Regional Directorate of Transdanubia.

Nevertheless if an applicant intends to lodge an application in front of another authority, the latter has the duty to record the applicant's wish and to notify simultaneously the Refugee Authority thereof.

⁸ Ibid, 19-20, 41

⁹ Data provided by the Hungarian Statistical Office, available at http://portal.ksh.hu/pls/ksh/docs/eng/xstadat/xstadat_annual/tab11_06ieb.html?617 (2008.08.13.)

¹⁰ (Illés, 2005; Melegh, 2006a)

¹¹ Okólski, 1999

The second part of this section provides a short overview on the Hungarian legislation on legal and economic migration with special emphasis on the types of visas given by the different responsible authorities involved in the entry procedures and on some coercitive measures such as the ban on entry, ban on entry and stay and expulsion differentiated according to the proceeding responsible authority. In addition to that some general statistics are also included after both of the two sub-sections.

4.1.1.1 Asylum

According to Article 1 of the new Act on Asylum the act regulates the content of the asylum granted by the Republic of Hungary, the criteria of recognition as a refugee, a beneficiary of subsidiary and temporary protection (hereinafter referred to as recognition) and the procedure aimed at the recognition and revocation. According to the Article 33 of the Act on Asylum the asylum procedure aims at determining whether the foreigner seeking recognition satisfies the criteria of recognition as a refugee, a beneficiary of subsidiary or temporary protection.

The new Act on Asylum – fully in line with the aim of the Common European Asylum System – introduced the concept of the single asylum procedure which means that the rules applicable during the asylum procedure do not differentiate between application for refugee status and subsidiary protection, every application is regarded as an application for recognition as a refugee or a beneficiary of subsidiary protection. Therefore the term asylum-seeker is considered to be either a person applying for refugee status or for subsidiary protection.

The application for temporary protection and the procedure of recognition as beneficiary of temporary protection falls under specific rules which are not detailed below.

An asylum seeker may express his/her intention to apply for recognition at the terrestrial border crossing points (Ukrainian-Hungarian Border Section, Serbian-Hungarian Border Section, Croatian-Hungarian Border Section), at the Budapest International Airport, at the OIN or at any other Hungarian authority.

According to the Border Monitoring Project conducted by the Hungarian Helsinki Committee in 2007¹², information materials concerning the right to apply for recognition in Hungary produced by the UNHCR, the Hungarian Helsinki Committee and the Menedék - Association for Migrants are regularly displayed at all border checkpoints and field offices. The information dispensers also include lawyers' contact information and are displayed in visible locations.

The application for recognition can only be examined by the Refugee Authority. If a foreigner declares his/her wish to apply for recognition during an alien policing procedure, during a penal or a petty offence procedure, the proceeding authority records his/her declaration and has the obligation to notify the Refugee Authority instantly.¹³ The Refugee Authority has the obligation to ensure the possibility of filing in the application at the place of detention for the detained foreigners.¹⁴

¹²Asylum seekers' access to territory and to the asylum procedure in the Republic of Hungary: Report on the Border Monitoring Program's first year in 2007, published by the Hungarian Helsinki Committee in 2008. Available at: www.helsinki.hu (last consulted on 27/04/2009) hereinafter referred to as: "HHC Border Monitoring Program"

¹³ Art. 64. (2) of the Government Decree 301/2007 (XI.9.) on the implementation of the Act on Asylum (hereinafter referred to as GD)

¹⁴ Art. 62. (8) of GD

The Joint Instruction 2008/1¹⁵ of the Director General of the OIN and the National Police Chief which entered into force on 30th May 2008 contains detailed rules related to the cooperation of the authorities in the asylum procedure.

If a person expresses his/her intention of submitting an application for recognition at the Police (during an alien policing, a petty offence or a penal procedure) the proceeding authority has the obligation to notify the Refugee Authority instantly and – at the written request of the Refugee Authority – provide for the transfer of the applicant to the Reception Centre located in Békéscsaba designated to accommodate applicants undergoing preliminary assessment procedure.¹⁶

If a foreigner expresses his/her intention of seeking asylum at any organizational unit of the OIN the territorially competent regional Police Headquarters is charged with the transfer of the applicant to the designated reception centre according to the Refugee Authority's written request.¹⁷

If a person accommodated in a guarded shelter expresses his/her will to acquire international protection during an alien policing procedure the Refugee Authority has the obligation to conduct the personal interview at the place of detention.¹⁸ If the Refugee Authority refers the application of the foreigner under detention to the in-merit procedure the proceeding authority shall terminate the detention upon the Refugee Authority's request and provide for the transfer of the applicant to the designated reception center.¹⁹

If it is established that the foreigner subjected to an alien policing procedure has previously already submitted an application for recognition in another Member State, the proceeding authority has the duty to send all the relevant data and files without delay to the Dublin Coordination Unit of the OIN for further instruction.²⁰

The asylum procedure starts when an application for recognition is submitted to the Refugee Authority. Thus the foreigner can only be considered an asylum seeker from the time he/she has submitted his/her application in oral or written form before the Refugee Authority.²¹ In the case of a written application the submission date is the date when the application is received by the Refugee Authority. In case of an oral application, the submission date is the date when the application is recorded. The asylum seeker shall proceed in the asylum procedure in person. When submitting an application, the applicant has to be informed in writing of his/her procedural rights and obligations.²²

In 2002 non-European asylum seekers made up 93% percent of the asylum-seekers and their proportion was between 63% and 73% from 2003 to 2006. In 2005 the main counties of origin of asylum seekers were: Vietnam, Serbia-Montenegro, China, Georgia and Bangladesh. In 2006 2117 applications were submitted to the Refugee Authority. The main nationalities of the applicants were Georgian, Iraqi, Chinese, Nigerian, Russian, Serb-Montenegrin, and Vietnamese. In 2008 all together 3118 applications for recognition were submitted to the

¹⁵ Henceforth referred to as “the Joint Instruction 2008/1”

¹⁶ Joint Instruction 2008/1, Art. 52.

¹⁷ Joint Instruction 2008/1, Art. 53.

¹⁸ Joint Instruction 2008/1, Art. 54.

¹⁹ Joint Instruction 2008/1, Art. 56.

²⁰ Joint Instruction 2008/1, Art. 57.

²¹ HHC Border Monitoring Program, see footnote 11.

²² Art 37. (1) of GD

Refugee Authority. The main countries of origin are Iraq, Serbia, Kosovo, Pakistan, Somalia and Georgian. This data shows a slight decrease in comparison to the previous year when 3419 applications for recognition were submitted.

According to the 2004-2008 Statistical Bulletin published by the OIN²³ in 2008, the majority of asylum seekers (92,33 %) entered into Hungary illegally. We can experience a considerable increase in the number of asylum seekers reaching Hungary illegally compared to the year 2007 when their percentage amounted to 82 %. Some of them were apprehended while violating immigration law trying to cross the border without the necessary prerequisites (no or falsified documents) or stopped as persons without a right to stay or work. In their case the alien policing procedure conducted by the Border Guards Police (the “return procedure”) aimed at sanctioning the violation starts first.²⁴ The alien policing procedure eventually may include their placing under alien policy detention.

In case of an airport procedure the Refugee Directorate of the OIN is informed about the presence of the asylum seeker. The new Act on Asylum, which entered into force on 1st January 2008, relieves the Border Guards from the duty of recording the asylum application in writing and assigns the obligation to the OIN. In cases involving foreigners applying for recognition at the airport the first phase of the Hungarian asylum procedure (the preliminary procedure) is to be conducted at the airport. The applicants are obliged to stay at the airport during the whole duration of the procedure, being accommodated at the so-called transit centre where other persons without the right to enter or awaiting removal stay.

Asylum seekers arriving to the Hungarian International Airport without papers or with falsified documents (in general not meeting entry conditions at the international airport) are subjected to the airport procedure which has to be completed by the OIN within eight days.²⁵ According to the statistical data provided by the Border Guards the number of applications for recognition submitted at the Budapest International Airport was very low in the years preceding the border monitoring project and in particular in 2005.²⁶

4.1.1.2. Migration

a) Legal migration

The new Aliens Act and its implementing Governmental Decree 114/2007. (V.24.) (hereinafter referred to as Implementing Rules) set down the detailed rules regarding legal migration. The latter distinguishes between the right of residence for less than three months within a six-month period and the right of residence for a period of longer than three months.

²³ <http://www.bmbah.hu/statisztikak.php>

²⁴ Comparative Overview of the implementation of the directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States, Odysseus Academic Network, October 2006. Available at: http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/odysseus_synthesis_report_2007_en.pdf (last consulted on 25/04/2009)

²⁵ Art. 72 of AA

²⁶ Asylum seekers' access to territory and to the asylum procedure in the Republic of Hungary: Report on the Border Monitoring Program's first year in 2007, published by the Hungarian Helsinki Committee in 2008. Available at: www.helsinki.hu (last consulted on 27/04/2009)

According to the general rules of the right of residence for less than three months within a six-month period third-country nationals may enter into the territory of the Republic of Hungary and stay for up to three months within a period of six months from the time of the first entry under the conditions set out 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 (hereinafter referred to as "Schengen Borders Code"). Unless otherwise prescribed by any directly applicable Community legislation, an international agreement, the New Aliens Act or a government decree adopted by the authorization of the New Aliens Act, the entry into and stay in the territory of Hungary for a period not exceeding three months shall be authorized in case if the foreigner is in possession of a valid visa.

The types of visas for a validity period not exceeding three months are the following ones:

- airport transit visa: for entering the international areas of the airport and for remaining there until the departure of the flight to the destination country;
- transit visa: for single or multiple entry and stay for maximum five days;
- short stay visa: for single or multiple entry and stays not exceeding three months.

Visas for a validity period not exceeding three months are valid for maximum five years and may be granted to third-country nationals who satisfy the requirements set out in Article 5 (1) a), c) and e) of the Schengen Borders Code.

The granting of these types of visas falls under the competence of the following three bodies (hereinafter referred to as Visa Authorities):

- Minister in charge of foreign affairs,
- consul,
- OIN (Aliens Policing Directorate, Visa, Residence and Settlement Division).

Decisions made by the consul

According to paragraph 11 sub-section (1) of the Implementing Rules the application for a visa for a validity period not exceeding three months have to be submitted to the consul, to a foreign representation of a Schengen state authorized to grant these types of visas in the name of Hungary or at another place authorized to take over these type of visas operating in the country of the place of permanent residence, usual place of residence or citizenship of the applicant. The application may also be submitted to the consul, to a foreign representation of a Schengen state authorized to grant these types of visas in the name of Hungary or other place authorized to take over these types of visas in which the applicant resides legally if:

- in the country indicated in sub-section (1) there is no operating consul, foreign representation or other place,
- the reason of the submission of the application is justified by the applicant,
- there is a significant economic, cultural, scientific or sport interest on behalf of the Republic of Hungary to the entry and stay of the person concerned.

In the above-mentioned cases the consul has to make the decision on the application for visa and is entitled to request the official position of the National Security Agency on the application concerned.

According to paragraph 9 of the New Aliens Act in cases defined by the minister in charge of immigration, the minister in charge of foreign policies and by the minister in charge of supervising the national security services, for reasons of public security and national security visas for a validity period not exceeding three months may only be granted upon the prior consent of the central visa authority (which is the OIN). In these cases the consul submits immediately the visa application for approval to the Office of Immigration. The OIN is obliged to request the official position of the Office of National Security before granting its approval. The OIN is obliged to manage a prior consultation with those central authorities of the Schengen states which requires to do so before granting its approval except when the visa application should be rejected.

Decisions made by the minister in charge of foreign affairs

According to paragraph 9 of the Implementing Rules the minister in charge of foreign affairs makes the decision on the application for visas in case if there is a strong foreign policy interest to the entry of the person concerned or if the person concerned or his/her family member enjoys diplomatic privileges and immunities or privileges and immunities under international law or if the person enters into the territory of Hungary for the purpose of visiting the members of diplomatic posts or consular missions or international organizations. The minister in charge of foreign affairs is entitled to request the official position of the National Security Agency on the application concerned.

Decisions made by the OIN

According to paragraph 10 of the Implementing Rules, in exceptional cases, the application for visa shall be submitted to the Police Headquarters at the external land, air and water borders. Fully in line with the Schengen Borders Code the Police Headquarters submit the application immediately to the OIN for decision. The OIN decides on the application for visa immediately but in three hours at the latest. In case if the OIN decides on granting visa applied, the visa is issued by the Police Headquarters.

In 2008 all together 348 414 applications for visa were submitted to the Visa Authorities from which 182 971 applications were submitted for tourism, 47 589 applications were submitted for business, 29 759 application were submitted for visit and 450 applications were submitted for other purposes.

b) Illegal migration

Concerning illegal migration, the following organizations have the main responsibility:

- In case of ban on entry the Police Headquarters,
- In case of expulsion the Police Headquarters and the OIN (Aliens Policing Directorate, Coercive Measures and Repatriation Division).

Refusal of entry and return

According to paragraph 40 of the New Aliens Act it is the Police Headquarters who carries out the border monitoring and according to the provisions of the Schengen Borders Code refuse the entry of third-country nationals seeking to stay in the territory of Hungary for a period no longer than three months, and return such persons – in due observation of its interests:

- a) to the country of origin of the third-country national in question;
- b) to the country that is liable to readmit the third-country national in question;
- c) to the country where the usual residence of the third-country national in question is located;
- d) to any third country prepared to admit the third-country national in question.

A third-country national whose entry was refused and is turned back shall:

- a) remain for a maximum period of eight hours on the means of transport that is scheduled to depart to the point of origin or another destination of transit;
- b) remain in a designated place located in the frontier zone for a maximum period of seventy-two hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days; or
- c) transfer onto another means of transport of the carrier that is liable to provide return transport.

If the return procedure cannot be carried out within the time limit specified in point b) the third-country national shall be expelled following his/her entry. In this case the Police Headquarters permit the entrance of the third-country national into the territory of Hungary according to the Article 5 section 4 point c) of the Schengen Borders Code and apprehend the third-country national to the territorial competent Regional Directorate which examines the conditions of expulsion.

Expulsion and ban on entry and stay

According to Article 43 paragraph 1 of the New Aliens Act, the responsible authority orders the expulsion and ban on entry and stay of a third-country national, or a ban on entry and stay can be imposed in itself if the whereabouts of a third-country national are unknown or if the third-country national resides outside the territory of the Republic of Hungary and (a) can not be allowed to enter the territory of the Republic of Hungary under international commitment, or (b) is under ban on entry and stay by a decision of the Council of the European Union.

According to the Article 43 paragraph 2 of the New Aliens Act responsible authority orders the expulsion and ban on entry and stay of a third-country national or a ban on entry and stay can be imposed in itself if the whereabouts of a third-country national are unknown or if the third-country national resides outside the territory of the Republic of Hungary and (a) has crossed the frontier of the Republic of Hungary illegally, or has attempted to do so, (b) fails to comply with the requirements of residence set out in the New Aliens Act, (c) fails to comply with the order to leave the territory of the Republic of Hungary within the prescribed time limit, (d) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision, (e) who has failed to repay any refundable financial aid received from the State of Hungary, (f) whose entry and residence represents a threat to national security, public security or public policy; (g) whose entry and residence represents a threat and is

potentially dangerous to public health, (h) who was returned under international treaty without expulsion to the authorities of another State, (i) who has failed to pay any instant fine or a fine imposed in conclusion of a misdemeanour proceeding within the prescribed deadline, and it cannot be recovered or collected.

Concerning expulsion the responsibility belongs to different organizations when the expulsion and the ban on entry and stay are stated at the same time and when the ban on entry and stay is stated in itself.

a) When the expulsion and the ban on entry and stay is stated at the same time

When the expulsion and the ban on entry and stay is stated at the same time the territorial competent Regional Directorates of the OIN is the responsible authority except when the illegal entry or its attempt was detected at the borders during the border monitoring activity according to the Article 2 paragraph 9 of the Schengen Borders Code and the expulsion might be implemented according to a readmission agreement. In this latter case, the Police Headquarters orders the expulsion and the ban on entry and stay.

b) When the ban on entry and stay is stated in itself

According to Article 43 paragraph 1 of the New Aliens Act in case if the expulsion and the ban on entry and stay is ordered in itself, the OIN, if the expulsion and the ban on entry and stay is ordered in itself according to the above-detailed Article 43 paragraph 2 of the New Aliens Act, the Regional Directorate has the responsibility. If the third-country national failed to repay the refundable financial aid for implementing the expulsion received from the State of Hungary the Police Headquarters is entitled to order the ban on entry and stay in itself.

4.1.2. Admission conditions

4.1.2.1. Asylum

The Hungarian asylum procedure is divided into 2 distinct phases: the preliminary assessment procedure and the in-merit procedure. Both phases are conducted by the Refugee Authority.

The territorial competency of the Regional Directorates of the OIN which have the duty of assessing the application is established in accordance with the place of submission of the application. The 3rd annex of the Joint Instruction 2008/1 of the Director General of the OIN and the National Police Chief dealing with cooperation in asylum matters between the Refugee Authority and the National Police Headquarters contains specific details concerning the territorially competent regional directorate supposed to deal with the application.

Applicants subjected to the preliminary assessment procedure are accommodated in the Békéscsaba Reception Centre. The entire duration of the preliminary assessment procedure shall not exceed fifteen days. The preliminary assessment procedure first aims at identifying whether the Dublin Procedure laid down in Council Regulation 343/2003/EC has to be followed.²⁷ If the Dublin Procedure does not apply the admissibility of the application is examined. If the application founds to be admissible the Refugee Authority refers it to the in-merit procedure and provides for the transfer of the applicant to the reception centre of Debrecen designated to accommodate applicants subjected to the in-merit procedure.

²⁷ Art. 49 of the AA

Subsequently to the Refugee Authority's resolution referring the application to the in-merit procedure the Alien Policing Authority shall terminate the detention of the applicant placed under alien policing detention at the initiative of the Refugee Authority.²⁸

As mentioned above in Section 4.1.1.1., when a foreigner submits his/her application at an international air traffic border crossing point prior to entry in the territory of the Republic of Hungary,²⁹ the preliminary assessment has to be completed by the Refugee Authority within eight days during which period the applicant is accommodated in the facility located in the transit area of the airport. However, it has to be emphasized, that according to the legal instruments in force persons requiring special treatment shall not be subjected to the airport procedure.

Unaccompanied minors are accommodated in the Shelter for Unaccompanied Minors located in Bicske. This shelter is designated to meet their special needs.

4.1.2.2. Migration

Concerning the general conditions of the right of residence for a period longer than three months the entry conditions for third-country nationals are the following: (a) possession of a valid travel document; and (b) possession of a visa for a validity period longer than three months, or a residence permit, or an immigration permit, or a settlement permit, or a temporary settlement permit, or a national settlement permit, or an EC settlement permit; and (c) possession of the necessary permits for return or subsequent travel; and (d) justification of the purpose of entry and stay; and (e) having accommodations or a place of residence in the territory of the Republic of Hungary; and (f) having sufficient means of subsistence and financial resources to cover their accommodation costs for the duration of the intended stay and for the return to their country of origin or transit to a third country; and (g) having full healthcare insurance or sufficient financial resources for healthcare services; and (h) not being subject to an entry ban, not considered to be a threat to public policy, public security or public health, or to the national security of the Republic of Hungary; and (i) not being persons for whom an alert has been issued in the SIS for the purposes of refusing entry.

In the event of non-compliance with these requirements the entry and stay of third-country nationals shall be authorized only on humanitarian grounds, on grounds of national interest or because of international obligations.

The third-country nationals holding either of the permits listed above are not required to certify at the time of entry the requirements specified under points c)-g).

The types of visas for a validity period for longer than three months are the following;

- visa entitling the holder to receive a residence permit, which is valid for single or multiple entry, and stay in the territory of the Republic of Hungary for a period of longer than three months,
- seasonal employment visa, which is valid for single or multiple entry and for employment for a period of longer than three months and maximum six months;

²⁸ Art. 55 Par. 3 of the AA

²⁹ Art. 72 Par. 1 of the AA

- national visa, which is valid for single or multiple entry and for stay in the territory of the Republic of Hungary for a period of longer than three months under international agreement.

The validity period of a visa entitling the holder to receive the residence permit and of the seasonal employment visa is maximum one year. The validity period of the national visa is maximum five years. Unless otherwise provided for in the New Aliens Act the seasonal employment visa and the national visa may be granted to third-country nationals who satisfy the requirements set out in the above-detailed points a) and c)-i).

The granting of these types of visas belongs to the competence of the following three bodies:

- consul,
- OIN (Aliens Policing Directorate, Visa, Residence and Settlement Division).
- Regional Directorates of the OIN.

Decisions made by the Regional Directorates of the OIN

The application for a visa entitling the holder to receive a residence permit should be submitted in the same application for receiving a residence permit. This type of visa can be issued since Hungary joined the Schengen area. The Regional Directorate of the OIN makes a decision on the application and at the same time gives permission for issuing the required visa. The Regional Directorate notifies the consul about its decision and it is the consul who issues the visa on the basis of this decision.

Decisions made by the consul and by the OIN

According to Article 34 Paragraph (1) of the Implementing Rules the application for seasonal employment visa and the application for national visa have to be submitted to the consul or to another authority authorized to take over these types of visas in the name of Hungary operating in the country of the place of permanent residence, usual place of residence or citizenship of the applicant. The application may also be submitted to other consul or to other authority authorized to take over these types of visas in the name of Hungary in which the applicant resides legally if:

- in the country indicated in Paragraph (1) there is no operating consul or other place,
- the reason of the submission of the application is justified by the applicant.
- there is a significant economic, cultural, scientific or sport interest on behalf of the Republic of Hungary for the entry and stay of the person concerned.

The consul submits the application for national visa to the OIN for making a decision. In case an application for seasonal visa is submitted the consul makes the decision on it. Both of the two visa authorities are obliged to request the official position of the Office of National Security in certain cases when the protection of the public or national security interest requires it.

In 2008 all together 11 943 applications for visa entitling the holder to receive the residence permit were submitted to the OIN, from which 9760 were granted and 912 seasonal employment visas were issued. During the same year 1905 applications for national visa were

submitted to the OIN, to which 1765 visa were granted. At the time of the data provision, in 646 cases the procedure was still in progress (in case of the national visas and visas entitling the holder to receive the residence permit).

On 31st December 2008, 11943 persons were in possession of a valid visa entitling the holder to stay for a period longer than three months in the territory of Hungary.³⁰

4.1.3. Legal Residence

4.1.3.1. Asylum

Third-country nationals applying for asylum, subsidiary or temporary protection at the Refugee Authority, persons recognized by the Republic of Hungary as stateless persons as well as unaccompanied minors arriving from a third-country are granted a residence permit on humanitarian grounds. This residence permit is valid for one year and may be prolonged by maximum one year at a time.³¹ The authority in charge of issuing this permit is the territorially competent Regional Directorate of the OIN.

In addition to the above-mentioned humanitarian residence permit recognised stateless persons are provided with a travel document valid for one year issued by the territorially competent Regional Directorate of the OIN.

According to Article 10 Paragraph (3) point a) of the Act on Asylum and Article 9 Paragraph (1) of the 168/1999 Government Decree, recognised refugees are entitled to a permanent identity card identical to the one issued to Hungarian citizens and to a bilingual travel document issued by the territorially competent Regional Directorate of the OIN.

According to Article 17 Paragraph (2) of the Act on Asylum of persons recognised as beneficiaries of subsidiary protection are provided with a travel document different from that of recognised refugees. Furthermore a travel document valid for a single return may be issued to recognised refugees and beneficiaries of subsidiary protection according to Article 11/B of the Government Decree 101/1998.

4.1.3.2. Migration³²

The new Aliens Act and its Implementing Rules contains the rules regarding the residence of third-country nationals in the territory of Hungary.

According to the general rules a residence permit is an authorization to reside in the territory of Hungary for a limited duration of at least three months and not more than two years and it may be extended for two additional years. Residence permits may be issued to third-country nationals who satisfy the general admission conditions mentioned under point 4.1.2.2 and either have a valid long-term visa or national visa or already have a valid residence permit in case of applications that aim at the extension of residence permit.

³⁰ Data provided by the OIN on 27 of January 2009

³¹ Art. 29. Par. 2 of the new Aliens Act

³² The rules concerning stays for a period of longer than 3 months were drafted to be in accordance with the relevant EU acquis, namely with Council Directive 2003/86/EC on family reunification, with Council Directive 2004/114 concerning students, unremunerated trainees and the entry and residence for the purpose of voluntary service activities; with Council Directive 2005/71/EC on researchers.

The issuance and the extension of residence permits fall under the competence of the Regional Directorate of the OIN and the minister in charge of foreign policies. The general rule is the competence of the Regional Directorate of the OIN while the minister in charge of foreign policies may issue residence permits in case of some specific groups of persons, such as:

- persons enjoying diplomatic immunity or some other privilege under international law, and their family members,
- visitors of members of international organizations and visitors of members of diplomatic and consular representations in Hungary,
- and persons whose entry is desirable for political reasons.

Applications for residence permits may be submitted at any consulate officer of Hungary or at any other authority that is authorized to accept such applications. Applications for residence permits may be submitted in the country where the permanent or temporary residence of the applicant is located, in the country of the applicant's nationality or under special circumstances in the country in which the applicant is lawfully residing. The consulate officer forwards the application to the competent Regional Directorate of the OIN. The competence of the Regional Directorate is based on the place of the future residence in Hungary of the third-country national concerned.

Third-country nationals residing already in the territory of Hungary may lodge their applications for a residence permit at the Regional Directorate of the OIN that has competence on the basis of their place of accommodation. This procedure may be used only in exceptional cases and under special conditions for instance when there are special circumstances that justify the submission of the application in Hungary, such as on the grounds of family reunification, medical treatment or when the purpose of residence is research.

Third-country nationals can submit applications for the extension of their residence permit to the Regional Directorate where their accommodation is located.

An appeal against a resolution for the ban on an application for a residence permit or for the withdrawal of a residence permit can be lodged within five working days following the delivery of the resolution.

In order to carry out some specific tasks there are other bodies involved in the procedure for issuing a residence permit besides the above-mentioned authorities. When the applicant asks for a residence permit he/she has to provide a statement as to whether or not he/she suffers from a disease or disorder specified in a decree issued by the minister in charge of the health, or is suffering from a contagious or pathogenic condition, or if he/she receives compulsory and regular treatment for any disease that constitute a potential threat to public health or for a contagious or pathogenic condition. If the health condition specified above exists, the Regional Directorate of the OIN has to notify the government body in charge of health care and epidemiological issues. The government body in charge of health care and epidemiological issues may compel the third-country national to attend the necessary medical examinations, or to present an official medical report issued by the competent authority of his/her country of origin.

The Regional Directorate requests the opinion of the National Security Agency concerning

applications for a residence permit for reasons of public security and national security.

In addition to the general rules concerning the issuance of residence permits, specific provisions can also be found in the new Aliens Act. Specific purposes of stay include family reunification, gainful employment, studies, scientific research, official duties, medical treatment, visit and voluntary service activities. In all cases, the competent Regional Directorate of the OIN makes the decision on the application for the residence permits, however in case of some permits, other institutions or bodies are also involved in the process.

The validity period of the residence permits issued for specific purposes of stay may differ, but the validity period of all kinds of permits may be extended, if the necessary conditions are met. However, residence permits issued for purpose of visit cannot be extended for this purpose, their validity period shall correspond to the duration of the commitment fixed in the letter of invitation and cannot exceed one year. The validity period of a residence permit granted for the purpose of family reunification can be three years maximum, and it may be extended by three additional years at a time, however the validity period may not exceed the validity period of the sponsor's long-term visa or residence permit. The validity period of a residence permit granted for the purpose of gainful employment is three years maximum which may be extended by three additional years at a time. The period of validity of a long-term visa or a residence permit issued for the purpose of gainful employment subject to work permit corresponds to the duration of the work permit.

Specific provisions regarding the involvement of other institutions/organizations are the following with regard to specific purposes of stay:

- In case of gainful employment work permits are issued by the employment agencies. The residence permit and the work permit is not incorporated into a single document for the time being. Two authorities, namely the immigration office³³ and the employment agency are involved in the process. Nevertheless, the rules of this procedure will have to be changed in due time, if the relevant EC directive on the single permit enters into force. At the moment not only the authorities involved are different, but also the applicants, since it is the third-country national who has to submit an application for a residence permit, while in case of the work permit, it is the employer who asks for the issuance.
- In case of studies the third-country national needs to submit a certificate from the relevant educational institution or a document to verify his/her student status.
- In case of scientific research, the residence permit can be issued to third-country nationals who have concluded a hosting agreement with an accredited research organization³⁴. Specific legislation had to be adopted in order to regulate the accreditation procedure of research organizations and the rules regarding the hosting agreement. This legislation is in compliance with the relevant EU acquis, namely with Council Directive 2005/71/EC. The office having the competence to approve research organizations is called the National Office for Research and Technology which is a government office under ministerial supervision.

³³ OIN

³⁴ Detailed rules are laid down in Government Decree 181/2007. (VII. 6.) on the accreditation of research organizations hosting third-country national researchers and on the hosting agreement

- In case of visits, residence permits are issued to third-country nationals holding a letter of invitation. A request for a letter of invitation may be presented, inter alia by a legal person or business association lacking the legal status of a legal person that is established or registered in Hungary.
- In case of voluntary service activities, residence permits can be issued to third-country nationals who have concluded a voluntary service agreement with the hosting organization specified in specific other legislation for the purpose of providing voluntary services in the public interest³⁵.
- In case of medical treatment, a certificate from the medical institution providing the treatment is required.

On 31 December 2008 a total of 15 304 third-country nationals were in possession of a residence permit. The main countries of origin were China, Ukraine, Serbia and the USA³⁶.

Residence permits issued on humanitarian grounds:

In the absence of the requirements for a residence permit specified in the new Aliens Act, the following persons shall be granted a residence permit on humanitarian grounds:

- a) persons recognized by the Republic of Hungary as a stateless person;
- b) persons who have been granted the status of Persons Authorized to Stay (hereinafter referred to as PAS);
- c) any third-country national who applied to the refugee authority for asylum, or who applied to the refugee authority for any subsidiary form of protection or temporary protection;
- d) any third-country national who was born in the territory of the Republic of Hungary who has been removed from the custody of his guardian having custody according to Hungarian law, and also unaccompanied minors;
- e) for substantial national security or law enforcement reasons – by initiative of the national security or law enforcement agency – to any third-country national, or other affiliated third-country nationals on his/her account, who has cooperated with the authorities in a crime investigation and has provided significant assistance to gather evidence.

A residence permit shall be granted on humanitarian grounds ex officio, and shall be extended by:

- a) the competent Regional Directorate granting stateless or PAS status, in case of points a) and b);
- b) the Refugee Authority in case of point c);
- c) the Regional Directorate of the place of accommodation of the unaccompanied minor in case of point d), at the request of the guardian authority;

³⁵ Detailed rules are laid down in Act LXXXVIII of 2005.

³⁶ Data provided by the OIN, available at http://www.bevandorlas.hu/statisztikak_HUN_36.xls

d) the Regional Directorate of the place of accommodation of the third-country national in case of point e).

Where a residence permit was granted on humanitarian grounds by the initiative of a duly authorized authority or body, the withdrawal, extension or refusal of extension of such residence permit shall be subject to the initiative or consent of the aforesaid duly authorized authority or body.

A special group of third-country nationals holding humanitarian residence permits are PAS. They are persons who are not eligible to refugee status but who are entitled to remain in Hungary as their removal to their country of origin might subject them to capital punishment, torture or any other form of cruel, inhuman or degrading treatment, and there is no safe third country where they can be returned. PAS receive a humanitarian residence permit which is valid for a year; therefore their status is subject to a yearly review. They receive support under the new Aliens Act, such as: accommodation at a reception centre or at a community shelter, health care, financial subsidy for housing, financial subsidy for participating in the public education.

From 2005 until the entry into force of the new Act on Asylum the Refugee Authority recognized approximately 100 persons as PAS yearly³⁷. The entry into force of the new Act on Asylum on 1 January 2008 resulted in a considerable decrease in the number of newly recognized PAS; in the first half of 2008 only one person received that status³⁸. This is due to the fact that the new Act on Asylum introduced the concept of subsidiary protection to the Hungarian law and the overwhelming majority of the applicants coming from the conflict zones such as Afghanistan or Iraq were recognized as beneficiaries of subsidiary protection. As the deadline of the ex officio review of the status of all PAS is eighteen months from the entry into force of the Act (until July 2009) the number of PAS after July 2009 is estimated to be very low³⁹. The number of persons having the status of PAS was 274 at the end of 2008. Main nationalities include Serbian-Montenegrins, Afghans, Iraqis, Syrians and Armenians⁴⁰.

Permanent resident status

Permanent residence status is granted to third-country nationals who are in possession of:

- a permanent residence permit issued before the entry into force of Act II of 2007;
- an interim permanent residence permit;
- a national permanent residence permit;
- or an EC permanent residence permit issued in accordance with the provisions of Council Directive 109/2003/EC.

Third-country nationals with permanent resident status are entitled to the rights afforded to holders of residence permits by specific other legislation and also to the rights afforded in the Constitution of Hungary and in specific other legislation. They are authorized to reside in the

³⁷ Data provided by the OIN, available at http://www.bevandorlas.hu/statisztikak_HUN_34.xls

³⁸ Data provided by the OIN on 30 July 2008

³⁹ Article 92 of the AA

⁴⁰ Data provided by the OIN, available at: http://www.bevandorlas.hu/statisztikak_HUN_36.xls.

territory of Hungary for an indefinite period of time and they have to register their place of residence and have to apply for an ID.

Applications for interim permanent residence permits, national permanent residence permits and EC permanent residence permits shall be submitted at the Regional Directorate that has territorial competence according to the applicant's future residence. Third-country nationals have to register their first place of domicile in Hungary – if they do not yet have a place of abode in Hungary – at the same time when they file the application for the aforesaid permanent resident permits.

When a third-country national with permanent resident status changes the address indicated in his/her application for permanent residence permit, he/she has to notify the notary of the local government of the new address.

Third-country nationals with permanent resident status shall supply their personal data and addresses to the notary of the local government in whose jurisdiction their residence is located within three working days following the issuance of the document containing their permanent resident status, and they shall apply for a personal identification document at the notary of the competent local government in whose jurisdiction they are domiciled.

Interim permanent residence permit

Third-country nationals holding an EC residence permit certifying long-term residence status granted by any Member State of the European Union under Council Directive 2003/109/EC, shall be issued an interim permanent residence permit if seeking admission into the territory of the Republic of Hungary: a) for the purpose of gainful employment, with the exception of seasonal employment; b) for the pursuit of studies or for the purpose of vocational training; or c) for other justified reasons. The validity period of an interim permanent residence permit shall be five years maximum, and it may be extended by five additional years at a time. The immigration authority of Hungary notifies the Member State that has granted the long-term resident status about the issuance or the withdrawal of the interim permanent residence permit.

National permanent residence permit

This permit is a special type of permit in the national legislation which ensures permanent resident status for third-country nationals. It is issued under more favourable conditions than the EC permanent residence permit but does not provide the right to mobility within the EU.

Under special circumstances the third-country national who is unable to satisfy the general conditions for receiving permanent residence status or the specific conditions set out for the issuance of a national residence permit, may be granted a national permanent residence permit by the decision of the minister in charge of immigration and asylum.

EC permanent residence permit

This type of permit may be granted to third-country nationals having lawfully resided in the territory of the Republic of Hungary continuously for at least the preceding five years before the application was submitted. If a third-country national has a long-term residence permit issued by another Member State of the EU, the immigration authority shall notify the Member State affected about the issue of an EC permanent residence permit.

There are no integration measures or prerequisites required for receiving resident status. Nevertheless, as regards the acquisition of Hungarian citizenship by naturalization, one of the requirements include a proof by the applicant that he/she has passed the examination in basic constitutional studies in Hungarian language, or that of being exempted from this exam. The President of Hungary may also grant exemption from the requirement of the exam in basic constitutional studies, if the naturalization of the applicant is in the overriding interest of Hungary.

According to the data of the OIN, 242 persons were in possession of an EC permanent residence permit, 2 568 persons were in possession of a national permanent residence permit and 6 persons were in possession of an interim permanent residence permit on 31 December 2008. The main countries of origin of third-country nationals holding a permanent residence permit are: Ukraine, China, and Serbia.

Family members of EEA citizens: if a third-country national is a family member of a citizen of a country belonging to the European Economic Area (hereinafter referred to as: EEA) or of a Hungarian citizen, she/he falls within the scope of the Free Movement Act and not under Act II of 2007 regulating the entry and residence of third-country nationals. On 31 December 2008, 5055 third-country nationals were in possession of a residence card as third-country national family members from which 4733 persons were family members of Hungarian citizens and 322 were family members of other EEA citizens⁴¹. 2113 third-country nationals were in possession of a permanent residence card.

4.1.4. Access to the labour market

4.1.4.1. Asylum

According to the Act on Asylum an asylum seeker is entitled to undertake employment only inside the premises of the reception centre within a period of one year from the date of submission of the application for asylum. Asylum seekers have to refrain from accepting employment apart from employment in the reception centre. If asylum seekers are employed inside the premises of a reception centre the administrative tasks fall under the competences of the respective reception centre, therefore the OIN.

Asylum seekers do not need a work permit for being employed in the territory of the reception centre but a limitation exists as to the working hours. The amount of this work cannot exceed forty hours per month. After one year an asylum seeker can take up employment under the general rules applicable to the employment of third-country nationals.

Recognized refugees, beneficiaries of subsidiary protection beneficiaries of temporary protection can work in the territory of Hungary without a work permit and can be employed according to the rules applicable to Hungarian citizens and they are also entitled to job seeker's benefits, allowance and services.

4.1.4.2. Migration

On the 1st of January 2009 Hungary opened its labour market to each workers coming from countries of the European Economic Area (hereinafter referred to as EEA) irrespective of their skills or the principle of reciprocity. According to general regulations, third-country nationals

⁴¹ Data as of 31 December 2008 provided by the OIN

can only be employed in Hungary in the possession of a work permit,⁴² however there are a few exemptions to this rule prescribed in the Ministerial Decree 8/1999 (XI.10.) SzCsM on Work Permits Issued to Foreign Nationals. According to the Ministerial Decree, the following categories can be distinguished:

- employment without a work permit obligation,
- employment with work permit obligation under facilitated conditions,
- employment with work permit obligation according to the general rules.

As it was mentioned under Part 2, 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. The maximum number of work permits is determined for the whole territory of Hungary (in 2008 it was 65 000).

Work permits are not easy to obtain. Individual work permits can only be issued by the competent employment centre on the basis of a valid workforce request submitted by an employer and if prior to filing the workforce request, neither any Hungarian worker, nor any EEA national or a relative of such national who is registered as a job-seeker and who satisfies the conditions of the current employment, was available for the position. The workforce request shall be considered valid, if it was registered by the employer minimum fifteen and maximum sixty days prior to the application for a work permit.

According to the procedural regulations, the workforce request has to be lodged at the branch of the employment centre (hereinafter referred to as branch) of the place of future employment. The branch examines whether there is available Hungarian or EEA national workforce for the position and if this labour market assessment comes to an end without success, the employer can apply for a work permit in order to employ a third-country national. The application for a work permit has to be filed at another level, at the employment centre (and not at its branch) which has competence according to the place of employment. If the employer intends to employ the third-country national in various business premises which are located in the territory of more than one county or branch, the employment centre or branch responsible for the place where the employer has its registered office is competent for the procedure.

Both the workforce request and the application for work permit have to be submitted by the employer. According to the general rule, the decision on the application has to be taken within ten working days after having received the application. The employment centre sends the work permit to the employer. In case of an application for renewal it shall be processed as such, if submitted minimum thirty days and maximum sixty days prior to the expiration of the original work permit.

With the exception set out in the Ministerial Decree, individual work permits are issued for a maximum period of two years, and may be renewed for the same period. Renewal is granted according to the same rules under which the original authorization was granted. It means that if an employer wants to renew a work permit, the whole procedure must be repeated: the employer must submit a workforce request, the labour market situation has to be examined, and if there is no other applicant, the application for the work permit is resubmitted. The individual

⁴² Act IV of 1991 on Promoting Employment and Supporting the Unemployed

work permit must specify the employer, the workplace, the job or position and the duration of employment for which the third-country national may be hired.

Requests for legal remedies within the administrative procedure are dealt with at a different level, namely by the Legal Department of the National Employment and Social Office.

Residence permits for third-country nationals can be granted for the purpose of gainful employment. The validity of a residence permit granted for the purpose of gainful employment by the OIN can be three years maximum, and it may be extended by three additional years at a time. However, in case of employment with work permit obligation, the validity period of the residence permit cannot exceed the duration of the work permit.

In some cases laid down in the Ministerial Decree it is possible to obtain a collective framework permit for the employment of a group of third-country nationals. Foreign companies often use this method as they are often subcontracted for a limited period of time and their activity requires a larger number of foreign personnel. However, the so-called collective framework permit does not substitute individual permits and the waiting periods are equally long.

There is one case when certain patterns of a sector driven selection takes place, which is the case of the work permit granted for seasonal workers. This category of work permit is issued to seasonal workers employed in agriculture, including crop production, stock-raising and fisheries. The work permit for seasonal employment may be granted for a maximum duration of 150 days within a twelve-month period. This type of work permit should be obtained only once, and workers may change employers or can even interrupt their stay in Hungary without losing the work permit. This permit is issued with a view to current trends in the labour market and these regulations were triggered by explicit labour needs, especially from the agriculture sector in the south-eastern parts of Hungary.

The procedure of obtaining a work permit has often been criticised by employers and foreign employees as being unnecessarily lengthy and bureaucratic. If there is no specific employer demand to employ foreign nationals – e.g. because of special skills normally not possessed by Hungarians, or being competitive in taking up badly paid or difficult jobs – employers usually do not bother with the administrative burden of obtaining a work permit. If it is already decided that the vacancy will be filled with a third-country national employee, the whole procedure becomes a waste of time, as there are well-established ways to influence the outcome of the labour market examination. For example, employers often set criteria in the job advertisement submitted to the labour centre that immediately exclude Hungarian nationals, such as language proficiency, training or a qualification which cannot be obtained in Hungary or foreign work experience.

However, to combat this type of behaviour, the authorities now examine whether or not the criteria set by the employer are relevant for the position and if not, the request can be refused. For this reason the Ministerial Decree lays down that the number of work permits issued to foreign nationals for employment in Hungary which at any given time may not exceed the average monthly number of workers requested by employers as reported during the previous year. This number, rounded up to the nearest thousand, shall be calculated by adding up the number of job vacancies on the first of the month and the number of new requests arriving during the month to fill job vacancies.

According to data provided by the National Employment and Social Office from June 2007, 58 265 foreign nationals were in possession of a valid work permit or have been registered as foreign workforce in Hungary. From this total number, 15 039 persons arrived from third countries. The great majority of third-country national workers take up employment in Central Hungary and most of them are employed in construction and agriculture.

The control of employment regulations, including the control of the employment of third-country nationals, falls under the general competence of the National Labour Inspectorate. Cooperation with other authorities, such as with the Hungarian Tax and Financial Control Administration, the Police, the OIN and the Hungarian Customs and Finance Guards, has also been strengthened.

4.1.5. Return

The OIN has the widest competences with regard to administrative actions concerning returnees. This authority organises the travel arrangements of persons who are obliged to return, coordinates the whole procedure, and implements the phases of return. Having regard to the fact that the OIN has the right to render decisions in each repatriation procedure and has the proper background for the implementation, the OIN can make the optimal decision in a short time period in order to find the most humanitarian and cost-effective way of return, taking into consideration also the level and nature of the violation of law and the personal circumstances of returnees.

Besides the OIN, the Border Guards, which was integrated into the Police from the 1st of January 2008, ensured the return related tasks until the 31st of December 2007. Due to this integration, as of 1st January 2008 the Police Headquarters is the competent authority that carries out these tasks.

The majority of third-country nationals ordered to leave the territory of the country do not have documents to prove their identity and nationality. In these cases the competent authority has to ensure the conditions of return as soon as possible. This obligation contains measures such as obtaining the necessary travel documents (e.g. passport, visa if needed), arrangements for the application of readmission agreements, purchasing the ticket and if necessary, notifying the competent authority in the country of transit or destination. To identify the third-country national concerned and to provide the abovementioned documents, the OIN requests the consular mission of the country of origin in Hungary, or takes the necessary steps through the Ministry of Foreign Affairs if the country has no consular mission in the territory of Hungary. The procedures initiated through diplomatic channels take up basically more time.

In order to avoid any overlap in proceedings and to establish the identity of third-country nationals, the authority which orders the obligation to leave the territory of Hungary, the expulsion, the compulsory confinement, the exclusion (ban on entry and residence), the detention or which carries out the expulsion ordered by the court shall take the fingerprint and the photograph of the third-country national. Returnees are obliged by law to provide the competent authority with the necessary documents and relevant personal data in order to make it possible for the authorities to conduct their return procedure.

In the cases of 165 nationals from 33 countries, the OIN sent a request to the responsible foreign representations for the purpose of obtaining the relevant travel documents in order to carry out the return procedure. This number decreased in the last two years as the OIN initiated

the abovementioned procedure in cases of 89 nationals from 26 countries in 2006 and in cases of 58 nationals from 19 countries in 2007⁴³.

Persons entering the territory of Hungary illegally – either through the green border or through official border crossing points – constitute one group of illegal migrants. In 2006 there were 16 508 revealed border apprehensions and 8 779 revealed cases in 2007. The reason of the decrease can be explained by the fact that as of January 2007 Romanian citizens enjoy the right to free movement, therefore they are not regarded as third-country nationals anymore. Another group of illegal migrants is constituted by persons who have crossed the borders legally but who no longer fulfill the requirements of legal residence. There are no exact statistics available on the number of overstayers, estimations can only be made using the data concerning the different ways in which their illegal stay is revealed, such as during labour inspections or border controls upon exit.⁴⁴

Removal by Deportation (Forced return)

Due to security reasons, the enforcement of expulsion decisions is implemented by means of removal by deportation, meaning that the authority provides escort for the third-country national. The returnee can be escorted either to the border of the Republic of Hungary, to the country of origin or to any other country which is obliged to take the returnee back.

According to the relevant legislation⁴⁵, in case of deportation by air, it is the OIN and in case of deportation by land it is the Police Headquarters which is responsible for the arrangements of the conditions of removal by deportation. The relevant rules are detailed in the Ministerial Decree 26/2007. (V. 31.) on the implementation of removal by deportation.

According to this, the arrangements of the conditions of removal by deportation include the following: providing for the acquisition of travel documents and the necessary visas for the entry to the destination country or to the transit country; taking the necessary measures for the application of readmission agreements; providing for the acquisition of the necessary vehicles for transportation; obtaining the necessary travel tickets; if it proves to be necessary, informing the authority of the destination and/or transit country; and providing for the transit of the returnee through the transit country.

It is always the Police Headquarters which implements the effective execution of the removal by deportation, therefore a police escort is always provided. During the removal by deportation the Police Headquarters has to ensure that the returnee is able to take his/her personal belongings with him/her and receives food if the execution of removal by deportation exceeds more than six hours, and in case of a minor, if the removal by deportation exceeds two hours. The provision of water to the returnees in every hour is also the task of the Police Headquarters. It is also prescribed that in case of minors or women returnees, one of the police officers providing escort should be female. Article 5 of the Ministerial Decree enumerates the persons and authorities that may participate in the escort, besides the Police Headquarters, these can be the civil servant of the OIN, a psychologist, a physician and an interpreter.

⁴³ Based on statistical data of the OIN

⁴⁴ Peter Futo: Country Report Hungary, Undocumented Migration, Counting the Uncountable. Data and trends across Europe, November 2008, page 17

⁴⁵ Act II of 2007, Governmental Decree 114/2007. (V.24.); Ministerial Decree 26/2007. (V.31.)

In accordance with the provisions of Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air, the OIN informs the authorities of those Member States, through which the transit is carried out. Practical cooperation has proved to be successful so far, especially with the German, Austrian and Italian authorities. The respective consular missions in Hungary are informed about the expected time of the removal, the number of people who are escorted and who provide escort, the time of arrival to the country of destination and about the itinerary.

The relevant national rules on expulsion, detention and removal by deportation are set down in the new Aliens Act and can also be found in its implementing regulations, namely in the governmental decree and in the ministerial decree.

Control of third-country nationals

Should a third-country national be unable to credibly prove the legality of his/her stay or his/her identity or if he/she violates alien policing rules, he/she shall be apprehended and detained for up to twelve hours if the legality of his/her stay or his/her identity remains unidentified. If, after this period, the identity or the legal/illegal nature of the stay is still not clarified, the third-country national may be kept in custody for up to thirty days.

Expulsion, ban on entry and stay

The aliens policing authorities (namely the Police Headquarters and the OIN) may order alien policing expulsion and ban on entry and stay – or just a ban on entry and stay in case of a person whose whereabouts are unknown or is abroad – against a third-country national.

The reasons for expulsion and/or imposing set forth in the Hungarian legislation are as follows:

- the third-country national must not be allowed to enter the territory of the Republic of Hungary under international commitment or under the decision of the Council of the European Union;
- the third-country national is in breach of the immigration laws (crossed or attempted to cross the frontiers illegally, stays or overstays in Hungary illegally, carried out work without the necessary work permit, failed to reimburse the refundable costs of his/her previous removal advanced by the Republic of Hungary);
- the third-country is deemed a threat to national security, public security or public order by the law-enforcement or national security agencies;
- the third-country national failed to pay an on-the-spot fine or a fine for administrative offence until the deadline fixed, and there is no possibility to collect it or the collection was unsuccessful.

Detention and removal

If the third-country national poses a threat to security or if there is a risk of absconding, he/she may be taken into custody (for a maximum of six months, minors and the family members taking care of them can not be taken in custody) and the expulsion may be carried out by means of removal (deportation).

As a general rule, expulsion is carried out by virtue of a readmission agreement which can either be a bilateral agreement or an agreement that was concluded at Community level with a third country. The Republic of Hungary has readmission agreements with 26 countries⁴⁶, including with those neighbouring countries, through which irregular migrants typically reach Hungary (Serbia, Ukraine and Romania). Besides all the neighbouring countries, Hungary also has bilateral readmission agreements in force with 17 EU Member States. The bilateral readmission agreements enable the Hungarian authorities to return illegally-staying persons within a short period of time, though according to the legislative changes introduced in 2007, in these cases the regular expulsion procedure and legal remedies apply. The bilateral agreements contain provisions on the sharing of costs between the contracting parties.

In the framework of the readmission agreements, in 2006 the OIN received 1946 applications for transit. The OIN authorised 1126 transits at the request of Germany, 607 transits at the request of Austria and 211 transits at the request of Belgium. The data show a decrease by 16.6 % in comparison to the numbers in 2005.

In 2007 the OIN received 1157 applications for transit which shows a decrease as compared to the number of applications in 2006. The OIN authorised the transit of 576 third-country nationals at the request of Germany, the transit of 307 people at the request of Austria and the transit of 255 third-country nationals at the request of Belgium. The OIN forwarded 12 applications to the partner authorities of other EU Member States.⁴⁷

Regarding the years 2002-2008 the number of expelled persons by the OIN – including the number of persons whose expulsion was ordered by the court – decreased except for a slight increase in 2008. The main countries whose nationals were expelled from Hungary remained the same in the recent years. These countries were Romania, Ukraine, Serbia-Montenegro and Moldova. It has to be borne in mind however that while until 2007 Romanian nationals constituted the greatest percentage of expelled persons, the situation has changed with Romania's accession to the EU as of the 1st January 2007. From that date on they are not considered to be third-country nationals.

Furthermore, in 2006 the OIN determined that there was a breach of law in 2045 other cases, however, it did not render an expulsion decision, since the foreigner left the country voluntarily. The majority of these persons were of Romanian and Ukrainian nationality. The number of such cases was 552 in 2007 and most of these persons came from Ukraine, Serbia, China, Moldova, South-Korea, Turkey and Vietnam.⁴⁸

Due to Hungary's geographical situation, it is significantly affected by the Eastern-South Eastern migratory flows and illegal migration is to a great extent transit migration towards Western Europe. Illegal migrants coming to Hungary are mainly from Eastern and South-Eastern Europe. The neighbouring countries, particularly Ukraine and Serbia, and the countries of Central-East Asia, such as China, Vietnam and Mongolia are considered to be the main countries of origin of illegal migrants. Hungary is used as a transit country mostly by the nationals of the former Soviet countries, especially Russia, Ukraine and Moldova, as well as by

⁴⁶ The EU Member States with which Hungary has a readmission agreement are the following: France, Portugal, Greece, Estonia, Slovakia, Belgium, the Netherlands, Luxemburg, Romania, Latvia, Slovenia, Italy, Germany, Bulgaria, Poland, the Czech Republic and Austria. Hungary also has readmission agreements with Bosnia-Herzegovina, Macedonia, Croatia, Serbia, Montenegro, Albania, Moldova, Ukraine and Switzerland.

⁴⁷ Data provided by the OIN in the Annual Reports of 2006 and 2007

⁴⁸ Data provided by the OIN in the Annual Reports of 2006 and 2007

the nationals of the countries of the former-Yugoslavia, primarily Serbia and Kosovo. The so-called “Balkan route” (through Turkey, Bulgaria, Macedonia, Albania) also needs to be given special attention as a route of illegal flows originating from Iraq, Iran, Syria, Turkey and Afghanistan.

Regarding human smuggling, three main routes were identified that go through Hungary (although some bypass routes have also developed that do not cross Hungary anymore):

- from Turkey through Romania and Hungary to Austria and Germany,
- from Turkey through Romania, Serbia, Hungary and Slovenia to Italy,
- from the former Soviet Union, especially Russia, through Ukraine and Hungary to Austria and Germany.

The use of falsified EU travel documents and the route via Romania and Hungary to Schengen countries were identified by Frontex as the most frequent *modus operandi*. As evidenced by Frontex risk analysis one of the main nationalities in illegal border crossings in the Eastern part of the European Union are Moldavians. However, other irregular migrants use Moldova as entry route towards the EU, the majority of them come from the Middle East.

Voluntary return

In the field of voluntary return the Hungarian Government works in close cooperation with the IOM Budapest⁴⁹ since 1997. In the framework of this co-operation IOM Budapest has carried out several effective programmes (e.g. HARP, HARIP, RETURN 2005 and RETURN 2006, HARRP) that aim at helping third-country nationals to return home voluntarily. These programmes target irregular migrants, rejected asylum seekers or asylum seekers who have withdrawn their application for asylum and also highly qualified migrants who are willing to return home and contribute to the development of their countries of origin. In 2005 IOM assisted around 47 000 persons⁵⁰ in their voluntary return home. Voluntary return is carried out to the country of origin or to the country of previous residence or to any other third country which is willing to receive the returnee. These programmes are applied in those cases when third-country nationals have the intention to return to their country of origin or to another country of destination voluntarily and they are not able to cover the expenses of the journey, provided that they did not commit a deliberate crime and their return can not be implemented under readmission agreements.

During the implementation phase IOM Budapest works in close co-operation with the OIN in order to ensure the departure of candidates. IOM takes care of the most appropriate means of transportation for the beneficiaries (one-way air ticket), of the complementary services and also gives a small amount of financial assistance. IOM Budapest, working in close co-operation with IOM offices in transit countries and IOM offices in countries of origin arranges the modalities of return to the final destination and provides escort when it is necessary, especially in case of minors or when the health condition of the returnee required medical assistance.

4.2 Links with other Policy Areas

⁴⁹ Memorandum of understanding between the International Organization for Migration and the Ministry of Interior of the Republic of Hungary on cooperation in the field of voluntary assisted return of migrants

⁵⁰ Based on statistical data of the International Organization for Migration

Encouraging intercultural dialogue, diversity, equal opportunities and fighting against discrimination

Within the framework of the European Year of Intercultural Dialogue, based on Council decision 1983/2006/EC of 18th December 2006, Hungary puts a special emphasis on promoting cultural diversity, with special emphasis on the cultures of neighbouring countries (both EU Member States and non EU Member States) and of minorities living in Hungary. Young people as well as cultural and educational institutions were encouraged to participate in European programmes and networks and to develop their intercultural competence and their sensitivity towards other cultures. Exhibitions, conferences, broadcasts and projects were organized within this framework and several of them will continue in the course of the forthcoming years.

Concerning the enhancement of providing equal opportunities, 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 No 362/2004 (XII. 26.). The Authority started its work on 1st 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 (see also under Part 2).

Education policy

According to Article 110 of Act LXXIX of 1993 on Public Education, non-Hungarian national minors are subject to nursery service or mandatory schooling in Hungary if (a) they are asylum seekers, recognized refugees, beneficiaries of temporary protection or beneficiaries of subsidiary protection, (b) they exercise the right of free movement and residence in Hungary according to the Free Movement Act, (c) they fall within the scope of the New Aliens Act and are in possession of a valid immigration permit, settlement permit or a permit entitling them to reside in the territory of the Republic of Hungary.

Beyond guaranteeing equal conditions on a legal basis, in order to promote the harmonious social and cultural integration of foreign students, the Minister of Education issued a pedagogical programme for the intercultural education of migrant children in 2004⁵¹. Those school maintainers that organise the education of their non-Hungarian speaking pupils on the basis of this pedagogical programme may apply for additional subsidy.

In addition to financial support, a working group on the education of migrant children was set up by the Ministry of Education and Culture in 2003. All the relevant stakeholders have been participating in the work of this expert team, particularly the ministries concerned in the field of integration, international organizations, experts, NGOs, teachers, directors of schools. The working group aims at sharing best practices, exchanging information, coordinating and harmonizing the tasks of the participants and it is an efficient platform for preparing the professional decisions, and for the improvement of the implementation of legal instruments.

In the academic year 2007/2008 the number of migrant children attending Hungarian public educational institutions was 10 916 from which 4802 third-country nationals and 6 114 EU nationals participated in public education.⁵² This number includes asylum seeker and refugee

⁵¹The pedagogical program is available at:

http://www.okm.gov.hu/doc/upload/200612/okm_migrans_hun_interkult_061205.pdf (2008.08.15.)

⁵²Data provided by the Ministry of Education and Culture, available in Közoktatási statisztikai kiadvány 2007 at

children as well. Another important fact 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. Even though a slight decrease can be observed in the number of migrant children, taking into account that the number of Hungarian minors has been decreasing consequently for years, the proportion of migrant children in comparison with Hungarian children is likely to grow. In the academic year 2006/2007 the number of foreign students participating in higher education in Hungary was 15 110 from which 6 552 were third-country nationals and 8 558 were EU nationals⁵³.

Employment⁵⁴ policy

Recognized refugees, beneficiaries of subsidiary protection, beneficiaries of temporary protection, immigrants (according to the previous Aliens Act) and settled persons can work in the territory of Hungary without a work permit.⁵⁵

As a general rule third-country nationals in Hungary are required to have a work permit in order to take up employment in Hungary. Individual work permits can only be issued after a valid workforce request was submitted by an employer and on condition that neither Hungarian workers, nor any national of the European Economic Area or a relative of such national was available for the position in question.

According to the number of permits issued by the Employment Centres in 2007, the total number of foreign workers in Hungary was 55 230⁵⁶. One-third of the foreigners holding a work permit (11 804) worked in the construction and between 1000 and 3000 foreigners worked in the following sectors (in descending order): catering/tourism, agriculture, commerce, fabrication of home entertainment devices and fabrication of clothes. 15 039 persons among the foreign workers came from third countries and among them 2 036 persons (13,5 %) was working in a position requiring high qualification. A study undertaken by the Economic Research Institute in 2005⁵⁷ indicated that the number of work permits does not give a reliable picture about the number of foreigners actually working in the country. On one hand nothing proves that the holder of the work permit is actually residing in the country and on the other hand the phenomenon of illegal employment is significant among foreigners.

Housing policy

Refugees and beneficiaries of subsidiary protection are entitled to reside in the reception centre for free of charge for six month from the date when the final decision was taken on their case. This period can be extended with 6 months by the asylum authority. Therefore they can remain in the reception centre for one year after their recognition as beneficiaries of international protection. Over this period they can remain in the reception centre only in case if the Refugee Authority gives its permission, taking into account the fact that the refugee or beneficiary of

http://db.okm.gov.hu/statisztika/ks07_fm/index.html (2008.08.14.)

⁵³ Data provided by the Ministry of Education and Culture, available in Felsőoktatási statisztikai kiadvány 2006: at http://db.okm.gov.hu/statisztika/fs06_fm/ (2008.08.14.)

⁵⁴ Please note that this part does not include detailed rules about asylum seekers

⁵⁵ Act IV of 1991 on Job Assistance and Unemployment Benefits, Government Decree No. 8/1999 (XI.10.) on the Authorization of Foreigners to Work in the Territory of Hungary

⁵⁶ Information provided by the Ministry of Social Affairs and Labour on 6 March 2008 on the basis of data provided by the National Employment Office

⁵⁷ GKI Economic Research Co, A foglalkoztatás közép- és hosszú távú feltételrendszerének, a várható munkaerő-kínálati és keresleti folyamatok változásának prognosztizálása (Budapest, October 2005)

subsidiary protection is over sixty years or she/he is not able to integrate into the host society because of her/his state of health or pregnancy. These provisions are provided by the Refugee Welfare and Integration Division of the OIN's Refugee Affairs Directorate. To be able to start a new life several types of financial subsidies are available for the refugees and beneficiaries of subsidiary protection.⁵⁸ Besides these subsidies they are also entitled to provisions provided by the Governmental Decree 12/2001 (I. 31.) on the state subsidies for housing.

According to the new Aliens Act persons authorized to stay – those in need of – are entitled to live in community shelter or reception centre for free of charge after eighteen months of the time of their placement. The Refugee Authority can extend the duration of accommodation in exceptional cases for humanitarian purposes. They are also entitled to several⁵⁹ subsidies. These provisions are also provided by the Refugee Welfare and Integration Division of the OIN's Refugee Affairs Directorate. Besides these subsidies these persons are also entitled to provisions provided by the Governmental Decree 12/2001 on the state subsidies for housing.

According to the latter decree housing subsidies are also provided to persons enjoying the right of free movement having a registered address as well as third-country nationals with immigration or settlement permit.

Health care system

Social insurance is a regime for sharing risks within the society among the citizens of the Republic of Hungary and other natural persons staying in the Hungary, in which participation is compulsory. Only those insured persons are entitled to receive the whole range of social security benefits who pay the obligatory social security contributions which practically means that those who work legally in Hungary are automatically insured. In the Hungarian system there are two categories of benefits: the health insurance benefits and the pension insurance benefits. The health insurance benefits consist of health services and cash benefits. According to the New Aliens Act an all-inclusive health insurance (or sufficient means for covering any foreseen medical treatment) is a prerequisite for obtaining any type of residence permit valid for more than three months.

Immigrants (according to the previous Aliens Act), settled persons, refugees and beneficiaries of subsidiary protection and persons enjoying the right to free movement have the same rights as Hungarian citizens if they are not insured. It means that in spite of the fact that they do not work legally in the territory of Hungary they are entitled to certain kinds of benefits, namely to health services and to some kind of medical services. Persons who stay temporarily in Hungary are entitled to a limited scope of social security services on the basis of bilateral social security agreements or on the basis of reciprocity. Foreign students who stay in Hungary in order to carry out studies are entitled to health services only if they are admitted by an establishment of secondary or higher education accredited in the Republic of Hungary in order to carry out a full-time course of study.⁶⁰

Rights to political and social participation

⁵⁸ Detailed in Art. 54-59 of the GD

⁵⁹ Art. 74 of the Implementing Rules

⁶⁰ Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for these Services

The Constitution of Hungary⁶¹ provides important rights to migrants in the field of political participation at the local level and in the field of civic participation. Everyone in the Republic of Hungary has the right to establish organizations, to join such organizations (Article 63) and have the right to establish or join organizations together with others with the objective of protecting their economic or social interests (Article 70/C). According to Article 64 of the Constitution, everyone has the right to present, individually or together with others, written petitions or complaints to the relevant public authority and Article 62 ensures the right to peaceful assembly.

All adult persons holding refugee, immigrant or permanent resident status in the Republic of Hungary have the right to vote in local ballots for the election of representatives and mayors, provided that they are in the territory of the Republic of Hungary on the day of the election or referendum and furthermore to participate in local referenda or popular initiatives.

Development policy

With regard to international development cooperation, the Hungarian Government elaborated its concept paper in this field in 2001 and in 2003 the coordination and implementation of development policy was assigned to the Ministry of Foreign Affairs within which the Department for International Development Cooperation is the responsible unit. Currently an act on international development cooperation is under preparation in order to provide the necessary legal framework.

With the concept of the Policy Coherence for Development it was recognized at EU level that development policy is interlinked with other policy areas as well, inter alia with migration. Therefore, whenever the issue of migration and development is discussed either at national or at EU level, the Department for International Development Cooperation within the Ministry of Foreign Affairs and the Department of Cooperation in Justice and Home Affairs and Migration within the MoJLE work closely together to adopt a coordinated position.⁶²

ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

1.) Institutional framework

Learning from the previous working experiences, the Department of Cooperation in Justice and Home Affairs and Migration endeavours to build and maintain durable working relationships with the stakeholders working in the field of asylum and migration. The national network of the EMN is one of the most operative and useful tool for fulfilling this aim. For the time being, the national network consists of approximately thirty members including all relevant governmental, intergovernmental, international and several non-governmental organizations, academic experts. Judges are also represented in the network. Besides EMN there are also several platforms of cooperation (both ad hoc and permanent) in the framework of which the experts meet regularly and work together.

Besides the main legal instruments (Act II of 2007 and Act LXXX of 2007), there are also

⁶¹ Act XX of 1949 on the Constitution of the Republic of Hungary

⁶² Information about international development cooperation can be found on the homepage of the Ministry of Foreign Affairs at: http://www.kulugyminiszterium.hu/kum/en/bal/foreign_policy/international_development/

other acts and decrees that contain provisions affecting the everyday life of asylum seekers, recognized refugees and third-country nationals.

Therefore it is very important to incorporate appropriate legal provisions or to amend the existing ones also in those instruments that are or have not been specifically drafted for these target groups but some or all provisions concern them as well. MoJLE, as the responsible body at governmental level in the field of asylum and migration, puts particular emphasis on complementing the relevant legal norms to cover all areas of life for the respective target groups. As a result of the relatively low number of recognized refugees, it has also occurred that in the drafting procedure of an act or decree they were not included in the first draft proposal of the responsible authority but only after having consulted with the asylum experts. However, these are very rare examples. The implementation of these provisions requires coordination between the responsible institutions, and sometimes also with international organizations or NGOs. The responsibility for making policy decisions lies mainly on the MoJLE but it has an obligation to negotiate and cooperate with the relevant bodies and institutions.

In some fields, cooperation still needs to be improved. It happens many times that the implementing – local – bodies are not aware of the specific needs of the target groups. As for example around 160-200 refugees are recognized in Hungary each year and they mainly live in the capital, most of the local self-governments, who also provide provisions or subsidies to refugees, scarcely meet with this group and therefore they are not aware of the relevant legislative acts or practices. Sometimes the authorities are aware of the relevant legislation but they interpret the norms in a different way. Therefore the practice may vary according to the regions. This was a frequent phenomenon after the legislative background had changed completely in the course of 2007 and 2008. It is the responsibility of the MoJLE to ensure the common interpretation and application of the legislative norms.

2.) Legal framework

On 1st of July 2007 two new pieces of legislation with regard to immigration entered into force which replaced the previous single Aliens Act.

The Free Movement Act and its implementing Government Decree regulate the entry and residence of persons enjoying the right to free movement and the entry and residence of their family members; whereas the new Aliens Act regulates the entry and residence of third-country nationals. During the implementing process concerning the Directive 2004/38/EC the necessity of having one separate legal instrument for EEA citizens and one for third-country nationals arose. As the nature of the provisions applicable to persons enjoying the Community right of free movement differs considerably from that of those applicable to third-country nationals regulating the immigration of these persons in a single Alien's Code seemed impossible. As a consequence, the Hungarian Government realised that the implementing process can only be completed successfully by drafting a new act dealing exclusively with the entry and stay of EEA nationals. As a result of the codification work carried out by the Migration Department of the MoJLE the Parliament adopted the Free Movement Act in December 2006 which entered into force on 1st July 2007.

As regards third-country nationals, the previous Aliens Act dating back to 2001 served well even after 1st May 2004. As the legislation was prepared in accordance with the EU acquis already three years before the accession, there was little or no change necessary to be made in the legislation and in the practice of the OIN. Nevertheless, Hungary had to harmonize its visa

regime with that of the EU, which meant visa requirement against two of our neighbours (Ukraine and Serbia), had to be introduced. In addition to that, the EU uniform format visa and residence permit stickers were also introduced without any difficulties despite the fact that the EU has adopted several legal instruments in the field of legal and illegal migration since 2001. In preparation for the fully-fledged membership of the Schengen Area, the Government had already made the decision that there should be a separate act on the entry and stay of nationals of the Member States of the European Economic Area, therefore the way forward was to adopt a new act also on the entry of stay of third-country nationals. One of the reasons for that was to introduce this new category of third-country national into the Hungarian legislation. The new Aliens Act was also adopted by the Hungarian Parliament in December 2006, and entered into force on 1st July 2007.

For the time being three categories of third-country nationals wishing to stay for more than three months are covered by the *acquis*: family members (Council Directive 2003/86/EC on the right to family reunification), students, volunteers (Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service), and researchers (Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research). Hungary had no difficulties in implementing these three Directives. The provisions on family reunification and studies were already more-or-less the same in our national law, we only had to make slight adjustments in order to fully transpose the directives. Nevertheless, researchers constitute a new, privileged category. The main novelty with regard to this category was to lay down the conditions and the procedure under which a research organization can be approved by the competent authority. Such research organizations have the right to conclude hosting agreements with researchers from third countries, facilitating their admission to the country.

Since 21st December 2007, the date of Hungary's full Schengen membership, we issue 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. Although the main conditions for issuing the visa and the procedures were basically left unchanged with the Schengen accession, we had to elaborate the procedures arising from the fact that the uniform visa is a visa valid for several countries. This means that in some cases partner countries need a consultation with Hungary before issuing a visa, therefore we had to provide procedural background for this kind of consultation in the legislation. We also had to lay down provisions to determine the cases when the visa issuing authorities shall issue a visa with limited territorial validity. Provisions enabling us to conclude agreements with Schengen partners on representation also had to be drafted.

With our full Schengen membership, we decided to change our system of long-term visas and residence permits. 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 the purpose of receiving residence permit), and get their residence permit in the territory of Hungary. Those, who can travel to Hungary without a visa can apply for a residence permit in Hungary, at the OIN.

As regards permanent residents, Directive 2003/109/EC introduced a common status for long-

term residents. The conditions for granting this status are basically the same as were the conditions for granting a settlement permit under Hungarian national law. The key difference is the required period of legal stay in the country: the Directive sets this period at five years, and strictly rules out the opportunity of Member States granting the status of long term residents earlier. According to our legislation in force since 2001, a foreigner has to reside legally in Hungary for three years to be eligible for a settlement permit. We found that raising this by two years is not the right thing to do, therefore, we decided to keep our current settlement permit under the name of ‘national permanent residence permit’, and to introduce the long-term resident status under the name of ‘EC permanent residence permit’. Third-country nationals in the possession of these two kinds of permits enjoy the same rights in Hungary. However, if they wish to move to another EU country, the difference between the two permits are clearly shown, as holders of EC settlement permits may exercise the right of residence for a period exceeding three months in a Member State other than Hungary.

Since our 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.

As regards the issue of 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 Asylum Act was adopted by the Parliament in June 2007, and entered into force on 1st January 2008.

The new Act on Asylum 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).

The new Act on Asylum 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 according to the provisions of the Procedures Directive. The new Act introduced a two-phased procedure to ensure the effectiveness and promptness of the asylum procedure: in the first phase – 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: an application is not admissible if the applicant is a citizen of one of the Member States of the European Union, if the applicant was recognized by another Member State as a refugee, if the applicant was recognized by a third country as a refugee, or if following a final and absolute decision of refusal, the same person submits an

application on the same factual grounds. The deadline 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 related to asylum there was no separate reception centre to accommodate persons undergoing preliminary assessment procedure. Since the entry into force of the new Act on Asylum 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 above-mentioned reform has facilitated the management of the reception centres.

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 the 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.

There are measures in the Act that aim to prevent the abuse of the asylum procedure by repeated claims: repeated claims on the same factual grounds are declared inadmissible by the Refugee Authority and asylum seekers are not permitted to stay on the territory of the Republic of Hungary provided that they have submitted a new application after the adoption of final and absolute decisions of refusal with respect to two of their previous applications and the authority decided that the prohibition of non-refoulement was not applicable.

ANNEXES

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