

## **Legal and functional context of family reunification in Hungary**

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### **Abstract:**

In this paper the possibilities of family reunion of third-country nationals and EEA or Hungarian nationals with their third-country national family members is investigated. After a summary of the national (and European level) regulation, the question of potential abuses of international protection of beneficiaries' access to family reunification will be presented, as well as some shortcomings.

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According to experts, for the past 20 years family reunification has been one of the main sources of immigration to the EU. In many Member States today, family reunification accounts for a large share of legal migration. Discussions on how to manage more effectively the large inflow of migrants under family reunification has led to a number of policy changes, many restrictive in nature.<sup>1</sup>

In Hungary the number of residence permits issued for the purposes of family reunification was 1,349 in 2010, a sharp decrease compared to 2008 (the year Hungary joined the Schengen zone), when this number was 5,337 (however, in 2008 37,586 residence permits were issued altogether for third-country nationals compared to 14,601 in 2010). In light of these numbers, family reunification accounts for around one tenth of all residency purposes today.<sup>2</sup> However, taking into account that family members of third-country national immigrants represent a less mobile population, cumulatively their proportion in immigrant stocks (compared to flow data) may be higher.

Regulation exists at both European and national level for the entry and stay of third-country nationals with the intention of family reunification. The law makes a distinction relating to

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<sup>1</sup> Report from the Commission to the European Parliament and the Council of 8 October 2008 on the application of Directive 2003/86/EC on the right to family reunification [COM\(2008\) 610](#) final

<sup>2</sup> Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

who is applying for family reunification: 1) third-country national immigrants; 2) EEA nationals with free movement; and 3) nationals of the state concerned.

According to Directive 2003/86/EC on family reunification, third-country nationals who hold a residence permit valid for at least one year in one of the Member States and who have the genuine option of long-term residence, can apply for family reunification. However, this Directive does not apply to third-country nationals applying for recognition of refugee status whose application has not yet given rise to a final decision or who are under a temporary form of protection.

Family members of European Union citizens are also excluded from this Directive. They are covered by Directive 2004/38/EC, which applies only to those Union citizens who move to or reside in a Member State other than that of which they are a national. In effect this means that family reunification of Union citizens residing in the Member State of their nationality is not subject to Community law. It is therefore up to a Member State to lay down rules on the right of third-country-national family members to join its own nationals.<sup>3</sup>

Concerning firstly Directive 2003/86, the deadline for the Directive's transposition into Hungarian national law was 31<sup>st</sup> October 2005. According to a report from the Commission to the Council of the European Union and the European Parliament<sup>4</sup> on the application of this Directive on the right to family reunification, the Hungarian legislation is limitative in its effect on the right to family reunification mostly when it comes to access to the labour market for family members. Hungary restricts access to the labour market for family members in the first 12 months of their stay according to a labour market survey.<sup>5</sup>

According to this Directive, in general the sponsor's spouse and his or her minors (including adopted children) are entitled to a residence permit for the purpose of family reunification. The Member States remain free to authorise, under certain conditions, family reunification of first-degree ascendants in a direct line, unmarried children who have reached legal age and unmarried partners. In Hungary, residence permits for the purpose of family reunification are authorised for parents of the sponsor and/or his/her spouse; furthermore for the siblings of the sponsor or the spouse who are unable to provide for themselves due to health constraints.<sup>6</sup>

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<sup>3</sup> European Migration Network (Hungary) 'Misuse of the Right to Family Reunification: marriages of convenience and false declarations of parenthood' p. 8-15

<sup>4</sup> See supra note 1

<sup>5</sup> Ibid.

<sup>6</sup> The position of Hungary on the Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

There are certain conditions<sup>7</sup> third-country nationals need to fulfil when they join their family member legally residing on the territory of Hungary for a period longer than three months. Where the purpose of entry and residence is family reunification, third-country nationals may verify the purpose of entry and stay with a birth certificate, marriage certificate, adoption document, or other reliable means.<sup>8</sup>

Secondly, concerning third-country family members of EEA and Hungarian nationals, a separate law regulates the possibility of their entry and stay for the purpose of family reunification.<sup>9</sup> EEA nationals need to fulfil certain conditions<sup>10</sup> if they want their third-country family member to gain the right of residence for the purpose of family reunification. The same law and basically the same rules apply in case Hungarian nationals' third-country family members<sup>11</sup> want to stay in the country for a period longer than three months for the purpose of family reunification.

According to MIPEX III<sup>12</sup>, Hungary has one of the best scores related to the legislation of family reunification, which is, among others, due to Government Decree No. 114/2007 reducing the necessary processing time for third country nationals. However, in Hungary immigration procedures, including family reunification, are highly bureaucratic and the translation and procedural costs for obtaining documentation cost 18,000 HUF (around 60 euro). The Hungarian government believes that this fee is proportional, however, taking into account the fee Hungarian nationals need to pay for their ID card<sup>13</sup>, yet it might seem relatively high and to interfere in its effect with third-country nationals' right to family reunification.<sup>14</sup>

Another weakness some professionals indicate in relation to the Hungarian legislation is the unclear definition of the term 'family members'. According to Act I of 2007, members of or

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<sup>7</sup> According to Section 13(1) Act II/2007, these are: valid travel document, adequate residence permit, accommodation or place of residence, sufficient means of subsistence and financial resources, healthcare insurance (and they are not subject to expulsion or exclusion and are not being subject to SIS warn signal)

<sup>8</sup> Article 56(1) of Act II/2007

<sup>9</sup> Act I of 2007

<sup>10</sup> The requirements are set out in Section 6(1) of Act I of 2007, which are: EEA nationals have the right of residence for a period of longer than three months if they intend to engage in some form of gainful employment or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of Hungary during their period of residence, and have comprehensive health insurance or have sufficient resources for themselves and their family members for such services. According to 6(1c) of the same Act, the spouse and dependent children of any EEA national who are enrolled at an educational institution have the right of residence if they in addition satisfy the above-mentioned criteria.

<sup>11</sup> According to Section 7 of Act I of 2007, if they have sufficient resources for themselves or the Hungarian citizen has sufficient resources for such family members not to become a burden on the social assistance system of Hungary during their period of residence and they have comprehensive health insurance cover or have sufficient resources for themselves and their family members for such services

<sup>12</sup> <http://www.mipex.eu/hungary>

<sup>13</sup> The fee is 1500 HUF (around 5 Euros)

<sup>14</sup> See supra note 6

persons in a family can be, under certain circumstances, persons ‘accompanying or joining’ an EEA national or a Hungarian citizen.<sup>15</sup> In addition, Section 1(d) of the same law<sup>16</sup> allows for a very broad definition of ‘quasi family member’, which could cause serious interpretation problems when it comes to law enforcement.

The potential abuse of the right to family reunification (marriages of convenience and false declarations of parenthood) is another hotly debated topic in the European Union. There are no official statistics about the number of relations of convenience in Hungary and, due to the sensitive nature of this topic, it is in general very difficult to screen or prove relations of convenience. There is, in addition, no stipulation in the Hungarian legislation to obstruct such marriages, because spouses are not subject to ‘such scrutiny before the registrar’<sup>17</sup>. Any such pre-investigation could be easily proven discriminatory in its effect.<sup>18</sup>

Despite the difficulties, there are some indications of patterns of marriages of convenience and declarations of false parenthood in Hungary. Regarding relations of convenience, in the case of applications for residence permits submitted by third-country nationals’ family members of third country nationality, this aspect usually does not arise. According to applicable measures, it is mostly Hungarian or EEA nationals in whose cases the issue of relation of convenience has emerged. The sensitivity of this issue is highlighted by the fact that bad faith and false emotions are very difficult to detect in such a situation.<sup>19</sup>

In relation to permits requested by third-country nationals, instances of declaration of false parenthood or verification of relations by false documents sometimes emerge. The facts in these cases are difficult to verify, since the law does not allow for the investigation of whether the persons concerned, for example, *de facto* take care of the minor and support him/her financially or emotionally.<sup>20</sup> The Supreme Court of Hungary ruled on this issue in two verdicts in 2011.<sup>21</sup> Accordingly, it is irrelevant whether the minor is in fact living in the household of the foreigner; the law states ‘only the existence of the right to parental custody

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<sup>15</sup> Töttös Ágnes ‘A szabad mozgás és tartózkodás jogával rendelkező családtagok harmadik országbeliek helyzete az új idegenrendészeti jogszabályok tükrében’

<sup>16</sup> (1) The Republic of Hungary shall ensure the right of free movement and residence in accordance with the provisions of this Act [...]

*d*) to any person accompanying or joining an EEA national or a Hungarian citizen, who:

*da*) is dependant or for a period of at least one year has been member of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen;

*db*) had been dependant or had been for a period of at least one year member of the household of an EEA national in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national,

and whose entry and residence has been authorized as family member by the authority.

<sup>17</sup> Ibid.

<sup>18</sup> See supra note 15

<sup>19</sup> See supra note 3

<sup>20</sup> Ibid.

<sup>21</sup> Decision of Supreme Court No. Kfv.III.37.048/2011/5. and Decision of Supreme Court No. Kfv.III.37.030/2011/4.

of the third-country national of the minor is investigated'. Even though there are no existing harmonised measures against marriages or children of convenience in Hungary, due to the complex nature of this problem, preventive or punitive state actions could easily be proved to be discriminatory.

The family reunification of refugees and other beneficiaries of international protection is regulated in another separate law.<sup>22</sup> Both the Hungarian Helsinki Committee (in several documents<sup>23</sup>) and the UNHCR (in its compilation report<sup>24</sup> for the Office of the High Commissioner for Human Rights) indicated that beneficiaries of international protection have no effective access to family reunification in Hungary. Despite the fact that the legislation allows for family reunification of refugees, in practice this possibility does not exist for family members whose national passports are not accepted by the EU member states.<sup>25</sup>

In addition, while refugees are exempted from fulfilling the requirements regarding accommodation, health insurance and resources if they submit the application within six months after granting refugee status, Hungary does not support 'exempting beneficiaries of subsidiary protection from these requirements',<sup>26</sup> even though earlier the Supreme Court ruled in its verdict that beneficiaries of subsidiary protection have the right to family reunification in Hungary under the same conditions as refugees.<sup>27</sup>

In general it can be concluded that Hungarian law allows for family reunification in a broader sense than the minimum European requirements; however, some bureaucratic hurdles might prevent third-country nationals from enjoying this right. Even though potential misuses of access to family reunification, such as relationship of convenience and false parenthood, are a highly debated topic in Europe, in Hungary this phenomenon is less typical for third-country family members of third-country nationals. Most criticism of the law involves the regulation related to the access of beneficiaries of international protection to family reunion and family members' access to the labour market.

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<sup>22</sup> Section 17(1) of Act LXXX of 2007 on asylum

<sup>23</sup> Gyulai, Gábor 'A nemzetközi védelem nem eu-harmonizált formái Magyarországon' (Európai Migrációs Hálózat, Budapest, 2009)

<sup>24</sup> Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: HUNGARY (2010) p. 8

<sup>25</sup> mostly Somali refugees, See further: Hungarian Helsinki Committee 'Family reunification of somali refugees – good practices of several EU Member States'

<sup>26</sup> See supra note 6

<sup>27</sup> Supreme Court Decision No. Kfv. III. 37.925/2009/7.