

**From Improvisation toward Awareness?  
Contemporary Migration Politics in Hungary**

**Yearbook of the Research Group  
on International Migration,  
the Institute for Political Science  
of the Hungarian Academy of Sciences  
(H.A.S.), 1997**

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### ***DEDICATION***

To P. who knows that reputation as a connoisseur of wine depends on being “able to recognise the type and vintage of the wine served. There are two – and only two – ways of doing this: (1) Have a quick glance at the label when no one is watching. (2) Bluff”.

*(George Mikes)*

## *Foreword*

Migration, by its very nature, affects politics. It involves mobile individuals, who often arrive in groups and always arrive in great and increasing numbers or so at least it is perceived in the media. Migrants cross borders and often cross cultural barriers, which in turn induces technological development and organisational innovation in police work and leads to lots of high-news value stories for the media. And, of course, migration influences the operation of basic economic institutions such as the labour market and the welfare distribution system, and even affects the most basic and slowly changing characteristics of a society such as the demographic behaviour, ethnic composition, and ethos.

Of course, there is nothing new in what we wrote in the preceding paragraph. However, there are new trends all around the process of migration. As globalisation and regionalism, result of the weakening of nation states, go together hand in hand, as the neat (though for a time it seemed to us lethal) dual enmities between capitalism and communism disappeared and allowed unstable coalitions and internal hostilities to surface, the socio-economic characteristics of the migration process have changed.

If we reduce our focus – both in time and space – to the immediate past and to the vicinity of Hungary, we can nonetheless witness quite new and complex processes which have influenced the migration process to a great extent and we can witness changes in the composition and techniques of the migrant groups. This set of changes challenges the political actors to adapt their rules and behaviour.

Although this is far from an exhaustive list of the changes that have taken place in the past decade in and around Hungary, a few examples are instructive.

- The communist party-state was replaced by a multiparty, parliamentary system.
- The COMECON and Warsaw Treaty disappeared, and through their ruins we are marching toward the European Union and the NATO.
- Previously unknown actors appeared. Among the public authorities, new actors, such as the Ombudsman, the Audit Office and the Anti-corruption Agency were born. International organisations, for instance, the UNHCR and the EU, established local branches. Without details, we also mention the blossoming of the NGO sector, from human rights organisations to skinhead groups, from self-help initiatives to charity organisations.
- There has been mass ethnic Hungarian immigration to a country to which no one wanted to immigrate during the past few decades, and to which no one could (except by a fake marriage) immigrate. The bulk of migrants came from neighbouring Romania. Yet

under communist rule the very mention of the existence of a Hungarian community in Romania was a taboo in Hungary.

- Masses of trader tourists cross through previously impenetrable borders on every day and irregular seasonal labour migration quickly became a normal way of doing business in a country where a special work-log book had been compulsory for decades.

- Non ethnic Hungarian asylum seekers appeared from the South, fleeing war and ethnic cleansing. Refugee camps were set up in a country where the last “real” refugees came during World War II and for years the term camp had meant either concentration camp or pioneer camp.

\*

The impetus for this edition was a project to increase the awareness of the actors in the political field concerning the importance of the migration (and within it the refugee) issue. Our indirect aim is to provide ammunition for debates which we hope will lead to the maturation of a presently rather immature migration policy.

The idea for such a project came from Mr. Philippe Labreux, the representative of UNHCR in Hungary. For those who know him, whether as an opponent or as an ally, it is obvious that he is one of the rare movers and shakers of the world. Driven by an unrelenting desire to make things better – while fighting with the Hungarian authorities, criticising the incompetence and bureaucracy of some international organisations and endlessly trying to explain to the NGOs the importance of acting politically – he had the energy to think BIG. Part of his BIG scheme was the launching of a campaign to educate and alert political leaders about migration and refugees.

The first part of the project focused on the Hungarian Parliament and the political parties. In the spring of 1997 Parliamentary factions of the political parties received about 200 copies of the yearbook of the Research Group on Migration (Institute for Political Science); the yearbook had a title similar to and content that overlapped with that of this book. A workshop was then organised to discuss the main topics of migration and politics and to focus on the importance of developing a legal framework for migration. As the Parliament was going to discuss and pass a new refugee law, this was a matter of special concern.

This book, the second part of the education and awareness project, builds on past efforts but takes a broader perspective. It aims at the international actors in and around Hungary. It provides an overview of the current state of the art of the migration issue in contemporary Hungary, where the ongoing debate on accession to the European Union has assumed increased importance. International organisations and the embassies of the European states will learn from this volume, as will Hungarian officials, NGOs, and scholars.

\*

In Part I of the book we introduce the reader to the available, up-to-date information concerning migration and refugee issues in contemporary Hungary. Juhász gives a short summary of the official statistics available on the numbers of various types of foreigners

in Hungary. It also provides a general overview of the role of the state – the main actor in the field – in the 1990s. The next three papers introduce the main characteristics and/or the major activities of the non-state actors in the field: Labreuve sketches out a UNHCR project to support self sufficiency among refugees; Szabó discusses the NGOs in general; and Nyíri outlines a unique self-help group that has developed among Chinese immigrants to Hungary. The last paper, by Hárs, views the labour market as an important actor in this field. It carefully examines the labour market's influence on migration politics and vice versa.

Part II of the volume focuses on the debates concerning preparation for and accession to the EU. Jungbert describes the current migration situation in Hungary from the point of view of the state authority and focuses on the tasks that the Hungarian government must accomplish in this field in order to join the EU. Nagy identifies the conditions the associated countries in general must consider and the problems they (together with the EU bureaucracy) must solve while marching on the long and sometimes road toward Europe. Later in the volume another leader of the migration and refugee administration (Világosi) provides a checklist of actual challenges and expectations.

Part III of the volume is a collection of papers debating various political aspects of the migration and refugee situation in contemporary Hungary. Fullerton's paper on the impact of ethnic Hungarian refugees on the refugee policy was widely debated (even in a portion of the mass media) in the spring of 1997. Her arguments plus Jungbert's answer and her reply to Jungbert provide a good reminder that there often is an ethnic component to the migration process. Furthermore, it is obvious that the march to the EU will influence politics in Hungary concerning Hungarians across the borders. This issue promises to continue to be debated hotly by the political actors both in Hungary and in the surrounding countries.

The second section of Part III contains short papers presented at a conference on migration and politics. They furnish a concise overview of the opinions of Hungarian experts on this topic as all those who had published anything on migration and politics attended the meeting. The conference brought together scholars from many disciplines – demography, economics, law – with government policy makers in this area. As a consequence, this concluding section presents a variety of perspectives on migration and refugees.

\*

Finally, we outline the third part of the political awareness project, which has yet to occur. In 1998, due in part to the general elections and in part as a consequence of the debates on joining NATO and starting negotiations with the EU, issues concerning the role and rights of migrants in Hungary and the presence and future of multiculturalism will be raised. Switching our focus back to the local political actors, we intend to publish a volume in Hungarian examining these issues. (This volume will simultaneously serve as the annual yearbook of the research group on international migration for 1998.) In this volume we hope to contribute to an appropriate and effective debate of these sensitive topics in order to help move migration politics in Hungary from improvisation to awareness.

## *RECENT DEVELOPMENTS*

Several important national and international developments in migration and refugee policy have occurred since some of the articles in this volume were written. These matters have a significance broader than any one paper, and, as a consequence, we have summarised them here at the beginning of the volume. We trust that knowing this information will enable the readers to understand more completely the context of the ongoing debate concerning migrants and refugees in Hungary.

- The geographical reservation is an optional provision of the 1951 Geneva Convention relating to the Status of Refugees. According to the reservation, a state party can elect to have its obligations limited to refugees forced to flee events in Europe [Article 1, B (1)(a)]. Hungary opted for this European reservation in October 1989 and since that time non-European asylum seekers in Hungary have been in a legal limbo; they are not entitled to protection under the Hungarian refugee policy. A Draft Declaration on withdrawal of the geographical reservation was prepared in June 1997. In September it was discussed in the competent parliamentary committees. It is proposed that the withdrawal of the geographical reservation enter into force along with the new law on asylum and refugees. All political parties have endorsed the withdrawal of the geographical reservation.

- The Hungarian Constitution also regulates asylum. Between October 1989 and July 1997 Article 65 of the Constitution defined refugees somewhat differently from the 1951 Geneva Convention. There was no geographical restriction, but refugees had to show direct persecution for racial, religious, ethnic/national, political or linguistic reasons. It did not appear that this definition intentionally differed from that of the 1951 Convention. Rather the constitutional provision presumed that the details on asylum would be regulated by a statute adopted by a qualified majority vote in Parliament, but thus far an asylum statute has not been adopted. In July 1997 the Parliament amended the constitutional provision regarding asylum. The amended provision contains all the grounds for persecution listed in the 1951 Convention, but includes further restrictions. These restrictions apply to asylum seekers who come from safe countries of origin and those who come to Hungary via safe third countries. Imported directly from the practice in a number of EU states, these clauses function to exclude certain applicants from the asylum procedure altogether and to limit the investigation into the merits of the claims presented by certain other applicants.

- The Government submitted a Bill on Asylum and Refugees to Parliament in June 1997. The proposed bill addresses those who can request asylum, the procedure for determining asylum, temporary protection, and the obligation to prevent refoulement (expulsion, deportation) in accordance with international human rights obligations. General debate on the bill began in September, with discussions continuing at the competent parliamentary committee (the Committee on Human Rights) during October and November. According to the parliamentary agenda, the proposed bill will be adopted in January 1998 and will enter into force in March 1998.

- The concept of temporary protection and details of determining those entitled to temporary protection have not been regulated in Hungary despite two significant influxes from neighbouring countries, Romania (1988–1990) and Yugoslavia (1991–1994). The

first group was handled within the framework of the 1951 Geneva Convention. The second was handled according to an evolving legal practice defined by the aliens police and the Hungarian refugee authorities. The ex-Yugoslavs obtained residence permits and received schooling and accommodations in shelters run by local communities, charity organisations, or the refugee authority. Nonetheless, they had a very fragile status and no written rules on which to rely. The proposed Bill on Asylum and Refugees will regulate temporary protection, granting the Cabinet the authority to decide the scope of the protection warranted by specific circumstances.

- The Treaty on European Union regulates migration issues, although they were not originally a matter that fell within the jurisdiction of the European Communities. Article K of Title VI of the Treaty on European Union (the Maastricht Treaty) addresses asylum policy, immigration policy, the control and crossing of external borders, the policy regarding nationals of non-member states, drug trafficking, serious international crimes, and cooperation in civil, criminal, police and customs matters. It refers to various methods of exchanging information and harmonising principles among EU states. The intergovernmental coordination concerning the issues of justice and home affairs among the member states of the EU is known as the Third Pillar; migration and asylum policy fall within this sphere. Hungary and other associated states, as participants in regular ministerial conferences, have been involved in the Third Pillar cooperation efforts. The Amsterdam Agreement, the final document of the Intergovernmental Conference (IGC) reforming the EU machinery, modifies provisions of the Third Pillar in order to unify certain rules concerning migration. Signed in October 1997, the Amsterdam Agreement is still awaiting ratification by each member state.

Budapest, December, 1997

*Maryellen Fullerton*  
*Endre Sik*  
*Judit Tóth*

*Part I*

**Migration and the Actors  
of Migration Politics**

*Judit Juhász*

## ***The Statistical Characteristics of Migration<sup>1</sup>***

### **IMMIGRATION OVERVIEW**

The number of immigrants to Hungary has risen steadily since the middle of the 1980s, and reached a peak in 1990. The removal of exit restrictions in neighbouring countries, the economic, political and social situation in the region, and ethnic conflicts all led to large scale movements of people.

Hungary became a transit country for those headed west and, partly due to restrictive measures in the Western European countries, also became a destination country for immigrants.

Given Hungary's geographic and socio-economic situation, rapid growth in the number of immigrants was inevitable. Hungary's geographic location provides a link between various parts of Europe. Major international roads cross the country, connecting South Eastern Europe (the Balkans), the southern part of Eastern Europe (including Ukraine) and Western Europe. The unification of Europe will magnify Hungary's transit role and its impact on international migration.

In 1990, almost 40,000 people arrived in the country (*Table 1*).<sup>2</sup> The number of immigrants fell steeply thereafter, reaching half the 1990 number in 1992. The figures for the last three years show the numbers of immigrants stabilising at the 14,000–16,000 level.

Throughout this period there have been more male than female immigrants. During the 1990s, the proportion of men has been between 52 and 57 per cent.

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<sup>1</sup> Editorial note: This excerpt is a small portion of an exhaustive statistical study regarding migration in Hungary. The editors have selected sections of the study that should be of great interest for researchers and policy makers dealing with migration issues since this information provides the context for a more complete understanding of migration in Hungary. A brief explanation of the key terms can be found in the Appendix of the paper.

<sup>2</sup> The figures refer to foreign citizens who received a residence permit for at least one year and who lived in the country for one year or more with a residence permit.

*Table 1*  
**Immigration by sex 1980–1995 (number of immigrants)**

Year	Men	Women	Total
1980	2,429	2,744	5,173
1981	3,116	2,929	6,045
1982	4,487	4,087	8,574
1983	3,199	3,269	6,468
1984	3,130	2,290	5,420
1985	4,886	2,951	7,837
1986	5,677	3,338	9,015
1987	6,000	3,529	9,529
1988	14,834	9,521	24,355
1989	22,573	13,614	36,187
1990	20,956	18,352	39,308
1991	13,737	10,880	24,617
1992	8,724	7,787	16,511
1993	9,702	8,700	18,402
1994	8,882	7,982	16,864
1995*	5,103	4,502	9,605
Total	137,435	106,475	243,910

\* Preliminary data

Source: Central Statistical Office (CSO)

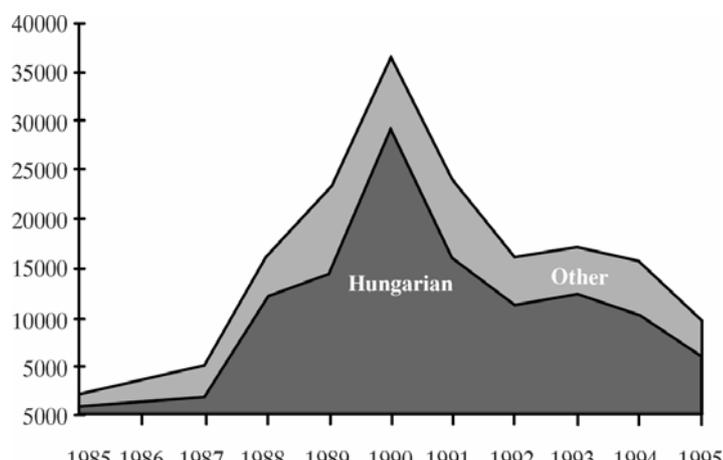
Most immigrants during this period came from Romania. Even now Romanians constitute the largest group, although their proportion has declined substantially: nearly 80 per cent of immigrants in 1988–90 were from Romania, as against 50 per cent in 1991 and 36 per cent in 1994. The decline was partly a result of the wave of refugees from the former Yugoslavia. Yugoslavs accounted for more than 20 per cent in 1992 and more than 30 per cent in 1993. By 1995, however, their proportion had fallen back to 15 per cent.

Prior to the break-up of the Soviet Union, Soviet immigrants were rare. Afterwards, the ex-Soviet proportion went up to 10 per cent, and has continued to grow. In 1994, 14 per cent (4,200 people) of all immigrants, came from the territory of the former Soviet Union. The majority of this group come from neighbouring Ukraine and from Russia. A totally different source of immigrants, those coming from OECD countries, has also increased steadily. This group constituted 5 per cent of the 1990 immigrants, and 12 per cent in 1994 and 1995.

### ETHNIC COMPOSITION

An important factor in the size and character of immigration to Hungary is the ethnic composition of the Carpathian Basin. Approximately three million ethnic Hungarians live in neighbouring countries. The majority of immigrants throughout the entire period were

ethnic Hungarians (*Figure 1*) and nearly all of those were from Romania. The proportion of ethnic Hungarians has declined recently: in 1990, 80 per cent of the new arrivals were ethnic Hungarians, compared with just 60 per cent in 1995. There has also been a strikingly high proportion (10 per cent) of ethnic Hungarians among immigrants from OECD countries.



*Figure 1*

**Immigrant flows by ethnicity (number of immigrants)**

### AGE

Most immigrants have been between 15 and 39 years old, with only 5–6 per cent over 60. The average age of immigrants to Hungary has risen steadily since 1990 among both women and men, a factor which is related to the reasons for migration. Of those arriving in the second half of the 1980s, many – especially women – came by virtue of marriage, including marriages of convenience, because this was practically the only way of emigrating from the neighbouring countries. This was reflected in the mean age of immigrant women, around 25 or 26. At the end of the decade, the sudden changes motivated mainly young people to leave their countries. Many at this time came illegally, without securing work or other arrangements in advance. As the situation stabilised, relations became more regular, and more information became available, the composition of the immigrant group changed. In line with the demands of the labour market, the new arrivals included more of the young-middle generations.

### REGIONAL DISTRIBUTION

Most migrants head for the capital (*Figure 2*), although Budapest's leading position has declined somewhat since the peak of 1991. In 1990–91 Budapest was the obvious destination. It was a desirable place to live and a promising source of work opportunities.

Moreover essential information could be found there concerning the possibilities of further migration and other topics.

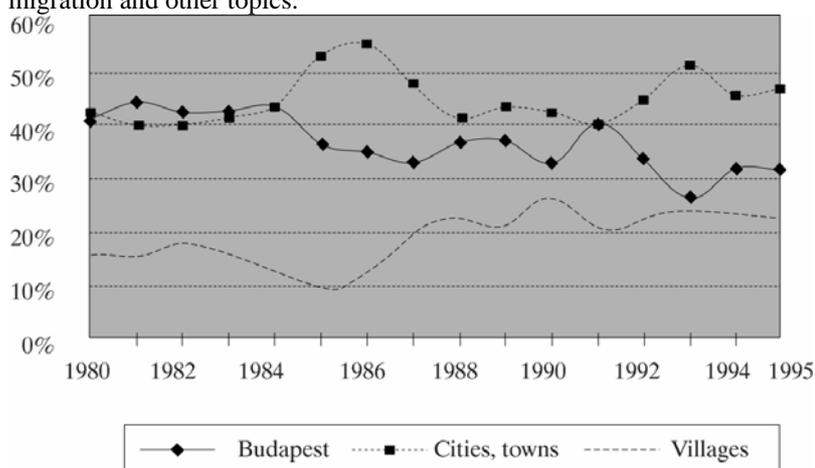


Figure 2

Immigrants by year of entry and place of residence (per cent)

## EMPLOYMENT SKILLS

The qualifications and occupational skills of foreigners immigrating to Hungary have changed little in recent years (Table 2). Approximately half of them have been skilled manual workers; and one third of them have been white collar workers.

Table 2

Immigrants by year of entry and occupation (per cent)

Year of entry	Professionals, managers	Other non-manual workers	Skilled manual	Unskilled manual	Total
1988	15.7	10.9	57.5	15.9	100.0
1989	13.2	9.1	60.0	17.7	100.0
1990	21.2	12.4	54.1	12.3	100.0
1991	24.7	11.6	52.2	11.5	100.0
1992	28.0	13.1	47.9	11.1	100.0
1993	26.5	12.6	49.1	11.7	100.0
1994	28.4	13.1	47.2	11.2	100.0
1995	27.6	14.3	48.5	9.6	100.0
Total	21.1	11.1	55.8	12.0	100.0

Source: Central Statistical Office (CSO)

## NATURALISATION

Before the end of 1980s foreign citizens rarely applied for naturalisation in Hungary. The majority of applicants were Hungarians who had left the country at some time in the past and who wanted to return, usually after retirement. Even in the 1980s there were hardly more than 1,000 applicants a year. In 1988 the applications rose to 2,300 (*Table 3*).<sup>3</sup> The number of applications exceeded 13,000 in each of the following three years. In 1994 the new Citizenship Act, requiring eight years residence in Hungary for citizenship, came into force. The number of applications decreased greatly.

Between 1990 and 1996 a total of 70,000 people were granted Hungarian citizenship. Approximately 90 per cent were ethnic Hungarians, this proportion falling a little in 1994–95, but still remaining as high as 84 per cent. In 1995, 70 per cent of the successful applicants were from Romania, of which 95 per cent were ethnic Hungarians.

Those who were stripped of their citizenship before 1990 or who lost their citizenship (e.g., by being resettled in Germany) could become Hungarian citizens on production of a certifying statement. There were 1,300 such statements submitted between 1993 and 1995.

Emigrants from Hungary do not usually renounce their citizenship. The law of the receiving country (e.g., Austria, Germany, Sweden) may, however, require renunciation. Since 1990, several thousand people each year have renounced their citizenship: 1,747 in 1994 and 1,818 in 1995.

*Table 3*

**Number of applications for citizenship between 1988 and June 1, 1996**

	1988	1989	1990	1991	1992	1993	1994	1995	1996
Applications	2,300	2,800	9,500	13,400	13,300	13,281	3,775	3,430	1,247
Applications granted	n. d.	927	1,981	3,409	11,288	6,497	5,444	5,948	n. d.
Statements	n. d.	n. d.	n. d.	n. d.	n. d.	284	667	406	149
Renunciations	n. d.	1,300	1,000	400	1,500	1,200	n. d.	n. d.	n. d.
Renunciations granted <sup>4</sup>	n. d.	855	746	295	878	1,689	1,200	1,413	n. d.

Source: Central Statistical Office (CSO)

## RESIDENCE PERMITS

<sup>3</sup> One application usually involves several people, since it is possible for families to apply jointly.

<sup>4</sup> Editorial notes: The number of granted renunciations can exceed the number of renunciations because of the slowness of the bureaucratic procedures there is a substantial delay in the process.

Those who wish to live in Hungary for more than one year must have a long-term or a permanent residence permit (“immigration permit”). The statistics show that only half of the applications for permanent residence have been granted in recent years while almost all of the applications for long-term residence permits have been successful (*Table 4*). In the mid-1990s there have been many more applications for long-term permits than for permanent authorisation.

*Table 4*

**Number of long-term and permanent residence permits, 1992–1996**

	1992	1993	1994	1995	1996
Permanent residence permits					
Number of applications	14,000	14,800	10,600	5,600	4,000
Number of approvals	8,700	7,700	3,400	2,200	2,000
Long-term residence permits (newly issued and renewals)					
Number of applications	16,600	11,500	17,800	23,500	15,300
Number of approvals	16,500	11,500	17,700	23,300	15,400

Source: Ministry of Interior

## REFUGEES

Between October 1989<sup>5</sup> and June 1996, 4,261 persons were granted refugee status. Of these, 2,747 presently reside in Hungary. Many more individuals were allowed to remain temporarily.

After the big refugee waves from the former Yugoslavia in 1991 and 1992 subsided, the number of temporarily protected persons declined (*Table 5*). Of all those who had applied for temporary protection, only 5,700 remained in Hungary in this status in mid-1996.

*Table 5*

**Refugees in Hungary by the country of origin, 1988–1996 (number of refugees)**

Year of arrival	Number registered	Country of origin			
		Romania	Former Soviet Union	Former Yugoslavia	Other

<sup>5</sup> Hungary signed the Geneva Convention relating to the Status of Refugees in October, 1989.

1988	13,173	13,173	n. d.	n. d.	n. d.
1989	17,448	17,365	50	n. d.	33
1990	18,283	17,416	488	n. d.	379
1991	53,359	3,728	738	48,485	408
1992	16,204	844	241	15,021	98
1993	5,366	548	168	4,693	57
1994	3,375	661	304	2,386	24
1995	5,912	523	315	5,046	28
1996	1,259	350	268	559	82
Total	134,379	54,608	2,572	76,090	1,109

Source: Central Statistical Office (CSO)

## FOREIGN BORN POPULATION

### Who Is An Immigrant?

According to the 1996 micro-census, roughly 300,000 residents of Hungary were born abroad. This is not a useful number when discussing immigration in Hungary, however. In many countries a foreign birthplace indicates the person is an immigrant. In Hungary – as in other countries in Central Europe – this assumption is not appropriate. The birthplace of many of those born abroad is foreign based only regarding the present borders. At the time they were born the place of their birth was within Hungary; their move from their birthplace to their current residence was at that time migration from one part of Hungary to another. Those residents born abroad are mostly older people, which reflects the historical events – the changes of borders following the Trianon peace treaty, the border revisions made during the Second World War, the annexations, withdrawals, and subsequent changes of population – that account for this phenomenon (*Figure 3*).

Other historical events, such as World War II and the 1956 revolution, also influence the situation regarding foreign citizens. About 6,000 of those living in Hungary with permanent residence permits were actually born in present day Hungary. They left Hungary, acquired citizenship elsewhere, and now have returned.

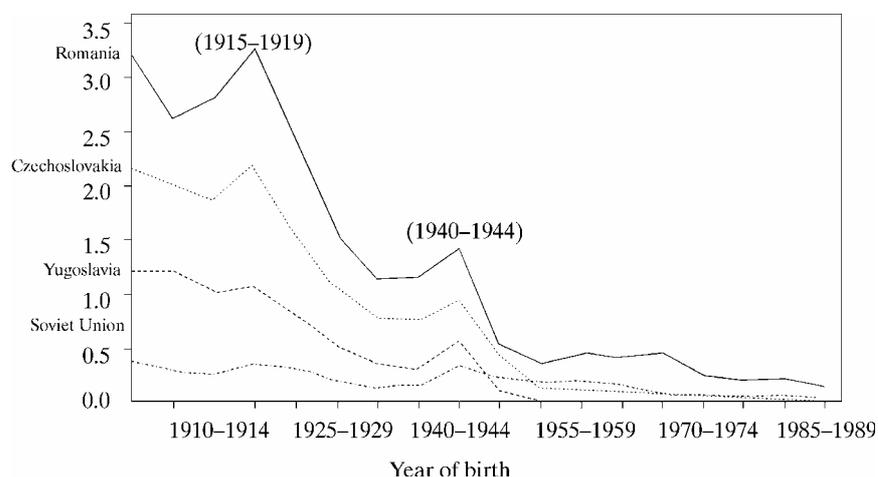


Figure 3

**Foreign born population of Hungary by the year of birth, January 1, 1990**  
*(foreign born persons per 100 thousand inhabitants)*

### Major Sending Countries

At the beginning of 1996, 140,000 foreigners were living in Hungary, of whom 82,000 were permanently settled. Almost 50 per cent of the immigrants are Romanian citizens. Approximately 10 per cent of the immigrants came from the former Soviet Union, 10 per cent from the former Yugoslavia, and 10–10 per cent from the other Central European and East European countries.

More than half of the foreign residents are ethnic Hungarians, two-third of those coming from Romania. The proportion of ethnic Hungarian immigrants who are citizens of former Yugoslavia and of the former Soviet Union is 20 per cent and 10 per cent, respectively.

### Age, Sex, and Family Status

Comparing the Hungarian population and resident foreigners by age and sex indicates that immigrants to some extent compensate for the distortions in the age structure of the Hungarian population. The overall proportion of immigrants is small, which limits the magnitude of this compensating effect, but it cannot be completely ignored in a country where the population is decreasing, mortality is high, life expectancy is low and the number of births is small.

Comparing those permanently settled here and those staying temporarily also reveals differences according to sex and age. The differences are unsurprising, since it is likely that those settled here will have more children, and that there will be more men than women.

Comparing the family status of the immigrant population with the total population indicates that the divorce rate is higher in the total population.

### **Geographic Distribution**

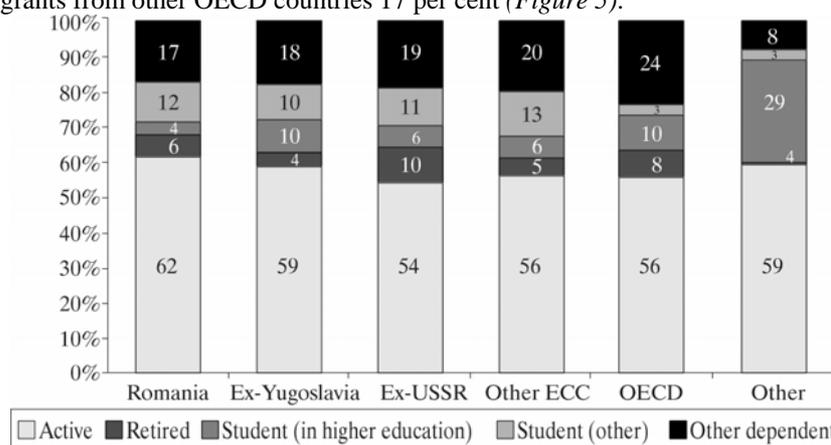
The share of immigrants in the population is the highest in Budapest, the area surrounding Budapest, and the south eastern part of the country, which borders Ukraine, Romania and the former Yugoslavia (*Figure 4*). More than 30 per cent of the immigrants live in the capital, a proportion much higher than the national average (19 per cent). Slightly more than 50 per cent of the immigrants live in cities, which by and large corresponds to the national figure. Consequently, only a minority of immigrants live in villages.

Those coming from the developed countries concentrate in Budapest (63 per cent). In contrast, immigrants from the former Yugoslavia prefer to live in cities near to border. (*Figure 4*).

There is also a difference according to migrant status (*Table 6*). The spatial distribution of permanent residents is similar to the national pattern. In contrast, officials and students are more highly concentrated in Budapest. Geographic location reveals a desire to remain close to the homeland but over time this motive weakens. The immigrants who reside for a longer period – those who have permanent immigrant status or apply for Hungarian citizenship – tend to move from the eastern or south eastern regions to the more developed western counties and from the area around Budapest to the capital itself.



immigrants coming from the EU is 30 per cent; the proportion of students among immigrants from other OECD countries 17 per cent (*Figure 5*).



*Figure 5*

#### Immigrants by economic activity and by country of origin

50 per cent of all foreign residents are skilled manual workers. Over 30 per cent are non-manual workers, slightly more than the national figure. The occupation of foreign residents vary significantly depending on the country of origin. Close to 50 per cent of the economically active immigrants from the EU countries are highly qualified as compared to 25 per cent of those from former Yugoslavia and only 10 per cent of those from Romania. The data concerning Romanian citizens living in Hungary provide a distorted image of immigration flows from Romania, however, as a larger proportion of the highly qualified Romanian immigrants have already acquired Hungarian citizenship. For example, more than 2,000 medical doctors have migrated to Hungary from Romania in the last decade and 1,500 have already become Hungarian citizens.

Following the recent political changes in Eastern Europe, the attraction of the Hungarian labour market – legal and illegal – rose sharply for various groups of foreign workers. Most foreigners working in Hungary are legally employed, but there are also many working “on the black”. This demonstrates that the Hungarian economy demands such migration.

#### Work Permits

Work permits are issued for a maximum of one year. Although short-term permits were issued at the beginning of the decade, the majority are now valid for more than 6 months. Indeed 90 per cent of the permits issued or extended in 1995 were valid for more than 6 months.

The number of new permits issued has fallen somewhat in recent years, but the number of valid permits has continued to rise (*Table 7*). At the end of 1995 the total was 21,000.

Work permit holders has come from about 100 countries, but the distribution by country of origin is highly concentrated. More than 90 per cent come from only 15 countries.

In June 1996 nearly 50 per cent of foreign workers are Romanian citizens, 11 per cent are Ukrainian, and many others came from former Yugoslavia, Poland and China. The proportion of Western, i.e., OECD, countries' citizens obliged to apply for work permits has risen steadily: about 20 per cent of the valid permits were held by citizens of OECD countries.

*Table 7*  
**Proportion of valid work permits, 1992–1996 (per cent)**

Citizenship	1992	1993	1994	1995	June 30, 1996
	<i>N</i> = 15,727	<i>N</i> = 17,620	<i>N</i> = 20,090	<i>N</i> = 21,009	<i>N</i> = 19,205
Total	100.0	100.0	100.0	100.0	100.0
Romanian	52.8	42.9	44.8	46.7	47.5
Ex-Soviet	12.4	11.6	9.0	12.6	12.8
of these Ukraine	n. d.	9.0	8.1	10.6	11.0
Ex-Yugoslav	9.0	9.0	8.4	6.9	6.6
of these FRY	n. d.	2.9	1.0	5.6	4.8
Polish	4.9	6.3	5.1	6.6	5.6
Chinese	4.8	2.5	1.3	4.3	4.1
Czech and Slovak	2.3	1.7	2.2	3.2	2.3
Vietnamese	1.4	1.0	0.2	0.9	0.8
<i>OECD</i>	n. d.	11.4	5.5	15.3	16.6
of these USA	n. d.	3.2	1.5	3.4	3.2
Great Britain	n. d.	2.5	1.1	3.4	3.3
Germany	n. d.	1.6	0.8	2.2	2.5

Men constitute a substantial majority of work permit holders. There are more men than women among the immigrants, but the rate of male employment exceeds the ratio of immigrant men. Between 1993 and 1996 57 per cent of the foreigners of working age who came into the country (apart from those coming to study) were men, but more than 67 per cent of the work permits issued during the last three years went to men.

In contrast there are fewer men in the Hungarian population (48 per cent) than women, and the ratio of men in the employed population is only slightly greater (52 per cent).

Approximately 50 per cent of the work permits were issued to those under 30. The age composition has remained constant during the past 2–3 years.

Over the last year and a half, the number of foreign employees in agriculture and mining has risen a great extent, with the number in the construction industry falling slightly.

The number of Chinese with work permits was much higher in 1995 than in the previous year. The Chinese work predominantly in trade.

In terms of the type of work, 70 per cent of the permits issued in 1995 were for manual work and 30 per cent for white collar work (*Table 8*). The majority in both categories are skilled. Three-quarters of the manual workers are skilled, and two-third of the white collar workers have post-secondary education. These figures demonstrate the relatively high level of qualifications of foreign workers. In reality, the skill levels are higher than indicated by the figures, because it is common for workers to take jobs that demand lower skills than the worker possesses. This discrepancy is accentuated by the high proportion of workers doing seasonal work – primarily in agriculture and construction – which requires no skill qualifications.

*Table 8*

**Distribution of work permits issued by type of work (per cent)**

	1992	1993	1994	1995	1996 Jan. 1–June 1
Manual worker	71	69	65	70	74
among them, skilled	83	80	80	78	77
White collar worker	29	31	35	30	26
among them, highly skilled	55	58	46	55	67

The distribution of working skills varies significantly according to the country of origin. Not surprisingly, people from more developed countries are mainly engaged in white collar occupations (more than 75 per cent in 1995) and particularly in jobs which require higher education (more than 80 per cent of white collar employees). The situation is reversed among those from Romania: 85 per cent are employed in manual jobs (only 65 per cent of which require skill qualifications) and 15 per cent in white collar occupations (23 per cent of which require higher educational qualifications).

### **Illegal Employment**

The informal sector plays an important role in Hungary. Some estimates that 30 per cent of the gross domestic product (GDP) is connected in some way to labour and trade in the informal economy. Whatever the precise statistics, illegal employment is considered a significant problem for the Hungarian labour market. The illegal labour market consists mainly of unskilled temporary labour with limited chances for

advancement in any job hierarchy. Those who are willing to work under poor conditions with low pay can find opportunities in this market.

Illegal work and illegal trading are not a problem specific to migrants, however. They are common among Hungarian citizens as well.

Due to the nature of undocumented migration and the illegal labour market, it is impossible to know the number of illegal labour migrants. According to some unofficial estimates, 70,000 to 100,000 foreigners, mostly from Romania and Ukraine, work on the illegal labour market. Since no visa is needed to enter Hungary from the neighbouring countries, it is relatively easy for citizens of those countries to enter as tourists, even if their real purpose is to work.

It appears that most of the foreigners working illegally are Romanian citizens. In recent years, increasing numbers are taking unskilled jobs, most frequently in construction and in seasonal agriculture. Illegal foreigners, mostly Ukrainians and Russians, are increasingly evident in the entertainment industry.

## **FUTURE OUTLOOK**

According to some opinion polls surveying the 18 East European countries, Hungary has the smallest proportion of citizens who intend to leave their homeland; only 4 per cent say they are liable to emigrate. The polls suggest that earlier tendencies will continue, which means that no mass emigration should be expected from Hungary in the near future. The stabilisation achieved in Hungary since 1995 is a significant factor in preventing the emigration of young, skilled people.

After an initial rapid rise, immigration to Hungary seems to have *stabilised* at a lower level in the past five years. Barring the occurrence of major international changes in the near future, this level is not expected to change. Nevertheless, Hungary's importance as an immigration and transit country may still increase, depending on regulations and the economic situation both in the countries of origin and in the destination countries. The composition of the immigrant population might also change as economic and political circumstances change. A peaceful period with more stability may emerge in the surrounding countries. In spite of the obvious economic difficulties in these countries, a more peaceful time may result in the recognition of the positive elements of migration in both the sending and receiving countries.

## **APPENDIX<sup>6</sup>**

### **WHO'S WHO IN THE STATISTICS ON MIGRATORY MOVEMENTS**

*Omnis definitio periculosa est* – as Romans said in ancient time. Although nobody intends to dispute this truth, a short thesaurus of regularly applied terms is needed for

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<sup>6</sup> Written by Judit Tóth

readers. The next lines cover on most frequently used categories of migrants used in Hungarian statistics.

#### • POPULATION OF FOREIGN CITIZENSHIP

The broadest term of foreign citizens residing in Hungary. The components of this category are as follows:

1. Foreign citizen in possession of short-term/temporary residence permit valid for a maximum of one year (seasonal worker, business man, visitor);
2. Foreign citizen in possession of long-term residence permit valid for more than one year (student, employee, etc.);
3. Immigrant in possession of an open-ended residence permit;
4. Refugees;
5. Illegal migrants (without valid residence permit or without any sort of registration).

#### • *Permanent residents*

Settled immigrants, refugees and long-term residence permit holders are generally considered permanent residents as they have resided for some years in Hungary (in the paper long-term residence permit holders are referred as immigrants. This is an example of later usage of the term.)

#### • IMMIGRANTS

According to legal rules, foreign citizens in possession of an open-ended residence permit are considered settled migrants or are simply referred to as immigrants. Residence and subsistence are provided in Hungary for those applying for an immigration permit. The core of the immigrants' legal status is free residence and freedom of movement in and out of Hungary. In addition, immigrants are furnished with a blue card which makes their daily life easier in official matters of identification.

#### • NATURALISATION

In order to acquire Hungarian citizenship, foreign citizens must submit a request for naturalisation. Current statistics cover data of new nationals who have already acquired citizenship rather than data on applicants. The yearly number of applications differ significantly from data of naturalised foreign citizens due to the 3–4 years procedure they must endure. Only immigrants in possession of a stable means of support, basic language ability in Hungarian and the acceptable result on the constitutional exam are entitled to submit a request for naturalisation. Naturalisation is regulated by the Hungarian Citizenship Act adopted in 1993, which also provides the opportunity for the fast re-acquisition of Hungarian citizenship by the official statement of an expatriated national.

#### • REFUGEES

According to the gradual adoption of provisions and the establishment of legal precedents, this term may refer to:

1. Asylum seekers either who do and do not submit formal asylum requests to refugee authorities;

2. Recognised refugees;

3. Temporarily protected persons from the ex-Yugoslavia.

Due to geographical reservation applied to the 1951 Geneva Convention, Hungarian refugee authorities shall consider only applications submitted by European asylum seekers, while non-European applicants are handled by the UNHCR branch office. In this way, refugees are recognised by local refugee authorities or by the UNHCR. In addition, temporary protection is provided by the local organs of the refugee authority, though short-term residence permits for both refugees and temporarily protected persons are issued by the alien police. Because of this dual or multiple administrative involvement, statistics on migrants are frequently contradictory.

#### • WORK-PERMIT HOLDERS

Foreign citizens can be employed only with valid work-permit issued by the county labour authority. An exception to this rule is provided only for recognised refugees and immigrants (settled migrants).

#### • FOREIGNERS BORN IN HUNGARY

This is a relatively small group of foreign citizens, which includes children of settled migrants, migrant workers or refugees. For instance, an infant born to a couple in possession of an immigration permit will also be registered as an immigrant (settled migrants).

*Philippe Labreuveux*

## ***Self-Sufficiency Through Self-Employment***

### **INTRODUCTION**

In mid-1995 the UNHCR introduced a self-sufficiency component into its programme of assistance to ex-Yugoslav displaced persons (DPs) in Hungary. The UNHCR programme reached over 5,000 Dps, of whom about two-thirds lived outside camps in private accommodation. Some of them had been in Hungary since 1991; a survey carried out in 1994 found that most lived in poverty. The cash allowances they received amounted to about one-third of the official minimum salary and were clearly insufficient to keep them afloat. As DPs under temporary protection, they did not have access to legal employment; if they did find work – which they had to or otherwise face hunger – it was informally in the black sector of the economy.

To complement cash allowances given by the Hungarian government through the municipalities, UNHCR started distributing through the same channels rental and utility subsidies to all DPs without discrimination on a temporary basis pending attainment of self-sufficiency. Simultaneously a programme was set up offering Hungarian language and vocational training (open to all DPs including those in camps) as well as apprenticeships and business grants (restricted to DPs outside camps).

Between August 1995 and 31 March 1997, 900 DPs attended (or were attending) language courses; 700, often the same individuals, underwent (or were undergoing) vocational training. The training included courses in computer operation, driving (including truck and construction equipment), welding, carpentry, sewing, mechanics, business management and administration.

Given that about a third of all DPs are ethnic Hungarians who do not need language training, Hungarian courses have attracted a very high percentage of the non-Hungarian-speaking adult DP population. Language and vocational training courses attracted a higher proportion of DPs living in camps than outside. It appears that privately accommodated DPs, even non-Hungarian speakers, had less need of acquiring basic notions of the host country language. They had more pressing economic needs to satisfy and they could satisfy them through the receipt of business grants.

## **SATISFYING THE GREAT DEMAND**

UNHCR directly administered the business grants project. Between September 1995 and June 1997 UNHCR received 882 applications, approved 585, rejected 285, with 12 left pending. (The *Annex* shows the most relevant characteristics of the business grants project.) Of the 585 successful applicants, 559 had received the grants by mid-June 1997. The rest were expected to receive them within two weeks. Applications were still being received and processed in the second term of 1997 at the rate of 70 to 80 a month. Taking into account family members of the applicants, business grants have been made to close to all of the privately accommodated DPs physically able to work. Thus, about half of the population have directly or indirectly benefited from the grants.

Unsuccessful applicants are allowed to apply as many times they wish and there are very few instances of them being turned down in the end. Business grants, which were originally meant to help DPs achieve self-sufficiency (or a degree of self-sufficiency) in the country of asylum, can also assist them to reintegrate into the country of origin. Since the cessation in 1995 of open hostilities in former Yugoslavia, this second objective is gradually becoming the main aim. DPs applying for business grants. At the end of 1996 and the beginning of 1997 were contemplating investing their financial and labour resources in the asylum country for a short period of time and at the same time amassing capital for their return. UNHCR took both objectives into account in deciding on the applications.

In 1995 UNHCR set the maximum grant at HUF 210,000, which was then equivalent to USD 2,000. By the beginning of 1997 the same amount was worth only about USD 1,200. The maximum was not increased, at least publicly, because it was found that DPs tended to ask for the maximum whatever the extent of the needs for their particular project.

The project has aimed to achieve in the twelve months following the receipt of the grant a gross return on the sum invested that is equivalent to the net yearly average income in Hungary (HUF 360,000). The recipients have in fact calculated the expected gross return over a year to equal 2 to 2,5 times the amount of grant received, which amounts up to 50 per cent above the yearly average income. This calculation includes the labour of the recipient and his family as well as other resources, if available. If the applicant calculated that the gross return was likely less than the yearly average income and less than the amount of the grant plus 35 per cent (the interest rate normally charged by banks on loans), then the application was generally rejected.

## **DRIVEN BY DEMAND: GRANTS EXCEED SUBSIDIES**

When the project started, applicants were asked to set the date (month and year) when they predicted they would become self-sufficient and therefore no longer need to receive (rental and utility) subsidies.

The cut off date could be objectively calculated in agriculture and animal husbandry, but it could not as easily be done in other activities. Accordingly, it was soon decided to give DPs the choice between subsidies and business grants. At the maximum level the

grants have been the equivalent to between 12 and 18 months worth of subsidies, depending on the size of the case/family. Nearly all opted for the grants.

Starting in the second half of 1996 the number of beneficiaries of subsidies gradually decreased. By the end of the year those receiving subsidies were limited to cases considered vulnerable: handicapped, old, sick, one-parent families, and so on. This amounted to some 500 persons whose capacity to work, let alone become self-sufficient, had been permanently or temporarily impaired. This represented about one in seven of all privately accommodated Dps in early 1997.

While the number of beneficiaries of UNHCR subsidies was reduced, the government continued to distribute to all DPs cash allowances of HUF 5,000 (approx. USD 30) per person per month. Furthermore, UNHCR continued surveying directly or indirectly the income level and the social situation of DPs. Then in April 1996 UNHCR informed the Dps that subsidies would no longer be automatically distributed. Instead, they would only be given on the basis of an individual request that detailed income from all possible sources, expenditures, and assets (car, fridge, TV, bicycle, and so on). As expected, all DPs requested subsidies but the data obtained, particularly on expenditures, gave reasonably objective grounds for UNHCR decisions to maintain or rescind subsidies.

There is a tendency among refugees, particularly those that have been assisted within institutions like camps or reception centres beyond a reasonable period of time, to treat assistance as a given and to lose initiative. Business grants and other such projects aiming at strengthening their capacity for self-sufficiency must not be viewed by refugees as an automatic benefit. Even after excluding vulnerable cases, some refugees will not become self-sufficient through self-employment. They have to fulfil certain conditions, have thought their project through and above all be ready to assume some risks. Refugees, like others, are certainly ready to do so. They, like others, want to be independent. But the advantages, material and other, to do something for themselves by themselves must weigh more heavily than benefits that accrue more or less automatically.

The UNHCR did not have much experience with business grant projects, but somehow started this one as an experiment. The refugees' response gave it impetus. Its budget in 1995, initially calculated at one twentieth of all expenditures on assistance to DPs, grew to about one-tenth by the end of the year, it is expected to top one-third in 1997. Due to repatriation, total assistance has decreased. Nonetheless, the self-sufficiency component of the programme has grown in 2 years from less than one-third to more than two-thirds of all expenditures. The business grant project is clearly demand driven.

### **OPPORTUNITIES FOR SELF-EMPLOYMENT**

The business grant programme did not make much effort at the beginning to examine the economic and social context in Hungary for self-employment opportunities for ex-Yugoslav DPs. The DPs proved they knew the situation well enough, if only because they had no alternative but to struggle to survive. Though unable to work legally, DPs had seized all opportunities to work for a bit of money "in the black". They worked seasonally in agriculture and occasionally in other (mainly manual) service activities.

Having been confronted with the day to day need to supplement the assistance they received, DPs knew far better than those who had concocted the business grant project what could be done with the proposed grants. The diversity of activities they have undertaken are witness to their ingenuity and capacity for survival against the odds. The diverse activities are also evidence of opportunities that exist today in Hungary, particularly in the informal sector, for those living near or below the “poverty line” and for other victims of the “transition”, such as Gypsies.

### **AGRICULTURE AND ANIMAL HUSBANDRY**

Of the 559 grants effectively distributed by 31 March 1997, nearly half (263) were granted to agriculture (mainly vegetable growing) and animal breeding (mainly pigs, but also chickens, rabbits, sheep, cows) projects. Few DPs had been engaged full time in economic activities linked to agriculture in their country of origin, but the great majority had had some experience in vegetable growing and animal husbandry for they had lived a life astride the city and the countryside. This was a great advantage in today’s Hungary (at least in the southern part) due to the availability of land and space for rent (or even for free). Since the change of regime production in most sub-sectors of agriculture, cattle and animal breeding has dropped, sometimes considerably, and there are unmet needs. Small producers can operate free from state control and are not taxed. Small producers appear to suffer less than medium or large ones from the increase in prices of (industrialised) inputs; they can also supplement the income from their own production by selling their labour seasonally for a wage. The gross return (including labour) on the investment (of the grant) reached at least 100 per cent and, on average, reached 150 per cent.

### **PRODUCTION, SERVICES, BUT NOT TRADE**

Most of the other grants went to independent semi-skilled or skilled workers or craftsmen in activities ranging from building construction, metallurgy, carpentry, electricity, electronics, plumbing, painting to tailoring, knitting, shoe repair, leather work, cleaning, and so on. Catering activities were sometimes supported, but very rarely. As a matter of principle, trading was not financed. In most cases there was a direct relation between the education of the recipients, their professional experience in the country of origin (and asylum) and their choice of activities. They generally requested equipment and tools which they had had in the country of origin but could not bring with them when they left. Possession of the equipment and tools necessary for their jobs made them more autonomous and increased their (labour) market value.

At one point in 1996 business grants supported the purchase of sewing machines (common and “overlock”) for housewives who had no “business plan” but could start to work for themselves and their family and expand their activities into the “market”. Later UNHCR, which has access in Budapest to a choice of articles of better quality at cheaper prices, purchased all equipment and tools directly. The practice has met with success as applicants saw a distinct advantage in receiving state of the art equipment.

Apart from trading (generally in open-air markets or bazaars), no activities were ruled out as a matter of principle. All proposed plans were seriously examined, discussed, and approved when the applicants demonstrated they had the necessary experience and a reasonable knowledge of the market. Thus artists, including musicians and one writer, received grants, as did breeders of dogs, chinchillas and pigeons. Even a handicapped person untrained and unable to perform any physical activity received a grant to purchase a machine to copy keys.

### **WORK IN THE INFORMAL SECTOR**

Activities of DPs outside agriculture were to an extent hampered by the fact that they are not allowed to work legally. Their status as temporarily protected persons has not been regulated in Hungary; in fact they are in a legal limbo. They enjoy the same rights as other foreigners, though, and hence are allowed to seek a licence for independent work (Bt.). UNHCR often conditioned the disbursement of a grant on the applicant's obtaining a Bt., and arranged for a lawyer to assist them free of charge for this purpose.

Generally speaking, DPs are no more likely to be harassed or prosecuted for working "on the black" than the tens of thousands of Hungarian citizens who also do it. The informal sector, which has been in existence since long before the demise of a centralised economy, is said to account for up to 30 per cent of total production.

### **ELIGIBILITY**

All Dps, whatever their citizenship, ethnicity, sex, age or education, could apply for business grants. After the passing of an amnesty law in June 1996, DPs originating from the Federal Republic of Yugoslavia were no longer eligible as they were considered able to return to their place of origin. With that exception, the characteristics of those who received business grants by and large are the same as the characteristics of those who applied. This is a prima facie indication that strictly technical (business) criteria have prevailed in UNHCR decisions.

Although not prevented from applying, DPs considered to be already self-sufficient were denied grants whatever the quality of their business plans. Conversely, applicants deemed particularly vulnerable (families of 5 or more and single parents, in particular) were often given the benefit of the doubt if their application failed a technical point. Young DPs fresh out of school and trying to enter the labour market were not favoured. They were instead channelled towards apprenticeships which could result in some sort of partnership or joint venture.

### **THE ALL IMPORTANT APPLICATION FORM**

While UNHCR did hardly any preparatory work on market conditions before launching the business grant project, it did carefully draft the application form, the main

implementing “tool” of the project. The UNHCR form is similar to standard applications for loans, but it has been simplified and modified based on experience. For example, the most recent version requires the applicant to list the specifications, price, trade mark, and name of seller, of all equipment to be purchased. This ensures that the applicant has made a serious enquiry and helps rate his reliability; at the same time it allows UNHCR to make direct procurement, if appropriate.

To avoid delays in the start of the project, ensure that it quickly gained momentum and acquired experience, UNHCR decided not to enlist the services of an implementing or operational partner, but to administer the project directly. The staff members (one international and two local) have devoted part of their time to examining the applications, interviewing applicants, assessing the merits of their plans, taking decisions and disbursing funds. They also followed up, time allowing, on the activities of beneficiaries. Four social counsellors covering different geographical areas where DPs are concentrated have been recruited to gather information (economic and social) on all cases individually, assess their needs and determine the type of assistance, if any, that they require. The counsellors play an important role as they distribute applications, retrieve them and make a preliminary evaluation, particularly in respect to the reliability of the applicant. Counsellors are present during the interviews of the applicants and take part in the final decisions, especially on border line cases.

The reliability and seriousness of the applicant is all the more important since UNHCR gives the grants with no strings attached. In contrast to a loan, the grant is a gift which is not to be returned with interest. Hence, care has to be taken to check on the real purpose of the applicant. Direct acquaintance with the applicant is a distinct advantage. Additional essential information can be obtained during the interview regarding the efforts already taken by the applicant to work, particularly in the area chosen in the business plan, and the obstacles he has faced. An applicant who has started or taken steps to start his project on his own is more likely than not to continue once in receipt of assistance. The grant is a unique chance for the DPs; they largely perceive it as such. It is unlikely that they would squander it on purpose.

## **GRANTS OR LOANS**

From the start UNHCR did not give envision providing loans rather than grants. First, issuing and recovering loans would have required establishing a heavier administrative structure through an implementing partner (a financial institution or NGO) which was not readily available. Second, grants were viewed as an alternative to subsidies or as subsidies given in advance. Third, loans at market (35 per cent interest and above) or preferential (20 to 25 per cent interest) rates would have to be given at a higher level than grants. DPs cannot in general mobilise any resource other than their own labour; they typically have no assets, although a few own practically valueless old cars.

There is no doubt, though, that the issuance of loans instead of grants would have offered distinct advantages and should generally be given preference. Applicants for loans must calculate precisely the rate of gross and net return over the investment contemplated, taking into account the terms of repayment. This forces recipients to

respect economic discipline in the allocation of their resources, be they cash or labour. Moreover, micro credit is gaining ground in Hungary and the region. It is promoted by international financial institutions and NGOs that operate through local partners. These local groups could take the lead in implementing self-sufficiency projects for refugees.

### **SPECIFIC CHARACTERISTICS OF THE TARGET GROUP**

UNHCR has no doubt that the project made a difference to the life of DPs, although the extent of the difference is difficult to gauge. UNHCR also believes the project could be replicated elsewhere with different groups of refugees. But the impact of the project on ex-Yugoslav DPs privately accommodated in southern Hungary has been affected by certain characteristics, positive and negative, of the beneficiaries and the situation in which they found themselves.

DPs had been living in Hungary for up to 4 years and had had time to reconnoitre the economic and social terrain, to think about ways to improve their income and sometimes to start some potentially durable activity. This is the main reason why UNHCR's offer of grants met with a quick response. The education and professional experience of the DPs gave them means to cope with a new but not totally unfamiliar environment. They were ready to undertake any type of activity on an independent basis. Coming from a society whose "transition" to a market economy had started even earlier than that in Hungary, they were prepared to put up with the hardships involved and to seize the chances it offered. Besides, most spoke or sufficient Hungarian to relate to local inhabitants.

It is obvious that DPs would have benefited from holding a different status that allowed them legal access to employment, although access to legal employment and social benefits on a par with Hungarian citizens would not have necessarily given them jobs. As it turned out, they had to create their own jobs and, at least in the long term, may be better for having to do so. Nonetheless, the business grant project would have had a more positive impact if it had been part of a wider effort by all actors concerned, in particular the government, to integrate refugees or at least make them self-sufficient. But that was definitely not the policy of the government in 1995 or at any other time.

### **CAN THE PROJECT BE REPLICATED?**

The difficulties of replicating the project for the benefit of a different group in a different economic and social context appeared clearly when, as an experiment, UNHCR distributed applications for grants to non-European refugees living in Budapest under the UNHCR Mandate. (As Hungary signed the 1951 Convention related to the Status of Refugees with a geographical reservation, UNHCR determines the status of non-European asylum seekers and assists refugees under its Mandate.) The non-European refugees were, by and large, in the same legal situation as the ex-Yugoslav Dps. There were few non-European applicants. With one exception, they all intended to engage in trading activities, including foreign currency exchange. But most lacked even sufficient experience in trade. Their economic aspirations, partially justified by the higher cost of living in the capital, were at least twice as high as those of ex-Yugoslav DPs. Their

aspirations were in general unrealistic and not in accordance with their education, experience and the employment opportunities offered by Hungary. In fact, they had little interest, if any, of staying in the country.

By and large, ex-Yugoslav DPs did not need much counselling as to the type of activities they could engage in and were best equipped for. In any case, UNHCR and its staff were not in a position to provide guidance. The process of examining applications was itself educational, however. All applicants – sometimes up to 25 – are assembled in a room while one of them is interviewed. The public does not intervene but listens with attention while questions and answers flow. The applicants learn about the strengths and weaknesses of other candidates and about their own. This method also achieves transparency, an important aspect of the programme.

### CONCLUSION

At the request of UNHCR, in 1996 the Institute of Political Science (Hungarian Academy of Sciences) began a study of the activities of the recipients of business grants (termed subsistence oriented migrant enterprises). It will be completed at the end of 1997 and will involve a comparison with similar enterprises set up by Hungarian citizens. The results of this study should provide a wealth of information concerning the impact of this effort to encourage self-sufficiency through self-employment. The analysis of the initial efforts behind the UNHCR business grants project should suggest future steps for this project and for similar projects started to assist displaced persons and refugees elsewhere.

### ANNEX

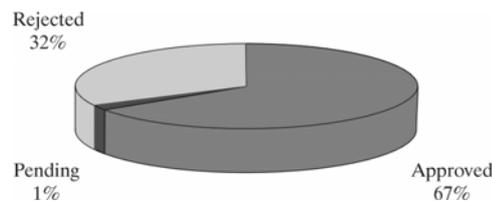


Figure 1  
Grant situation

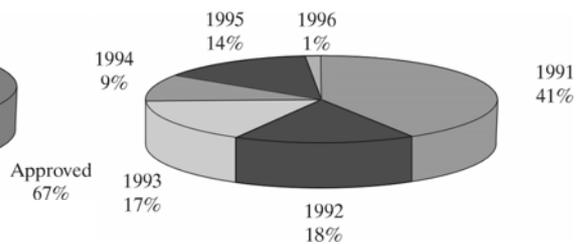


Figure 2  
The DP lives in Hungary since ...

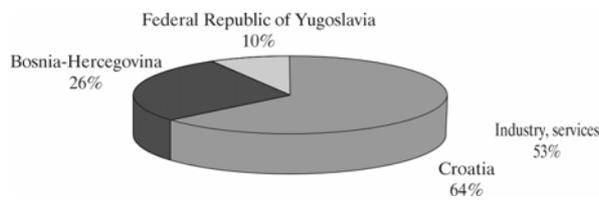


Figure 3

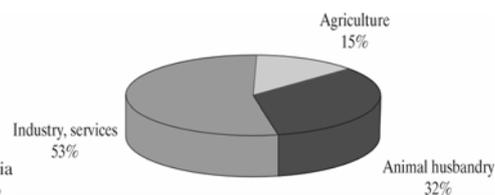


Figure 4

*Máté Szabó*

***From “Catacomb” to “Civic” Activism:  
Transformation of Civil Right Movements in Hungary  
after 1989***

In 1993, fewer than two percent of all NGO's in Hungary were active in the field of human rights protection, according to a survey of the Hungarian Statistical Office. Most of the human rights groups operated in Budapest and provided minimal countrywide activities. However, although their number and power are small their importance in a post-communist country trying to create new institutions of governance and to extend civil rights is significant.

**THE DEVELOPMENT OF HUMAN RIGHTS INITIATIVES  
IN HUNGARY AFTER 1989**

Human rights issues were at the forefront of democratisation of the communist systems. Basic freedoms were not provided by the communist regimes, but only a small elite risked protesting for human rights against the almighty party and state. The avant-garde of human rights activists articulated demands for civic freedom, documented violations of civic freedoms by the state and the party, and tried to establish networks with Western activists and with similar groups in other communist countries. The mainstream civic activism for human rights developed after the Helsinki Charter was passed, and ended in 1989 with the changes of regimes in the European communist countries.

As the regimes changed, most of the civic initiatives and their leading activists became part of the new political elite as politicians and civil servants, or became influential in the media as journalists, reporters, and so on. A shift in the issues and agendas of civil rights activism occurred. Before 1989 a “catacomb” activism dominated; after 1989 most of the demands of these activists were institutionalised in the new political and legal systems, and the main institutions of government and law enforcement provided guarantees for these new freedoms. Human rights not only became standard parts of the new constitutions of post-communist democracies, but their institutional and procedural guarantees have been introduced: Constitutional Courts, ombudsmen, representatives for civil rights, broad judicial review of administrative decisions, and non-legal watchdogs such as free press and free electronic media now emancipated from the brutal manipulation of the former regimes.

Despite all these democratic developments to establishing a rule of law and civic freedoms, we need civic activism to protect the rights and freedoms of citizens, as do even the Western democracies established long ago. With issues such as women's rights, minorities' rights or the rights of people without citizenship, modern societies need civic action to protect these rights against government interference or against the activities of other groups and organisations.

Civil rights issues still exist in the post-communist democracies following the institutionalisation of the rule of law and the consolidation of new regimes. Moreover, civil rights are still new "import" products in the political "markets" of these countries, and the "hardware" for the realisation of the civil rights, the new institutions, are not fully established yet. On the one hand, the classical issues of civil freedoms and civic participation have to be defended against a still very powerful government sector. On the other hand, new challenges are emerging during the consolidation of the first generation of basic civil rights (such as freedom of the press), and rights for women, for different minorities and for people who are not citizens have to be taken seriously by civic activists.

What are the main problems of the non-governmental sector under post-communist conditions, especially for human rights activism? Non-governmental activities were established after 1989 in an emerging or re-emerging civil society, where the functions of the non-governmental sector had long been occupied by governmental agencies. There is a scarcity of resources for civic activism, and the tradition of government superiority and hyper-activism in this field still exists. The post-communist governments themselves aim to reconstruct civil society, or to secure conditions for its revitalisation, and try to restrict their own interference, which produces many contradictory requirements. For example, government has to help or even create the new subjects, whose functions, resources and power have to be provided by the government. The non-governmental organisations are established by rules of the government and with government support. To minimise the negative aspects of this dependence and the lack of experience, the new non-governmental sector is highly dependent on the international network of NGO's and their own co-operative networks, and has to build up the infrastructure often against the will of the powerful post-communist government sector.

In the field of human rights the initiatives of post-communist democracies are highly dependent on Western aid in the form of resources and know-how. The former civic activism developed under authoritarian rule, and its tradition does not fit in every respect into the post-communist conditions of the rule of law. Moreover, the governments have ambivalent attitudes towards emerging civil rights activism. All bureaucracies exerting more or less discretionary influence and power are disturbed by the task of building up external powers to control their own power and resources. No wonder that post-communist police, border control, legal and other state services related to asylum seekers, foreigners, and migrants are not happy with the development of the praxis of civic activism on this field, even if they help their operations. Often the official declarations and the opinion of higher level politicians may be different from the practical steps taken by the personnel who execute decisions; many Hungarian initiatives encouraged and supported from "the top" have been hindered or rejected by "the bottom" of the bureaucracies.

All the previous characteristics apply to the small network of human rights activist groups in Hungary. In the following section we will focus the analysis on the initiatives for the rights of refugees, foreigners, and especially for victims of racist violence.

These issues overlap with the issues of women's rights and minorities' rights. Most of the initiatives have a multidimensional approach, and the NGO actors in these fields are connected with each other. For example, skinheads attack not only foreigners but Roma minority members as well. This interconnection of issues also means that the main activists on human rights issues seem to be the same ones in many different circles working on related issues. Groups and circles of activists are co-ordinated in joint bureaux, using overlapping campaign funds because of the scarcity of resources. No actor in this tiny "political field" can afford the luxury of ignoring the possibility of joint actions which multiply the effects of the rather restricted resources. Among these "integrators" or multiple-identity persons, we may identify both the "veterans" of the "catacomb times" and the new generations of professional activists who joined the movement after 1989.

#### **THE CHANGING FIELD OF CONFLICT: ACTORS, ACTIVITIES, STAGES OF DEVELOPMENT**

Who are the main actors in the "political field" on the issues of asylum seekers and victims of racism or xenophobia?

*a)* Activists. They can be recruited from the bureaucratic-administrative sector or from the civil society. Anti-human rights "streetfighters" are rare, but other more subtle forms of rejection and hostility may poison the atmosphere of Hungarian society. Behind the few hostile xenophobic actions there might be broader social support. This is what we can assume based on opinion polls and other surveys. Some groups may not openly articulate their hostility against foreigners or racial minorities, but they may "cover" the activism of racist "streetfighters". Some of the civil servants misusing their power on these issues may refer to the "consent" of the majority who back them in these cases and reject the liberal norms. As a consequence, pro human rights activists have to fight on many fronts: trying to change general hostile attitudes, convincing officials and clerks to follow the norms of human rights, and combating "streetfighters" with all possible legal means.

*b)* Clients. They have as varied profiles as do the activists. The biggest native ethnic minority, the Roma, has established its own civic infrastructure, including some civil rights organisations, for help and self-help.

*c)* Supporters. Many groups and institutions, from the governmental sector and from the civil society, from Hungary and from abroad, help to defend civil rights. In Hungary not only the liberal and socialist parties but also the conservatives use the language of human rights, which is a requirement in the post-communist political culture. Although, there are clear-cut differences among political parties treating the issue, there is a consensus among the parties that Hungary should not become "the last station for refugees before the gates of the West". It is very likely that in the course of the coming election (in 1998) the overwhelming number of the parties will court their potential

voters by restrictive programs concerning immigration, despite the differences in political values. In Hungarian society, younger, urban, cosmopolitan, “European”-oriented persons with higher education and white collar occupations tend to accept the opening up of the country and of multiculturalism, while older, less educated, blue collar or unemployed people in the countryside with strong national identification reject that. Among the minorities there is little solidarity despite their common problems.

What are the main forms of human rights actions in Hungary?

a) Propaganda and training aiming to mobilise people for human rights, and targeted on the hostile or passive majority as well as on the groups of actual and possible victims.

b) Monitoring and documenting the current state of human rights. This includes various activities oriented towards governmental organisations misusing their discretionary power, as well as against groups and individuals injuring or misusing foreigners, asylum seekers, and so on. The use of the “power” of international and local publicity enables the activists to “make the issue” or to “set an agenda”. The power of information is also important in terms of building up archives, which may serve many functions, such as training, media education, legal assistance and so on based on their practical experience towards government and the public, civic groups launch reform initiatives to improve the status of minorities and foreigners.

c) Legal counselling service, networking, community building. Activities to help the clients, the minority groups or the refugees, achieve better results in legal or other administrative procedures, and to establish groups and networks enabling them to help themselves and to articulate their demands. Information on their rights and duties, on their participation and on the channels for articulating their concerns are provided for the clients. A wide range of professional and semi-professional volunteer work has been undertaken to improve the conditions of the different groups of foreigners and to help them find a satisfactory solution in Hungary to their situation as migrants.

We may identify different stages or periods in the development of human rights activism in Hungary. The main characteristics of these periods are the following:

#### 1. 1987–1989

- Human rights are not institutionalised, but there are rapid improvements due to the change in regime.

- Civic activism is first and foremost oriented to change the regime and institutionalise rights and freedoms. Some initiatives emerge both from church and other groups to help Hungarian refugees from Romania. National and democratic motives play a role.

- Mostly ethnic Hungarians immigrate from Romania. The overwhelming majority of the population supports the assistance to and the integration of the victims of totalitarianism and ethnic discrimination.

- There is no legal status in the beginning of the de facto immigration. Transitory solutions are established. There is a relatively homogeneous ethnic composition of immigrants.

- First violent attacks by skinheads against Roma and non-European foreigners. Under heavy government and police pressure, calm quickly returns.

## 2. 1989–1991

- Institutionalisation of human rights and freedoms and of the rule of law occurs by changing the constitution, passing new laws and establishing constitutional democracy.

- The previously suppressed civil right activism is now legal and is coopted into the formal political process. Many old “catacomb” activists change to politics, and new generations of activists and groups emerge. An internationalisation process occurs, with Hungarians acting as members of international networks, and international organisations acting freely in Hungary.

- The newly established freedom in Hungary also locks various ethnic groups in the country, who had hoped to go further West. However, Western countries, especially Austria, demand a strict refugee regime and border control, to avoid being a target of illegal immigration from and via Hungary. Contradictory tendencies emerge, and these are further strengthened by the outbreak of civil war in Yugoslavia. As a result, the ethnic composition of immigration changes, the dominance of ethnic Hungarians is still there, but other important ethnic groups appear. There is a large quantitative increase which will be perceived by Hungarian and Western decisionmakers as a threat and a destabilising force.

- Immigrant status and related procedures are established and institutionalised under the pressure of Western and Hungarian fears that see Hungary as a “fortress” against unpredictable immigrant streams from the East and the South. Hungary is still open to ethnic Hungarians, but is more selective. The Antall-government believes that ethnic Hungarians have to live in their country of origin to uphold the Hungarian minority there. As a result, a contradictory regime of immigration and refugee status is emerging, with territorial restriction which makes the non-European immigrants mostly “outlawed” in Hungary.

- The mobilisation of violence and other hostilities reaches its peaks. Fears of Yugoslav war, socio-economic crisis, unemployment, West European rejection, and violence against foreigners depicted in the press and media lead to hostile outbursts and violent attacks on foreign migrants and Roma. There is a change in public opinion toward all migrants, including ethnic Hungarians, who are rejected as competitors with lower skilled and blue collar workers on the job market. The “skinhead issue” will be discussed by the political elite and will receive publicity; decisionmakers are uncertain to support any type of immigration.

## 3. 1991–1994

- The main institutional guarantees for human rights are settled and established. The issues concerning the rights of women, minority groups, and migrants-foreigners provoke conflicts between the Christian Democratic government on the “right” and the Socialist and Liberal opposition parties on the “left”. A conflict arises between “law and order” and “right and freedom” views and political camps emerge within and outside the Parliament concerning issues of immigration, Roma minority, the mass media freedom and control, and so on.

- The national and international network of the NGOs is strengthened, and new initiatives are established. An interconnection develops with the extraparliamentary protest activities of the Socialist and Liberal opposition parties organised in the so-called “Democratic Charter”, a nation-wide initiative of post-communist human rights activists. Human rights networks with different profiles emerge, for example those that are Liberal, Anarchist-Libertarian, Feminist-Alternative or Socialist-Syndicalist. Institutionalisation, fictionalisation and networking occur within a new NGO sector, where problems of migrants and ethnic minorities are one of the specific fields. Connections to parties and trade unions and to different social groups establish a “multiorganisational field of alliance for rights and freedoms”.

- There is a relative stabilisation of the level of immigration to Hungary. Important groups simply do not enter the official records, due to their illegal migrant strategies, such as smuggling non-Europeans to Austria and illegal labour and trade from former communist countries. Meanwhile official and institutionalised migration is controlled, and illegal or semi-legal migrants are a steady provocation to border control, foreigners, offices and employment policy. The Yugoslav “invasion” of Hungary is resolved with Western help.

- There are constant shifts in the policy, sometimes without any official declaration. Generally, the Conservative government has a “law and order” policy in internal affairs, uses more control mechanisms and “tougher” means toward non-Europeans and immigrant workers. This policy is backed by Western governmental models and by fears in a broad range of the population; it is criticised and rejected by the “left” Liberal and Socialist parties.

- There is a decrease in the number of violent acts against Roma and foreigners by skinheads. This is due to many reasons, such as the tougher government reactions towards immigration and to the increased police activities towards skinheads. On the other hand, new political issues for the extreme right emerge; there is conflict in the media, conflict between Prime Minister Antall and State President Árpád Göncz, and conflict concerning the communist past of some officials. Right-wing activism shifts to other issues and becomes more “institutionalised” in legally organised political demonstrations against Communists, Liberals, and Socialists. There is a shift from violence to protest in the right-wing strategy, which continues after 1994, although streetfighting is not eliminated totally and conflict with the Roma remains alive.

#### 4. 1994–1996

- The government coalition of the “right” was defeated, and “left” Liberals and Socialists form the new government after the second general elections in 1994. There are new institutional improvements for human rights. The ombudsmen will be elected by Parliament, one on minority groups, one on information and freedom of speech issues, and a “general” ombudsman. The new officials try their best to help citizens realise their rights and freedoms and to criticise the authorities’ actions. There are important steps taken, such as regulating the videotapes of demonstrations taken by police, and protecting peoples’ rights when under psychiatric guardianship. The Liberal party in the government selects the Minister of Internal Affairs, who is dedicated to improving

human rights conditions. For example, he launched a training program for the police on how to treat Roma. Controls on drug addiction were liberalised to a great extent by High Court decision. The Liberal Minister of Culture launched nation-wide education programs and propaganda on multicultural tolerance, involving foreign and Hungarian NGOs.

- The new generation of human rights initiatives is more professional due to government and Western help. The international networking within Europe extends to the East, involving other former communist countries. Hungarian initiatives and leaders receive important international acknowledgements, such as the alternative Nobel prize given to András Bíró, who established a network of NGOs concerned about the social, cultural and legal status of the Roma in Hungary. Some important international and European NGO meetings were organised in Hungary. The Helsinki Committee received a UN Award for their human rights work concerning refugee rights in Hungary in 1996.

- The main “shadow” on the Hungarian migration consciousness, the Yugoslav civil war, is concluded by the Dayton agreement, so the problems of the resettlement of ex-Yugoslav refugees and the challenge to reorient immigration policy have to be resolved. This has not yet occurred. Regulations impose controls in response to fears of immigration from the East, pressure from Western governments and a dissatisfied home population. A change of the existing regulations might imbalance the situation, which is probably why the new government avoided essential changes, such as deleting the territorial exclusion for non-European refugees. Immigration strategies cope with the Hungarian immigration regime. The “underground” form of migration that is targeting Hungary and the West is the most worrying phenomenon for decisionmakers nowadays. In response new, more inclusive and permissive regulations or the extension of law enforcement and border control efforts are considered. There is no dramatic migration of ethnic Hungarians to Hungary. Ethnic Hungarians from nearby countries try to benefit from education and economic activities in Hungary, but they continue commuting to their “mother” country so long as no new and sudden obstacles occur there.

- No substantial changes in the refugee and immigration regime had occurred but there are considerable policy changes in preparation, such as the abolition of the so-called geographical limitation. There are political hopes of admission to the European Community and NATO. Accordingly, new regulations should control migration in and via Hungary. Despite more policies fostering multicultural tolerance, the institutional barriers and controls believed to stem mass migration are upheld throughout 1996.

- Mobilisation of violence declines against foreigners, while attacks against individual Roma and their homes remain relatively stable. Extreme right subcultures are more organised and politicised. Skinheads are involved in legal and semi-legal political associations and support legal demonstrations and other protest actions, where the leaders misuse the rights of free assembly and free speech to launch Nazi and racist slogans publicly. The ideological and organisational development has brought some parts of the formerly violent right-wing youth subculture to the symbolic protest politics of the right-wing. At the same time the international wave of racist violence in Europe is diminishing, although it has stabilised at a higher level than in the late eighties. Some researchers see links between the stabilisation of refugee-immigrant regimes and their coping with migrant flows from former Communist and Third World countries since

1989 and the decline of racist attacks after the asylum-immigrant conflict and debate in the beginning of the 1990s.

Summing up the results of our analysis of the different levels of the human rights issues related to asylum seekers, refugees and migrants in Hungary, we may state that many improvements have been made on all levels. The conditions for the realisation of human rights improved rapidly in 1989 and after and there has been a constant development since then, which, of course, has not solved all the problems. Civil rights activism has also developed with some links to pre-1989 activism, but on a new basis, as part of European and global networks of professional volunteers.

Immigration to Hungary did not increase as dramatically as it was assumed at the peak of the Yugoslav war, and the crisis de-escalated. Hungary has become a type of “transit” country for all types of Eastern migrants toward the West, and for a variety of reasons some of the migrants are staying here longer. Only a few of the ethnic Hungarians, and even fewer of other ethnic groups, try to settle in Hungary and make a living and obtain citizenship here. The immigration regime and mechanisms, created in response to international pressure and internal consensus, try to select and reject immigrants coming to and through Hungary. Different groups of migrants, especially commuters, find their way legally or illegally through Hungary into Western countries, which is a constant irritant to law enforcement authorities and the public.

Despite the change of government in 1994, the immigration system did not undergo fundamental changes, being seen as a means of keeping a balance between international pressure and the interests of different internal political forces, and backed strongly by socio-economic problems that trigger hostility against all foreigners in a wider strata. Although xenophobia seems to be a stable element of Hungarian political culture, its ability to generate racist violence and other forms of hostile outbursts has de-escalated recently. Counter-mobilisation by civil rights activists, the change of government, a tougher immigration policy and the decrease of the European violence wave have contributed to the de-escalation, as has the institutionalisation and politicisation of extreme right youth groups. Prejudice, hostility toward foreigners and toward ethnic groups has not mobilised larger scale racist and ethnic violence in Hungary since 1989, unlike the case in many former Eastern and South-eastern communist countries.

### **THE PROFILES OF THE MAJOR HUMAN RIGHTS ORGANISATIONS DEALING WITH REFUGEE, MIGRANT, AND MINORITY ISSUES**

Sketching of the profile of a small but developing NGO sector cannot give complete insight into the practical work and the problems of human rights activists in Hungary. We do not provide a full description of all human rights organisations in Hungary, but focus the analysis<sup>7</sup> on several well known actors, whose activities are mostly

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<sup>7</sup> Our data is based upon different sources: the documentation, which the initiatives gave us upon request, newspaper content analysis of the leading Hungarian weeklies and dailies from 1989–1995 related to NGO protest activities, statistical reports on NGOs in Hungary, and standardised interviews with each initiative,

documented. These few initiatives are selected from a broader spectrum of initiatives based upon media coverage, efficacy, and support.

### **Raoul Wallenberg Association, Raoul Wallenberg Egyesület (1988)**

The association took the name of Raoul Wallenberg, an official of the Swedish Embassy in Budapest who in 1944–1945 rescued many Jewish persons from being killed in the Holocaust. The organisation works on behalf of all people whose individual and group rights are endangered.

The initiative was established during the crisis of the communist regime. In the beginning this was the only initiative with this profile. The monopoly situation and the prestige of Wallenberg gave the association a type of “moral power”. The initiative organised or participated in many demonstrations against all forms of racism and xenophobia in memory of the Holocaust. They fight discrimination against Roma, against disabled, against children and, of course, fight against racism in any form. There are several hundred members and some membership groups exist outside Budapest. However, the main activities are located in the capital. The membership consists mainly of white collar workers, intellectuals, well known public personalities. In the beginning the association articulated its mission as all conflicts involving human rights. Later it focused more on the misuse of ethnic rights. Raoul Wallenberg Association joined a network providing legal help for individuals, but this is just a small part of its activities. The main bulk of activities include PR work, education and consciousness raising, organising conferences, launching a newsletter, and protest letters to the authorities. The association’s activities are a moral and political “force” that orient and advise the public, especially the younger generation. Most of the activities are based on the volunteer work of members. The financial resources are rather limited. The Soros Foundation and some international organisations support the activities. The members have varied political perspectives, but the association has had a more relaxed relationship with the governmental agencies since the Christian Democrats lost power to the Socialist Liberal coalition in 1994. Since then protest has vanished.

### **Hungarian Helsinki Committee, Magyar Helsinki Bizottság (1989)**

The Hungarian Helsinki Committee monitors violations of the European Convention on Human Rights, with special emphasis on the illegitimacy of certain individuals, imprisonment and other abuses of authority in criminal procedures. It also deals with cases where the right to life and equal human dignity are in danger, or where there are threats to

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selecting a leader, a rank and file member, and, if available, a “non-conformist” member. The data gathering was organised in the form of a research seminar on “Social Movements and Politics” at the Eötvös Loránd University, Faculty of Law and Department of Political Science, where students studying law and political science formed research teams to study each of the initiatives described here and wrote case studies according to common criteria and questionnaires.

the norm that prohibits discrimination or the rights to information and to freedom of expression. It co-operates with the Centre for Defence of Human Rights, introduces below, in providing a legal service for victims and other clients. Its newsletter is the Helsinki Reporter.

The association works within the international network of National Helsinki Committees. The forerunners of its activity were in the Hungarian democratic opposition, which launched different projects for the defence of human rights after the mid-eighties. Since 1988 the Independent Service for the Defence of Human Rights has worked as a satellite organisation of the Liberal party, the Alliance of Free Democrats (Szabad Demokraták Szövetsége), as part of the democratic opposition. Since 1992 the Helsinki Committee, as a non-party and non-governmental organisation, has together with the Hungarian Centre for Human Rights provided service for individual violations of human rights. According to liberal principles, individual complaints are handled by the activities of the association. General moral and political appeals are avoided, but professional service is provided by paid workers, who are lawyers or students of the law faculties. Hundreds of cases were picked up from different areas, such as prisoners' rights, Roma issues, asylum seekers in Hungarian camps and so on.

The association does not want to act as a mass organisation. The number of members is very limited; acceptance is based upon a qualified majority of members. Famous, prestigious human right activists and intellectuals are members, but their task is the articulation of the general orientation and policy of the association. The practical service is done by volunteers, but mainly by paid professionals under the guidance of the executive director of the association. The Helsinki Committee has clear-cut relationship to the Liberal party, which since 1994 has been a member of the government coalition, so it has good abilities to get access to official archives and to get permission to visit and investigate the prisons and camps for asylum seekers or refugees. The relationship to the authorities is not as relaxed. The chief attorney and some leaders of the police and border police reject and criticise the activities of the committee, which they believe undermines the professionals controlling the penal processes.

The association is successful in fund raising from international organisations and from western governmental agencies. It has launched several quite large-scale – in Hungarian terms – programmes and campaigns involving dozens of professional and semi-professional workers investigating, defending and speaking for people in prison, refugee camps and so on. Winning the UNHCR prize in 1996 work on behalf of the rights of refugees in Hungary shows its international support and acceptance, which is due to its actual success built on the moral prestige of the former underground civic activism, in which members of the association were involved before 1989. The association launches protests and engages in public debates only in cases when the legal avenues have been exhausted. The main profile of the group is reflected in its professional legal service plus its publicity campaigns in cases such as the conditions of the former Kerepestarcsa refugee camp. In 1995 the association launched a press documentation centre and archive on racist violence and human rights harassments in Hungary, which is open to the public.

### **Martin Luther King Association, Martin Luther King Egyesület (1991)**

This association was established by foreign students from overseas areas, especially from Africa, and their Hungarian supporters to defend the community of foreign students against racist attacks, which peaked in the year the organisation was established in Budapest. The association also has proactive goals, trying to spread multicultural values and tolerance for foreigners among the Hungarian population via education, propaganda and meetings. Recently, as racist attacks diminished, Martin Luther King Association has become active in refugee work and in helping migrants, especially those from African and Asian countries. Until 1993–94, Martin Luther King Association's focus was on confrontations with racist skinheads and with the police and other governmental organs that were less helpful to the victims. Later the profile on refugee work, PR and education was strengthened.

The association is a type of student organisation. Its main constituency is the overseas students coming from areas whose population is a potential victim of racist attacks. Established at a peak of tension, the association was mainly involved in the protests for the sake of the victims of racist streetfighters. In parliamentary hearings and other fora the association argued against the strategy of the Hungarian police and of the Christian Democratic government which neglected racist violence in Hungary. Martin Luther King Association made an alliance with the Liberal parties, at that time in opposition, with other civic initiatives, with the President of the Republic, Árpád Göncz, who has appointed by one of the Liberal parties, the Alliance of Free Democrats, and who also became a victim of skinhead provocation at a state celebration on 23. 10. 1992, the memorial day of the 1956 revolution, when he was hindered in giving his memorial speech.

There are fewer than two hundred members out of a community of 4–5,000 potential victims in Budapest. Half of the members are Hungarians. However, the association can depend on a broad spectrum of volunteers, who are ready to do unpaid translating, and the like. Without the effective support of its constituency and of Hungarian human rights activists the association could not have survived. Most of the financial support comes from international organisations and western governments or non-governmental organisations. The association is involved in international networking in many ways.

Since the change of government, the association has had an institutionalised and better relationship to the police forces and to other governmental organisations. As the number of racist attacks has diminished, the education and propaganda activities have become dominant in its profile, while the protests against skinheads and authorities have decreased. The association provides legal assistance and translation aid for foreign people, not just for students having problems with the Hungarian refugee regime or with other authorities. Since 1993–1994 there has been an ongoing transformation process within the association concerning goals and strategy, which is not finished yet. Martin Luther King Association, a combatant human rights organisation, would like to be transformed into a consciousness raising and educational association, providing services for clients and consciousness raising for the general public. The material background and public support for this transformation is not clearly defined, however.

**Centre for Defence of Human Rights, Magyar Emberjogvédő Központ,  
MEJOK (1993)**

This foundation was set up by a former activist of the Martin Luther King Association, Márton Ill, who wanted to establish a new model of civil rights initiative as the racist attacks diminished. The goal is less to articulate protest, than to organise legal or other types of services for clients, to network and to do fund-raising to maintain the group's non-profit character. It established a European East-East network for human rights activists from post-communist countries. Together with the Hungarian Helsinki Committee it launched and established a Human Rights Legal Counselling Office. It places special emphasis on discrimination against racial minorities and on the fight against unlawful and unwarranted measures against minority persons and foreigners.

Similar to the Helsinki Committee, this foundation does not try to mobilise a broader constituency, which seems to be very hard under post-communist conditions, as the case of the Martin Luther King Association has shown, but to provide clients with legal services by professionals and semi-professionals. There is more volunteer work than in the case of the Helsinki Committee. The charismatic figure of Márton Ill, loved and hated by many activists and actors in the field, is a good manager and fund raiser at the same time. The association seems to have the most extensive budget, estimated at 60,000–90,000 USD per year and coming, as in the other cases, from international sources. Together with the Helsinki Committee, it has provided a successful legal counselling office since 1994 for migrants and other people with human rights problems under the Helsinki Charter and the European Convention on Human Rights.

MEJOK is extremely active in defending the rights of refugees and migrants against the authorities' misuse of power. This has provoked mixed reactions from of the authorities whose representatives are rather ambivalent or do not want to comment on the activities of the foundation and especially on its well known "Robin Hood-like" leader, Márton Ill. In some cases MEJOK probably achieve its goal of pressuring the authorities in charge, by using the political access to the Liberal Ministry of Interior maintained allied organisation, the Helsinki Committee. All authorities dislike if their "cases" are made into "public issues" and "politics", which results in interviews, reports and sanctions, so it is no wonder that after some notorious cases MEJOK and the one who personifies MEJOK to the public are less popular among the clerks. It is more interesting, that our interview revealed that MEJOK with its quite sizeable budget among Hungarian NGOs, and its media based and politically supported successes provokes some ambivalence among and even rejection by the other NGO activists in the field. Despite this fact, Márton Ill himself regarded his relationship with the other organisations as balanced, and hoped to do more networking and co-operation with them. In his vision MEJOK could become an organising centre, doing less substantive work and more co-ordination among other initiatives. Whether the practical needs for co-ordination will overcome the hostility against the self-appointed leader of human rights activism in Hungary will be seen in the future.

### **Refuge – the Hungarian Association for Migrants, Menedék Egyesület (1995)**

The goals of the recently established association are to help migrants and to network with other NGOs. They provide legal services for migrants, organise information campaigns on the conditions of the migrants and their status in Hungary, and produce information leaflets in different languages for migrants to make them aware of their status, rights and duties in Hungary. They also provide documentation and analysis of all information connected to the status of migrants in Hungary and are part of regular networks in this field in Hungary and abroad. They publish a newsletter (*Oltalomkeresők*).

The association is a sort of “expert activists’ club”, which co-ordinates the activities of some well established scholars and engaged intellectuals working on and for migrants. There is a small semi-professional office, and, as in the case of the other initiatives, a small network of paid legal counsellors who help to solve the individual legal problems of migrants. Established in 1995 in the more relaxed times in this field, this association does not have the profile of protesting against the authorities or hostile groups. There is a clearly developed professional orientation, organising different international and national research and information campaigns, organising conferences and, together with other scientific or NGO organisations, publishing books on refugee issues.

According to Judith Tóth, the “soul” of the organisation, as some activists characterised her in the interviews, the legal service and mediation are the main profiles of Menedék. This is provided on a semi-professional, semi-volunteer basis. The character of the work is somewhere halfway between the professionalism of the Helsinki Committee and MEJOK and the volunteerism of the Raoul Wallenberg Association. No public conflicts and protests are launched, as MEJOK does. The association should provide at the same time a “voice” for the migrant and a type of educated, even scholarly based rational discourse. In the discussions of modifying the Hungarian refugee policy, Menedék has the least emotional, least political and most “scientific” profile. But the same time the absence of political support and a clearly defined and mobilised constituency hinders it from entering the bargaining field and getting bargaining power. Unlike other associations described, Menedék has not been invited to add its name to the list of the lobbying organisations of any ministry or office.

### **SHIFTING EMPHASIS IN THE ACTIVITIES OF THE NGOs**

By examining the profiles of human rights organisations established in Hungary between 1989–1995, shifts in their involvement can be traced as follows.

#### **From an Avant-garde Toward Professionalism**

The risk of civic activism was high in the communist system, and the space to launch professional activities was restricted. During the consolidation of democracy, many professionalised organisations were established providing a defence of human rights.

Fewer and fewer cases of harassment occur. Different political organisations, such as parties, trade unions, associations, are ready to protest in the case of harassment. So, when governmental organisations fail to provide adequate or satisfactory treatment, NGOs are asked to develop more service activities. There are fewer and fewer protests, mostly in spectacular individual cases. Organisations which started with a protest profile, as did the Wallenberg Association, Helsinki Committee, and Martin Luther King Association, shift their activities toward consciousness raising and to services. Later established organisations, such as the Hungarian Centre for Human Rights and the Hungarian Association for Migrants, do not include protest in their action repertoires at all. After 1989 the issue and efficacy oriented activity becomes more and more dominant in the profile of the initiatives, and the non-governmental activity no longer raises much risk of repression from the authorities. As a consequence, a new generation of activists with professional or semi-professional background emerged. Their work is not motivated by general political objectives for or against particular political directions. Although the different forms of civic protest do not lose their importance after 1989, the protests become only one of the forms of civic activities. After 1989, civic activities place great importance in PR work, fund raising, national and international networking, education, and organisation development, and professionally trained volunteers are required to provide efficient services.

### **Constituency Building or Service Orientation**

The initiatives are forced to define their profile either as successful in mobilising constituencies or as successful in mobilising material resources and skilled labour. The proportion of volunteerism is different but even constituency based initiatives such as the Raoul Wallenberg or Martin Luther King Association have to depend on professional workers to establish effective management and service activities toward the clients. Constituency building is almost impossible among people with legal or illegal migrant status, because they do not want to maintain this role and identity for long. As organisations like the Raoul Wallenberg Association or Helsinki Committee do not aim to represent certain communities, like the Jewish or the Roma, but launch issue-oriented services and activities, constituency building is blocked again. Even the Martin Luther King Association, with its clear-cut constituency, can not effectively organise them due to the transitory status of foreign students in Hungary, unless there is outward danger pressing a group of victims together.

### **Changing the Structure and Moving from Ideology to Policy Orientation**

General discussions, symbolic issues, and the framing of problems, are still on the agenda, but nowadays initiatives are issue oriented in a policy framework. In contrast, in the communist system every civic activist criticised the “System”, but without free praxis the discourse was overly theoretical. The government or its agencies are still the main target of the initiatives. However, the power structure in a pluralist democracy is

fragmented, and the government is backed by different political parties with different orientations. For example, in the first legislative period the two opposition parties of the Liberals in the Parliament were the most willing allies of the civil rights initiatives. After 1994 the bigger Liberal party became a partner of the ruling coalition, and has an open but ambivalent attitude toward civil rights activism. The structure of government agencies is differentiated, too, and many activists speak about more willingness on the “top” than on the “bottom” level of bureaucracies in terms of co-operation with human rights activists. Summing up, in the former regime civil society was the “We” and the party-state was the “They”; good and evil confronted each other on human rights issues. Nowadays, since 1989, alliances have to be developed on policy issues, where there are different and changing roles on the part of government agencies, political parties and NGOs. The “Communist” as the enemies of human rights are out of the picture, and there are pro-human rights activities with different emphases within government and among the political parties. We may speak about “law and order” and “civil rights radicalism” activism, but both orientations are found within the concrete attitudes and policies of all organisations. Authorities in general are rather “law and order”, but institutions such as the Constitutional Court and the ombudsmen are rather “civil right radicals”, while among civic organisations we may find those with “law and order” orientations, too.

### **From the Local to the Global**

Although civic activism had from the beginning connections to similar activities in other countries, the communist system heavily controlled international travel and communication. Since 1989 unlimited international networking and communication has made internationalisation and globalisation possible. Both Western resources and Western know-how are badly needed in post-communist Hungary, and this encourages groups to combine resources and establish common power structures in networking with initiatives in other post-communist countries. Of course, the flow of resources and of experience is rather one-sided: Western help for the Eastern initiatives. Hungarian human rights NGOs define themselves as independent of the Hungarian government. Some of them do not apply for government help at all. But at the same time, lacking constituency and social support in a society with a scarcity of resources, they are highly dependent on Western governmental and non-governmental help. We could not calculate the exact proportions, but based upon the interviews it seems, that most of their resources are coming from external sources. International organisations, such as specialised institutions and campaigns or programmes of the UN and the European Union, are very important. Individual Western governments, especially the United States, Canada, Great Britain and the Netherlands provide special help for the NGOs. International civic organisations, especially the Soros Foundation, the German Marshall Fund and other charitable foundations or other types of NGOs, are important supporters of the Hungarian initiatives.

Pál Nyíri

***Organisation and Integration  
in a New Overseas Chinese Community –  
Hungary, 1989–1997***

**ORGANISATION**

Large-scale Chinese migration to Hungary started in 1989–90 and peaked in 1991. The migrants came overwhelmingly from the urban and coastal zones of the People's Republic of China (PRC) where they had tasted the new consumption culture, and for many of them, the timing of their migration had to do with the unclear future of private business and the recession in China in the wake of Tienanmen. Hungary offered itself as an attractive business destination with a newly freed market, forecasts of rapid economic development, and above all, a newly signed treaty abolishing the visa requirement for PRC citizens. A “Hungary fever” (*Xiongyali re*) developed, and in 1991, the number of Chinese entering Hungary to look for a less controlled business environment, more opportunities, and less competition exceeded 27,000 (Nyíri, 1994a). Migrants from the PRC (mostly Mandarin-speaking Northerners) were joined by a far smaller but influential group of Chinese businessmen from Western Europe, America, and Southeast Asia. With few exceptions, these were not “old overseas Chinese” (*lao huaqiao*) but people who had left the People's Republic after 1970. Thus, Chinese migrants to Hungary, in their motivation and background, represented a different type of migration compared to migrants from traditional *qiaoxiang* that had dominated the Western European scene until the seventies.

During the first two years, most Chinese in Hungary shuttled between China and Hungary, bringing goods to be sold in their personal baggage. After a major crackdown by immigration authorities in 1991, the Chinese population in Hungary declined to about 10,000 and has remained around that number since. Those Chinese who stayed on had mostly accumulated enough income and built a sufficient business infrastructure to consolidate their trade, and became real importers, wholesalers, and/or retailers. Contrary to older overseas Chinese communities, imports remained the main occupation of Chinese in Hungary.

The consolidation of 1991–92 was marked by the appearance of voluntary associations. The Hungarian Chinese Association (HCA; *Xiongyali Huaren Lianhehui, Magyarországi Kínaiak Egyesülete*) was established in autumn 1992. HCA claimed to be the representative of all Chinese in Hungary; at the same time, it emphasised loyalty toward Peking.

HCA established itself in a leading position within the Hungarian Chinese community and has retained that position ever since. An editorial in HCA's weekly *Ouzhou zhi*

*Sheng (Voice of Europe)* outlines the association's programme (*Ouzhou zhi Sheng*, 1995h), which I will comment on below.

1. *Charitable and philanthropic activities for the benefit of Hungarians, local Chinese, as well as the PRC.* These have included fund-raising for the benefit of Hungarian poor and handicapped, as well as the PRC's Project Hope (*Xiwang Gongcheng*); funding Hungarian children's travel to China and a concert of the Hungarian Choral Quintet and the publication of a translation of Petöfi's poems in Shanghai; and, according to HCA leaders, gifts to families with new-born children and aid to families of deceased community members (*Hua Sheng Bao*, 1994), though I have encountered no evidence of the latter. These activities have been surrounded by intense publicity directed at Hungarian authorities and media. Charity and philanthropy, or "fostering the virtues of the Chinese race" (*fayang huaxia minzu meide*), helps HCA appear orthodox and respectable, and is one function HCA took over from traditional lineage and native-place associations that play this role in older overseas Chinese communities.

2. *Patriotism (reai zuguo); "obligations toward the home country".* HCA's leaders regularly meet with officials from the PRC's central, provincial, and local governments, and participate in conferences organised by the Zhejiang provincial government for overseas leaders of Zhejiang extraction (Hai Ming, 1994; *Ouzhou zhi Sheng*, 1995c). In 1994, the association's president enjoyed the PRC's National Day parade from the Tiananmen Square rostrum, and in 1995, he and other leaders were received in Budapest by visiting PRC Chairman Jiang Zemin. In early 1996, he became a member of the People's Political Consultative Conference.

3. *Organisation of services and cultural events for Chinese.* These have included business services (translation, accounting, transportation) as well as karaoke contests and Chinese New Year events.

4. *Efforts to protect Chinese interests in dealing with Hungarian authorities and businesses.* HCA's strong reaction to the harassment of Chinese vendors at a Budapest market in May 1994 resulted in action against the offenders and the formation of a joint management committee. Later, HCA's engagement made the market's owner withdraw his requirement that Chinese vendors purchase their stalls (Polonyi, 1995; *Ouzhou zhi Sheng*, 1995h). Last month, in March 1997, HCA, this time securing the support of Vietnamese traders who were represented by an organisation called the Hungarian Vietnamese Association, staged a strike at the same market to protest against a planned 25 per cent raise of stall rents and succeeded to driving it down to 5 per cent. In March 1995, HCA initiated talks with customs officials to discuss the new customs duties which were severely damaging Chinese business. To combat crime within the Chinese community, the association established a Chinese Legal Protection Committee (which, however, has been wholly inactive).

5. *Efforts to maintain contacts with Hungarian society.* This is discussed below.

6. *Support of other organisations (tongxianghui, sports, women's, youth, and various professional societies).* The first of these, the Hungarian Chinese Chamber of Commerce (*Xiongyali Huaren Shanghui*), was established together with HCA and is really the latter's commercial section; the Hungarian Chinese Women's Association (*Xiongyali Huaren Funü Lianhehui*) and the Hungarian Chinese Youth Association (*Xiongyali*

*Huaren Qingnian Lianhehui*) were established by the HCA following the model of mass organisations organised by the Chinese Communist Party. When other organisations appeared, HCA, wishing to preserve its leading role, chose to co-opt them and even asserted that “HCA’s organisational life represented an inspiration to the native-place associations that have formed in the past year” (*Ouzhou zhi Sheng*, 1995h). In some cases, HCA created duplicates under its own control of already formed organisations such as the Association of the Hungarian Chinese Cultural and Arts Circles (*Xiongyali Zhongguo Wenhua-yishu-jie Lianhehui*), which exist only on paper (*Ouzhou zhi Sheng*, 1995h). Immediately after the exclusive meeting in Budapest with Jiang Zemin, HCA, with support from the PRC Embassy, established the Representative Committee of Hungarian Chinese Organisations (*Xiongyali Huaren Shetuan Daibiao Weiyuanhui*), which was joined by all but three Chinese organisation. “It is the Committee’s right and duty to represent all Chinese living in Hungary... protect [their] interests and struggle for the improvement of their position in society”, *Ouzhou zhi Sheng* wrote in a leader. The first item in the Committee’s statement of purpose is “Spread the fine tradition of patriotism... Promote reunification of the fatherland. Do not tolerate any behaviour not in line with the interests of the fatherland.” The sixth item is “Enter the mainstream of the society of the country of residence” (*Ouzhou zhi Sheng*, 1995a).

7. *Contacts with overseas Chinese organisations abroad.* HCA became the first East European organisation to join the European Federation of Overseas Chinese and Chinese Organisations (EFOCCO, *Ouzhou Huaqiao Huaren Shetuan Lianhehui*), a group of mostly pro-Peking bodies that enjoys the PRC’s support (Nyíri, 1994b). In 1995, HCA’s president became vice president of the federation.

8. *Informing the Chinese community* through the publication, since August 1994, of *Ouzhou zhi Sheng*, which is distributed across Eastern Europe as well as to PRC government agencies.

We can see that individual connections to PRC authorities and the traditional role of patron-type community leaders who bankroll charitable events and guard traditional culture are equally important sources of legitimation for HCA’s leaders, while lobbying local authorities and organising professional activities, which have become the main profile of some second-generation overseas Chinese in the West, are far less important to them. In this respect, although the quick accumulation of wealth allowed Hungarian Chinese leaders to emerge at a considerably younger age (most are in their thirties) and although they possess a higher average level of education, the nature of their leadership is close to traditional patronage. Yet, while traditional Chinese community leaders have usually emerged from among the exceedingly wealthy, those wealthy enough to afford a degree of protection to the group around them, this is not the case in Hungary: HCA leaders have come from among leaders of businesses of some repute, but the wealthiest individuals are not among them. Perceived connections with PRC authorities have supplied these leaders with the legitimacy they were lacking based on economic achievement. The rapid commercial success of Hungarian Chinese in general, has means that the fortunes of the most prosperous do not stand out so much from the average, and this has probably contributed to the elevation of political connections as the central factor of legitimacy.

The structure of HCA – a board of regents (*lishihui*) with an executive council consisting of president, vice-president, secretary-general, and *changwu lishi* at its core – reflects the influence of both the PRC’s political organisations and the European tradition of overseas Chinese associations. HCA’s first president established good relations with the embassy, and the latter recognised HCA as the representative of Hungarian Chinese. After a year, a new president – a Qingtianese who had lived in the Philippines for over a decade – took over. There have been no new elections since 1993. HCA’s leadership, its president in particular, has often been criticised by local Chinese for creating a personality cult around himself, entertaining hegemonic ambitions within the community, and using force to achieve that aim (see e.g., *Ouzhou zhi Sheng*, 1995h; *Távol-Kelet*, 1996b; A Dong, 1996). Nonetheless, membership – according to the association’s own data – grew to around one thousand during the same period. In addition, HCA succeeded in winning over some Chinese who had come from intellectual backgrounds and therefore enjoyed a certain respect. HCA came to be regarded as the only Chinese organisation that could do something to protect the interests of the Chinese, even if it rarely did so. The primary reason behind HCA’s growth, however, was the legitimisation provided by PRC officials and the effective display of relations with them. Jiang Zemin’s visit boosted the association’s influence enormously.

Because of the different profile of Chinese business in Hungary, professional-type organisations, too, differ from those in overseas Chinese communities in Western Europe or America. Larger-scale undertakings of the HCA-affiliated Hungarian Chinese Chamber of Commerce, such as establishing an HCA market and attempting to reach a binding price control agreement among Chinese retailers, were short-lived but important as they represented a degree of business co-operation rare among Chinese. The Hungarian Chinese Federation of Industry and Trade (*Xiongyali Zhonghua Gongshangye Lianhehui*), the *Gongshanglian*, is fact a branch of the PRC’s *Gongshanglian*, the “democratic” “party” supposed to represent the “national bourgeoisie” and elevated to new prominence by its former president, now PRC Vice-Chairman Rong Yiren. It was established in January 1995 (*ZhongOu Shangbao*, 1995a), and like HCA, has sent several delegations to the PRC where it reportedly enjoys the favour of the national *Gongshanglian*’s current secretary-general, Hu Deping, Hu Yaobang’s son. Although the *Gongshanglian*’s direct political significance is limited, it has the right to nominate delegates to the People’s Political Consultative Conference: this may have been the mechanism for the delegation of HCA’s president, who is the *Gongshanglian*’s honorary president. It is to be noted that the PRC *Gongshanglian* has also been active in contacts with “migratory businesspersons” within mainland China; for example, it supports the most important organisation in Peking’s Zhejiang Village. In other words, we may be dealing here with a new centralised structure to monitor Chinese migrants domestically and abroad.

In summary, the PRC connection in trade, whether for HCA, the chamber of commerce, or individuals, is necessarily strong because most of the working capital of the Chinese companies comes from state enterprises. In the local economy, however, neither the chamber of commerce nor the Hungarian Chinese Catering Association (*Xiongyali Zhongguo Canyinye Xiehui*, established summer 1995) have been able to assume the significant role played by their West European and American counterparts.

Organisational pluralism in the Hungarian Chinese community started in late 1994 and enjoyed a one-year boom before dying down under the pressure of an economic crisis. The first grassroots organisation was the Association for the Promotion of Chinese–Hungarian Friendship (APCHF, *Zhong-Xiong Youhao Cujinhui*), which popularised its goals – such as promoting “entry into mainstream [Hungarian] society” (*rongru zhuliu shehui*) and improving the cultural and educational level of the community – in the weekly *Ouzhou Daobao* (*Europe’s Way Weekly*) (see *Ouzhou Daobao*, 1994). Although APCHF’s leaders, too, cultivated contacts with PRC officials for business purposes, they stressed loyalty to and relations with Peking less. For their part, officials at the PRC embassy favoured HCA and refused to deal with APCHF.

Though it represented a political alternative to HCA, APCHF did not claim to be a representative of all Hungarian Chinese: it only spoke for its several-dozen-strong membership. This gave impetus to the growth of both traditional organisations and interest-group formations. Seeing in them allies to check HCA’s dominance and perhaps as a step toward a less Peking-dependent, more integrated, more “civil” Chinese community, APCHF established contacts with these, and *Ouzhou Daobao* applauded their appearance. The period between December 1994 and May 1995 saw the establishment of the Fujian, Canton, Tianjin, and Shandong *tongxianghuis*, followed in July by the Xinjiang and in August by the Sichuan *tongxianghui*. They typically number a few dozen members and are, as of now, very limited in both influence and scope of activities. They have been unable or uninterested to wrest, even rhetorically, the traditional charitable and other functions from HCA. The relative unimportance of *tongxianghuis* is reflected in the absence of a *tongxianghui* despite leading role of the Wenzhounese in the community and in HCA. Similarly despite the strong positions of Qingtianese in the catering trade, the Qingtian *tongxianghui*, was thus far the last to form, on November 17, 1996 (*Távol-Kelet*, 1996c). The role of a Chinese Christian Church, created in 1990, and of a Buddhist association, created in 1995, is similarly minimal.

Non-traditional organisations representing professional and other interest groups appeared concurrently with the *tongxianghuis*, bringing the number of Chinese organisations in Hungary to nearly twenty. They emerged much sooner than in the history of earlier overseas Chinese communities, where such “new-type” (Wong, 1982) organisations had usually been created by the local-born second generation (Weiss, 1974). Indeed, equivalents of the European Society of Chinese Artists (ESCA, *Ouzhou Zhongguo Yishujia Xiehui*), the National Hungarian Chinese Physical Education and Sports Federation (*Quanxiong Huaren Tiyu Yundong Zonghui, Tizong*), the Cultural and Educational Association for Chinese–Hungarian Friendship (*Zhong-Xiong Youhao Wenhua Jiaoyu Xiehui, Wenjiaoxie*), or the Hungarian Chinese Writers’ Association (*Xiongyali Huaren Zuoja Xiehui*) exist only in large Chinese communities such as those in France, Britain, or the United States. There, because of the size and stratification of the communities, they tend to be isolated from each other and, even more, from traditional organisations which typically build on a different membership base. In Hungary, “new-type” and traditional organisations have largely been formed from the same stock, and they are aware of and maintain regular contacts with each other. Organisational pluralism also contributes to the building of contacts with Hungarian NGOs and Chinese

organisations elsewhere in Europe. For example, Tizong's soccer team, the European Dragons, plays in Budapest League IV and has represented Hungary at an international Chinese soccer tournament in the Netherlands; the Wenjiaoxie, whose concerns have included the organisation of Chinese-language education, has Hungarians in its leadership; and the Gongshanglian's delegation represented Hungary at the third World Congress of Chinese Businesses in December 1995 in Bangkok.

In June 1995, the four existing *tongxianghuis*, the Wenjiaoxie, Tizong, ESCA, the Chinese Christian Church, and a committee representing the owners of several dozen Chinese shops joined APCHF to form the Joint Conference of Hungarian Chinese Organisations (*Xiongyali Huaren Shetuan Lianxi Huiyi*). As noted above, HCA reacted by establishing the Representative Committee of Hungarian Chinese Organisations; it also attempted to secure the membership of any newly formed Chinese organisation. A case in point is that of the Shanghai *tongxianghui*. A maverick ex-HCA leader was planning to establish an organisation to be called Association of Hungarian Chinese Entrepreneurs from Shanghai (*Lü Xiong Shanghai Huaren Qiyejia Xiehui*) but refused to have it join the Representative Committee (*Ouzhou zhi Sheng*, 1995b). Concurrently with the Shanghai Entrepreneurs' founding meeting, HCA's president invited a dozen Shanghainese for dinner and asked them to sign a document establishing a stillborn Shanghai *tongxianghui*. In the end, the Shanghai Entrepreneurs' leader decided to avoid confrontation by ceding the chairmanship to another man close to the HCA's president. Similarly the Shandong *tongxianghui* lost its entire membership after its president became vice chairman of the Representative Committee.

By this time, however, organisations had begun to stretch across the various layers of the Hungarian Chinese community and show the potential to fill a range of traditional and non-traditional functions and to represent a variety of interests. For example, in 1995, an article in *Ouzhou zhi Sheng* suggested that the behaviour of some Chinese newcomers who changed apartments without paying their final rent or telephone bills, thus damaging the reputation of the Chinese among Hungarians, could be curbed if each organisation acted against such behaviour by ostracising offenders who belonged to the organisation, and, if necessary, handing them over to the police (Song, 1995). Native-place associations, attempting to gain leverage, were also becoming more high-profile, with PRC embassy officials appearing at their activities celebrating the PRC's official holidays. Their further development appears to be leading them into the politicised fold of the Peking-oriented network, showing the changed function and content of native-place-based organisational structures within the new context.

## ORGANISATION AND INTEGRATION

Hungarian politicians have yet to include "non-traditional minorities" in their vision of the development of Hungarian society. At present, these migrants are not seen as part of that society but only as individual aliens, and the state's contact with them has largely been limited to periodic administrative matters such as the extension of stay permits. Consequently, beyond short-term efforts to crack down on immigration, no government agency has formulated a policy in their regard. Immigration practice has had its stricter and later periods, but this did not reflect any long-term government strategy and were

unaffected by the internal dynamics of the migration or the community. Indeed, the latter's limited size, prosperity, and relatively low criminality meant that tensions either within it or between it and its Hungarian environment have never risen to a point where national or local authorities have been compelled to take measures. The Chinese self-employed, conduct three-fourths of the trade between Hungary and the PRC, have much higher incomes than the Hungarian average, employ several thousand Hungarians, and pay social security taxes for those they employ legally. They have health insurance, and although they have settled in greater numbers in some districts than in others, their residences are not clustered. In fact, the government derives significantly higher direct and indirect per capita revenues – in taxes, duties, and consumption, including rents, telecommunication, transportation, medical expenses, and gambling revenues, in particular – from Chinese than from Hungarians. Government officials derive another significant flow of revenue from the Chinese through corruption and, in some cases, extortion, to which immigration and customs officials, police and border guard officers, and, to a lesser extent, local commercial inspectors are party. Finally, Chinese businesspeople have purchased abandoned real estate formerly belonging to bankrupt state industries – such as plants, warehouses, and workers' hostels – and are contributing to their rehabilitation, but they have not applied for and have not received any benefits from urban planning administrators.

In two cases, Hungarian immigration and economic policies deeply affected the Chinese, but in both cases, the effects were inadvertent and remained largely unnoticed by the authorities. Thus, the tightening of immigration rules in 1991 resulted in a drop in the total number of Chinese as well as a reduction in the rate of new migration. Favourable market conditions and a limited inflow of new migrants led to the emergence of a relatively consolidated, prosperous, and sophisticated Chinese community by 1993–94. Later, an oversaturated market and a drastic rise in tariffs for Chinese goods caused a depression in Chinese business that deepened into a crisis by the end of 1995; at the same time, however, immigration practice became more relaxed, resulting in an inflow of new migrants with insecure means and a rather grim perspective, presenting a danger to the safety of the Chinese old-timers. The bankruptcy or exodus of many leading companies provided an opportunity for HCA to extend its control into the business sphere. The formation of two alliances of larger companies that decided to pool their investment capital and issue shares occurred in 1995. Several individuals prominent in HCA joined one of these, the Chinese Investment Group of Hungary share company, headed by HCA's honorary president, and HCA established the Preparatory Committee of another investment group under its own control. Although HCA won its recent round of rent negotiations at the Józsefváros market, its president has nonetheless been urging traders to move to a new market where HCA, as the collective negotiator from the start, would be in a better position to control them.

The first gestures in building relations between the Chinese community and authorities came from the Chinese. Beginning shortly after its establishment, HCA organised numerous Chinese cultural nights, Children's Day events, and charitable fundraisers in co-operation with or for the benefit of district authorities and other government-related bodies. It also initiated contacts with the Hungarian Chamber of Commerce. More recently, various Chinese organisations, including HCA, and

individuals have intensified another type of contact with Hungarian officials – particularly at ministries and municipal governments. These contacts attempt to better business opportunities or gain more favourable immigration treatment. They are often publicised to raise the prestige of the organisation or individual but do not further legal rights or represent the interests of the community; in this respect, they remind one of Southeast Asian countries, specifically Indonesia, where Chinese are effectively deprived of political rights but avoid challenges to their control of the economy by bankrolling leaders of the political establishment. One Chinese businessman in Hungary has been cultivating contacts with the former second-in-command of the old communist leadership who has lost influence at home but has maintained ties with old Russian comrades who are now in charge of major raw-materials conglomerates there. Several Chinese have targeted officials of smaller towns with little outside investment in the hope of securing construction permits, favourable real estate deals, or, more interestingly, to use them as equity in their business with China. The Hungarian Chinese and Hungarian press regularly reports sister-city agreements between rural Hungarian towns and obscure Chinese localities, brokered by Chinese whom such agreements help in winning the confidence and respect of local businessmen and officials in China. (*Tongxianghuis* have been particularly active in this field, presumably to garner credibility with officials in their home provinces.) The Chinese in Hungary seem to have successfully followed the PRC practice in which, to lend respectability to business transactions, officials or government agencies act as nominal partners while actual financing comes from other sources. A brilliantly organised case in point is the trip of a ten-person delegation of the Somogy County Assembly to Lanzhou. According to a Hungarian press report, the delegation and Gansu provincial officials signed an agreement on constructing a 25-storey trade centre in Lanzhou. Three-quarters of the \$20 million to be invested will come from “the Hungarian side, including Chinese working in Hungary” (g.j.a., 1996). Although the report does not mention that Chinese from Hungary took part in the trip, this investment, as well as the financing of the trip itself, essentially comes from them. Thus, the astute organisers assisted the Hungarian officials, “gave face” to Gansu officials, created publicity around the deal, and raised their own respectability. They rightly chose to export Hungarian construction expertise to an inland Chinese province where foreign competition is less intense and is more likely to be overcome by the advantage of a province-level visit by foreign officials.

Relations with Hungarian officials thus often are means to improve relations with PRC officials. A good relationship with Hungarians or Hungarian authorities does not confer legitimacy or power. Indeed, although other associations’ activities prompted HCA to step up initiatives to show that it does not lag behind in Hungarian contacts, the Wenjiaoxie, despite having a Hungarian chairman, has never managed to rise from obscurity. For the Hungarian Chinese interaction with Hungarian authorities is tactical, rather than strategic, and its business importance is not nearly as great as that of contacts with the PRC.

APCHF, which tended to pay more attention to Hungarian than to Chinese politics, sought higher-profile contacts with a broad range of Hungarian authorities, motivated less by individual incentives and more by a desire for integration and even for gaining legal and political rights. Those Hungarian politicians who showed a willingness to help

solve the problem of residence permits of the Chinese, however, made it clear that they would only have substantive talks with a group that represented the whole community (Hajdú, 1995). Recognising the opportunity to assert its legitimacy in the eyes of Hungarian authorities, as well as within a Chinese community dominated by HCA, the Joint Conference of Hungarian Chinese Organisations organised several meetings and conferences with the participation of Hungarian officials. The highest-profile of these was a conference on the Chinese in Hungary in October 1995, co-sponsored with the City Government of Budapest and the Hungarian Association for Migrants, an NGO. Held at the City Assembly's building, this was the first meeting of such scale organised by Chinese in Hungary, and it expanded the Chinese theme from the police news and entertainment to the political sections of newspapers. Above all, the conference was a public relations effort by the Chinese community to convince Hungarians that they have played a positive role in the society and economy and have more contributions to make. Chinese speakers emphasised, in addition to their success in making Hungary the centre of Chinese reexports in Eastern Europe, other contributions Chinese have made to Hungary's development in the past five years. These included the import and sale of cheap garments that met the needs of those who would otherwise have not been able to afford new clothes and the creation of jobs for Hungarians. They also aired grievances such as the apparent discrimination by immigration officials who require Chinese applicants to show proof of purchase of an apartment or a detailed statement of deposits and withdrawals on their personal bank accounts in order to extend their stay permits, another point mentioned was the lack of interest by the Hungarian authorities in exploiting the opportunities offered by Chinese capital. An APCHF leader suggested that, as a first step toward integration into Hungarian society, individuals with a professional or intellectual background in China be given an opportunity to make use of their knowledge of China's market and politics in Hungarian government agencies, corporations, or consultancies, as is the case in several countries in North and Latin America. He also pointed out that Chinese cannot "expect others to treat them the same as local residents when they regard themselves as having a different status". He warned Chinese of "excesses" in "loving the motherland and maintaining the fine national traditions... especially now that we are asking others not to practice racial discrimination." In speaking of the "beauty of the difference" that Chinese and Hungarians should discover, this leader, in essence, advocated a "multicultural" society. What he suggested was doing away with the "sojourner mentality", which is short of acculturation but clearly more than just adaptation. Leaders of some minor partners in the Joint Conference went farther, voicing the concept of an eventual minority status within Hungarian society. This proposal immediately stirred controversy both in the Hungarian media and within the Chinese community (*Távol-Kelet*, 1995; Cz. G., 1995a, b; Czene, 1995; *Népszabadság*, 1995). Many Chinese, even among those sympathetic to APCHF, viewed it as insulting; as one said, "Chinese can never be a minority anywhere".

Due to poor organisation on the Hungarian side, however, attendance at the conference was low, and HCA's boycott of the meeting (despite having been invited) caused most Chinese organisations not to attend for fear of jeopardising their relations with HCA. APCHF hoped to increase the influence and legitimacy of its Joint Conference of Hungarian Chinese Organisations by mustering massive support and

spectacular success at the conference. This failed, and APCHF's leaders – who had been labelled “anti-party elements” by HCA's president – faced a precarious situation. After the October conference, HCA forwarded materials implicating APCHF's secretary-general in the pro-democracy movement to the PRC embassy. (This man, who had belonged to the core of the Democracy Wall movement in Canton, had left China in 1990 and had not been close to any of the émigré pro-democracy organisations. He had helped found HCA and had served as the association's secretary-general for one year, but after the ascension of the new leadership he had joined several other founders in quitting (Nyíri, 1996). HCA's leadership targeted him, of course, not so much for his past dissidence against the Party but for his resistance to HCA dominance in the community.) APCHF beat a retreat and dismissed its secretary-general (*ZhongOu Shangbao*, 1995b); a month later, he left the country. APCHF's vice-president and the main financier of *Ouzhou Daobao* did likewise. On 16 December, APCHF's members came to the banquet celebrating HCA's third anniversary (*Távol-Kelet*, 1996a). In February, ESCA – another of the three organisations that had not joined HCA's Representative Committee – announced the suspension of its activities (*Távol-Kelet*, 1996c). Due to HCA's effective disruption of its functioning, the Joint Conference of Hungarian Chinese Associations practically ceased operation. HCA won this round of the battle, and gained for its own umbrella organisation the potential ability to represent the community vis-à-vis Hungarian authorities.

APCHF's defeat showed that relations with Hungarian authorities could not, at this point, serve as a source of legitimation. Indeed, HCA's statements show that it believes Hungarian authority can arbitrate between Hungarians and Chinese but not between Chinese and Chinese. Even in clashes between Hungarian and Chinese, HCA views Hungarian authority as subject to appeal to the PRC. For HCA, if problems encountered in Hungary, including those with Hungarian authorities, cannot be resolved by negotiations, the next step is to hope that PRC authorities – the consulate, the foreign ministry, the police, the secret services, or just in some vague way – will apply pressure. After the beating of a Chinese merchant by security guards at a Budapest market in 1996, *Voice of Europe* devoted its entire front page to this matter, another skinhead attack against a Chinese, and a robbery, highlighting the reluctance of the police to respond adequately, and implying that Chinese should form a tighter alliance with the Hungarian Chinese Association and the PRC embassy in order to protect their interests in a hostile environment and in the face of the biased Hungarian authority (*Ouzhou zhi Sheng*, 1995f, g). In another article, an HCA spokesman pointed out the need for a “united struggle” (*tuanjie zhandou*) (Liu, 1996). An editorial in *Voice of Europe* after a recent series of murders of Chinese victims struck a similar note, asserting that foreigners' praise of Confucius is a strategy to encourage Chinese complacency and lack of will to defend themselves (*Ouzhou zhi Sheng*, 1997). Other quarters of the community took a more moderate stand. *Ouzhou Daobao*'s reporter asked if “the Chinese Ministry of Public Security could work with Hungarian police to find an early solution to crimes against Chinese” (*Ouzhou Daobao*, 1997). Another newspaper, *ZhongOu Shangbao*, emphasised the role of Hungarian authorities:

The old view, ‘Sweep in front of your own gate, don’t look at the snowflakes on others’ shoes’, has long been eroded by history... We therefore repeatedly call on Hungarian police to take strong measures, to do all they can to crack one or two evil cases within the shortest time... At the same time, we also hope that Chinese in Hungary of all walks of life will strengthen their unity. (Zheng, 1997)

A recent proposal by HCA’s president to set up a residential Chinatown – an idea floated earlier that failed to alter the current scattered pattern of Chinese residences in the city – is another plan intended to strengthen HCA’s control at the expense of seriously impeding integration and increasing distrust toward Chinese on the part of Hungarians.

Overseas Chinese history in Southeast Asia and America teaches us that rising demands for emancipation indicate a rise in assimilative trends. From this perspective, growing demands for better enforcement of laws, including immigration laws, and better investment and trade conditions are favourable signs for integration; however, the exclusive orientation toward the PRC as their main proponent and the community’s dominant force, the Hungarian Chinese Association, largely cancels their ability to advance integration.

HCA’s increasing control and economic difficulties of Chinese businesses appeared as roadblocks to the plural organisational structure whose birth had marked a milestone on the Hungarian Chinese community’s path to maturity. Ideas of integration still appear in publications, particularly in *Ouzhou Daobao*: one article in its October 2, 1996, issue was titled “The First Homeland and the Second Homeland” (Zhao, 1996). In late 1996, the State Secretary in the Prime Minister’s Office received an HCA delegation which asked him to lower customs duties and facilitate the granting of permanent residency to Chinese who meet legal conditions. In 1997, in the wake of the death of two Chinese women in an explosion at a Chinese restaurant, the Hungarian Chinese Catering Association made a gift of HUF 2.5 million (USD 15,000) to a foundation supporting the work of the homicide unit of the Budapest Police Department (Polonyi, 1996b; k.z.t., 1997). Additionally, as Chinese in Hungary are faced with a crisis of their main business, more people are seeking contacts with commercial organisations such as the Budapest Chamber of Trade and Industry or the Hungarian Far Eastern Business Club, which has two corporate Chinese founding members. Unfortunately, such practical “firefighting” steps are a consequence of the same economic crisis damaging Chinese business that is triggering an outflow of Chinese from Hungary. Their place is being taken by newcomers whose means of existence are usually unstable, which means the prospects of integration, except for a still very small second generation, are bleak.

Had the Hungarian authorities, local or national, shown an interest in the Chinese living under their jurisdiction this could have provided a push toward integration while the organisations positively inclined toward this were vocal in the community. Now a Hungarian interest in the Chinese community is starting to appear. The conference APCHF organised at City Hall did have an effect on city politicians, and the idea has been floated to allow the Chinese to delegate an observer to the City Assembly. Minority affairs departments of various local governments and the Ministry of Education have recently shown a willingness to include the Chinese in cultural activities, and even funding, thus far restricted to “traditional” minorities. President Árpád Göncz, who

previously had met with Chinese on an individual basis recently, in responding to the presentation of an RCA-sponsored album on the Chinese in Hungary, made the first public statement acknowledging the possibility of the emergence of a group of Hungarian citizens of Chinese origin: "I hope and wish that those Chinese who have chosen Hungary as their second homeland still cherish the traditions and cultural customs of their land of birth while being diligent, law-abiding, and content citizens of our country" (Zhao, 1996). A legal amendment allowing non-citizens to vote and run in municipal elections, to be tabled before Parliament, may make it easier for Chinese to find a voice in local politics. At this point, however, any attempt at a conscious integration strategy will actually have to counter HCA's influence. On the whole, in Polonyi's words, "the community behaves as if it were in Hungary on business and could leave for good at any time". Spokesmen for the Chinese community describe it at the most as a bridge whose main pillar is in China. Peking regards it, and other Chinese communities in Eastern Europe, simply as a branch of the PRC. This situation, while relatively harmless thus far, is hardly a healthy one. It should serve as a caution to other European governments seeking to integrate the evolving Chinese communities in their countries (Polonyi, 1996a).

#### NEW TRENDS AND FUTURE

Several policy analysts in Europe have started to look to immigrants as vehicles to sustain a healthy demographic and economic balance. Yet the pattern of migration have changed. West European societies no longer are the host societies to traditional Chinese migration, as was the situation up to the 1970s. The destination countries have changed as has the driving force. This "post-modern" Chinese migration is no longer spurred by hopes abject poverty, political, ethnic, or religious persecution, or the inherited patterns of a village; but rather by hopes for a better quality life, less control by the society over the individual, and more money-making opportunities.

These new patterns of migration make attempts to provide immigrant minorities a defined place in society. With the increasing importance of connections to the PRC, the "sojourner mentality" may be on the rise among overseas Chinese, yet the fundamental problem is no longer how to convert "sojourners" into "settlers". New migration patterns, viewed against a background of fluidity in the host societies, challenge not only the traditional dichotomy between these two categories but the very notion of "immigrant", indeed the notion of "minority". The upheaval in migration studies to accommodate new global patterns of human interaction demands the development of a new discourse on minorities, a formidable challenge for scholars as well as for policymakers. Since the Hungarian Chinese community originates from the new wave of migration, its study may provide a useful perspective on these issues.

New Chinese migrants are present in increasing numbers and influence in traditional overseas Chinese communities such as those in Western Europe. They have higher average levels of education, are individually motivated to migrate rather than following the general pattern of a traditional migrant home community (*qiaoxiang*), and are entrepreneurs. Most of them had moved around in China (from smaller to larger cities or from inland provinces to the coastal zones of the highest economic growth) prior to

leaving for overseas, and thus had gained experience domestically in both individual and organised interaction with host communities (see Xiang, 1996). Imports are at the core of the economic niche these migrants occupy in their countries of residence. Thus they are more open and exposed to transactions with locals than those involved in catering, the traditional trade of old overseas Chinese communities. The social visibility of the Chinese in Hungary in areas beyond their residential and occupational realms – that is, in recreational settings such as restaurants and resorts – and the increased number of Chinese travelling for pleasure around Europe in 1996 are signs of a trend to take advantage of the material culture the host society offers that has taken place much faster among the new migrants than in traditional overseas Chinese communities. New migrants can thus be expected to take a conscious stand vis-à-vis the host society more quickly than “traditional” migrants. All this means that investment and foreign trade laws, along with immigration, citizenship, minority, labour, and family legislation, must increasingly be regarded in the policy framework of dealing with Chinese migrants in Europe, as is already the case in America and Australia.

At the same time, the influx of new migrants into Europe contributes to the emergence of overseas Chinese organisations with strong political affiliation toward the PRC. Many of these organisations claim to represent the entire Chinese community of their country of residence. They receive varying degrees of encouragement, ranging from direct sponsorship to endorsement from Peking and gain the greatest influence in relatively small or new Chinese communities. The Spanish Overseas Chinese Association, the Belgian Overseas Chinese Association, and the Shanghai Friends’ Society in Belgium are recently established organisations of this type. Like HCA, they maintain close ties with PRC authorities, which their members utilise in extensive activities in the PRC. Like HCA’s president, leaders of four Belgian Chinese organisations were present at state ceremonies on the PRC’s National Day in 1996. The Shanghai Friends’ Society even prints its newsletter in Shanghai and brings it to Belgium by air. Furthermore, because many new migrants have higher education and/or first arrive in their countries of residence as students, the barrier between the student-scholar-expatriate professional community and the established Chinese organisations is breaking down. In Belgium, for example, the Shanghai Friends’ Society’s bulletin has launched a special column devoted to Chinese students and maintains contacts with Chinese managers working at Brussels-based international corporations who were recruited from Western universities. These phenomena, which closely mirror the way the Hungarian Chinese community has developed, indicate that foreign policy and security considerations must also play a greater role in designing policies dealing with Chinese migrants.

In Hungary, none of these factors currently receives proper attention.

The Alien Regulation Law does not set clear criteria for the granting and extension of short-term stay permits and long-term residence permits, leaving much of the decisionmaking up to the discretion of the immigration officer. No specialised immigration quotas exist, and the concepts of “investment immigration” or “expert immigration” are unknown, much to the surprise of Chinese migrants who regard such Anglo-Saxon practices as a matter of course. As a result, only a few hundred Chinese have obtained residence permits in spite of the fact that most have been in Hungary for at least five years and satisfy the requirements to apply for one. Some are still forced to

renew their stay permits every few months, resulting in an instability that is a very strong disincentive for investment. In addition, the current practice does not allow the government to be selective in admitting migrants.

Despite these circumstances, Hungary had a stable Chinese community until 1995–96, thanks to the highly profitable nature of the import and reexport business. For Chinese merchants Hungary was the East European centre of imports and exports. In early 1995, Hungary introduced higher import tariffs for goods from a number of countries, including China. In addition, invoices for Chinese goods were no longer accepted in clearing the goods through customs. Estimates of prices, a practice widely regarded by Chinese merchants as unrealistic and discriminatory replaced invoices. This raised the duties to be paid by Chinese importers nearly four times the level of two years earlier, dramatically reducing import and reexport volume. As a result, government revenues from the trade have dropped sharply, and successful Chinese entrepreneurs are beginning to move their businesses to countries with more favourable investment policies, particularly Poland and Slovenia. An increased flow of new immigrants who lack stable livelihoods is ready to take their place. This situation clearly is as detrimental to the Hungarian economy and security as it is to the stability and integration of the Chinese community.

New Chinese migrants can be a particular asset for European communities that lack expertise and experience in China but are looking for investment in or from, or trade with, China and Hong Kong. Due to their strong connections with PRC state enterprises and government agencies, as well as to their higher education recent migrants are often willing and able to assist such initiatives. The new Chinese migrants have also been quick to explore unexplored opportunities in trade with foreign partners other than China, turning Hungary into a regional trade hub.

In order to make full use of this potential, a predictable immigration policy that confers benefits on those who have shown the ability to contribute to Hungary and a good investment environment are necessary. Incidentally, Hungarian Chinese leaders are calling for precisely these two elements. Last year, a respected Hungarian intellectual monthly published an essay by the APCHF's ex-secretary-general (then no longer in Hungary) arguing that a liberalisation of the tariff system, tax cuts, and greater incentives for foreign investment would allow Hungary to take advantage of its infrastructure and location. Thus, new Chinese migrants are contributing to local economies through both investment and original policy perspectives (Wang, 1996).

Once the basic economic and administrative policies are in place, those leaders and organisations in the Chinese community that are willing to examine their situation from the perspective of the local society should be consulted. Their views should be considered when working out a long-term vision of their desired identity and place within Hungarian society. Enabling non-citizen Chinese to satisfy appropriate residency criteria to be elected to local legislatures would encourage integration and political participation. Yes, it is contrary to the interests of the local society to support leaders or organisations whose main source of legitimacy is their connections to PRC authorities and whose main policy concern is loyalty to the PRC. Government bodies at all levels, as well as NGOs, should involve PRC-linked organisations in dialogue and co-operative efforts on both formal and informal occasions. Such overtures should indeed be made

toward all Chinese organisations. No matter how much more powerful one organisation may be than all others, no single organisation short of a universally elected body should be accepted as a negotiating partner representing the entire Chinese community. Insisting on identifying a single representative organisation as a pre-condition for official attention to the community's problems is likely simply to strengthen the position of the organisation that has the best contacts with PRC authorities. That organisation's policies and ambitions may not be supported by or even known within the community itself.

Under Hungarian law, recognised ethnic minorities have the right to elect their organs of self-government, but recognition as a minority can occur, of course, only if a sufficient number of Chinese gain Hungarian citizenship. Until such time, local authorities should cooperate more closely with those Chinese organisations whose objectives for the future are closest to their own views of the legitimate interests and expectations of both the receiving society and the immigrant community. Those views, however, should be developed based on consensus and public discussion that involves the fullest range of Chinese organisations.

In closing, mention should be made of two issues that have a bearing on the integration of the Chinese in Hungary. One is law enforcement, the other is education. In 1996, Chinese in Budapest viewed the inaction of police in cases involving Chinese victims of crime as one of the greatest problems they faced, greater than corruption or extortion which they saw as natural abuses of power. The inaction has been due to the police force's lack of specific knowledge of the Chinese community, an ignorance sometimes compounded by thrillers about the "Chinese Mafia". Police statements and media reports that the Chinese prefer taking justice in their own hands rather than cooperating with law enforcement organs amplify each other. HCA's calls to allow PRC authorities to police the Hungarian Chinese community, which are clearly problematic from the standpoint of Hungarian sovereignty, have been fuelled by the lack of will of the Hungarian police to protect the community from its own criminals. It is in the interest of both the Chinese community and society at large, as well as a matter of Hungary's security, to ensure that properly qualified law enforcement officials do their best to combat crimes against Chinese. Statements that perpetuate the myth that crime and retribution are endemic and "natural" to the Chinese community should of course be avoided.

Turning to education, the Hungarian-born or -raised generation of Chinese is small, but it is coming of age. Whether this generation will be a success story of the Hungarian immigration policy largely depends on its education. Currently, school-age children are often sent back to China, while a number of college-age youth go to the United States and the United Kingdom. This is due to the lack of Chinese-language education in Hungary and to the perception that Hungarian-language education limits the youth's career prospects abroad. Several Chinese organisations and individuals have attempted to establish mother-tongue schools, but the only one launched so far teaches little more than reading and writing. Both Hungarian public schools and the Ministry of Education, however, have expressed their willingness to cooperate in this field. To facilitate the children's integration into Hungarian society and limit outside political influences, mother-tongue education in a range of subjects such as history, literature, culture, and religion, should be set up within the Hungarian education system. These subjects should

supplement the required curriculum (some of which may also be taught in Chinese), rather than be relegated to weekends and to PRC overseas Chinese affairs officials who will, sooner or later, become interested in supplying educational materials. The Hungarian education system could follow the model of the existing minority schools, except that Chinese schools will have to be largely financed by the Chinese themselves. In return, the particular needs of the Chinese community, such as a strengthened English-language and science curriculum, should be accommodated.

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*Ágnes Hárs*

## ***The Labour Market and Migration in Hungary***

Given that the economic analyses of immigration and trade are similar, why do economists lead the charge for free trade but not for free immigration? Support free trade, and you are mainstream. Express doubts, and your friends wonder which industry/union pays your rent... But declare yourself for open-door immigration, and you are dismissed as an idealist, maybe even a card-carrying member of a human rights or amnesty group.<sup>8</sup>

Is it necessary to control the international migration of labour, and if so, why is it so difficult? What rationales and principles should be considered? Why is every attempt to differentiate “desirable” from “undesirable” ones more or less unsuccessful? Who are these aliens, and what makes them desirable or, on the contrary, undesirable?

Similar to other countries in Central and Eastern Europe, international migration was not a general phenomenon in Hungary during the past fifty years.<sup>9</sup> In countries which had open borders and a market economy, foreigners were an important element in the labour market of the host country – a part of the host economy. Migration policy was one – albeit often heavily debated – tool for manipulating the process.

Migration is determined by various well or lesser-known economic rules, and therefore the consideration of political advantage is rarely sufficient for successful control. Very often, even the exact definition of these aspirations – “the interests of the affected country” – is somewhat difficult.

This study attempts to outline the economics of migration in Hungary. We will seek an answer to the considerations governing restrictions set forth by the state on labour migration and whether these factors are influenced by economic rules and if so, which. The first section will focus on the contradictory definitions of migrants, as well as on the concept of desirable or undesirable migrants. The next section will analyse the genuine goals of Hungarian migration policy, and contrast perceived migrant labour supply with reality. Finally, we shall seek an answer to the question of obstacles in the demand for foreign labour. In our analysis, the lack of comprehensive data and empirical knowledge will be counterbalanced by the use various analogies.<sup>10</sup>

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<sup>8</sup> R. B. Freeman (1993), p. 449.

<sup>9</sup> The period of modern migrations can be distinguished from the migrations in the early 20th century and the migration waves following 1956 not only by the different direction of these migrations, but also by the relative impenetrability of the borders.

<sup>10</sup> The lack of relevant data is not only characteristic of migration research in Hungary. In a study on labour markets and migration research in general, the economist Oded Stark (1991) ironically noted that “With such an impressive score, it is a wonder that more of the profession has not shifted into migration research. This has to do with the lack of information.” (p. 23).

## PROBLEMS OF DEFINITION – AND THEIR CONSEQUENCES

Who are labour migrants? The term seems to be rather self-explanatory: in the most common sense of the word, migrants are people who, temporarily or permanently, change their place of residence. Migrants who cross state borders are considered international migrants.<sup>11</sup>

Still, there seems to be some confusion as to the use of the term “migration”. This confusion can, for the most part, be ascribed to practical reasons. There are a number of obstacles to the documentation of labour migration. Official statistics tend to register as migrants only individuals who spend over one year in another country.<sup>12</sup> Also, owing to the general accessibility and reliability of relevant data, most analyses only work with figures on *legal* migration and thus, only foreigners who are documented in some way (who have been granted a residence or labour permit, or have been registered as a refugee) are considered migrants.

Set against the wider circle of international migrants who, according to the above, cannot always be reliably documented, labour migrants are individuals who make the decision to migrate and leave their homeland for a rational economic reason, namely in order to achieve a better life for themselves in another country. Who are they? They are migrant workers arriving legally with the aim of finding employment (subsequent to obtaining a work permit) and other aliens seeking employment for shorter or longer periods of time. However, the number of individuals who, either from neglect or intentional defiance of the law, seek employment *illegally*, is also substantial. Tourists and other visitors are, by definition, not labour migrants. Between these two extreme ends of the scale are several temporary combinations of economic reasoning, ranging from illegal workers arriving initially as tourists to students working as dishwashers to earn pocket money.<sup>13</sup>

Migration experts often draw a distinction between migrants who leave their country for economic reasons and forced migrants, i.e., refugees. However, line of demarcation between these two groups is not as clear as we would like to think. Certain economic rationales often play a role even in these the case of forced migration. Refugees fleeing for their lives rarely head out for some random destination, and again, there are several,

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<sup>11</sup> For quite a long time, there were few differences between internal and international migration. In two articles of the same title, Ravenstein (1885, 1889), who first described the phenomenon of migration, discusses migration between areas separated by wide geographic distances and migration across borders. The change of borders affecting the place of residence represent a particular variant of migration which is not discussed here. Cp. Szöke (1992).

<sup>12</sup> “According to a UN recommendation, a migrant, in the demographic sense, is an individual who (irrespective of place of birth and nationality) arrives in a given country with the intention of spending at least 12 months there or an individual who has spent at least 12 months away from his home.” Cp. Coleman (1994) p. 292. Registration laws in other countries may specify other intervals of time.

<sup>13</sup> Without denying its importance, the obvious intent of income maximization or the possible links to the labour market, I do not consider the international movements within economic crime to be part of economic migration.

transitional cases between them and migrants who calculate rationally with the aim of income maximisation.<sup>14</sup>

The multitude of migrants who are fortunately documented – or, depending on the point of view, unfortunately undocumented – might suggest that the impact of migrant labour on a country is negligible or, conversely, that owing to its *perceived* volume, it appears to be more significant than it actually is.<sup>15</sup> The success of policies designed to control or influence migration greatly depends on which documented or undocumented migrant group is being targeted and on which groups are purposefully neglected. In the following, we shall demonstrate that in Hungary the genuine processes of labour migration and their regulation are governed by rules independent of one other and that this is hardly accidental.

### DESIRABLE OR NON-DESIRABLE

The issues consistently raised in the debate on migration policy ultimately focus on *economic* considerations: a “more favourable” population breakdown or a “more useful” labour force or in other words, a more efficient economy. According to the narrower economic interpretation of a country’s “interests”, the aim of migration for the host country is to increase the prosperity of the native population and their share of the GDP.

Is foreign labour beneficial or harmful to the Hungarian economy? Fortunately, we do know a little about trends and the regional breakdown of Hungarian migration.<sup>16</sup> However, almost nothing is known about which sectors of the economy employ aliens, whether foreign labour plays an important role in the Hungarian economy or even the true significance of legal and illegal labour migration.

These uncertainties are reflected in the heated debates which characterise even those countries which can boast a substantial number of empirical analyses. The increase in migration both in Europe and the USA has led to debates over the beneficial and harmful

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<sup>14</sup> Oded Stark (1996) probably refers to the obvious economic decision making found at the “inevitable end” of voluntary “economic migration” and forced migration, namely that even a forced migrant fleeing for political reasons is faced with the decision of *where* to go. The choice of possible destinations can, in a given situation, be influenced by an economic optimization behaviour. A. Zolberg (1989) has noted the important correlation between the limitations on entry (to labour markets) and the growth of demand for refugee status.

<sup>15</sup> This dilemma is reflected in the last paragraph of a recent analysis: “Similarly to other studies, this study too is faced with the problem that only the competition from legally employed foreigners could be studied. However, political debates are generally concerned with the impact of the illegal employment of foreigners. Does this not, in effect, mean that the above analysis loses its significance?”, is the authors’ conclusion in their study offering a detailed analysis on the impact of legal immigrants on the Austrian labour market (based on statistics). A few sentences at the end of their study are devoted to illegal migration which might possibly distort their mathematical and statistic calculations. Cp. Winter-Ebmer and Zweimüller (1996), p. 102.

<sup>16</sup> For an overview of the few modest empirical analyses, cp. Sik (1993) and Sik-Tóth (1994, 1996, 1997). According to Dövényi (1997) who worked with 1995 data, most mayors agreed that foreigners settled in all counties of Hungary, mostly in cities and larger towns, and that their settlement was concentrated in the central and eastern regions, as well as Budapest. According to the data gathered by the Central Statistics Office (KSH, 1997) 35 per cent of foreigners staying in Hungary for over one year lived in Budapest. 4.9 per cent of the active workers aged 15–39 were foreigners.

effects of migration. Fears concerning migration are usually expressed as a question of whether foreigners take jobs from native workers and whether they cause a decline in wages. Another question is whether migrant workers can adapt to the host economy and whether they can cover the costs of their own welfare services. These concerns are not unfounded and immigration does place a heavy burden on the host economy, as demonstrated by Borjas (1994).

On the macro-economic level, the impact on employment in host countries is barely perceptible. No correlation has been demonstrated between unemployment and the ratio of foreign labour in developed western economies.<sup>17</sup> More detailed empirical studies have shown that employment opportunities and wage increases may be affected – to differing extents – in specific regions or other segments of the population. The insignificance of the impact of foreign migrants is generally explained by claiming that the high ratio of foreigners in certain regions, in turn, triggers the migration of the native population and, thus, has an effect which ripples across the entire economy, and is thus difficult to measure.<sup>18</sup> Although the possible effects of migrant labour in Hungary have not been analysed yet, we do know that in Austria, where the ratio of foreign employment is considerably higher than in Hungary, few, if any, effects have been demonstrated, and they differ according to economic sector.<sup>19</sup>

In contrast to the imminent or less critical dangers of migration, its possible benefits are – interestingly enough – rarely mentioned. In the study quoted above, Borjas (1995) convincingly demonstrates that the benefits of migration compensate its costs which originate from the not only the reciprocity of migration but other elements of production as well. He also claims that the greater the difference between the native and the migrant labour force, the more significant the effect of migration (through wages). Another benefit can also be seen in the redistribution of welfare services, primarily from the taxes paid by migrants to the services which are not used by them. In this respect, skilled migrants are more attractive and even if they are eligible for welfare benefits, their probable demand for these benefits is lower while, at the same time, their contributions are higher.<sup>20</sup>

Migration policies are generally designed to attract desirable migrants for the labour market and to exclude others. In order to influence migration, a set of selective criteria are generally formulated. At first glance, the main goal of a prudent migration policy is to attract valuable labour. How should we define “valuable”? Human capital investment in qualified labour undoubtedly appears as such, especially if we subscribe to the human

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<sup>17</sup> According to 1995 data, unemployment in Spain, Italy and Ireland was high, and the ratio of foreign workers was low, whereas in Switzerland and Luxembourg, low unemployment was coupled with an outstandingly high ratio of foreign workers. A more or less similar unemployment level could be noted in Germany, Austria and Belgium, all of which had higher ratios of foreign workers, and in Portugal, Holland and Sweden which had lower ratios of foreign workers.

<sup>18</sup> Cp. Borjas (1994, 1995).

<sup>19</sup> Cp. R. Winter-Ebner et al. (1996).

<sup>20</sup> Hungarian regulations demand that foreigners residing in Hungary pay social security and labour market contributions, as well as taxes, but instead of receiving unemployment or welfare benefits, they are barred from the welfare system and once they are unable to find employment, they are deported from the country. However, there are no data on the actual amount of benefits used. Cp. Tóth (1997).

capital theory underlying selection, according to which education, qualification and training make labour more valuable, and if we also accept the theory proposed by one renowned expert on the economics of migration that the average productivity of a host country is raised to a greater extent by skilled rather than unskilled workers.<sup>21</sup> However, there is no sound argumentation that the average productivity of a mixed population is indeed affected by qualification.<sup>22</sup>

Why is qualified labour necessarily more attractive? Labour supply needs to be screened in some form. Selection based on gender, age and ethnic composition of migrants or their breakdown according to qualifications or other useful qualities may provide an effective screening method, at least according to the proponents of the screening hypothesis.<sup>23</sup> Some kind of selection criteria must be applied. A better educated, more qualified, young, and productive labourer will probably cause less problems, offer better performance and adapt more readily – although he may not necessarily improve the performance of the host economy as a whole.

In contrast to the arguments based on the human capital theory, Stark (1991) has argued that both human capital and the information available on it changes during migration which, incidentally, should not be analysed at a specific moment, but within given period of time. Information is asymmetric: at first, the assumed qualification (its lack) is paid, and with time, the initial uncertainty over the migrant's qualifications and capabilities disappear, and the uniform wages paid to migrants – or some of their groups – are differentiated, establishing a division providing a divide between migrants who continue to work in the host country and those who return to their homeland. It is possible that more qualified labour will not be as desirable once higher wages are involved while unqualified labour may accept less than their earlier wages. Trends in migration and wages can be explained with this model.

Even if the host country accepts the migration of screened, qualified labour and is even prepared to offer incentives for their entry, principles which appear attractive on the macro-level do not always appear on the micro-level. In spite of all restrictions and efforts at channelling, migrants who do not conform to the preferences of such a selective migration policy nonetheless leave their homeland, seeking – and finding – less qualified and unqualified jobs. Given the growing concern over jobs and wages in the host country, undesirable labour may find itself barred from legal employment opportunities. Similar to illegal native workers, unpaid taxes and other contributions of alien citizens will decrease revenue of the host country.

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<sup>21</sup> Cp. Borjas (1995).

<sup>22</sup> Cp. Layard et al. (1992).

<sup>23</sup> The screening hypothesis in fact addresses the problem of whether qualification as measured by educational attainment can be used as an effective screening method for evaluating the potential performance of applicants. It may offer useful information on the potential capabilities, the achieving motivation and family background of new workers. Most workers attain the necessary skills by on-the-job training and employers are mainly concerned with selecting job applicants in terms of their future trainability. According to Blaug (1976) if the above assumption is correct, the observed correlation between educational attainment and earnings – which figures prominently in the writings of human capital theorists – disguises a more fundamental correlation between educational attainment and trainability. Cp. Blaug (1976).

An immigration policy based on the human capital theory of more qualified and thus more valuable labour is not necessarily successful. This also holds true for Hungary. The ultimate goal – that migration should correspond to the country’s interests – should be formulated in another manner.

### WHO IS CHANNELLED BY MIGRATION POLICY?

In the 1980s migration slowly grew, and then suddenly accelerated in the Hungarian economy which, during decades of a planned economy, was more or less closed (cp. *Figure 1*).<sup>24</sup> At first, in the 1980s and the early 1990s, this migration was spontaneous and soft regulation ensued to follow, rather than harsh restriction on the influx of aliens. Within a few years, however, this process was regulated – and to some extent restricted – by a law which, applied as it was homogeneously to all aliens, was designed to follow the then-recognised migration patterns.<sup>25</sup> Policy makers regulated the flow of migrants in an essentially “defensive form”, citing considerations such as the protection of society, the labour market and public security and, in effect, setting up a screening process for all aliens entering the country. Regulations concerning the employment of aliens reflect a similar attitude.<sup>26</sup> At the same time, a selective screening process promoting the advantages of migration, with the supposed aim of attracting the best migrants,<sup>27</sup> was not formulated. A similarly positive selection has been suggested for Eastern Europe by Layard et al. (1992) in their study of the expected East to West migration, claiming that the short-term social tensions generated by such migration could best be cured in this way, especially in times of recession. Is there a genuine need for such screening and incentives in Hungary? Is there indeed a need for any intervention?

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<sup>24</sup> The data quoted in this section are based on legal migrants.

<sup>25</sup> The Aliens Act (Law LXXXVI/1993 on the Entry and Residence of Aliens and on Immigration) and Government Decree 64/1994 (April 30) on its implementation, as well as Ministry of Interior Decree 9/1994 (May 30).

<sup>26</sup> Law IV/1991 on employment and unemployment benefits, as well as Ministry of Labour Decree 7/1991 (October 17).

<sup>27</sup> In her excellent analysis of the Hungarian legislation on migration, J. Tóth (1994) concluded that this legislation does not offer the option of “positive selection”.

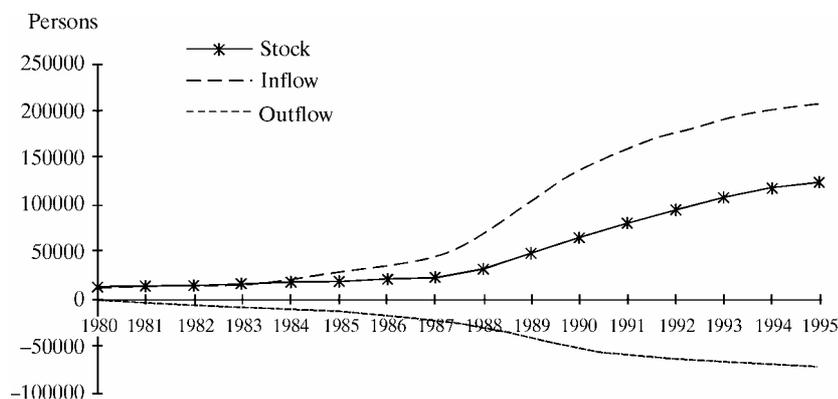


Figure 1

#### Aliens residing permanently in Hungary

Note: Cumulated figures, according to the year of entry and departure

Source: *Demográfiai Évkönyv 1995*, KSH, Budapest, 1997

Hungarian legislation is based on the assumption that migration pressure on the country is high and that it is determined by the *demand* side, thus implying that changes in this side should be pursued. A negative selection is therefore needed to restrict this migration pressure, while a positive quota system or similar solution is necessary for attracting desirable labour. In the following we shall demonstrate that beliefs concerning regulation are linked to desires and assumptions, rather than actual migration processes.

As a matter of fact, there was no need for substantial restrictions concerning “first generation” migrants who had no special contacts, for even the modest annual quotas remained unfilled.<sup>28</sup> Obviously, these quotas have little significance if they do *not* affect family reunification and the immigration of ethnic Hungarians, especially since most immigrants *are* ethnic Hungarians.<sup>29</sup> The main issue is whether the latter should be channelled, and if so, how, into a “desirable” direction.

The number of immigrants has remained more or less stable, without substantial increase.<sup>30</sup> The number of applications for permanent residence (for over a year) has increased slightly and the composition of applicants is more or less identical to those applying for immigration.<sup>31</sup> Most legal immigrants find employment with a labour visa and a valid labour permit. Although foreign employment is not restricted by quotas,

<sup>28</sup> In 1995 and 1996, this quota was defined as 2,000 individuals for those who did not fall into any of the privileged groups.

<sup>29</sup> According to data from the Ministry of Interior, there are about 75–77 thousand immigrants residing in Hungary; their majority are ethnic Hungarians arriving from Romania, from the former Soviet Union and from ex-Yugoslavia.

<sup>30</sup> A total of 14,013 immigration applications were submitted in 1992, of which 8,718 were granted, while in 1995 a total of 5,629 applications were submitted and 2,183 were granted. (Source: Ministry of Interior.)

<sup>31</sup> A total of 16,500 residence permits for stays of over 12 months were granted in 1992, and a total of 23,500 in 1995. (Source: Ministry of Interior.) According to data from the Ministry of Interior, only 6 per cent of the foreigners staying for over 12 months came from Romania in 1980; this figure climbed to 30 per cent by 1985 and to 90 per cent by 1990. Although this ratio declined following the outbreak of the Southern Slav war and the collapse of the Soviet Union, it has nonetheless remained a dominant trend.

about 20 thousand aliens with a work permit are continuously employed in Hungary, and this level is maintained as a rule of thumb.<sup>32</sup> The Ministry of Labour could, in principle, set up quotas for foreign employment, but as of yet, no such decree has been prepared.

On the basis of legal immigration we may thus claim that there is no significant supply pressure.

In 1996, only 2 per cent of all employed workers were aliens, and 0.5 per cent had labour permits (the rest having a residence permit or refugee status).<sup>33</sup> There are no reliable statistics for the number of illegal migrant workers, but we do know that most of them are commuters, staying for shorter or longer periods of time.<sup>34</sup> Is this an alarmingly high or a negligible ratio? In Germany 8 per cent of all employed workers were aliens in 1990; the same figure for Austria in 1995 was 10 per cent.<sup>35</sup> Illegal foreign employment, however, was considered to be substantial.

The expected intensity of migrant labour supply – migration pressure – will, in the next section, be examined in terms of wage differences, unemployment and job opportunities, as well as of contact networks and family strategies.<sup>36</sup>

### **Wage Discrepancies, Unemployment and Job Opportunities**

Migration motivated by economic considerations have traditionally been analysed as a flow triggered by differences between attainable wages in the home and the host countries, the assumption being that migration is governed purely by the market; it was also assumed that migration is inversely proportionate to distance and directly proportionate to more lucrative or attractive jobs.<sup>37</sup> Distance was later expanded to include the interpretation of cultural and other distances.<sup>38</sup> Harris-Todero's (1970) classical model also examines the extent to which unemployment is an important factor influencing migration.

*Table 1* shows the ratio of monthly earnings based on purchasing power parity. The difference between potential earnings is obviously greater since the savings of migrants are greater than those of the native population in the host country, their consumption is lower, and exchange rates and other complementary income possibilities (such as exchange rate profit, exchange on the black market, the exploitation of differences in the price structure between the sending and the host country in the form of "long-distance trade") also increase incentives for migration.

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<sup>32</sup> In 1992, the most adequate solution to the dangers posed by foreign employment seemed a more stringent control of legal employment. Legal employment was made stricter by an amendment to the Employment Act. By linking employment to visa requirements, by adding administrative complications and the need to hold a certain amount of funds upon entry, the previous number of 30 thousand dropped to 15–20 thousand. (Cp. Hárs [1992].) According to the Employment Act, foreigners can receive a work permit only if it is demonstrated that native labour is not available. The granting of permits, however, is possible owing to soft regulations.

<sup>33</sup> KSH (1997).

<sup>34</sup> Cp. Bodó (1996), Hárs (1995).

<sup>35</sup> Source: SOPEMI Trends in International Migration. OECD, Paris, 1992; SOPEMI Report for Austria. OECD, Paris, 1996.

<sup>36</sup> Legal and illegal migration pressure will both be considered.

<sup>37</sup> Cp. Ravenstein (1885, 1889).

<sup>38</sup> Cp. Borjas (1994).

Table 1

**Ratio of earnings in transitional economies**  
(In USD, with purchasing power parity, Hungary = 1)

Year	Slovenia	Czech Republic	Slovakia	Poland	Romania	Ukraine	Croatia	Bulgaria	Estonia	Latvia	Lithuania
1992	n. d.	1.09	1.01	0.78	0.59	0.59	0.40	0.80	0.55	n. d.	n. d.
1993	n. d.	1.18	1.03	0.79	0.62	0.42	0.48	0.79	0.58	0.54	0.50
1994	2.05	1.24	1.04	0.82	0.52	0.35	0.57	0.69	0.66	0.59	0.55
1995	2.24	1.40	1.15	1.09	0.60	0.39	0.82	0.74	0.72	0.63	n. d.

Source: OECD Short-term Economic Indicators Transit Economies; OECD Main Economic Indicators, WIIW database; ILO Monthly Bulletin of Statistics, United Nations, New York, May 1996 (author's calculations).

Layard et al. (1992) quote Barro's estimates: in the case of domestic migrations – when migration is not influenced by the channelling and distorting regulations of border crossings, and only the rules governing natural migration must be considered – earnings 10 per cent below the average triggered a 0.25 net migration between the states of the US. Under similar conditions, a 40 per cent lag would mean the migration of 1 per cent of Romania's population (230 thousand people), while a 60 per cent lag would mean the migration of 1.5 per cent of the Ukrainian population (750 thousand people) insofar as Hungary is the destination country. Based solely on differences in earnings, the Slovakian and the recovering Croatian economies do not seem to pose a migration threat.

Income difference and increasing distance have an inverse effect on migration. Even a relatively modest income difference may be attractive enough to trigger labour migration between close-lying countries, especially if the costs of migration can be decreased significantly by travel or commuting. The Czech Republic and Slovakia may be more attractive for labour migrants from the Ukraine than Hungary. In spite of relatively modest differences in earnings, the common border between Hungary and Romania motivates workers from Romania who would try their luck in Hungary sensitive to potential gains in income. The labour market in western countries offering significantly higher earnings are also more attractive to migrant workers than those in transitional economies. *Table 2* illustrates the ratio of Hungarian earnings to wages in developed countries. The lag of Hungary compared to even some of the poorer Western European states (such as Greece) is greater even than the difference between poorer Eastern European and Hungarian wages.

Table 2

**Ratio of earnings**  
(In USD, with purchasing power parity, Hungary = 1)

Year	Belgium	Ireland	Sweden	France	Greece	Austria	Germany
1992	4.85	4.47	3.98	3.14	2.50	3.55	5.25
1993	4.95	4.44	4.17	3.03	2.46	3.62	5.28
1994	4.93	4.31	3.91	2.98	2.53	3.58	5.20

Source: OECD Short-term Economic Indicators Transit Economies 4/1994, 1/1997; OECD Main Economic Indicators, December 1995; ILO Monthly Bulletin of Statistics, United Nations, New York, May 1996 (author's calculations)

Migration is even more sensitive to changes in employment opportunities. The study of domestic migration has the advantage that once a border is crossed, natural migration processes are influenced by regulations. Layard et al. (1991) have shown that in England, a 10 per cent difference in earnings increases net domestic migration by an annual 0.6 per cent, while a 10 per cent decrease in employment triggers a net migration of 0.8 per cent.

Unfortunately, statistical data on employment and unemployment are very inaccurate in the very Eastern European countries from where labour migrants start out for Hungary and other close-lying countries. The available figures reflect a minimal unemployment and a low underemployment. These statistics offer little information on how employment in these countries affects migration; however, interviews conducted with foreign workers in Hungary seem to confirm the role of underemployment in their home country.

**Migration Pressure and Contact Networks**

The increase and magnitude of migration can only be measured from data available on legal migration. However, migration spreads with the continuous building of contact networks. Once this process begins, each migrant is a new link in a chain of information, knowledge about opportunities and the minimisation of risk.<sup>39</sup> The impact of contact networks on migration would suggest that legal and illegal migration are interrelated, that illegal migration is proportional to legal migration and that the ratio of migrants from an unaffected population is proportionate to the migrant population. The impact of any shock (such as a revolution, the opening of borders) may lead to a sudden growth in this process, but it eventually slows down and leads to a balance, similar to the one at the turn of the 1980s and 1990s in Central and Eastern Europe.<sup>40</sup>

<sup>39</sup> Cp. Boyd (1989).

<sup>40</sup> Cp. Layard et al. (1992), p. 27.

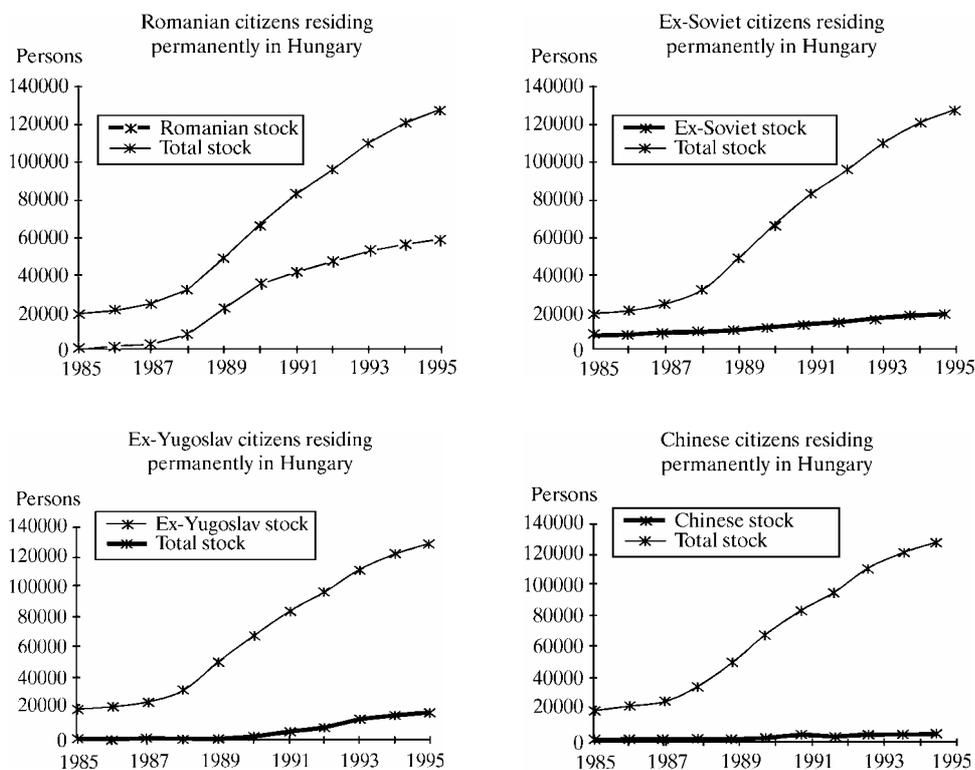


Figure 2

**Foreign citizens residing permanently in Hungary**

Remark: Cumulated figures according to the year of entry

Source: *Demográfiai Évkönyv 1995*, KSH, Budapest, 1997

Figure 2 shows the changes in the largest groups of foreigners residing permanently (and legally) in Hungary. It is clear that migration from Romania to Hungary can be seen as a “mature” migration process, together with the considerably more modest influx from ex-Yugoslavia. The ratio of the other two large groups – or what is perceived as such – is eclipsed by the former.<sup>41</sup> Figure 3 shows the in- and outflow, i.e. the dynamics of migration. Return migration can be noted among Romanian citizens, while another interesting phenomenon is the “ousting” of Chinese citizens who arrived in the early 1990s. Inflow is rather one-directional in the case of other countries. Most conspicuous, however, is that following an initial increase, legal migration diminishes after a few years.

<sup>41</sup> Illegal immigration from these countries is considerably more costly owing to the fragility of contact networks and the large distances involved, as well as to the high risks and costs.

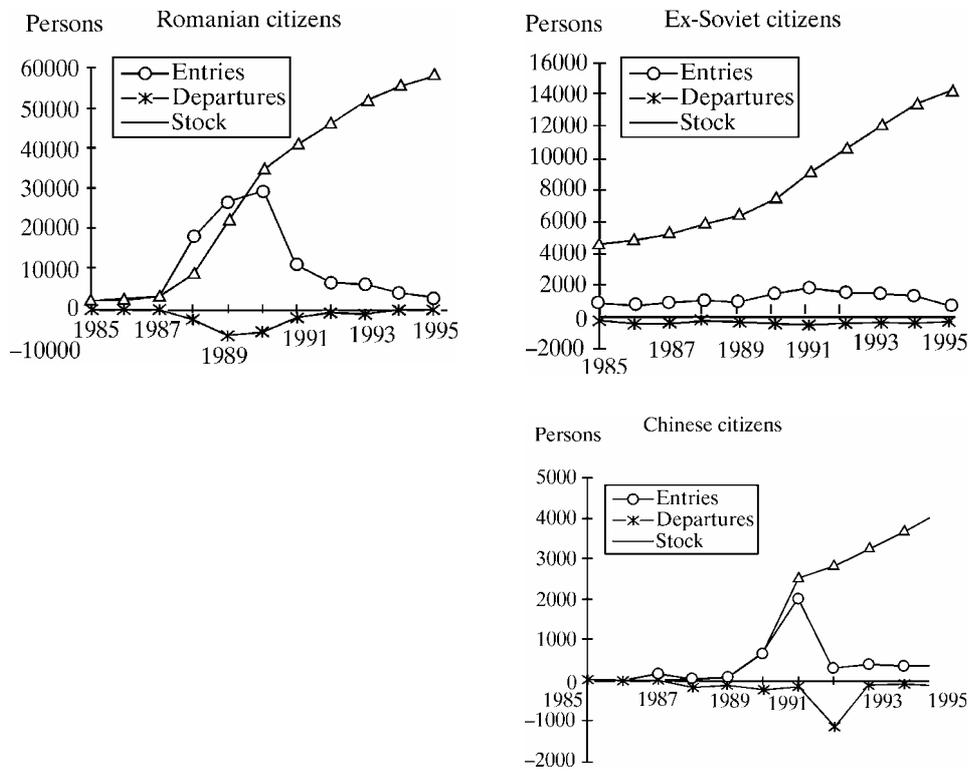


Figure 3

**Foreign citizens residing permanently in Hungary**  
 Remark: Figures according to the year of entry  
 Source: *Demográfiai Évkönyv 1995*, KSH, Budapest, 1997

### Family Strategies, Commuter Migration

Why are migrations triggered in some places and not in others? This question cannot be answered on the basis of economic indicators alone. A related question is the motivation underlying migration and its duration. Traditional fields of inquiry in migration research, namely the absolute and relative performance of migrants on the market of the host country – based especially on the interpretation offered by human capital theory – can hardly answer these questions.

Migration research now focuses on the question of what motivates people to leave their homeland for economic reasons, to return to their homeland or to help their families left behind with money transfers. Insofar as migrants differ from native workers in that return to their home country depends on several factors and that their earnings are lower, this motivates them to work harder and save more than native workers.

Piore's (1979) classic study has described the migrants' unique, instrumental relation to the host country's labour market where the main goal is to acquire income commensurate with *native status*. Migration researchers have also begun to study family strategies instead of individual migration patterns and the role of the family left behind in the migrant's performance. Anthropologists have gathered impressive data on these issues; in contrast, the economic model offers a more general scheme. By including deprivation in the economic analysis, Stark (1991) has shown that migration is not only influenced by an increase in personal prosperity, but also that migrants compare any increase in their incomes to others' (the reference group): insofar as they consider their income to be adequate they are satisfied. If not, they feel themselves in a relatively disadvantaged position. It is fairly obvious that this disadvantaged position forces migrants to accept conditions which are valid in the sending country and which make even considerable risk and personal costs acceptable in the host country. This is what ultimately determines their economic and employment strategies, rather than the laws of the host country.

There is a wealth of sociological and anthropological studies on migration decisions made by the most important migrant groups to Hungary and the motivations underlying their migration. This anthropological information is confirmed by research carried out in Transylvania, particularly in the Székelyföld (the Szekler region of Transylvania) and elsewhere; namely, that labour migrants do not plan on staying forever.<sup>42</sup> Migration can be explained in this context. According to a study on migration in the 1990s, "in the light of the outflows over the past one hundred years, the Székelyföld can hardly be considered a new sending region ... it would appear that in order to understand migration patterns, new cultural patterns in this environment must also be analysed. ... Outflow is seasonal and often repeated. The date and duration of the outflow is essentially determined by the domestic organisation of labour and seems to be less influenced by the receiving environment. ... The dominant motivation for outflow is the creation and strengthening of the family economy, and the family in general."<sup>43</sup>

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<sup>42</sup> Cp. J. Bodó (1996), Hárs (1995b), Gagyí-Oláh (1997).

<sup>43</sup> Bíró (1996), pp. 39–40.

## PREJUDICE AS A BARRIER TO DEMAND

It remains to be seen whether a restrictive and selective migration regulation geared towards the demand side can be effective. Is such a migration policy necessary in Hungary? Is there a strategy which screens migrants according to the interests of the host country? It is quite possible that genuine labour market supply and demand takes place in the undocumented sphere where less qualified labour is more attractive.

The overwhelming majority of foreigners seeking employment – legally or illegally – has arrived, and continues to arrive, from Romania; most are ethnic Hungarians. Parallel to the economic slump and the growth of unemployment in Hungary, there is increasing resistance to their arrival. In 1989, only 27 per cent of the respondents felt that ethnic Hungarian refugees from Romania were taking jobs from Hungarian citizens, while a year later 40 per cent considered competition from ethnic Hungarians coming from Transylvania to be disadvantageous and, by 1993, this figure was over 50 per cent.<sup>44</sup> During this period, the registered unemployment rate climbed to over 12 per cent, economic activity declined and there was a considerable deterioration in living standards.<sup>45</sup>

It must here be noted that this is an assumption and not a genuine labour market effect. The perceived danger of the presence of foreigners is much higher where there are fewer foreigners, and tolerance is higher where there are more.<sup>46</sup>

This correlation has also been observed elsewhere. We are, in fact, dealing with prejudice towards foreigners. R. Freeman (1993) considers prejudice to be a barrier to the absorption of migrants, limiting the entry of foreigners even in cases when the national economy would benefit from it. Borjas (1994) notes similar results in his analysis of prejudices, and concludes that the demand function of migrants on the labour market of host countries is less known. He assumes that the determination of the demand function of migrants belongs to the domain of political economy and depends on the extent to which winners can compensate losers.

The advantages enjoyed by the beneficiaries of economic migration in the host country and the burdens borne by the disadvantaged are seldom distributed equally.

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<sup>44</sup> Source: Opinion poll commissioned by the Institute of Political Sciences of the Hungarian Academy of Sciences, conducted by Szonda-Ipsos.

<sup>45</sup> Between 1990 and 1993 employment dropped by an annual 10 per cent. This process later slowed down (cp. *A nemzetgazdaság munkaerő mérlege*, KSH, annual report). By 1994, the per capita poverty level declined significantly compared to 1989. Compared to poverty level estimates calculated for an unchanged consumption structure, the poverty level estimates based on the 1994 consumption structure calculated for that year showed a 25 per cent decrease for all family types (cp. *Létminimum 1996*, KSH, 1997).

<sup>46</sup> Surveys conducted among mayors in 1992 and 1995 on the presence of “foreigners” showed that mayors were considerably more tolerant in settlements where there were more foreigners, and that an inverse correlation could also be demonstrated [Kovács (1993), Dövényi (1997)]. Gang and Rivera-Batiz (1993) found a similar correlation in their study examining whether the concentration of a high number of foreign population had an impact on German unemployment. Although a link between the presence of a foreign population and a higher unemployment rate among the native population could not be demonstrated, they noted that unemployed Germans nonetheless *perceived* the presence of a higher number of foreigners than those who had employment. They also surveyed German attitudes to foreigners and found that compared to other countries with a smaller immigration rate, a much smaller percentage of the German population thought that there were too many foreigners in the country or that foreigners increased unemployment.

Migration lays a disproportionately great burden on the disadvantaged groups of the host country who have to compete with foreign migrants – who might also be beneficiaries of welfare programmes – for reduced employment possibilities and black labour on the market for less skilled labour. Moreover, the group of beneficiaries can articulate its interests more clearly than the disadvantaged group.<sup>47</sup> The distribution of various social benefits may also legitimise the control of migration: these may include national unity and culture, external and internal security, restricted natural resources, economic prosperity and welfare benefits.

This unknown demand seems to be the main element influencing Hungarian regulation. Regulation is not based on an empirical knowledge of demand, but on presumptions as to its nature, i.e. ultimately on a prejudice. Screening – which approves barriers – is in this case the formulation of these prejudices into policy, namely that only those who are “better” and less dangerous should be allowed to enter the country. This regulation limits and channels the actors of the migrant labour market into the illegal sphere. Prejudice – or its presumption – does not affect one particular, rather wide loophole of a specific variant of tourism: the possibility for illegal employment.<sup>48</sup>

The best antidote to international migration is restriction and exclusion. We cannot know whether this will benefit or adversely affect the economy, but we do know that if an economy wishes to ban migration, it can do so only with great financial (and other) sacrifices. Screening and selection are riskier ventures since unexpected rules can modify or amplify these processes, or trigger entirely new ones.<sup>49</sup>

The dangers of a wholly unrestricted labour migration are political. However, the economy often overrules political restrictions and migrants continue to migrate to countries – uncontrollably and illegally – where they are denied legal entry. Illegal entry increases the risk – i.e. the costs of entry – to the same extent as it decreases entry. The impact of stringent control is direct and short-term, but it does not ultimately stop the flow.<sup>50</sup>

There is a natural barrier to illegal migration. Layard et al. (1992) hope that this lies in the honesty of employers and, also in the finite number of sectors where foreigners can be adequately employed illegally, as well as in the limits to risk taking (medical help in the case of accidents, police help in criminal cases). This natural barrier varies from country to country. The possibility for the legal employment of foreigners does not mean

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<sup>47</sup> Cp. G. Freeman (1995).

<sup>48</sup> Foreigners seeking illegal employment are generally employed by small businesses, themselves on the borderline between legality and illegality, which in itself is a source of profit; the risk of detection is also small in the case of small, barely conspicuous businesses. Beside the profits from the work itself, migration is also a source of income for participants in the “migrant trade” which is not discussed here. Cp. Sik (1997), Czákó (1997).

<sup>49</sup> One classical example is the failure of attempts to stop the recruitment of guest workers for Germany, resulting in the increased migration of family members and the growing importance of contact networks in general. Cp. Castles (1986).

<sup>50</sup> The tightening of Hungarian regulations in 1992 resulted in a dramatic decline in the number of official work permits (which dropped by 50 per cent), but the number of permits slowly climbed back to about 75 per cent of the former number. There are no figures on the number of illegal immigrants, but the costs of border crossings and getting passports stamped to circumvent the limited duration of allowed stays, the procurement of the necessary funds for covering entry into Hungary, practically meant a single screening between migrants who undertook this and those who did not. The impact of a more stringent employment control was similar. Foreigners are channelled from more visible areas (such as major construction and open employment) to less visible areas through mediators and this, too, involves a single – temporary – decrease.

the disappearance of strategies to avoid taxes and the end of illegal employment. Restrictions, however, will increase it.

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*Part II*

## **Towards the European Union**

Béla Jungbert

*The Management and Regulation  
of Refugee Affairs in Hungary in View  
of Accession to the European Union*

**CO-OPERATION BETWEEN HUNGARY AND THE EU  
IN THE FIELD OF REFUGEE AFFAIRS**

The involvement of the associated Countries of Central and Eastern Europe (CCEE) in the co-operation with EU member countries in the area of domestic and judicial affairs arose from the structured dialogue and resolution set forth at the European Council conference in Corfu.

The co-operation of CCEE was necessitated by recognition of the fact that both the EU and CCEE now face new types of challenges to the economic and social stability of their respective countries, such as illegal mass migration and the spread of organised crime. Combating these challenges is only possible through pan-European co-operation.

For the first time on September 8, 1994 an all-European conference of ministers of domestic and judicial affairs was convened in Berlin. This event was also attended by ministers of the CCEE. The conference adopted a strategy called the Berlin Declaration in order to intensify co-operation in the battle against drugs and organised crime.

The third joint conference of domestic and judicial affairs ministers of both the EU and CCEE was held in Brussels (September 25, 1995) and focused on the varying forms of co-operation on the question of organised crime, with special attention to automobile trafficking, police training, asylum and migration.

The conference also adopted a judicial strategy of co-operation in the field to combat organised crime.

The strengthening of co-operation is demonstrated by the fact that what was initially ministerial level co-operation has, since January 1996, extended to a more general co-operation among experts of both organisations. Today there are working contacts between experts of the CCEE and the K-4 Committee of the European Council.

The Amsterdam Treaty of June 1997, in its new chapter entitled "The Creation of the Zone of Freedom, Security and Justice" deals with various issues regarding the free movement of persons, such as administration of refugee affairs, immigration and visa policies as well as with certain elements of civil legal co-operation. The new Treaty outlines a five-year period for the formulation of a common policy. Furthermore, within three years following the enactment of the Treaty, the Council makes decisions unanimously, and only this preliminary period will there be a vote on the introduction of qualified majority voting.

This means that despite the fact that these issues are tackled at the Community level, it was not designed to promote the introduction of qualified majority vote. Naturally, a

fundamental reform in the field of the Third Pillar must be included which, in turn, will raise issues currently under debate to the European Community forum by the date of Hungary's accession. The possibility of this kind of rapid progress is, however, very slim in the light of the divergent positions of member states.

Because of increased defense of external borders of the European Union, and the regulation of co-operation among the so-called Schengen States in the field of refugee affairs, many citizens of third countries are turned back, and those who were originally transit passengers now appear in Hungary as asylum seekers. No wonder the Hungarian budget is experiencing more and more difficulty identifying adequate financial resources for the implementation of refugee assistance especially when the support of UNHCR and other international organisations has been gradually reduced.

Since the end of the 1980s, Hungary has to an ever increasing extent, become a transit and destination country of illegal migration. Following the accession of Austria to EU and the enactment of the Schengen Agreement, the Austro-Hungarian border has become an external border of the European Union, and as a result, there is increasing pressure placed on Hungary in the field of illegal migration to meet the expectations of the European Union. However, it is worthy to note that an international forum called Budapest Group is already undertaking activities to combat illegal migration, and that the stricter border control now being implemented with support of the PHARE programme. With this in mind, the utilisation of the INTERREG programme of the European Union can also be examined.

The Schengen Agreement is both nominally and institutionally integrated into the framework of the European Union. For this reason, the so-called Schengen *acquis* must be entirely accepted by those seeking accession to the European Union in the near future.

In the field of refugee policy, special attention is also paid by the European Union to the issue of burden-sharing, first and foremost, with regard to its member states. Recent efforts, however, increase the prospect of obtaining EU support for burden-sharing in associate countries as well. Within the framework of mutually beneficial co-operation, the financing of joint technical or development projects, as well as the training of and exchange of information among experts are important goals.

The 1951 Geneva Convention and the New York Protocol of 1967 provide the international legal basis for the application of refugee policies among EU member states, the provisions of which are administered without any geographical reservation.

Notwithstanding the above, it was found in the EU as well that not all actual refugee matters can be handled by the provisions of the 1951 Geneva Convention alone and that there is an increasing number of individuals whose protection is justified on humanitarian grounds who, nonetheless, do not qualify as refugees.

To put it in a somewhat simplified manner we can state that the EU is currently trying to implement the provisions of the 1951 Geneva Convention and international agreements on refugee protection together with their own refugee policies which are of a decidedly defensive character. Under the accepted practice, an asylum seeker is not entitled to decide in which EU member state he will reside during the application procedure. He is allowed to do so only in the country he first enters EU territory and submits his application for asylum. On the other hand EU policies also try to ensure that all applications submitted be examined by one of the member states. This goal was

established by the Dublin Convention, signed in 1990 but ratified only recently, which delegates responsibility for the examination of asylum claims in one state to at least one other member state. It is difficult to enforce this practice throughout the EU because France, for example, reserves the right to provide asylum on humanitarian grounds even if the asylum seeker has been rejected by another member state. Spain, on the other hand, albeit lacking Community support at this time has proposed that the EU member states should under no circumstances provide asylum for citizens of other member states.

The refugee policy, legal, administrative and security issues relating to asylum cannot be separated from other problems of irregular migration, since a substantial number of asylum seekers arrive illegally. The danger of illegal migration is that it has close ties with international organised crime. It is well-known that the same organised criminal groups who handle trafficking of illegal migrants, drugs and weapons on major border crossings do so between countries and continents alike. A co-ordinated international strategy in combating illegal migration requires even closer co-operation between governments and international organisations.

The increase of social and economic disparities among countries, the number of conflicts originating from ethnic, religious or political differences and even increased travel opportunities, has made mass migration one of the most important challenges to national and economic security.

Within the framework of migratory movements, the reception of foreigners arriving in destination and transit countries, as well as the attitude of the host society are influenced by several factors: from cultural and historical traditions to the number and ethnic composition of the new arrivals, and enduring capacity of the host country to receive foreign nationals.

The execution of the defensive and restrictive EU refugee policy is facilitated by principles adopted in more and more countries on the basis of which applicant's claim may be rejected without actual consideration, at which point he may be shuffled off to another country. The use of a "safe third country" effects mostly the transit countries, such as Hungary, through which the claimant has already travelled or has stayed in for some time prior to submitting his claim to the EU member state.

Answers given to the so-called Third Pillar Questionnaire on co-operation in the field of domestic and judicial affairs by the Hungarian Government were accepted by the European Commission. No request for additional information was made at either the meetings of the Association Council or any other forums. Both in our answers to the Questionnaire and at expert negotiations we have enumerated our progress on the legal regulation of refugee affairs, taking into consideration the political and social development of recent years. At the same time, we also provided for the lifting of geographic reservation by the time of our EU membership. Special attention is given to this particular range of subjects by the Dutch Presidency of the EU which, in the first half of 1997, emphasised the importance refugee affairs. It can also be mentioned that the 5th European Conference on the Reception of Asylum seekers was held at the Hague in June 1997, at which time Hungary was invited to organise and host the forthcoming 6th Conference in Budapest, in 1999.

In order to accelerate our preparations for negotiations concerning accession to the EU, the Hungarian Government has introduced several measures. From among them, the

most notable is the continuous activity of working groups established by the Inter-Departmental Committee on European Integration whose purpose is to formulate directives and strategy of the negotiations. The Working Group (No. 22) of domestic and judicial affairs will have to prepare relevant documents by September 30, 1997. Naturally, this can only be done on the basis of the Treaty of the Union, and following a survey of harmonisation requirements of legal institution of the Third Pillar. From this point of view, it is significant, that on July 16, 1996, the European Commission issued a positive reply to the application of Hungary for accession to the European Union.

### **A BRIEF HISTORY OF REFUGEE POLICY IN HUNGARY**

The country's acceding to the 1951 Geneva Convention in 1989, first among countries of the region, was directly motivated by the swarms of refugees arriving from Romania.

The regulations pertaining to refugee affairs was established by Government Decree (No. 101 on September 28, 1989). The local organs of the Office for Refugee and Migration Affairs (ORMA) handle applications for asylum. The initial decision may be appealed. There is judicial review over the second instance decision. Since 1989 5,941 applications for asylum have been submitted; favourable decisions were passed in the case of 4,293 persons. Of those, currently 2,672 persons have recognised refugee status. This smaller number is due to the fact that recognised refugees are entitled to request naturalisation. Refugee status ceases to exist if citizenship is acquired. The termination of the refugee status was effected for the above reason in about 90 percent of the cases.

The Budapest Office of UNHCR deals with applications lodged by non-European asylum seekers. Between 1989 and 1996 2,698 applications were submitted to the Budapest Office. Of those 262 applications were considered well-founded. The legal status of "mandatory refugees" has been unsettled. The Alien Police issues them residence permit and they may take jobs or other entrepreneurial activity within generally established guidelines.<sup>51</sup> The cost of accommodation, care and subsistence for mandatory refugees are partly provided by the UNHCR. Since early 1997, the accommodation of non-European applicants has been provided by the Reception Centre in the town of Bicske, which is maintained by the ORMA. The costs incurred during the process are also covered by the UNHCR.

Due to the emergence of military conflict in the territory of the former Yugoslavia, the institution of refugee affairs in Hungary has been confronted by the greatest challenge ever since the summer of 1991. Between 1991–1995 more than 70,000 persons arrived in Hungary in successive waves from the Baranya triangle, Eastern Slavonia, Bosnia and, mainly to escape conscription, from Vojvodina. The overwhelming majority of those individuals sought only temporary protection from the Government for humanitarian reasons. Besides assistance provided by international organisations, the accommodation and maintenance of a large number of refugees were managed by municipalities and non-

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<sup>51</sup> According to general rules on employment of aliens they need a previously issued labour visa by the Hungarian Embassy in order to obtain a labour permit valid for one year. The regional labour authority can renew the permit if the alien's residence is lawful. (T. J.)

governmental organisations (such as the Hungarian Red Cross, Hungarian Inter Church Aid, the Hungarian Maltese Charity Service, Refugee Mission of the Reformed Church as well as other charity organisations). Under the current practice, temporarily protected persons are given an ID entitling them to receiving support. The cards are validated every four months, on the basis of which the Alien Police may issue them a short-term residence permit. The validity of the IDs was last extended in May 1997 when 4,083 persons were registered (1,223 Bosnians, 1,872 Croats and 988 Yugoslav citizens).

Based on the experiences to date it can be stated that about 1/4–1/3 of the temporary protected persons lived or are still living in reception centres, camps or shelters, whereas others found private accommodation. Within the given parameters, the ORMA is trying to provide education for refugee children in their mother tongue. Care and maintenance at the camps is complete and free of charge, whereas those living in private facilities are provided with weekly aid and health care from the municipalities. Temporary protected persons living in the camps may perform jobs within the camps premises without labour permit.

Following the signing of the Dayton Accords the Hungarian Government, similar to governments of other host countries, decided<sup>52</sup> that after January 15, 1996 it would no longer provide temporary protection for new arrivals from the territory of ex-Yugoslavia. However, the Government continues to ensure the protection of such persons until the conditions of their safe return to their homeland can be arranged. Furthermore, in consideration of the principle of family unity, the entry of spouses and minor children of temporarily protected persons is allowed.

After the peace accords, it has become a primary goal to encourage the voluntary and safe repatriation of temporarily protected persons. The Dayton Accords set December 31, 1997 as deadline for the repatriation of those driven from their homes. Regrettably, the repatriation of Bosnian citizens proceeds very sluggishly. Their return to the territory of the Bosnian Serb Republic, the homeland of most Bosnian temporary protected persons is almost impossible. Whereas return to the territory of the Bosnian Federation is possible only on condition that they have relatives there to accept them and prior permission of the local authorities. The situation is better in the areas of Croatia under UNTAES control, where local elections were held recently without disturbances, so there is sound hope that the return of Croatian citizens may be accelerated very soon.

It is also a favourable development that an amnesty law prohibiting the criminal charge of persons avoiding conscription was passed in June 1996 by the Parliament of the Yugoslav Federation. Thus the return of Yugoslav citizens, in the majority of cases, ethnic Hungarians, has become possible. Assisting this process is consistent with the declared mission of the Hungarian government, which supports the recognition of Hungarians across borders as citizens with equal rights living in their respective homelands.

In order to assist voluntary repatriation, ORMA has provided financial assistance from early 1996 for those wishing to return home permanently. From state budget, and through the participation of the Maltese Charity Service, each person is given travel provisions worth 1,000 HUF and a survival kit worth 7,000 HUF to help them at home. They also

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<sup>52</sup> It was published in a press-release, rather than in a formal cabinet decision. (T. J.)

receive one-time financial assistance in the amount of 7,000 HUF/adult and 3,500 HUF/minor. These sums are supplemented by equivalent sums from the UNHCR. Those intending to return home between May 1 and August 31, 1997 are given increased amounts of 14,000 HUF/adult and 7,000 HUF/minor by the ORMA.

There are a considerable number of people intending to settle in third countries because they consider repatriation to their country of origin a hopeless situation. The USA, Canada and Australia offered these immigrants organised resettlement programs between 1995–96. These programs were mainly designed for people either living in mixed marriages or for those who now found themselves as an ethnic minority in their original homeland. In 1996 346 Bosnian citizens were allowed to travel to the countries mentioned above. In the first half of 1997, another 110 persons were received.

### **PREPARATORY TASKS FOR THE ORMA**

It follows from the preparatory work relating to new asylum law and refugee policy that the following factors need to be considered:

#### **Lifting of the Geographical Reservation to 1951 Geneva Convention**

The number of asylum seekers in Hungary is certain to increase considerably upon lifting the limitation. At the same time, the legal status of the non-European mandatory refugees will be settled, and management of their affairs will be assumed by the Hungarian refugee authority alone.

The experiences of past years have made it obvious that in addition to recognised refugees on the basis of 1951 Geneva Convention, there is a considerably higher number of people who seek protection on humanitarian grounds, mainly under the 1950 European Convention on Human Rights. These persons can be divided in two categories.

*a) Temporary protected persons.* These persons are forced to leave their country of origin due to armed conflicts, civil war, or ethnic strife and they seek temporary protection in large numbers. Once there is a massive inflow of persons described above, the conditions of temporary protection, designation, their assistance as well as the duration of their protection must be determined by the Government.

*b) Accepted persons.* These are not refugees or temporarily protected persons, but aliens who may not be expelled or returned to their country of origin or some other country – even if the individual has a criminal background – because of subsequent persecution, torture, inhumane or degrading treatment. Proper legal instruments must be devised for this steadily increasing group of people. With regard to practical administration, they are similar to refugees, so relevant legal regulation and support should be extended within the scope of asylum regulations and the refugee care system. Only minimally necessary provisions should be afforded to these persons and their eligibility for protection needs to be regularly reviewed. Should conditions change, general Alien Police rules are to be applied.

Unlike the case of recognised refugees, the protection of the persons belonging of these two categories is only provisional and their integration into society may be of only secondary importance.

### **The Transformation of Asylum Proceedings**

To facilitate more effective and expedient proceedings, as well as the unified interpretation of provisions, it is necessary to establish one-time administrative proceedings and to ensure that legal remedies may be effectively applied in court.

In cases where the application is obviously unfounded, and abuse of asylum is evident asylum proceedings may be accelerated.

### **The Application of the Principle of “Safe Country of Origin” and “Safe Third Country”**

Under the principle of the “safe country of origin”, the asylum seeker is not recognised as a refugee if he is not faced with the possibility of persecution, torture, inhuman or degrading treatment in the country of origin, especially if fundamental human rights are consistent with international standards.

Under the principle of a “safe third country”, the asylum seeker may not decide in which country he will to submit his claim. Therefore, provided that the applicant has already spent some time in a third country where his protection or the possibility of applying for asylum was guaranteed, he may be turned back to that country without consideration of his claim.

The application of the above principle, similar to that in EU member countries, is justified in Hungary as well. It is an important procedural guarantee that any decision passed under both the above principles may be rebutted (i.e., the claimant is given the possibility to prove facts to the contrary), and thus, in broader terms, a clear distinction between “accelerated” and “ordinary” proceedings is established.

### **Temporarily Protected Persons Unable to Repatriate**

Temporarily protected persons, who for various reasons (sudden statelessness, the destruction of a former place of residence, etc.) may not return to their country of origin may need the possibility to integrate into Hungarian society. If the necessary conditions exist, such individuals may be offered the possibility of immigration or a permanent residence permit, together with assistance for finding employment and the provision of integration assistance programs (in reasonably justified cases their travel to third countries should be supported in co-operation with international organisations).

### **The Examination of the EU Norms**

The ORMA has embarked on the task of assembling EU regulations with regard to refugee affairs for their comparison with the currently enacted Hungarian laws. This was motivated by preparation for the asylum act. In formulating proposals for the updating and EU-standardisation of domestic affairs, ORMA has also taken into account certain structural-institutional schemes of EU member states.

Undoubtedly, there are differences in the national asylum regulations between the EU countries, but the community-wide political goals can be clearly recognised. The commonly applied laws provide strategic focus, but their regulations do not, in fact, cover all aspects of refugee policy. Even the EU does not yet have a comprehensive migration policy, though a common refugee strategy is currently under negotiation. Article K.1 of Title VI of the TEU specifies “areas of co-operation” and stipulates that further areas may later be added, and that under point 100(c) of the TEU in the First Pillar – certain areas (e.g., visa policy) have already become Community-wide.

### **Database on Countries of Origin and Safe Third Countries**

With a view to the lifting of geographical reservation ORMA has started establishing a database for more effective decision-making in the asylum process. This database includes information on the countries of origin of the refugees, which can, in turn, be used in administrative proceedings. The alien police can also use the database with special view to Par. (1) of Article 32 of the Alien Police Act.

The creation of a general database assumes the constant flow and maintenance of information of several government organs, such as the Ministry of Foreign Affairs, the National Security Office, the Information Office as well as the Hungarian Press Agency (MTI).

The establishment of the database on the countries of origin and transit countries of refugees will be critical to the repatriation of rejected asylum seekers and other irregular or regular migrants. The refoulement of this group of people is only acceptable in accordance with regulations of the Alien Police Act, as well as with international agreements to which Hungary is a signatory party. (1)32.§ of the Act regulates: “The foreigner shall not be turned or expelled to a country or moved into a territory where he would be exposed to persecution based on race, religion, national or social membership or political views. Nor may he be sent to a country or territory where he, as a returned or expelled person, would be exposed to torture, inhumane treatment or degradation.” The existence of such conditions is examined by ORMA upon the request of the alien police.

In cases when the refoulement or expulsion would violate the provisions referred to above, a refugee reception centre may also be assigned as temporary residence.

It should not be disregarded however, that this procedure may be applied only after the alien has committed an act of crime for which he is subject to expulsion or refoulement. The Alien Police Act’s scope of authority does not cover asylum seekers until refugee authorities have duly considered a claim. The already mentioned non-European asylum seekers, who almost always arrive illegally in Hungary, often in the

form of trafficking by organised crime, are accommodated at the Reception Centre (in Bicske) following the submission of their claims. For most of them, Hungary is not a destination but an involuntarily chosen transit country. This view is supported by the fact that of the 1,200 claimants accommodated in Bicske in 1997 about 1,000 persons left the country illegally, many of them before even UNHCR officials had a chance to consider their applications.

The submission of application for asylum does not provide exemption from legal proceedings relating to a committed crime. (1).31.§ of the 1951 Geneva Convention provides that the only persons entering a country illegally who shall not be punished<sup>53</sup> for illegal entry or stay are those who have arrived directly from a territory where their lives and freedom were endangered for the reasons described above, provided that they report immediately to authorities and provide reasonable explanation for their entry.

### **Media, Public Opinion**

Media portrayal and opinion polls show that the issue of refugee and criminals are very often confused. We have found on several occasions that foreigners entering or staying in the country illegally are often regarded as refugees, irrespective of their actual legal status, and that community centres accommodating aliens against whom police measures are being actively implemented are often regarded as refugee camps. Worries of ORMA concerning the use of incorrect perception of the public are not merely of a matter of principle.

The spread of erroneous information may lead to a situation in which the public, which has proven willing to help in past occasions, will not be able to distinguish between claimants really needing help and the participants and beneficiaries of unwanted and illegal migration.

The effective fight against illegal migration and trafficking of human beings, often in the form of organised crime, requires implementation of stringent and defensive alien police measures. Refugee affairs, on the other hand, should be free of discrimination and its activities should be based on humanitarian principles of assistance. This is in contradiction to the fact that host countries sometimes must apply restrictive measures due to financial limitations.

A communication strategy designed to inform the public about the consequences of the country's EU accession should also be formulated. Special attention should be paid to publicising the long-term consequences of population shifts due to various factors, as well as to migration generated by social, political and economic reasons unrelated to our EU accession. It is the aim to provide protection, in co-operation with other European host countries, for those in need and at the same time, curb the unwanted consequences of illegal migration. A fair sharing of this burden by the states will become more possible being a member state in the EU.

### **Non-Discrimination Principle**

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<sup>53</sup> The punishment (e.g., fines or arrest) is differing from refoulement. (T. J.)

The 1951 Geneva Convention on the status of refugees explicitly prohibits any form of discrimination. In this regard, ORMA receives criticism from two sides. On the one hand, they are criticised for the large number of persons of Hungarian descent who have attained recognised refugee status.<sup>54</sup> On the other hand, they demand more positive discrimination in favour of ethnic Hungarians from neighbouring countries. A careful look at the nationality statistics of the asylum seekers and recognised refugees confirms that the proportion of the ethnic Hungarian claimants is considerably high. This is mainly because, among of the asylum seekers, it is still the Hungarians that, for cultural reasons, regard Hungary as being their destination country.

Under such conditions, refugee regulations and practice should meet two-fold requirements. They must ensure protection – in keeping with Hungarian humanitarian traditions and assumed international obligations – for all asylum seekers genuinely in need of protection. ORMA must also prevent any abusive asylum practice. A restrictive asylum policy necessarily leads to the suppression of certain aspects of human rights which will, in turn, lead to an increase in criticisms.

The legal status of foreigners who, although they do not qualify as refugees under the 1951 Geneva Convention, but are nonetheless in need as defined by international agreements, must be regulated. The bill on asylum was prepared in consideration of this fact.

### **Organisational System**

It is a matter of legislative procedure to wholly revise the separate systems of asylum and alien policing which, at the current time, suffer from disunity in the authoritative-administrative area. The member states in EU are also making efforts to handle these matters (refugee affairs, immigration) by federal legislation and the establishment of federal institutions.

In the field of asylum policy it is justified to grant, as in all mature democracies, a larger role to non-governmental and civil organisations. The co-ordination effects of refugees assistance and accommodation may facilitate social integration on the one hand and the protection of refugee interests on the other. However, proper state control should be exercised to ensure the transparency and accountability of NGO's further actions.

### **Burden Sharing**

As mentioned above, the matter of burden sharing must be given special attention and thus, financial assistance from the EU and other states should be actively sought. In this regard, ORMA can refer to the common interests of the CCEE countries, whereas in other cases, Hungary find itself in uniquely competitive position.

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<sup>54</sup> See the work of M. Fullerton in the volume.

## *CONCLUSION*

Taking all this into consideration, Hungary must strive as a potential member state of the European Union, to approximate its regulation and practice of asylum law and migration to that of the Union, and create conditions for refugees which are consistent with the principles of human rights, but at the same time, which are not in contradiction to our national interest. It is not easy to meet such expectations in the short term. We should, however, endeavour to maximise the means and possibilities at our disposal with the help of international co-operation. On the other hand, in order to extend satisfactory legal security full board and health provision to persons referred to by new legislation, it is necessary to take more severe measures against trafficking of illegal immigrants related international organised crime.

Also, the co-ordination of laws governing more general aspects of migration (such as rules on visa, residence permits, immigration, citizenship, employment and marriage) is an equally significant part of international co-operation.

However, if Hungary wants to provide proper security, protection and care for the circle of persons covered by regulations governing asylum within its borders, even more effective measures are necessary to combat the undesired phenomena of illegal migration.

Boldizsár Nagy

## **The *Acquis* of the European Union Concerning Refugees and the Law in the Associated States<sup>55</sup>**

My task in this paper – surveying the law concerning asylum seekers and refugees in the European Union (EU) states and in the states associated with the EU – is a difficult one based on the number of states alone. If the EU states and the associated countries are taken as two groups within which each member can be compared with each other, and to this we add comparisons of each member of one group with each of the other group, then 300 (105 + 45 + 150) pairs of comparisons are available. Examining each pair concerning a modest agenda of 12 items we have 3,600 entries, each of which could be divided into an unlimited number of sub-entries, either by separating time frames,<sup>56</sup> or further dividing complex items such as “access to procedure”.<sup>57</sup> And all this concerns only the written law, yet we know that practice may be – and frequently is – a far cry from the expectation reflected in the rules.

Simplifying the two groups into one object and one actor such as “the rules in the EU” and “the refugee law of the associated states” has the attraction of promising a manageable number of parameters by which to identify gaps between the two sets. However, this approach provides simply no help because EU refugee law does not exist nor is there one refugee law in the many different social and legal structures that exist in the region stretching between the Black Sea and the Baltic Sea.

The options left to me, therefore, were limited. I could identify crucial issues deserving attention because a relatively large number of countries have adopted a certain type of behaviour. Alternatively, I could select issues based on their trend – setting character or based on their remarkable resistance to generally accepted trends. I have chosen the qualitative rather than the quantitative approach.

Due to the severe limitations on this paper I will concentrate on the core law. I will only skim “challenges to the associated states” concerning asylum and migration con-

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<sup>55</sup> Paper prepared for the 3rd Symposium on the International Protection of Refugees in Central Europe, Budapest, 23–25 April 1997. Accordingly it cannot take note of subsequent events, like the adoption of the Amsterdam Treaty or the entry into force of the Dublin Convention.

<sup>56</sup> It would be possible to identify trends (“development”) unfolding in time, both concerning the scale of movements and the numbers of persons affected by certain types of decisions, and concerning the continuous redrafting of the legal landscape.

<sup>57</sup> Important components concerning access to the procedure include the following topics: which are the competent authorities, are there guarantees that an application will reach the competent forum, do deadlines or formal requirements limit the possibility to apply for status, what are the specialities to be considered in case of an application submitted at the border, including airports, and so on.

trol, and will not discuss at all temporary protection or steps taken after the asylum procedure.

In my view the ten associated states have two paramount tasks. First, they must harmonise their legislation and administrative practice with the *acquis* of the European Union, with a view to acceding to the Union and carrying out the responsibilities under the Third Pillar. Second, they must not reproduce the failures of member states of the Union. They have to avoid the adoption of laws and practices which are inconsistent with applicable refugee law and human rights standards.

### I. The European Union *acquis* on asylum

Associated states will have to conform to the EU *acquis* when joining the Union. Although it is premature to assess what precisely will constitute the *acquis* at the moment of entry in the first decade of 2000, it is necessary to take stock of the present *acquis* concerning forced migration.

The *acquis* of the European Union is understood as the sum of those norms which govern member states' action in matters within the competence of the Union and which must be accepted by adhering states. These rules cannot be disassociated from the achievement of the objectives of the EU relating to asylum. Such rules may be derived from binding or non-binding sources from within or outside the Union. Thereby, a four box matrix results (*Table 1*). With regard to binding instruments, there is a subset of instruments which do not establish enforceable legal obligations at the moment, either because they have not entered into force yet, or because their binding force has not extended to some member states of the Union. They notably include the Dublin Convention<sup>58</sup> and the Schengen Agreement and its implementing Convention.<sup>59</sup> Nevertheless, associated states should consider the impact of these instruments and anticipate them to have full legal force by the time they join the system, unless there are strong indications that those treaties and other documents will be abandoned without reaching full legal life.

*Table 1*

**Simple matrix of the EU *acquis***

	Binding	Non-binding
Union	1	2
Inter-governmental	3	4

<sup>58</sup> *International Journal of Refugee Law*, 1990/3, at p. 469. Also: CIREA 3 4464/1/95 REV 1.

<sup>59</sup> Schengen Agreement on the Gradual Abolition of Controls at the Common Frontiers of June 14, 1985 and Convention Applying the Schengen Agreement of June 14, 1985 signed on the June 19, 1990, ILM, Vol. 30, 1991, p. 68.

There is no authoritative statement issued by the European Union which would unequivocally state what does and what does not belong to the *acquis*.<sup>60</sup> Accordingly, it is necessary to examine each of the individual relevant instruments.

### **1. Binding Rules of the European Union, Including the European Community**

Asylum policy was not a matter within the jurisdiction of the European Communities. Title VI, that is Article K of the Treaty on European Union<sup>61</sup> (TEU or the Maastricht Treaty) has set the framework for the inclusion of forced migration into the Union's competence. Article K.1 identified asylum issues, the crossing of the external borders and legal and illegal immigration of third country nationals as matters of common interest, and other sections of Article K determined the tools and procedures of the Union which were to embody the Union's activity in these fields. According to Article K.3, the Council is entitled to adopt joint positions, take joint actions and draw up Conventions to be recommended to the Member States for adoption. Article K is binding, as are Conventions drawn up within the justice and home affairs co-operation, after the appropriate domestic procedure for expressing the states' consent has been completed, and the required number of parties achieved. The legal force of joint positions and actions is less clear, however.<sup>62</sup> Although they must be adopted unanimously by the Council, they neither have the direct effect of a Regulation, nor the binding force of a Directive adopted under the Rome Treaty. Therefore, the joint positions and actions are dealt with under the "non-binding" classification.

The organisational structure set up by the TEU and developed in its implementation certainly belongs to the *acquis*.<sup>63</sup> The over-complicated nature of the system has been widely criticised.<sup>64</sup> Nevertheless, it is part of the present system, and the associated states will have to adjust to the Co-ordinating Committee set up by Article K.4 and the working groups thereunder. Equally, the present rules of unanimous decision-making in the Council – except for measures implementing Conventions adopted under Article K.3. – are set and may only be replaced by majority decisions if the matter is transferred to Community competence.

The *acquis* of the Union also incorporates rules of the amended Rome Treaty on the European Community. Article 100c on the common visa policy, appearing in the chapter on approximation of laws, has great significance in guiding asylum seeker flows and determining the state responsible for determining the refugee status of the asylum seeker.

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<sup>60</sup> A. J. Langdon in his report entitled "Justice and Home Affairs Co-operation with Associated Countries" (Phare Programme, Services contract 95-0683.01, October 1995) has remarked: "it would probably be helpful if at some stage along the pre-accession route there could be a more authoritative statement about those justice and home affairs matters that are regarded as being part of the formal *acquis* and those that are being pursued with the central and eastern European Countries simply in their character as friendly neighbours." (paragraph II. 5).

<sup>61</sup> Signed on February 7, 1992, O. J. C. 191, June 29, 1992, entered into force on November 1, 1993

<sup>62</sup> O'KEEFE, DAVID: Recasting the Third Pillar, *Common Market Law Review*, Vol. 32, 1995, 4, p. 914, Commission of the European Communities: Report on the operation of the Treaty on European Union, Brussels, 10. 05.1995 SEC(95) 731 final, paragraph 121, p. 48.

<sup>63</sup> For a brief and instructive description see *UNHCR and its Partners in Europe* UNHCR, Geneva, 1995, especially pp. 6-8 and 31.

<sup>64</sup> Commission of the European Communities: Report on the operation of the Treaty on European Union, Brussels, 10. 05.1995 SEC(95) 731 final, paragraph 124, pp. 50-51.

It also has a bearing on the crossing of the external frontiers of the Union in general and the related issue of illegal migration.

The Council has adopted Regulation 2317/95<sup>65</sup> implementing Article 100c by determining the countries whose nationals are required to possess a visa in order to cross the external frontier of the Community. If associated states become members of the Union, they will have to follow that visa list, which will require a thorough revision of their visa policies. Although this may not appear to have a direct bearing on asylum issues, it is beyond doubt that the introduction of visa requirement acts as a deterrent. The UNHCR has taken the position that “it would be desirable for states not to impose [visa requirements] where considerable human rights violations occur (Bosnia-Herzegovina, for example).”<sup>66</sup> A visa requirement either induces the asylum seeker to choose another route, or forces her to cross the border illegally. This in turn, leads to a preference for land routes as opposed to fleeing by air, with the consequence that the number of asylum seekers at the outer flanks of the Union increases and those arriving by air to the inner countries drops.

Before turning to the non-binding instruments adopted in the EU, it must be noted that radical changes concerning asylum matters may occur long before associated states become members. The Intergovernmental Conference now working on the revision of the treaties constituting the Union and the Communities is considering a suggestion to move asylum and immigration matters from Title VI of the TEU to a new title within the Treaty on the European Community. As proposed by the Dutch Presidency, Article C of the new title would entitle the Council of the Community, acting on a proposal from the Commission and after consulting the European Parliament, to adopt measures such as determining the state responsible for considering an asylum application submitted by a third country national, setting minimum standards on the reception of asylum seekers, establishing common rules with respect to the qualification of third country nationals as refugees and developing minimum standards on procedures for granting or withdrawing refugee status.<sup>67</sup> The suggested text also envisages common measures on temporary protection and the nucleus of a burden sharing mechanism.

## **2. NON-BINDING INSTRUMENTS ADOPTED IN THE EUROPEAN UNION**

Council Resolution on minimum guarantees for asylum procedures,  
adopted on 20 June 1995<sup>68</sup>

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<sup>65</sup> O. J. L 234/1, October 3, 1995.

<sup>66</sup> An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR, UNHCR Regional Bureau for Europe, European Series, Vol. 1, No. 3, p. 41.

<sup>67</sup> IGC, CONF/2500/96 ADD. 1 Brussels, March 20, 1997, p. 18.

<sup>68</sup> O. J. C 274, September 19, 1996, p. 13.

Of the non-binding instruments adopted within the European Union, this Council Resolution setting forth minimum guarantees for asylum procedures may have the greatest bearing on the associated states. Although much of the Resolution merely reiterates requirements clearly formulated by UNHCR Executive Committee conclusions (e.g., Conclusion No. 8 [XXVIII] of 1977 and No. 30 [XXXIV] of 1983), its comprehensive nature and recent adoption, coupled with the fact that it forms part of the *acquis*, will secure the Resolution a prominent role in assessing the associated states' refugee law.

The 32 paragraph Resolution deals with the principles concerning fair and effective asylum procedures, with the guarantees concerning the examination of asylum applications and, in its longest section, with the minimum rights of asylum seekers during first instance, appeal and review procedures, including accelerated procedures.

The rules contained in the Resolution can be considered as part of the EU *acquis*, although not without qualifications. The statements of the delegations of Austria, Belgium, Denmark, Ireland, Sweden and the United Kingdom, mostly dealing with paragraphs 8 and 17 concerning the right to have recourse to an independent, fully qualified objective and impartial authority and the general principle that the applicant should be allowed to remain on the territory of the decision-making state until the appeal has been decided, effectively limit the reach of portions of the Resolution.

Nonetheless, associated states will have to devote specific attention to the following matters.

- Common procedural guarantees

The Resolution requires that states adopt similar procedural guarantees for asylum seekers. For the effective implementation of an international instrument, such as the Dublin Convention or any other treaty which may be concluded with the associated states determining the state responsible for examining applications for asylum lodged in one of the state parties there must be “decisions on asylum applications ... taken on the basis of equivalent procedures” in all State parties and “common procedural guarantees ... adopted for asylum seekers ...”<sup>69</sup>

- Non-refoulement and Geneva Convention obligations

Minimum requirements of fair and effective procedures imply the adoption of the following principles:

- Full compliance with the 1951 Geneva Convention and the 1967 Protocol and other obligations granting human rights.

- Effective application of the *non-refoulement* principle, which precludes deportation *before* a (final) decision on the asylum application. In this context the right to appeal from abroad after removal fails to satisfy the *non-refoulement* requirement.

- Observance of Article 35 of the Geneva Convention, which grants UNHCR the rights to supervise the application of the Convention. Co-operation with UNHCR is deemed a universal principle from which no state may derogate.

- Guarantees concerning the examination of asylum applications

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<sup>69</sup> Preamble to the Resolution on Minimum Guarantees for Asylum Procedures.

– Access to procedure, essential features of the status granted and identification of competent authorities must be determined by legislation.

– A fully qualified authority should decide on each case objectively and impartially. The authority must have personnel with specialised knowledge in asylum matters, an understanding of the applicant’s situation, including his culture and medical (psychological) needs, and access to up-to-date information from various sources concerning the country of origin.

– The authority cannot restrict itself to considering the facts presented by the applicant, but must seek to establish those facts itself.

– Authorities whom the applicant contacts first, whether at the border or inland, must receive clear and detailed instructions on forwarding the applicant or her request to the competent authority.

– A right to appeal to an independent court or review authority must exist.

- Rights of asylum seekers during the procedure

– They must have an effective opportunity to lodge an application and – as a general rule – to remain in the territory of the state until the final decision.

– During the procedure a personal interview by a qualified official must take place with the assistance of an interpreter paid from public funds.

– Data revealed in the procedure must be adequately protected, particularly from the authorities of the country of origin.

– The UNHCR, legal advisers and refugee organisations must have the right to participate.

– The authorities must deliver written, reasoned decisions, giving an adequate period of time for the asylum seeker to prepare her appeal.

– In case the application does not entail the right to remain in the territory, the applicant should at least be able to apply to the review body (court or otherwise) for an exceptional leave to remain and not be expelled until a decision on this request is taken.

- Specific rules for manifestly unfounded applications

– The procedural guarantees of this Resolution extend to cases which are considered manifestly unfounded according to the Resolution adopted by the Immigration Ministers on November 30 and December 1, 1992. However, derogation is allowed in certain cases where the application is abusive or deceptive, or the applicant is a national of another member state, or the host third country principle can be invoked.

– Formal appeal and review can be replaced by the confirmation of the rejection by an independent body, distinct from the examining authority.

– In exceptional cases the applicant can be excluded from the right to stay during the appeal period. This applies if the application is based on deliberate deception or abuses the asylum procedure, and in cases when the host third country concept applies. In cases of refusal based on the host third country concept, the authorities of the third country “must, where necessary, be informed that the asylum application was not examined as to substance”.<sup>70</sup>

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<sup>70</sup> Resolution on Minimum Guarantees for Asylum Procedures O. J. C 274, September 19, 1996, paragraph 22.

- Applications at the border

- In cases of manifestly unfounded applications, admission may be refused, but the applicant may not be returned or expelled until the final decision on refusal of admission is taken by a ministry or comparable central authority.

The Resolution contains many other provisions, including those concerning specific attention to unaccompanied minors and women. The Resolution also states that recognised refugees “should in principle be granted the right of residence.”<sup>71</sup> It deserves to be noted that the Resolution does not identify which should be the competent authorities implementing the minimum guarantees. All the details of the procedure, including deadlines, were left to be national legislation. Member States were expected “to bring their national legislation into line with these principles”<sup>72</sup> by January 1, 1996. As the requirements constitute *the minimum*, member states, present and future, are encouraged to maintain or enact national rules which are more favourable for refugees.

#### Documents concerning admission and residence of displaced persons on a temporary basis

The Council has adopted a resolution on burden sharing<sup>73</sup> and a decision on an alert and emergency procedure with regard to the temporary protection of displaced persons.<sup>74</sup> The concept of temporary protection and its implications for refugee status based on the 1951 Geneva Convention are beyond the limit of this study. However, the idea of burden-sharing according to prearranged agreements that supersede ad hoc arrangements and involve access to the territory of member states not directly affected by large-scale involuntary movement certainly requires the attention of the associated states. It will be briefly discussed in the next chapter.

#### Joint Position defined by the Council on the basis of Article K.3. of the Treaty on European Union on the harmonised application of the definition of the term “refugee” in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees<sup>75</sup>

The implementation of a harmonised system of asylum and the equivalence of national decisions can only be achieved if the term “refugee” has the same, or at least a

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<sup>71</sup> Resolution on Minimum Guarantees for Asylum Procedures O. J. C 274, September 19, 1996, paragraph 29.

<sup>72</sup> Resolution on Minimum Guarantees for Asylum Procedures O. J. C 274, September 19, 1996, paragraph 31.

<sup>73</sup> Council resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, September 25, 1995, O. J. C 262 October 7, 1995, p. 1.

<sup>74</sup> Council decision on alert and emergency procedure with regard to the admission and residence of displaced persons on a temporary basis March 4, 1996, O. J. L. 63, March 13, 1996

<sup>75</sup> Adopted on March 4, 1996. O. J. L 63 March 13, 1996, p. 10.

similar, meaning in the national determination procedures. A Resolution, adopted after long years of discussions, sets out guidelines for the application of criteria for recognition and admission as a refugee. These guidelines “shall not bind the legislative authorities or affect decisions of the judicial authorities of the Member States”<sup>76</sup> but the Member States are “requested” to consider these guidelines as a foundation. Most of the guidelines confirm interpretations of Article 1 of the Geneva Convention as developed by the UNHCR Handbook and contemporary practice, but several provisions triggered severe criticism. The treatment of civil war and internal or generalised conflict as not warranting the grant of refugee status<sup>77</sup> and the view that persecution by non-state actors should not lead to recognition of refugee status under the Convention<sup>78</sup> are more restrictive than the practice of several Member States.

### **3. BINDING DOCUMENTS ADOPTED AT THE INTER-GOVERNMENTAL LEVEL, INCLUDING THOSE WHICH HAVE NOT YET ENTERED INTO FORCE**

#### Basic refugee and human rights treaties

The *acquis* of the EU in asylum issues undoubtedly incorporates the 1951 Geneva Convention relating to the Status of Refugees and its 1967 New York Protocol.<sup>79</sup> The fact that Italy maintained its geographic limitation excluding persons fearing persecution by non-European events until March 1, 1990<sup>80</sup> is an indication that membership in the Community – if not in the Union – was compatible with a geographic reservation. Of course, Italy was one of the founding members of the Community and, as such, did not have to adhere to an *acquis*. The TEU itself does not prohibit the geographic reservation when it orders that matters of common interest in Article K.1., such as asylum policy and crossing the external borders “shall be dealt with in compliance with” the 1951 Geneva Convention. Nor do later instruments of the Council<sup>81</sup> explicitly ban such a limitation. However, it must be assumed that this silence merely reflects the reality that at the time of adoption of these documents none of the EC Member States still maintained a geographic reservation.<sup>82</sup> In light of the 1967 Protocol, which clearly prohibits a

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<sup>76</sup> Third paragraph of the “preamble”.

<sup>77</sup> Article 6.

<sup>78</sup> Article 5.2

<sup>79</sup> The Convention entered into force on April 22, 1954 (189 UNTS 150), the Protocol on October 4, 1967 (606 UNTS 267); both are reproduced among others in UNHCR: Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons, Geneva, 1995 Vol. I, pp. 10 and 39.

<sup>80</sup> Multilateral Treaties Deposited with the Secretary General, Status as of December 31, 1994, UN, New York, 1995, p. 219.

<sup>81</sup> The 1995 Resolution on minimum guarantees for asylum procedures and the 1996 Joint Position on the harmonised application of the definition.

<sup>82</sup> France and Luxembourg withdrew it in 1972 after fourteen years of EC membership, Portugal in 1976 before its accession.

geographic reservation unless it accompanied the 1951 Convention before the entry into force of the Protocol, Hungary – the only associated state maintaining the reservation – must assume that the *acquis* includes the 1951 Convention as applicable to asylum seekers from around the world.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>83</sup> – but not necessarily its substantive protocols – also enjoys priority over decisions adopted under the Justice and Home Affairs Co-operation. Article K.2 and also Article F paragraph 2 of the TEU confirm this priority. The interrelation between the ECHR and the EU *acquis* is still unclear. A precise and authoritative delimitation of the EU *acquis* in the asylum field must address following questions.

- To what extent can one exclude the Protocols of the ECHR from the *acquis*?<sup>84</sup>
- Do the growing number of Strasbourg decisions (by the Commission and Court) interpreting rules of the ECHR constitute a body of law which cannot be disassociated from archiving the objectives of the EU? In particular, decisions relating to Article 3 on torture, inhuman or degrading treatment and punishment, Article 5 1 (f) on detention in connection with illegal entry or deportation/extradition, Article 8 on family life, and Article 13 on effective remedy must be considered as they relate to migrants and the removal of individuals from the territory.
- Aren't there other treaties safeguarding basic human rights and the dignity of the person, including the equality of women and men, which have also been ratified by (all) member states of the EU and have been interpreted by important individual decisions that make concrete the abstract legal commitments? The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>85</sup> the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>86</sup> and the Convention on the Rights of the Child<sup>87</sup> should be examined in this regard.

#### The Dublin Convention determining the state responsible for examining applications for asylum

The Dublin Convention “aims to avoid multiple applications for asylum lodged in the territory of the EU Member States whilst at the same time guaranteeing that an asylum

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<sup>83</sup> Rome, November 4, 1950, entered into force on September 3, 1953 (213 UNTS 222).

<sup>84</sup> In the *Bosphorus* case the Advocate General after reference to Article F(2) of the TEU according to which the Union will respect fundamental rights as guaranteed by the ECHR relied on Article 1 of the *First Protocol* securing the peaceful enjoyment of possessions and stated that “although the [ECHR] may not be formally binding upon the Community, nevertheless for practical purposes the Convention can be regarded as part of Community law and can be invoked as such both in this Court and in national courts where Community law is in issue.” Quoted in *Interights Bulletin*, Vol. 10, No. 2, 1996, p. 60.

<sup>85</sup> Adopted in the UN General Assembly on 10 December 1984, (GA Res. 39/46) entered into force on June 26, 1987, reproduced, e.g., in *Human Rights, A Compilation of International Instruments*, UN, New York, 1988, p. 212.

<sup>86</sup> Adopted in the UN General Assembly on December 18, 1979 (GA Res 34/80), entered into force on September 3, 1981, 1249 UNTS 13.

<sup>87</sup> Adopted on November 20, as GA Res. 44/25, entered into force on September 2, 1990, 28 ILM, 1989, p. 1448.

request will be examined by one of the Member States”.<sup>88</sup> It was signed by the twelve member states of the Community on June 15, 1990.<sup>89</sup> It entered into force on September 1, 1997.

Since the Dublin Convention is only open to member states of the Community its importance for the associated states before their accession derives from the instrument’s provisions concerning its connections with non-member states. According to Article 3, paragraph 5:

“Any member State shall retain the right pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.”

This is an unequivocal license to utilise readmission agreements concluded by EU member states with the associated states. It allows member states to thwart the underlying premise of the Dublin Convention that at least one of the EU member states will examine the asylum seeker’s application. Instead, this provision permits members to return the applicant forcefully to a non-EU country. As a consequence, persons who could not be sent back from a given member state in the absence of a direct bilateral agreement, can, with the mediation of the Dublin Convention (and the responsible member state), land in a country outside the EU as a result of two consecutive removals.

The same result may also be achieved by a parallel convention, basically reproducing the Convention’s criteria for determining the state responsible for examining the application, but open to non-EC member states. There are reports that such a convention has already been drafted.<sup>90</sup>

#### **4. NON-BINDING INSTRUMENTS ADOPTED IN INTER-GOVERNMENTAL CO-OPERATION**

Member states were actively co-operating in justice and home affairs even before the TEU made some of those issues a matter of common interest. Therefore, the *acquis* extends to decisions reached at the purely intergovernmental level. Their status is unclear because they emerged as non-binding instruments that resulted from purely intergovernmental negotiations without the control of the Community organs. Nonetheless, they appear significant in the light of the fact that decisions properly arrived at under the TEU refer back to them.<sup>91</sup>

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<sup>88</sup> *UNHCR and its Partners in Europe* UNHCR, Geneva, 1995, p. 33.

<sup>89</sup> For its text see *International Journal of Refugee Law*, Vol. 2, No. 3, 1990, p. 469.

<sup>90</sup> *UNHCR and its Partners in Europe* UNHCR, Geneva, 1995, p. 33.

<sup>91</sup> E.g. The Resolution on the minimum guarantees in the procedure builds on the concept of manifestly unfounded asylum application as elaborated in the pre-TEU period.

Decision to establish a Centre for Information,  
Discussion and Exchange on Asylum (CIREA)<sup>92</sup>

CIREA is a clearing house of information and policy analysis. Following logically from the tasks of the Dublin Convention,<sup>93</sup> CIREA gathers, exchanges and disseminates information and compiles documentation on matters related to asylum. CIREA is an informal structure that involves the participation of the Commission. Associated states, which might wish to establish closer links with CIREA, might experience difficulties. It is neither a Community body nor an intergovernmental organisation with clear rules on accession.

Resolution on manifestly unfounded applications for asylum<sup>94</sup>

This Resolution defines a manifestly unfounded application as a request which can be handled in a speedy manner in an accelerated procedure which “need not include full examination at every level of the procedure”<sup>95</sup> and should lead to an initial decision within a month.

Three types of applications fall into this category:

- Claims without substance as to the fear of persecution.

These include cases in which no Convention grounds are raised, or the applicant lacks credibility or gives no personal details on the substance of the claim. The availability of an internal flight alternative or the fact that the applicant is coming from a country where “there is in general terms no serious risk of persecution”<sup>96</sup> may also lead to the conclusion that the claim lacks substance.

- Deliberate deception or abuse of procedures

Seven subsections identify actions which amount to deceit or abuse, including maintaining a false identity, deliberately making false representations, destroying travel documents, destroying tickets, remaining silent about earlier applications for refugee status, submitting an application merely to forestall an impending expulsion measure, and flagrant violation of procedural rules.

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<sup>92</sup> Reproduced in CIREA 3 4464/1/95 REV 1 as II. H.

<sup>93</sup> JOLY, DANÉLE: The Porous Dam; European Harmonisation on Asylum in the Nineties, *International Journal of Refugee Law*, Vol. 6, No. 2, 1994, p. 173.

<sup>94</sup> Adopted at the London meeting of Ministers responsible for Immigration, November 30 and December 1, 1992. Reproduced in UNHCR: Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons, Vol. II, Regional Instruments, Geneva, 1995, p. 455. See also A Guide to Asylum Law and Practice in the European Union, compiled by G. Care, ILPA, London, 1995, p. 1.

<sup>95</sup> Resolution on manifestly unfounded applications, paragraph 2.

<sup>96</sup> Resolution on manifestly unfounded applications, paragraph 8.

Although practices justify accelerated procedure, under the Resolution, they do not in themselves “outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention”.<sup>97</sup>

- Cases falling within the provisions of the Resolution on host third countries.

#### Resolution on a harmonised approach to questions of host third countries

This Resolution<sup>98</sup> on a harmonised approach to the concept of host third countries was adopted at the London meeting of Ministers responsible for Immigration on November 30 and December 1, 1992. It defines host third countries as countries of transit or potential destination where the applicant’s life and freedom are not threatened within the meaning of Article 33 of the Geneva Convention, the applicant is not exposed to torture or inhuman or degrading treatment and the applicant is effectively protected against refoulement. Whether she had actual protection, or any contact with the authorities, is immaterial. The mere opportunity to contact the authorities, e.g., at the border, qualifies a country as host third (safe) country.

The Resolution establishes an exception from the duty to examine each case on its merits. Applicants can be sent back to the host third country “irrespective of whether or not they may be regarded as refugees.”<sup>99</sup> In relation to the Dublin Convention, the resolution gives priority to sending the applicant back to a non-member state. However, if the first state does not return the applicant to the host third state, but transfers her to another state responsible for the examination of the application under the Dublin Convention, the latter may not decline this responsibility unless it can itself send the applicant to a host third country. Naturally, every state retains its right not to make use of these possibilities but to decide on the refugee status in its own substantive procedure.

The Immigration Ministers “agreed to seek to ensure that their national laws are adapted, if need be, to incorporate the principles of this resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention.”<sup>100</sup>

#### Conclusions on countries in which there is generally no serious risk of persecution<sup>101</sup>

Paragraph 8 of the Resolution on manifestly unfounded applications indicates that a general but rebuttable presumption about the safety of a country of origin may be

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<sup>97</sup> Resolution on manifestly unfounded applications, paragraph 10.

<sup>98</sup> Reproduced in UNHCR: Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons Vol. II, Regional Instruments, Geneva, 1995, p. 459. See also A Guide to Asylum Law and Practice in the European Union, compiled by G. Care, ILPA, London, 1995, p. 5.

<sup>99</sup> Resolution on host third countries, paragraph 1. (a)

<sup>100</sup> Resolution on host third countries, paragraph 4.

<sup>101</sup> Reproduced in UNHCR: Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons Volume II, Regional Instruments, Geneva, 1995, p. 461. See also A Guide to Asylum Law and Practice in the European Union, compiled by G. Care, ILPA, London, 1995, p. 8.

adopted by Member States. A country can be presumed safe if it can be clearly shown in an objective and verifiable way that it normally does not generate refugees because in general terms no serious risk of persecution exists there. These conclusions identify four basic elements which render a country safe:

- Observance of human rights, in terms of treaty obligations and domestic legislation and – which is “clearly more important”<sup>102</sup> – practice in conformity with the obligations. Mere adherence to human rights instruments does not result in a country being considered safe.
- Democratic institutions, such as elections, political pluralism, freedom of thought and expression, augmented by available and effective legal protection and redress.
- Low recognition rate among applicants coming from the state where generally there is no persecution.
- Lack of foreseeable dramatic change (e.g., a violent coup) in the immediate future.

Member States undertake to exchange information derived from a wide range of sources, including UNHCR, NGOs and the press. It must be stressed that applicants coming from a safe country of origin, face only a rebuttable presumption that they do not fear persecution. They have the right to an individualised – even if accelerated – determination procedure.

## **5. THE *ACQUIS* AS A YARDSTICK**

The preceding list of the most important rules constituting the *acquis* is an attempt to summarise them in a compressed form without distorting their meaning. Certainly, the presentation is selective: it concentrates on those features which pose the greatest challenge to the associated states or generate the most debate. Moreover, the presentation is cursory. It assumes the content of the major multilateral conventions open to the associated states is well known and does not need reproduction here. The linearity of the analysis also excludes comments or critical remarks, as well as explanations of the history of the instruments presented. They will be woven into the following discussion, a comparison between the *acquis* and the law and practice of the associated states.

### **II. The law and practice of the associated states compared to the *acquis***

#### **1. LEGAL ISSUES**

##### **A) SUBSTANTIVE LAW**

###### Definitions and their inconsistencies

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<sup>102</sup> Conclusions on countries in which there is generally no serious risk of persecution, paragraph 4 (b).

An orderly, fair and efficient refugee recognition procedure presupposes the adoption of comprehensive refugee legislation, including the incorporation into domestic law of those international treaties, which most affect the status of asylum seekers, the 1951 Geneva Convention and the European Convention on Human Rights. Prior to 1956 most Western European states became parties to the Geneva Convention (exceptions are Greece and Portugal, 1960; Finland, 1968; Spain, 1978) and the European Convention on Human Rights (exceptions are Austria, 1958; France and Greece, 1974; Portugal, 1978; Spain, 1979; Finland, 1990), but none of the associated states<sup>103</sup> was party to the Geneva Convention before 1989 or to the European Convention on Human Rights before 1992.<sup>104</sup> All of the associated states except for the Baltic countries acceded to the Geneva Convention between 1989 and 1993, and in 1997 Latvia, Lithuania and Estonia will become parties to it.<sup>105</sup> Only the Visegrád countries ratified the ECHR before 1994; the others followed suit later, Latvia still having the bill on ratification pending in the Parliament.

In terms of domestic legislation, the picture is as varied. Here one must note the substantial development which has taken place in the EU member states during the past decades. From the 1950s through the 1970s the domestic rules were non-existent or extremely rudimentary, designed for a few, or at maximum a few hundred applications per year,<sup>106</sup> and frequently granting the decision-making power to the highest political instances.<sup>107</sup> This was succeeded by a fervour of modifications in the 1980s and the early 1990s, leading to extremely articulated regulations, with special (accelerated) procedures, multiple categories of status, and elaborate hierarchies of competent authorities. Moreover, development proceeded at an unequal pace. France and Germany had detailed rules quite early on but smaller states not affected by forced migration, such as Finland and Ireland, did not adopt statutory provisions expressly regulating refugee determination procedures till the 1990s.

The development of domestic legal regimes in the associated states is characterised by two features. First, there was a long time lag between the appearance of asylum seekers and the establishment a complete set of rules. Second, in more than a few countries regulations were adopted at the administrative (ministerial) level, with an air of

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<sup>103</sup> Former Yugoslavia was an exception, but Slovenia did not succeed in its treaty party status.

<sup>104</sup> The International Covenant on Civil and Political Rights, but not its Optional Protocol entitling the individual to submit a complaint against its state, was incorporated into the books but not into real life in the socialist states of Central and Eastern Europe after 1976.

<sup>105</sup> Estonia adopted the law on accession on February 19, 1997, Latvia (according to its statement to this symposium) plans to accede before 1998 and Lithuania's Parliament has also decided to accede by its decision of January 21, 1997.

<sup>106</sup> The total number of asylum seekers in the whole of Western Europe in 1976 was 20,600 and even in 1983 Denmark or Greece had less than a thousand applications and with the exception of France and Germany none of the present EU states had more than 6 thousand. (Source: MARTIN, David (ed.): *The New Asylum Seekers: Refugee Law in the 1980s* The Ninth Sokol Colloquium on International Law, Nijhoff, Dordrecht, etc., 1988, p. 32 and *People on the move: New migration flows in Europe*, Council of Europe, 1992, p. 195, Table 14.)

<sup>107</sup> E.g. In Spain in the early eighties the authority to decide on the request was the Minister of Internal Administration together with the Minister of Justice. (GOODWIN-GILL, GUY: *The Refugee in International Law*, Clarendon Press, Oxford, 1983, p. 198.)

provisionality, which in several cases lingered quite long and may still not be settled. Hungary and Slovenia received several tens of thousands of asylum seekers before regulations concerning their status were adopted; Poland does not yet have comprehensive legislation implementing the Geneva Convention, nor procedural rules modifying the Administrative Procedure Act. Similarly, significant numbers of asylum seekers appeared in the Baltic states before their legislation responded by exempting them from the regulations applicable to aliens travelling and staying in a regular manner. In early 1997 the following states are engaged in drafting a new asylum law or substantively modifying existing regulations: Bulgaria, the Czech Republic, Hungary, Latvia, Poland, Slovenia.

In most of the countries the first basis of granting protection was not a statute adopted by Parliament. Rather it was a provision of the Constitution and/or a decree issued by the executive power. Legal problems arise from this situation because constitutions frequently incorporate definitions which do not precisely correspond to the definition of the Geneva Convention,<sup>108</sup> or envisage a different system of protection.

The Hungarian Constitution adds “language” as a ground of persecution, but does *not* include membership in a particular social group. It refers to “persecution” rather than a well founded fear of persecution. If interpreted literally, this is a substantive shift, not allowing for the mere probability of persecution but requiring past persecution or the certainty of persecution in the future. The Slovene Constitution presents a similar issue: “within such limits as laid down by statute the right of foreign nationals and of persons without citizenship who are subject to persecution for their stand on human rights and fundamental freedoms to asylum shall be guaranteed.”<sup>109</sup> Similarly, Article 88 of the Polish Constitution stipulates that “nationals of other states or stateless persons may enjoy the right of asylum as stipulated in the law”.

Granting asylum is different from recognising refugee status; therefore, a parallel system exists in the law, even if not in the practice.<sup>110</sup> This might lead to two problems. First, if the constitutional rights are taken seriously, asylum seekers may try to establish their right to asylum independently from criteria of the Geneva Convention, which would lead to undesired incongruencies in domestic legal systems.<sup>111</sup> Second, the concept of territorial asylum engenders confusion when matters of social assistance arise, which the law may grant to those who have refugee status, but not necessarily to those who only enjoy territorial asylum.

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<sup>108</sup> EU members are not free from this problem. Article 10 (3) of the 1947 Italian Constitution provides that “aliens who in their own country are prevented from actually exercising the democratic freedom which is safeguarded by the Italian Constitution are entitled to asylum on Italian territory in accordance with this regulation of the law.” (Quoted in *Legal and Social Conditions of Asylum Seekers and Refugees in Western Europe* (Fabrice LEBAUT and Jane HUGES, eds.), Danish Refugee Council, Copenhagen, 1997, p. 129.)

<sup>109</sup> Article 48. of the Slovene Constitution.

<sup>110</sup> Article 98 of the Bulgarian Constitution also entitles the president to grant political asylum.

<sup>111</sup> One may think, e.g., of the Hungarian rule offering refugee status for those who are persecuted for the reason of their language. Does this entitle every member of a language group who is prohibited from using her language in her country of nationality to seek and enjoy asylum in Hungary?

### Convention status or else?

The Geneva Convention criteria for the recognition of refugee status do not cover all the situations of people in need of international protection. The incompleteness of the Geneva Convention is reflected by the later extension of the refugee definition in the African and Latin American context to include (among other situations) foreign invasion and events seriously disturbing public order, including civil wars and massive violation of human rights.<sup>112</sup> States frequently introduce “B” status or a similar status for cases in need of international protection which are not covered by the Convention.

In addition, a third category has recently gained ground. Temporary protection is viewed as a different kind of protection and assistance. It is usually based on group determination and has a strong emphasis on (voluntary) return after the circumstances causing the large-scale outflow cease to exist. It has been applied especially – but not only – in response to the crisis and war in former Yugoslavia. A fourth category has emerged in some countries, as a corollary to the non-refoulement principle understood in a broad sense to include the threat of torture and inhuman or degrading treatment and other inhuman circumstances to which someone should not be expected to return. Permission to stay based on humanitarian grounds, sometimes is called “tolerated” status or “exceptional leave to remain”.

Associated states have to decide whether and to what extent to adopt protection categories in addition Convention status. The Joint Position of the EU of 1996 on the harmonised application of the term refugee recognises each state’s right to extend protection beyond the Convention or to designate whole groups as exposed to persecution. The practice of the EU member states varies widely. Several recognise three different categories: Convention refugees, other type(s) of refugees and temporarily protected persons (e.g., Denmark, Finland, Portugal, Sweden).

Some of the associated states have embraced all of the protection grounds (e.g., Romania, Slovakia, Hungary in the draft bill presently under consideration). Others do not have a special humanitarian status. For example the Czech Republic repealed it, in 1993 when amending the Refugee Act enacted by Czechoslovakia three years earlier.<sup>113</sup>

### Duration of status, exclusion grounds

Convention status does not legally entail a right to residence. However, most states provide (territorial) asylum, that is a full legal title to remain in the territory, to persons they recognise as refugees. Several associated states grant refugees rights close to those of their own nationals. In that context the provision of the Czechoslovak Refugee Act of 1990 which limited the grant of refugee status for five years met strong criticism and was repealed by an amendment in 1996.<sup>114</sup>

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<sup>112</sup> For many others on this: GOODWIN-GILL, GUY: *The Refugee in International Law*, Second Ed., Clarendon, Oxford, 1996, pp. 20–21.

<sup>113</sup> Law No. 317/1993 Sb. December 8, 1993, amending Law No. 498/1990 Sb. November 16, 1990.

<sup>114</sup> Law No. 150/1996 Sb. April 26, 1996.

Exclusion from refugee status may be based on substantive or procedural norms. The Geneva Convention furnishes an exhaustive catalogue of substantive legal grounds on which someone may be excluded from the protection offered by the Convention and it also determines situations which may lead to the cessation of status previously granted. Rules in force or planned to be adopted in associated states more frequently than not tend to treat exclusion and cessation grounds in an unjustifiably broad manner. They add exclusion grounds not mentioned in the Geneva Convention, change their wording, or simply mix exclusion and cessation grounds.<sup>115</sup>

## **B) PROCEDURAL ISSUES**

The Geneva Convention does not regulate the status determination procedure. Prior to the 1995 adoption of the Council Resolution on minimum guarantees, the states' freedom to set up a procedure of their preference was bounded only by EXCOM conclusions, the Handbook on Procedures and Criteria for Determining Refugee Status and Council of Europe recommendations, none of which were legally binding. Several NGOs with great experience also called for fair and efficient procedures, to be applied uniformly or at least in comparable manner.<sup>116</sup>

Harmonisation of procedures that results in equivalent procedural guarantees is the precondition for intergovernmental co-operation leading to the identification of one state among the co-operating countries which is responsible for determining whether the applicant is a refugee. Without equivalence, domestic legal systems will not be entitled to recognise a negative decision arrived at in a procedure lacking minimum standards conducted by another state. The lack of equivalence would also affect the operation of return agreements and readmission rules contained in multilateral treaties, such as the Dublin Convention or the Schengen system. Therefore, if associated states intend to create a functioning network of co-operation which avoids multiple applications but guarantees that every asylum seeker has access to a determination procedure on the merits of the case, then elements of the refugee determination procedures have to be harmonised. There should be equal levels of protection during the procedure and possibly after recognition as well.

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<sup>115</sup> Added ground: Lithuania: illness with "especially infectious disease" (Section 4 (7) of the refugee act adopted on July 4, 1995), changed wording: Slovakia: "has been sentenced for acts against the UN Charter objectives and principles" (Art 8 (e) of Act. No. 283 of November 14, 1995); mixing grounds: Czech Republic, Hungary, Romania and others.

<sup>116</sup> See, e.g., EXCOM Conclusions No. 8 [XXVIII] of 1977 and No. 30 [XXXIV] of 1983, Recommendation No. R. (81) 16 of the Committee of Ministers of the Council of Europe on the Harmonisation of national procedures relating to asylum, and for forceful NGO proposals: Fair and Efficient Procedures for Determining Refugee Status, European Consultation on Refugees and Exiles, London, October 1990; and Amnesty International: Europe: Harmonisation of asylum policy, Accelerated procedures for "manifestly unfounded" asylum claims and the "safe country" concept, London, November 1992.

### Access to procedure

The most elementary requirement is that an asylum seeker must have access to a refugee determination procedure, conducted by an authority designated by law, obeying predetermined rules and respecting procedural safeguards. As basic as this may sound, several of these criteria were or still are missing in a number of the associated states. In Hungary no domestic rules and authorities were in place to implement the Geneva Convention for six months after its entry into force (by way of its Protocol). In Latvia between April 1995 and October 1996 some 130 asylum seekers were detained at Olaine, although more than a hundred of them were recognised by the UNHCR as refugees. The explanation was the lack of a refugee law and competent authorities specialised for the task.

The authorities which the asylum seeker contacts must have clear instructions about the next step. Whether at an entry point or inland, border guards, police and any other agency which the asylum seeker approaches must be informed about the immediate steps to be taken. In most countries the authorities must record the intention of the asylum seeker and transfer her to a reception centre pending the start of the procedure on the merits. (See specific border and airport issues below.)

There are strong indications that authorities in certain cases exercise a kind of pre-screening function, turning away persons by “convincing” them that their case does not fall within the refugee framework. Frequently the person turning to the authorities does not fall within the refugee law, but one must nevertheless note that such unrecorded decisions may jeopardise asylum seekers’ rights. For example, time limits, measured from the moment of border crossing, may be missed.

### Borders, ports

Whereas applications lodged inland normally lead to a full-blown procedure, asylum seekers at the frontier or seeking entry at sea and airports frequently are denied legal entry and subjected to special rules. A recent significant judgement of the European Court of Human Rights sets important limits to this practice. The *Amuur* case<sup>117</sup> announces that keeping persons in an “international zone” may amount to deprivation – and not merely restriction – of liberty and therefore requires review by a competent court. The Court stated: “Despite its name, the international zone does not have extraterritorial status.” Accordingly, rules governing deprivation of liberty in the zone must have the character of law. Unpublished circulars of the Minister of the Interior do not qualify as law. The associated states practising denial of entry on the basis of similar internal rules must seriously study the Court’s judgement, otherwise, they will share the fate of France, which was found guilty of violating the European Convention of Human Rights for keeping four Somali nationals who arrived with falsified passports for twenty days at Paris-Orly airport.

In sum, as set forth in the EU Council resolution on minimum guarantees, it may be lawful to deny physical entry before deciding whether the application is manifestly unfounded. However, in cases of manifestly unfounded applications the decision to deny entry must be taken by a central authority. Moreover, everyone detained shall be entitled to challenge the lawfulness of the detention in a speedy court proceeding. Furthermore, the maximum duration of detention must be set by law.

### Accelerated procedures, pre-screening

Pre-screening is a process which is even speedier than the accelerated procedure. A look at the Hungarian statistics for 1996 tells the story. According to the official data,<sup>118</sup> 1,259 asylum seekers approached the Hungarian authorities in 1996. However, only 152 started a refugee determination procedure, while further 65 persons were recognised as temporarily protected. With respect to the other 1,042 persons, the statistics state: “refugee status determination, temporary protection procedure not started.” As Hungary at the moment has no accelerated procedure, it must be assumed that these persons were not screened out at the border, but by the very authorities they turned to. In principle, one line of the statistics must be wrong. Either roughly 80 per cent of the “new arrivals” were not asylum seekers at all and should not have entered the statistics, or – if they had a *prima facie* claim – their applications were decided upon and rejected without a formal procedure, by way of an informal pre-screening.<sup>119</sup> A look at other countries’ available statistics suggests that this is not a uniquely Hungarian phenomenon.<sup>120</sup>

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<sup>117</sup> Case of *Amuur v. France*, 17/1995/523/609, delivered on June 25, 1996.

<sup>118</sup> Reproduced in *Workshop with the Hungarian Delegation*, Geneva, February 17–18, 1997, UNHCR Branch Office Budapest, without page numbers.

<sup>119</sup> In effect this is admitted in Hungary’s country report to this symposium, p. 5.

<sup>120</sup> The publication of the Polish Ministry for Interior “Poland Statistical Data on Migration, 1990–1996” states that in 1995 there were 841 asylum seekers in Poland. (p. 50) However, the country report submitted to

The resolution on manifestly unfounded applications endorsing accelerated procedures was adopted by the EC Ministers in December 1992, at the end of the year which witnessed an unprecedented number of asylum seekers. Compared to the 1992 figures, the present flow into Western Europe resembles that of the late eighties.<sup>121</sup> The aggregate asylum seeker figure for the ten associated states is even smaller. It is less than 5 per cent of the grand total of asylum applications in the EU (approximately 9,000 compared to 220,000).<sup>122</sup>

this symposium states that the number of asylum applications in 1995 was 714. (Statistical overview, first table).  
127 asylum seekers did not apply...

<sup>121</sup> The number of asylum applications in 13 EU member states (in thousands)

Country	1983	1988	1992	1996
Austria	5,9	15,8	16,2	5,9*
Belgium	2,9	5,1	17,7	12,2
Denmark	0,8	4,7	13,9	5,8
Finland	?	0,1	3,6	0,7
France	14,3	31,6	26,9	17,1
Germany	19,7	103,1	438,2	116,3
Greece	0,5	8,4	1,9	1,3*
Italy	3,1	1,3	2,5	0,5
The Netherlands	2,6	6,6	17,5	22,8
Portugal	1,5	0,4	0,7	0,5*
Spain	1,4	3,3	11,7	3,6
Sweden	3,0	19,6	84,0	5,7
United Kingdom	5,5	5,7	32,3	27,8
Total	61,2	213,2	667,1	220,2

Data with \* are for the year 1995

Source: *People on the Move Appendix I*, Table 14 (for 1983); *Refugees*, no. 101 (1995 III) p. 4. (for 1988, 1992); *Monthly Asylum Applications as reported by the IGC Participating States January–December 1996*, reproduced in MNS, No. 168 (97–3), p. 10; *Legal and Social Conditions of Asylum Seekers and Refugees in Western Europe* (Fabrice LEBAUT and Jane HUGES, Eds.), Danish Refugee Council, Copenhagen, 1997 (for Austria, Greece and Portugal in 1995).

Ireland's and Luxembourg's figures do not appear in that table, but according to *Legal and Social Conditions of Asylum Seekers and Refugees in Western Europe* they are minimal (below 500).

<sup>122</sup> The number of asylum applications in 10 associated states of the EU (persons).

Country	1996
Bulgaria	1,585
Czech Republic	2,158
Estonia	n. d.
Hungary	667*
Latvia	n. d.
Lithuania	n. d.
Poland	2,811
Romania	1,232
Slovakia	415
Slovenia	35
Total	8,903

Accelerated procedures have been practically abandoned in some of the EU states which had introduced them (e.g., Austria). Elsewhere they did not lead to a significantly faster and more cost effective determination procedure (as the experience of the United Kingdom shows). Furthermore, a cut-back on procedural guarantees, such as curtailing appeal rights, in the Central and Eastern European context may restore the unwelcome tendency of arbitrary, uncontrolled decisions by low level officials. As a result, the associated states should shy away from incorporating accelerated procedures into their asylum regimes. Abusive and deceptive cases, including attempts to enter a country outside of the entry points or without valid travel documents, can quickly be handled within normal procedures. The authorities can arrive at a decision long before the last possible moment allowed by the procedural law. Court proceedings and their suspensive effect on deportation, when suspensive effect is available, deserve specific treatment in abusive and deceptive cases. This leads to the issue of *non-refoulement*, discussed below.

Another type of accelerated procedure is the one, in which there is no apparent shortcoming in the asylum claim. The applicant may well be a refugee entitled to protection and assistance, but the requested state thinks that another state should conduct the determination procedure. Some of the associated states have formally introduced accelerated procedures based on the host third country concept. For example, Slovakia has adopted a government decree<sup>123</sup> identifying as safe third countries all the EU member states, Canada, Iceland, Norway, Switzerland and the USA but including only two of the associated states, the Czech Republic and Poland. Others are inclined to utilise the concept without formal bases in the law.<sup>124</sup>

A detailed analysis of the safe third country concept is beyond the scope of this paper, but those who promote it should bear in mind that special adjudicators in the United Kingdom have repeatedly found that under certain circumstances even member states of the EU, such as Belgium, France, Italy, the Netherlands, and Spain did not qualify as safe!<sup>125</sup>

#### Deadlines, formal grounds for exclusion

Time limits for submission of an application may function as an effective barrier to protection under the Geneva Convention or domestic law. The Geneva Convention does

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\* Including submissions to the Office of Refugee and Migration Affairs and the UNHCR Budapest Branch Office.

Source: *Country reports submitted to the Third International Symposium on the Protection of Refugees in Central Europe*, Budapest, April 23–25, 1997.

<sup>123</sup> Government decree 67/1996.

<sup>124</sup> The negative decision (currently on appeal) of the Hungarian Office of Refugee and Migration Affairs in case No. 106-2303/2/96 concerning a Turkish citizen of Kurdish origin fearing persecution both by Turkish authorities and the PKK mentions that the applicant had an opportunity to submit his application in Bulgaria and Romania, where he had spent 2 weeks and 2 months respectively. The Slovene Supreme Court has also decided in one case to uphold rejection because the applicant came from Canada, which was a safe third country.

<sup>125</sup> Immigration Law Practitioners' Association, Update February 1995, Summaries of Special Adjudicator decisions, No. 1, prepared by Nick Rollason and Tony Haque. See also ECRE, "*Safe Third Countries*" *myths and realities*, London, 1995.

not stipulate any deadlines, and time limits run contrary to the underlying principle of refugee protection that seeks to provide safety to those with a well founded fear of persecution for grounds incorporated into the law. Nonetheless associated states frequently have enacted deadlines beyond which asylum applications are refused.<sup>126</sup> It is true that a great number of cases applications are first submitted in the associated states after individuals were caught trying to cross the border on a journey westward, an indication that the asylum seekers did not intend to seek the protection of the associated state.<sup>127</sup> Even so, it is, at the very least questionable, whether missing a deadline deprives the asylum seeker of her right to be recognised as a Convention refugee. In any event, enforcing deadlines to preclude asylum seekers from gaining refugee status may well lead to a less desirable situation for the state.

Those who are threatened with persecution or other acts justifying *non-refoulement* will remain in the country, but with a much less orderly status than if they had been allowed to enter the full determination procedure, and either been recognised as refugees or rejected, which in turn would have entitled the state to remove them.

A similar problem frequently arises with regulations, that exclude asylum seekers from a substantive investigation of their claims if they fail to comply with certain rules.<sup>128</sup> Under the stress of lengthy procedures, restrictions on their freedom of movement, and the uncertainty of the outcome, asylum seekers frequently commit disciplinary offences. Penalties may well be appropriate for infractions, but the denial of protection from persecution is too great a penalty to impose.

The authority in action: specialised knowledge, interview, interpretation, legal aid, UNHCR, data protection

The refugee processing authority should have the means to gather up to date knowledge concerning the refugees' countries of origin and an in-depth understanding of the refugees' culture and experience. The staff of the authority should be objective, impartial and willing to seek relevant evidence concerning the claim that is not available from the applicant herself. These requirements are reflected in the EU ministers' resolution on minimum guarantees as well as in other documents which address the Geneva Convention' silence on procedure. The need for appropriate procedures appears to be widely discussed and appreciated within and among the associated states.

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<sup>126</sup> Bulgaria: 48 hours, Hungary: 3 + 3 days, Romania: 10 days, Slovakia: 24 hours or the expiry of the stay permit.

<sup>127</sup> The great number of discontinued cases of those who "disappeared" during the procedure confirms the view that asylum seekers have a strong preference for getting into one of the EU member states. See, e.g., Polish country report submitted to this symposium which states that in 1995 57 per cent and in 1996 75 per cent of the cases were discontinued because the "applicant 'disappeared' whereas [sic] the procedure period".

<sup>128</sup> See, e.g., Art 12 of the Czech Refugee Act according to which the Ministry of the Interior "shall terminate"(not: *may*) the proceedings on granting refugee status if the applicant wilfully and repeatedly violates the duties set by this Act. The Romanian Statute threatens the applicant with a compulsory rejection if she does not "have a correct and civilised conduct" during the procedure. (Article 11 together with Article 10 f ).

Currently, two types of gaps are present in the associated states. One relates to facts or “hard data”; the other relates to mentality and political and cultural traditions. The simpler gap to remedy – although it requires the investment of resources – is the gap between the EU states and the associated countries in terms of country of origin information available at the central and at the local level. UNHCR’s on-line service and REFWORLD CD ROM are good examples of the resources theoretically, but not practically, available in the associated states. Although not perfectly up to date, they are helpful *provided* that all the following elements are in place: a functioning computer connection or at least a telephone line with a modem, a computer with a CD ROM drive, electric power at the moment of inquiry, appropriate knowledge of English by the state official doing the research and the knowledge of how to search in the database. More frequently than not at least one item of this simple set is missing. Internet-based information is even less frequently utilised in most of the associated states, especially at the local decision-making level. National sources of country of origin information (e.g., diplomatic presence) are scattered and unevenly distributed over areas producing asylum seekers. Prior discussions have stressed the importance of technical development and of training decision-makers with adequate language skills and information retrieval skills and these points need no further elaboration.

The other gap previously mentioned relates to the attitudes of the interviewers and the processing authority. In order to understand the cultures of the asylum seekers, the interviewers need extensive training or in-depth personal experience concerning foreign cultures which might operate ways in diametrically opposed to the fundamental convictions of the interviewer. Furthermore, authorities dealing with asylum seekers must abandon biases and prejudices officially endorsed (or violently suppressed) by the previous socialist regimes.<sup>129</sup>

In terms of the structure of the determination process, fair and efficient refugee procedure presupposes at least one detailed personal interview with the asylum seeker in circumstances that allow her to present a full account of her story in a language both she and the interviewer understand well enough to convey subtle nuances. Frequently, the presence of a qualified interpreter is needed; this should not be a fellow asylum seeker or someone who is unable to achieve precision. Procedures conducted in associated states frequently do not meet these standards, and this is often due to a shortage of persons familiar with uncommon languages, the lack of an appropriate environment providing privacy during the interview, and so on. Procedures that rely on questionnaires or that entrust the decision to someone other than the interviewer increase the risk that important details get lost.

The urge to establish unequivocally the facts of the case, especially if doubts remain after the interview with the asylum seeker, sometimes induces the refugee processing agency to turn to authorities (such as diplomatic representatives) of the (alleged)

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<sup>129</sup> To name a few factors observable in determination procedures that interfere with impartiality and objective assessment: ignorance about vulnerable groups, especially women, bias towards ethnic kin, reluctance to acknowledge problems related to statelessness, prejudice against certain ethnic groups such as Roma or people of colour, intolerance towards unintentional and unmisleading contradictions in the asylum seeker’s account of her fear and escape route, exaggerated concern that asylum seekers add pressure on limited economic resources or on the labour market.

persecuting state in order to verify (or refute) the statements of the applicant. In other instances, access to asylum seekers is granted to outside agencies, domestic or foreign, most frequently to enable humanitarian agencies to provide material assistance. These, and other situations not enumerated here, underline the importance of adequate data protection. This is not yet guaranteed in some of the associated states, and hinders their closer connections with CIREA and CIREFI.

Many of these problems could be alleviated if groups supporting asylum seekers had a more pronounced role in the procedure. Some associated states restrict UNHCR's participation in the hearings<sup>130</sup>, not to speak of individual legal representatives and non-governmental organisations. Even in countries where both law and practice permit the participation of these watchdogs, insufficient staff or funding may prevent UNHCR and NGOs from having a more visible presence.

These problems in the associated states have been clearly identified and efforts to improve the situation have already begun. UNHCR sponsors a wide variety of training programs all over the region, including language courses, and interested EU members have established both bilateral and multilateral co-operation programs with associated countries. A few examples come to mind: the continued assistance by the Nordic countries to the Baltic states, the support Germany provides to its Eastern neighbours and other associated states, and training efforts undertaken by France, the Netherlands and the UK. The extension of the PHARE program to Third Pillar issues, including asylum matters, has also been on the agenda since the 1995 Langdon report.

### Appeal rights

In terms of appeal rights, all the associated states guarantee at least one appeal. There is a wide variety of solutions, from one administrative hearing followed by one level of judicial review (Bulgaria) to two administrative procedures followed by two levels of court procedures (Hungary). Appeal without exception entitles the asylum seeker to stay in the country, at least during the administrative phase.

In formal terms the most questionable appeal procedure is that conducted by the UNHCR Branch Office in Budapest with respect to asylum seekers fleeing non-European events. The same small staff which conducted the first examination of the case provides the review. No formal deadlines or procedural guarantees apply. As opposed to the second instance administrative decisions rendered by the Hungarian refugee authority, the UNHCR decision can not be appealed to the Administrative Court.

Turning from formalities to realities, there are indications that the laws on appeal provide little protection. Either very few cases reach the courts at all<sup>131</sup> or the courts do

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<sup>130</sup> Unpublished but authoritative reports mention airport procedures in Bulgaria and hearings in Poland, for example.

<sup>131</sup> *Asylum Law Report and Papers Delivered at the First International Judicial Conference Held at Inner Temple*, London, December 1 and 2, 1995. Published by the Steering Committee of THE JUDICIAL CONFERENCE ON ASYLUM LAW, 1995. A Polish judge stated that he was "only aware of two cases which have already been tried and of two appeals which are waiting to be listed" Judge Jacek Chlebny. p. 183.

not reverse earlier decisions.<sup>132</sup> Utilising the right to appeal effectively requires an accurate understanding of the reasoning in the decision challenged. However, the decisions are frequently written only in the language of the processing state. Although the decisions may be orally translated by an interpreter, the lack of a written record the asylum seeker understands limits the asylum seeker's ability to address issues not adequately evaluated by the authority. Furthermore, her unfamiliarity with the procedural requirements which might have been breached during the procedure often prevents references to those grounds, which in some jurisdictions are the sole permissible basis for a judgement annulling the administrative decision.

### Non-refoulement

The principle of *non-refoulement* is the cornerstone of the protection to be granted to those who are persecuted. Although those recognised as refugees in the associated countries are safe from *refoulement*, there are three types of situation in which persons face return to frontiers of territories where their life or freedom would be threatened or they would be exposed to torture or inhuman or degrading treatment.

First, a country may refuse to entertain an application for refugee status on formal grounds. Missing time limits, violating the rules of behaviour during the procedure or travelling through a safe third country are used as justifications for not recognising certain individuals as refugees under the protection of the Geneva Convention. Frequently individuals are returned on the basis of readmission agreements to countries which may in law or in practice not strictly observe the *non-refoulement* principle. There is evidence that these returns may lead to chain deportations forcing the individuals back to the countries they fled.<sup>133</sup>

Second, of *refoulement* are especially great at entry points. Asylum seekers who do not produce valid travel documents, or use false passports or visas or are caught in illegal attempts to cross the border outside the designated points are frequently treated as illegal aliens. They might be denied entry and immediately returned to the country from which they fled. Those not denied entry may be charged with crimes connected with entry (illegal border crossing, use of false documents) and quickly found guilty. As such, they are subjected to expulsion and deportation order.

According to the EU ministers' resolution on minimum guarantees, even in such cases asylum seekers must have an opportunity to lodge an application. No expulsion should be carried out before a decision is taken, even if an application is deemed manifestly unfounded. In addition, another source of law applies. Article 31 of the Geneva Convention explicitly states that the mere fact that asylum seekers unlawfully entered or tried to enter the territory does not deprive them of protection.<sup>134</sup>

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<sup>132</sup> According to the available information in Hungary none of the second instance administrative decisions was reversed by the courts.

<sup>133</sup> ECRE; "*Safe Third Countries*" *myths and realities*, London, 1995.

<sup>134</sup> Good cause for illegal entry or presence and presenting themselves without delay to the authorities should exempt refugees from any penalty for the illegal entry or presence according to the same Article.

Third, rejected asylum seekers and other persons who do not fall within the scope of the Geneva Convention but who should enjoy the protection of other treaties, such as the UN Convention against Torture face refoulement threats. Authorities in the associated states are very reluctant to recognise that absence of refugee status is not a license to removal. The *non-refoulement* principle protects a much wider circle of persons, some of whom may have violated several rules of the receiving state. Despite this misconduct, they must not be returned to their country of origin because the right to be free from torture or other inhuman or degrading treatment or punishment is not subject to restrictions. The associated states must learn the lesson of the *Soering* case,<sup>135</sup> in which the extradition of a murderer was prohibited because he would face inhuman treatment due to the lengthy stay on death row in the USA.

## 2. SOCIAL AND POLICY ISSUES

Social and policy issues unfortunately are not in the forefront of the refugee agenda of the associated states. Their view of forced migration as a primarily legal matter, and as a subset of illegal migration, must change.

### Burden sharing

By the time the associated states become full members of the EU, the *acquis* concerning asylum seekers may be quite different from its current content and may include burden sharing measures tailored specifically to emergencies of future times. Whether or not this change occurs, the associated states will have a profound interest in burden sharing because even after the accession of all 10 associated states it is these states that will constitute the outer end of the Union (only the Czech Republic will have no land border with a non-member state). This will force a substantial change compared to the present situation when burden sharing as a voluntary action is absent from their agenda.

The 1990s have been characterised by a mood of national seclusion. This has led to the intended or, at the very least, tolerated result of burden shifting both among the associated states and at the border of the associated states and their EU member neighbours. The only early signs of genuine burden sharing appeared in bilateral agreements which provided financial assistance to Poland and the Czech Republic in exchange for Germany's transfer to them of the responsibility for refugee status determination.

### Durable solutions

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<sup>135</sup> European Court of Human Rights, Series A No. 161, Paras 109, 111.

A common feature of the associated states is that they perceive themselves as transit states from which the asylum seekers want to move forward to the EU area or – mainly in the case of those from former Yugoslavia receiving temporary protection – return home. This view of the desires of asylum seekers may well be largely true. The statistics recording the number who only submit an asylum application when caught in an attempt to cross the western border, the number who disappear during the determination procedure or the number who leave after their status was recognised show that many want to go further west. However, in light of the tightly knit web of readmission agreements and the safe third country policy of the EU member states<sup>136</sup> many asylum seekers will not be allowed into the EU territory. As a consequence, Central and Eastern European countries must realise that they have to offer durable solutions.

Resettlement is available only for a fragment of the refugee population, and most probably will become even less accessible in the future. This means that voluntary return or integration become more important. Associated states will gradually realise that the generous recognition of refugees as having the same rights as the nationals of the country may not be enough. Active programs providing housing, access to the job market, social services and so on are needed. There are recent signs of such measures (Czech Republic, Hungary) and certainly UNHCR promotes integration all over the region, but much more is needed.

### III. Conclusion

Member states of the EU have widely differing national legislation, both in terms of procedures and categories of protection available. These differences have survived the growing number of decisions adopted under Article K. Moreover, minimum requirements and harmonised interpretations envisaged in those resolutions frequently are not reflected in member states' law or practice. This resembles a picture having two different focal points, two different perspectives. One focus is on principles, guarantees and specific rights endorsed by the documents forming the *acquis*. The other focus is on national legislation and practice, which often pursue national policy objectives at the expense of the substantive protection and human dignity of the asylum seeker. The two focal points create tension and latent conflict in the associated states.

Associated states, confronted with this obscure vision of the “refugee law of the EU”, tend to reproduce elements which reinforce the preventive, defensive, short-term policy-driven national techniques. Instruments and justifications adopted by member states to exclude abusive asylum claims get more attention than human rights guarantees and costly procedural requirements. The emerging practice has a negative slant which overshadows the core idea of refugee protection: those who are persecuted by intolerant societies and authoritarian states practising discrimination on the basis of race, religion, nationality, social status or political views should enjoy asylum and “freedom from coercion” in those societies which profess tolerance and equality for all human beings.

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<sup>136</sup> These issues were largely beyond the scope of this paper.

*Part III*

## **Debates on Migration Politics**

Maryellen Fullerton

## ***Hungary, Refugees, and the Law of Return***<sup>137</sup>

### **HUNGARY IN TRANSITION**

In Hungary in 1995 everything and everyone is in transition. Refugee issues in Hungary are no exception: they are also in a state of flux. There have been dramatic pendulum swings during the last decade. A few facts give the broad outlines. Until the late 1980s Hungary was a refugee producing country. Since 1987 Hungary has become a refugee receiving country.

Indeed, Hungary has become a refugee receiving country in a big way. From 1988 through 1995 Hungary registered more than 130,000 refugees. Many more may have entered Hungary, sought private assistance, or never even informed the authorities of their presence.

This situation, too, is in transition, though. By late 1994 the refugee population registered in Hungary had dwindled to less than 8,000. The government refugee office suddenly had empty and half-filled refugee camps on its hands. It had staff to pay and buildings to heat, but few refugees. First, there were no refugees; then too many; later not enough!

The pendulum swung again in 1995. New ethnic cleansing and renewed combat in Bosnia sent more refugees to Hungary in the spring and summer. The government opened a refugee camp that had been mothballed as excess capacity. Officials braced for a new flood of people needing refuge and protection. Close to 6,000 new asylum seekers entered Hungary.

Meanwhile, the legal framework for refugee protection is also in transition. There is patchwork of legislation and government decrees, much of it dating back to the pre-1989 communist regime. Enormous gaps still exist. There are rumours that new refugee legislation will be passed, and reports that draft legislation has circulated within the Ministry of Interior, but everything is vague and indefinite. New statutes on citizenship and on foreigners were enacted in 1993, but nothing on refugees.

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<sup>137</sup> This paper, an excerpt from a much lengthier and more detailed article published in the *International Journal of Refugee Law*, Volume 8, 1996, is reprinted here with the permission of Oxford University Press. In condensing this article for purposes of the present volume we omitted many supporting details and most of the author's references; the result is more similar to an essay than to a rigorously documented work of legal analysis. Readers interested in a greater emphasis on the legal framework and in a more nuanced examination of the refugee law and policy in Hungary should consult the original article.

This article will examine the refugee laws in Hungary as they are written and as applied. This description draws largely on years of field work in Hungary. The field work firmly roots the legal analysis in the current reality that refugees in Hungary currently face.

This article concludes that the current refugee system in Hungary largely functions as a Law of Return. Since 1989 Hungary has taken a series of steps to establish a basic legal framework for refugee protection. Provisions in the new Constitution and in recent legislation grant rights to refugees. Several decrees define refugee status and set forth procedures for determining refugee status. Traces of a preference for ethnic Hungarians can be seen in the written laws. The Hungarian decree implementing the Geneva Convention on Refugees imposes a geographic reservation, stating that Hungary will only accept European refugees. This drastically reduces Hungary's potential refugee population: most of the refugees in the world and most of the countries that produce refugees are not in Europe. Simultaneously, this measure effectively protects ethnic Hungarian refugees, who tend to be in European countries, particularly in countries contiguous to Hungary.

In addition, the guarantee of asylum in the Hungarian constitution specifically offers protection to those persecuted on linguistic grounds. Harassment based on linguistic tension grounds is a source of great concern in ethnic Hungarian communities in Romania, Slovakia, and other neighbouring countries. Moreover, the new citizenship legislation in Hungary provides advantages for those granted refugee status. At the same time, it offers even greater advantages for those – refugee or not – of Hungarian descent.

The preference for ethnic Hungarians that can be detected in the laws is even more pronounced in the administration of the refugee system. Ethnic Hungarians who enter Hungary seeking refuge are channelled into the refugee system, while others who need refuge are channelled into the temporary protection system. Access to the refugee system is not the only area in which the ethnic Hungarian asylum seekers receive an advantage. The less favourable camp conditions and the restrictions on freedom of movement appear to fall more heavily on those asylum seekers who are not ethnic Hungarians. The reality of refugee status in Hungary is that it is largely reserved for ethnic Hungarians.

It is true that the law does not on the surface limit the applicants for refugee status. It is also true that not all ethnic Hungarians who apply for refugee status receive it. Nonetheless, it is true that almost all successful candidates for refugee status are ethnic Hungarians. In contrast, the large numbers of asylum seekers from other backgrounds are generally shunted into temporary protection status. There they receive food and shelter and other basic necessities, but lack any substantial legal protection. This two-tiered system has resulted in many bona fide refugees, those qualified under the Hungarian as well as the international law refugee definition, who never nonetheless receive refugee status and its attendant legal protections. Large numbers of legitimate refugees have not been recognised as such in Hungary. Almost all of these have lacked Hungarian ancestry.

At the same time, a substantial number of those recognised as refugees in Hungary appear to be immigrants rather than refugees. Many describe leaving lives of hardship and diminished opportunities, to be sure. Personal interviews of many different individuals granted refugee status, though, leads to the conclusion that in many cases the hardship did not constitute persecution. Almost all in this category were ethnic Hungarians.

The result is that Hungary, which does not have a law allowing immigration based on ethnic heritage, has distorted its refugee system to accomplish this immigration goal. Moreover, in counting immigrants as refugees, Hungary has misled international donors. It has effectively inflated the size of its refugee population. In doing so, it has increased the amount of contributions it has received from the international community for refugee assistance. Whether the international community would be equally generous in providing assistance to Hungary for the resettlement of ethnic Hungarian immigrants is doubtful.

Simultaneously, Hungary has created the functional equivalent of a Law of Return. As is possible in Israel, Ireland, and to some extent Italy, those who share the ethnic background of the citizens of Hungary, may enter the society and become full members. Although there are relatively few nations that have established a Law of Return, there is nothing malevolent about the Hungarian government enacting such a law. What is objectionable is accomplishing this goal by misusing the refugee process. This misuse has obvious negative consequences for the refugee program itself. It also has negative consequences for the international efforts to raise ever-dwindling funds to support an ever-increasing number of refugees.

In addition, the law has negative consequences for the rule of law in Hungary. A country newly freed from one party rule should develop the contours of an important social policy such as immigration in the legislative arena. Recent legislation concerning immigration does not provide a right to immigrate based on ancestry. This suggests that the Parliament of Hungary does not want to establish a Law of Return at this time. The refugee system should not be manipulated to create one. [...]

In seven years, from 1988 through 1995, Hungary received 133,000 refugees. Roughly 120,000 are no longer visible. Where have they all gone? No one knows. Many have probably left Hungary; many others have probably stayed but in a non-refugee status. It appears that the situations vary significantly depending on the country of origin and the ethnic background of the refugees.

Turning first to those who fled ex-Yugoslavia, approximately 68,000 refugees from ex-Yugoslavia are no longer visibly present in Hungary. The consensus is that most of the Croats have left Hungary and returned, if not to their homes, then to other areas in Croatia that were not occupied by Serbs. As the Croats comprised the overwhelming majority of refugees from ex-Yugoslavia, this accounts for most of the decrease. Others granted temporary protection in Hungary left to go elsewhere, mainly to western Europe.<sup>138</sup> This is said to be a small number, mostly Bosnians, but no reliable data are available. Of the 7,000 citizens of ex-Yugoslavia who remain, approximately one-third are Bosnian Muslims, one-third are ethnic Hungarians from Vojvodina in Serbia, one-quarter are Croats, and one-tenth are Serbs and Albanians from Kosovo in Serbia. In a bitter irony, the groups that warring forces prevented from living together in peace in the lands of ex-Yugoslavia now live together as refugees in Hungary.

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<sup>138</sup> Some estimate 10,000 went west, but there are no reliable statistics. Some went legally; others illegally on false documents; others illegally with no documents. Interview, Lajos Horváth, Director, Nagyatád Refugee Camp, December 1, 1994.

Turning next to refugees from Romania, approximately 54,000 have come to Hungary, and 4,000 have been granted official refugee status.<sup>139</sup> Again, reliable data about the other 50,000 are unavailable. There are reports that several hundred returned to Romania and that several thousand moved on and settled in the West. Several thousand may have acquired Hungarian citizenship through naturalisation, although that appears to be an overly optimistic projection since the Hungarian naturalisation process works so slowly that it is likely that most applications filed in the late 1980s have not yet been decided. Others have, no doubt, acquired temporary and permanent resident status, but no one knows how many. It appears that most of the “missing” 50,000 who came from Romania are still in Hungary, but have not been recognised as refugees.

## THE LEGAL FRAMEWORK

One of the reasons so little is known about the 133,000 refugees who entered Hungary between 1988 and 1995 is the sparse legal framework for refugee protection in Hungary. This sketchy patchwork contains relatively few laws concerning refugees. There is little synchronisation between the laws that do exist. Furthermore, a great many refugee issues are simply not addressed by any of the laws.

### International Law

The foundation of Hungarian refugee law is the 1951 Geneva Convention Relating to the Status of Refugees.<sup>140</sup> Various government decrees build on this international agreement. Most of the actual practice, though, stems from unwritten administrative policies that have developed to fill yawning gaps in the legal structure.

Hungary has justified its insistence on the geographic reservation by its fear of being overwhelmed with refugees. Large numbers of potential refugees obviously pose legitimate and serious concerns for a country. Nevertheless, there are questions as to whether Hungary’s fear on this score is well-founded.<sup>141</sup> None of the other Central

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<sup>139</sup> ORMA Statistics, 1988–1995. Approximately 30,000 asylum seekers from Romania had entered Hungary before October 1989, when Hungary officially became bound by the 1951 Geneva Convention. The procedural rules implementing the Convention provided that those already within Hungary had 30 days in which to file an application for refugee status. §21, 101/1989. (IX. 28.) MT rendelet a menekültként való elismerésről [Cabinet Decree 101 of September 28, 1989 on the Recognition Process for Refugees] [hereinafter Decree 101]. Very few of the 30,000 asylum seekers did.

<sup>140</sup> Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6260, T.I.A.S. No. 6577, 189 U.N.T.S. 137 [hereinafter Convention].

<sup>141</sup> Pursuant to an agreement between the Government of Hungary and the UNHCR, promulgated as 23/1990. (II. 7.) MT rendelet [Cabinet Decree 23 of February 7, 1990], *Magyar Közlöny* [Official Gazette] 1990, No. 11, at 172, the UNHCR office interviews asylum seekers claiming a well-founded fear of persecution based on non-European events. Very few have been found to have a well-founded fear. The Hungarian authorities have granted short-term residency permits, but not work permits, to those few the UNHCR deemed warranted. Thus, their situation is tenuous. Nonetheless, it is startling to learn that from 1990 through 1995 only 136 non-Europeans have been recognised as needing protection in Hungary. Of these, only 70 remain in

European countries that have ratified the Convention have adopted similar policies of geographic reservation, yet none of them have been overrun with refugees. Poland and the Czech Republic, for example, have not limited their acceptance of refugees to those fleeing European persecution. Despite their acceptance of the much broader refugee definition that is available under the Refugee Convention, neither Poland nor the Czech Republic has received more than a few thousand refugees.

Some have argued that Hungary is in a more vulnerable geographic position in terms of refugee flows. It is true that Hungary is nearer to the Balkans than Poland or the Czech Republic, and it is also true that Hungary has received many thousands more people fleeing the war in the Balkans. Ironically, however, Hungary has not afforded refugee status to most of these people. Instead, they are viewed as war victims. They are assisted by the government, but not given the legal protection or status received by those recognised as refugees under the Convention. Moreover, as the Balkans are part of Europe, the geographic reservation does not limit refugees fleeing persecution there from receiving protection in Hungary. Rather it precludes those fleeing persecution in Africa and Asia from finding refuge in Hungary.

Others have asserted that Hungary needs to invoke the geographic reservation because Hungary is likely to be a magnet for asylum seekers from other continents. As one of the Visegrád countries, Hungary has a more advanced economy than many of the Central European states. The debates are endless as to whether the economy is more robust in Hungary or the Czech Republic or Poland. The answer – if there is one – to the debate is irrelevant. What is relevant is the general perception that the economies in the Czech Republic, Poland, and Hungary are all becoming stronger. Moreover, they are all quantum leaps ahead of the conditions in many of the countries that are triggering massive refugee flows. Yet neither the Czech Republic nor Poland has been flooded by asylum seekers and refugees.

### **The Refugee Definition**

Hungary's national laws on refugees, like its international obligations, also date from the last communist government. The most salient provisions include a recent constitutional amendment concerning asylum and several government decrees regulating different aspects of the asylum process. In addition, the new legislation concerning citizenship has a significant impact on those seeking permanent refuge in Hungary. [...]

In 1993 Parliament enacted new legislation regulating citizenship.<sup>142</sup> Strictly speaking, while this law does not specifically concern refugee protection, it interacts with the refugee system in a significant way. The citizenship statute sets forth the conditions under which individuals can acquire citizenship via naturalisation. In general, an applicant seeking naturalisation must satisfy five requirements:

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Hungary. The total number of non-European asylum seekers who applied in Hungary during that time is 1885. Interview, Ágnes Ambrus, UNHCR Legal Protection Officer, Budapest, August 1, 1995.

<sup>142</sup> 1993. évi LV. törvény a magyar állampolgárságról [Act No. LV of 1993 concerning Hungarian Citizenship] [hereinafter Citizenship Act].

- eight years of continuous residence in Hungary,<sup>143</sup>
- no criminal record,<sup>144</sup>
- the ability to support oneself,<sup>145</sup>
- basic knowledge of the Hungarian constitution (based on a Hungarian language examination), and
- naturalisation would not be against the national interest.

Although described as five, in reality there are six requirements. The examination on the Hungarian constitution is administered in Hungarian, thus adding a language requirement. As Hungarian is both unique and unusually difficult, the language criterion will serve as a much more serious obstacle to obtaining citizenship than will the constitutional knowledge prerequisite.

The law relaxes the citizenship requirements for certain applicants. Specifically, the legislation reduces the continuous residence requirement from eight to three years for several categories of applicants for naturalisation:<sup>146</sup>

- those married to Hungarian citizens,<sup>147</sup>
- those whose minor child is a Hungarian citizen,
- those adopted by a Hungarian citizen, or
- those recognised by Hungarian authorities as a refugee.

The law reduces the continuous residence requirement even further – to one year – for one category:

- ethnic Hungarians.<sup>148</sup>

The preferential treatment offered by the citizenship law mirrors some of the distinctions that can be perceived in the constitutional law on asylum. Both the asylum provision in the constitution and the naturalisation law are written in neutral language; they protect all those recognised as refugees – ethnic Hungarian or not. Indeed, the citizenship law clearly treats refugees better than most other non-citizens of Hungary. Refugees receive a substantial advantage because they need only satisfy a three year residency requirement.<sup>149</sup> This advantage is particularly noteworthy in light of the lengthy eight year requirement imposed on most citizenship applicants.

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<sup>143</sup> The residence period must precede the application date.

<sup>144</sup> The applicant must have no criminal record and no pending criminal proceedings. Citizenship Act, para. 4(1)(b).

<sup>145</sup> Subsistence and residence in Hungary must be ensured.

<sup>146</sup> Certain naturalisation applicants need only satisfy a three year continuous residence requirement plus fulfil the other four requirements listed above.

<sup>147</sup> This is restricted to those who have lived with a Hungarian citizen for three years or more in a valid marriage. The time can be shortened if the spouse died.

<sup>148</sup> A non-Hungarian citizen who asserts s/he is an ethnic Hungarian and has an ancestor who was a Hungarian citizen may apply after one year in Hungary so long as s/he satisfies the other standard citizenship requirements. Citizenship Act, para. 4(3). Note that this does not extend to all former citizens/subjects of Hungary. The Kingdom of Hungary included many ethnic Romanians, Serbs, Slovaks, Germans and so on. Indeed, ethnic Hungarians only comprised 50–55 per cent of the population of Hungary in 1910.

<sup>149</sup> Although there are other barriers that might prevent refugees from obtaining Hungarian citizenship – for example, the Hungarian language test on constitutional knowledge or the “against the national interest” requirement, there are few citizenship laws that are more lenient than Hungary’s. In the United States, refugees and other permanent resident aliens face a five year residency requirement. 8 U.S.C. § 1427(a)(1). In Germany,

Nevertheless, it is also noteworthy that ethnic Hungarians receive an even more substantial advantage than refugees: they need only satisfy a one year residency requirement. This short residency requirement is, an addition to the huge advantage that ethnic Hungarians already have on the other requirements. They are almost sure to be able to pass an examination in Hungarian, a language that is spoken by fewer than fifteen million people and that poses major barriers to most of the rest of the people in the world. They also are more likely to be acquainted with the structure of the Hungarian government and other basic constitutional knowledge.

Furthermore, under Hungarian law the decision to grant naturalisation is totally discretionary.<sup>150</sup> Negative decisions are not accompanied by explanations and cannot be appealed. Although there are no reliable statistics concerning naturalisation decisions, it would not be surprising if the decisionmakers,<sup>151</sup> consciously or subconsciously, considered Hungarian heritage a positive factor. Anecdotal evidence suggests that most of those granted citizenship in the past few years have been ethnic Hungarians.

Thus, the citizenship law apparently favours ethnic Hungarians over refugees and any other applicants. Moreover, other provisions of the citizenship law that at first glance appear neutral, in fact also favour ethnic Hungarians. Lastly, it appears that the discretionary naturalisation decisions may in practice favour applicants of Hungarian origin.

## Decree

Most of the laws that affect refugees in Hungary have not been enacted by Parliament. Rather they have been promulgated by decree. Cabinet Decree 101,<sup>152</sup> the most significant government pronouncement, sets forth the procedure for determining refugee status. It contains several provisions that, as applied, have resulted in the preferential treatment of ethnic Hungarians.

In October 1989, several months after Hungary's ratification of the Geneva Refugee Convention, the government issued Decree 101 in order to implement the Convention and Protocol.<sup>153</sup> Decree 101, regulates the refugee recognition procedure from beginning

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the residency requirement is 10 years, which is shortened to 7 years for those granted official refugee status. European Council on Refugees and Exiles, *Asylum in Europe*, Vol. 2, 194 (4th ed., 1994).

<sup>150</sup> Judit Tóth, Who Are the Desirable Immigrants in Hungary Under the Newly Adopted Laws?, in *Refugees and Migrants: Hungary at a crossroads*, pp. 57–60 (Maryellen Fullerton et al. eds., 1995).

<sup>151</sup> The citizenship statute grants the President of the Republic of Hungary the authority to decide naturalisation procedures, based on the recommendation of the Minister of the Interior. The Department of Citizenship [Állampolgársági Főosztály] of the Ministry of the Interior processes the applications on behalf of the Minister.

<sup>152</sup> 101/1989. (IX. 28.) MT rendelet a menekültként való elismerésről [Cabinet Decree 101 of September 28, 1989 on the Recognition Process for Refugees] [hereinafter Decree 101].

<sup>153</sup> As Hungary follows a dualist, rather than monist, legal tradition, its accession to the Convention and Protocol bound Hungary on the international plane only. Domestic implementation of the law needed further government action, which occurred with Decree 101.

to end.<sup>154</sup> It contains only twenty-two sections; consequently, it is not surprising that the law is less than comprehensive. There are gaps between topics; entire topics are even omitted. For example, there is no mention of people seeking temporary protection – rather than asylum – in Hungary. Nonetheless, Decree 101, as it is known, provides the legal structure that is in place.

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<sup>154</sup> It begins with provisions addressed to asylum seekers crossing the Hungarian border (“This decree shall apply to the non-Hungarian nationals who, having crossed the frontier of the Hungarian People’s Republic, apply for recognition as refugees” Decree 101, §1) and ends with provisions allowing judicial review of the denial of refugee status, Decree 101, §19. The concluding provisions address the three month deadline on seeking extension, §20; non-Hungarian nationals present in Hungary at the time the decree came into force, as well as those who later might be lawfully present in Hungary on non-refugee grounds who might later subsequently seek to apply for refugee status, §21; and the effective date of the decree, October 15, 1989, §22.

### *Application deadlines*

Decree 101 sets forth a short period of time – 72 hours after crossing the border into Hungary – in which refugee applicants must notify the police or border guards that they are seeking refugee status. Once this notice is given, there is a second period of 72 hours, in which the applicants must submit formal applications for recognition as a refugee.<sup>155</sup> While these provisions appear neutral, in practice they provide a significant advantage to ethnic Hungarians. The 72 hour deadlines are short. Those who do not speak the language are likely to have a much harder time ascertaining that there is a deadline and complying with it than those who speak Hungarian. Furthermore, many ethnic Hungarians have relatives or friends in Hungary, who can learn how the refugee system works and can assist newcomers in manoeuvring their way through it.<sup>156</sup>

Once a refugee application is filed, it triggers another set of deadlines.<sup>157</sup> Government officials who decide who is eligible for refugee status schedule personal interviews with the applicants.<sup>158</sup> The applicants bear the burden of proof in the procedure. Again, those who can speak Hungarian and who may have relatives or others who can provide information and assistance have a great advantage. They can rely on more assistance in assembling documents and other information to support their claim. Moreover, to the extent their claim rests upon persecution of ethnic Hungarians in neighbouring states, there is a better chance that the Hungarian officials will be aware of the unrest and tension in those communities.

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<sup>155</sup> Technically, this second 72 hour period begins from the time of arrival at a refugee camp or at one of the three mentioned police stations: the Central Police Station in Budapest, the County of Csongrád, or the County of Szabolcs-Szatmár. The application shall be filed on a government form, a copy of which is attached as an Appendix to Decree 101. Decree 101, §4 (1).

<sup>156</sup> Candidates for refugee status spend the time between their arrival at the refugee camp and the hearing on their refugee application in a separate, closed section of the camp, Decree 101, §7(1). During this quarantine period, which typically lasts one week (interview, Béla Székely, Director, Békéscsaba Refugee Camp, June 6, 1995), medical screening and tests are done on each candidate, Decree 101, §8(2)(b). While in the refugee camp the applicants surrender their passports or identity documents to the camp authorities. *Id.* §8(2)(c). In return they receive identity documents that entitle them to remain in Hungary during the process, to stay in the camp and use its services free of charge, and to receive free medical care. *Id.*, §9.

<sup>157</sup> The eligibility officers have 30 days from the date the application was submitted in which to make decisions on applications. *Id.*, §10(1). This deadline may be extended only once by 60 days. *Id.*, §10(2). There is a provision that allows further gathering of evidence in special cases where the available information is insufficient and the current information indicates that it is possible the applicant should be recognised as a refugee. *Id.* §11(1). At present, the eligibility officers have been able to meet the deadlines in most of the cases. Interview, István Dobó, Chief, Division of State Administrative Procedure [Appeals Division], Office for Refugees and Migrant Affairs, Department of Interior, Budapest, March 23, 1995.

<sup>158</sup> *Id.*, §11. In some of the refugee camps, such as Békéscsaba, the eligibility officers are stationed right on the camp premises. Other eligibility offices are located in cities in the south and east of Hungary, and in Budapest, the capital. Interviews, Ágnes Ambrus, UNHCR Legal Protection Officer, Budapest, November 28, 1994; August 1, 1995.

### *The refugee definition*

Decree 101 defines those who can be recognised as refugees.<sup>159</sup> It explicitly incorporates the refugee definition set forth in the Geneva Convention.<sup>160</sup> Thus, Decree 101 defines as refugees those who have a well-founded fear of persecution due to race, religion, national origin, political opinion, or membership in a particular social group.<sup>161</sup> As discussed earlier, Hungary adopted the Geneva Convention refugee definition subject to a major restriction: only those whose fear of persecution stemming from events in Europe are included.<sup>162</sup> Thus, as a matter of treaty law, and of national law implementing the treaty, Hungary will, in practice, only afford refugee status to Europeans.<sup>163</sup>

Acknowledging that the geographic reservation allows Hungary to accept only European refugees does not automatically lead to the conclusion that Hungary accepts only ethnic Hungarian refugees. Indeed, the statistics indicate that that is not so. Many non ethnic

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<sup>159</sup> Those individuals whose applications are judged favourably are granted identity cards containing proof of residence in Hungary and a notation that they have refugee status. *Id.*, §16 (2), (3). If they are living in a refugee camp they may continue to stay there, and continue receiving room, board and other assistance provided by the government. Staff members in the camps attempt to identify employment opportunities. Skilled workers, such as electricians, often find work quickly. Others have much more difficulty. Interviews with Robert Rontó, Staff, Bicske Refugee Camp, February 11, March 4, and April 2, 1995.

Those whose applications for refugee status are denied have five days in which to file an appeal. Decree 101, §18(1). The first level of review is administrative. *Id.*, §18(2). The second appeal is to the courts. *Id.*, §19(1).

<sup>160</sup> “A person who is qualified as a refugee according to Article 1, Item C, as well as Item B, Para (1), Subclause a.) of the Convention...” Decree 101, §2 (1). In addition, section 1 specifies that the decree applies only to non-Hungarian nationals who have crossed the borders into Hungary.

<sup>161</sup> The persons with this well-founded fear must be outside their country of nationality or, if they lack a nationality must be outside the country where they formerly resided. Geneva Convention, Article 1.A.(2).

<sup>162</sup> Cabinet Decree 101, §2 expressly incorporates Geneva Convention Article 1.B.(1)(a), which states:

For the purposes of this Convention, the words “events occurring before January 1, 1951” in Article 1, Section A, shall be understood to mean...

(a) “events occurring in Europe before 1 January 1951”.

As noted earlier, *supra* note 89, the 1967 Protocol removed the January 1, 1951 deadline. Decree 101 acknowledges this by referring to Article 1, paras. (2) and (3) of the Protocol. Decree 101, §2(1). Thus, Decree 101 has a geographic restriction, but not a time restriction.

<sup>163</sup> Because the geographic reservation restricts refugees to those with a well-founded fear of persecution based on events in Europe, non-Europeans who face persecution in Europe are protected under the geographic reservation. As a practical matter, those fleeing persecution in Europe are almost always Europeans.

How treaty law and national decrees implementing treaty law can trump the constitution, which contains no such geographical restriction, is difficult to comprehend. Nonetheless, as to the geographical scope of persecution, the Hungarian government follows Decree 101, thereby restricting refugee status to those fleeing persecution in Europe, and eschews the unlimited geographical approach of the Constitution.

Furthermore, Decree 101 places limitations even on those who fear the “right kind” of persecution on the “right” continent. Those whose stay in Hungary interferes with national security, public order, or public health are not entitled to refugee status even if they face the type of persecution defined in the Geneva Convention. Decree 101, §2(b). Needless to say, the “security of the state”, “public order,” and “public health” are not defined. In addition, Decree 101 tracks the Geneva Convention and excludes from refugee status those who face bona fide persecution who have committed a serious non-political crime outside Hungary prior to entering Hungary, or have committed war crimes, crimes against peace, or crimes against humanity. *Id.*, §2(a) (incorporating by reference Geneva Convention art. 1(f)).

Hungarians have been granted protection in Hungary. Of the 133,000 asylum seekers accepted by Hungary from 1988 through 1995, more than half were not of Hungarian background.<sup>164</sup>

Yet, the same statistics indicate that Hungarian refugee procedures exercise a powerful bias in favour of ethnic Hungarians. The data reveal that very few of the asylum seekers actually file applications and seek recognition as refugees. Approximately 5,000 of the 133,000 have filed refugee claims and followed the recognition process through to the end. Roughly 4,000 have been recognised as refugees under Decree 101. They are deemed “Convention refugees” and receive the rights and benefits mandated by the Geneva Convention. This group is also eligible for any rights and benefits, such as a shorter residency requirement under the citizenship legislation law, that Hungarian law affords. Most of the Convention refugees, perhaps 3,500 out of 4,000, are ethnic Hungarians.

Most of those seeking refuge in Hungary, including the overwhelming majority of non Hungarians, never take part in the official refugee procedure. Instead, they are shunted into a separate category. They are deemed temporarily protected persons and their cases are not reviewed to determine whether they satisfy the refugee definition set forth in Decree 101. Thus, they never have the opportunity to qualify for refugee status in Hungary.

### *The legal status of refugees*

The legal status of those the Hungarian authorities recognise as refugees is set forth in a second decree, also dating from 1989.<sup>165</sup> The terms of Law-Decree 19 are quite generous.<sup>166</sup> The decree provides that recognised refugees have all the rights of Hungarian citizens with three exceptions:

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<sup>164</sup> Menekülők Magyarországon (1988–1995) [Refugees in Hungary], prepared by Menekültügyi és Migrációs Hivatal Informatikai Osztály [Office of Refugees and Migration Affairs, Information Department] January 1996 [hereinafter ORMA Statistics 1988–1995] (of 133, 120 asylum seekers from 1988–1995, 75, 531 came from former Yugoslavia; most of these were Croats and Bosnians).

<sup>165</sup> 1989. évi 19. törvényerejű rendelet a menekültként elismert személyek jogállásáról [Law-Decree No. 19 of 1989 on the legal status of persons recognised as refugees] [hereinafter Law-Decree 19]. Under the new regime, the Presidential Council of the Hungarian People’s Republic designated certain pronouncements as a Law-Decree [törvényerejű rendelet] in order to indicate that they were more weighty than a decree [rendelet]. The Law-Decree was issued by the government alone, however, and not enacted by a legislature.

<sup>166</sup> The reality of refugee status in Hungary appears to be the same as the law. Those recognised as refugees experience no legal barriers to work. Anecdotal evidence indicates that they also experience little, if any, social discrimination in employment. (Series of interviews carried out by author in winter and spring 1995 with refugees in Hungary.) Because most of the recognised refugees in Hungary are ethnic Hungarians, they do not face the language barriers that are obstacles for refugees in many societies. Moreover, they are often perceived as fellow countrymen who have returned home after suffering persecution for loyally preserving Hungarian culture.

Although the receptivity to ethnic Hungarian refugees may be diminishing somewhat, György Csepeli and Endre Sik, *Changing Content of Political Xenophobia in Hungary – Is the Growth of Xenophobia Inevitable?*, in *Refugees and Migrants: Hungary at a crossroads*, pp. 121, 122–125 (Maryellen Fullerton et al. eds., 1995) the past decade has been marked by an extraordinary sympathy in Hungary to ethnic Hungarian communities in surrounding countries whose attempts to school their children in Hungarian and maintain their Hungarian

1. refugees do not have the right to vote;
2. refugees may not be employed in jobs restricted to Hungarian citizens;
3. refugees do not have to perform military service.

In addition, refugees can receive Hungarian language classes free of charge. Most important, receiving refugee status helps those who later seek naturalisation citizens of Hungary. As described above, refugee status accelerates eligibility for Hungarian citizenship. An eight year residency requirement is reduced to three years. Moreover, Law Decree 19 states that recognition as a refugee shall be considered extraordinary circumstance in an application for nationality.

Ethnic Hungarians, who constitute the vast majority of those recognised as refugees, can rely on an even greater acceleration: they are eligible for naturalisation in one year. As their knowledge of Hungarian and their familiarity with Hungarian law is likely to be greater than that of others recognised as refugees, their success in obtaining citizenship is also likely to be vastly greater. Indeed, combining the preference written into the citizenship law with the preference that appears to exist in the refugee status procedure enables a sizeable number of ethnic Hungarians to make a quick<sup>167</sup> jump from status as an ethnic minority in a neighbouring country to a full member of Hungarian society.

In contrast, those who are categorised as temporarily protected are, in effect, put into the second tier of a two-tiered system. If they pass a perfunctory screening that attempts to ascertain their country of origin and their membership in a group at risk, they are allowed to stay in Hungary. The government attempts to assign them to refugee camps or to provide rent subsidies that allow them to live in private housing. As temporarily protected persons, rather than refugees, they have no rights under Hungarian law. The law does not recognise their existence. This silence works against them. They are not allowed to work. They are sometimes even denied permission to leave the refugee camp.

#### *Discriminatory treatment*

To an outside observer there is a marked difference in the treatment of refugees in Hungary. Ethnic Hungarian asylum seekers appear to benefit on every measure. Some of this can, no doubt, be explained by non-discriminatory factors. For example, the timing and sequence of the refugee movements may be significant. Perhaps the refugees who arrived in Hungary first, in the late 1980s, tended to be sheltered in small refugee camps. Those who arrived later, in 1991 and 1992, came in large numbers and tended to be

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cultural heritage have been met with great resistance by the regimes that govern them. This makes Hungary's refugee experience unique.

Whether the reality of refugee status will change if more non-Hungarians are recognised as refugees is a major question. Certainly, if a majority of the recognised refugees are from distant countries and distinct cultures, the social perception of refugees would change. Although empathy for those fleeing persecution would remain applicable, the empathy for fellow countrymen returning "home" from "abroad" would no longer be pertinent.

<sup>167</sup> The process is quite short by Western European or U.S. standards. A positive decision on refugee status often comes in 2 or 3 months. Twelve months after that an ethnic Hungarian refugee can apply for citizenship in Hungary.

sheltered in large camps opened in response to the influx.<sup>168</sup> As the first wave of refugees was primarily ethnic Hungarian, and the second was not, that might explain the difference in the character of the camps. Although timing may be a partial explanation, it is no more than partial. The camp populations have not remained static. Instead there has been a substantial turnover at the camps,<sup>169</sup> yet the difference in the characteristics of the camp population has remained.

One of the starkest differences in treatment involves the distinction between those accorded refugee status and those accorded temporary protection. More than 90 per cent of those deemed refugees, and thus entitled to virtually the same rights as citizens, are ethnic Hungarians. More than 90 per cent of those deemed temporarily protected persons, who are assisted with food and shelter but denied many other rights, including the right to work legally, are not ethnic Hungarians. These statistics are damning, but the factors that have contributed to channelling asylum seekers into these categories must also be examined to see if there are non-discriminatory explanations for the situation.

For example, the circumstances that compelled people to flee might account for the difference in treatment. Perhaps more of the asylum seekers who fled Romania left traditional political persecution: a totalitarian state that tolerated no dissidence and viewed with hostility any cohesive group that did not exist to further government aims. In Ceaucescu's Romania, the Hungarian minority, an ethnic group with pre-existing loyalties, with independent and long-standing cultural traditions, and with a language different from that of the government, was viewed and treated with suspicion. Consequently, many of the ethnic Hungarian asylum seekers from Romania fell neatly into the traditional refugee definition: those persecuted for their practices and beliefs.

In contrast, perhaps one could say that many of the asylum seekers who fled the former Yugoslavia left due to war. Although families fleeing artillery fire evoke sympathy in news stories, they often do not readily fall into the traditional refugee definition. This is because the harm that war refugees flee is generally viewed as danger due to their being unfortunate bystanders rather than danger due to their practices and beliefs. Accordingly, some might argue that asylum seekers fleeing Yugoslavia are fleeing generalised wartime conditions and thus are entitled to temporary protection rather than refugee status.

Again, the timing of the refugee arrivals mentioned above can be, at most, a partial explanation. The war in former Yugoslavia has not been an ordinary war. It has distinguished itself by publicly acknowledged ethnic cleansing a classic form of political and religious persecution. Although many asylum seekers from former Yugoslavia may

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<sup>168</sup> For example, the Bicske refugee camp was opened earlier than the Nagyatád camp, when the first flows of refugees were predominantly ethnic Hungarians from Romania. Nagyatád was opened in August 1991, when the refugees from the war in Yugoslavia began pouring into Hungary. It was opened as a temporary shelter, with the idea that the refugees would be able to return in a matter of months. Five years later this temporary shelter is still in active operation.

<sup>169</sup> Many camp residents have left and been replaced by those who arrived years later. For example, in 1991 the Nagyatád camp population was 85 per cent Croatian and 12 per cent ethnic Hungarian. In 1994 the camp population was 77 per cent Bosnian, 10 per cent Croatian, and 8 per cent ethnic Hungarians.

have fled solely to avoid bombardment, many fled because they were members of a group expressly targeted to be expelled or killed.<sup>170</sup>

The media covering the situation in former Yugoslavia published repeated reports of persecution aimed at specific groups. Indeed, the leaders of the Serb forces in Bosnia made it easy to recognise the persecution because they publicly vilified non-Serbs as foreign occupying forces who should be evacuated or eradicated from Serb lands. Moreover, many asylum seekers who arrived in Hungary confirmed the reports of ethnic cleansing with consistent tales of being driven away from their lands and homes solely because they had been born into the targeted group. Accordingly, although it might be possible to say that many of the asylum seekers from former Yugoslavia were those traditionally viewed as war refugees and were properly channelled into the temporary protection category rather than into the refugee process, many of the others satisfied the traditional refugee definition and should have been accorded access to the refugee process in Hungary.

Another factor that may have contributed to the channelling of ethnic Hungarian asylum seekers into the refugee category and non ethnic Hungarian asylum seekers into the temporary protection category is the different expectations with which they left home. Most ethnic Hungarian asylum seekers came from Romania and describe their lives in Romania as slow, steady oppression, occasionally punctuated by threats of violence. After enduring this for years, they planned their departure for Hungary. They left with the hope of starting a new life there.

In contrast, the non ethnic Hungarian asylum seekers largely came from former Yugoslavia. They describe their lives before the war in positive terms. They left suddenly, when war or ethnic cleansing erupted near them. They left with the hope that this was only temporary madness. They expected to return home in a short time. Indeed there are many stories of asylum seekers who arrived in the summer of 1991, having arranged to schedule their summer vacation to cover their time in Hungary!

Clearly, those who view their move to Hungary as the beginning of a new life might be more likely to view themselves as refugees in the traditional sense and thus might be more likely to apply for refugee status under standard procedure. Those who view their presence in Hungary as a short-term dislocation would be less likely to view themselves as traditional refugees. They don't want to start a new life in another country; they just want temporary protection. Consequently, many of them would be perfectly comfortable with being shunted away from the refugee status procedure and categorised as temporarily protected persons. The lack of legal rights that attend temporary protection status would be of little concern. The basic necessities – food and shelter – to weather the immediate crisis were provided. The inability to work legally and the lack of other legal

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<sup>170</sup> The details vary depending on the timing and sequence of the refugees arrival in Hungary. Many who fled to Hungary in the summer of 1991 were Croatians who lived in the northeast corner of Croatia, in the vicinity of Vukovár. The long siege of Vukovár and the incessant artillery attacks may have triggered a substantial flow of families desperate to escape the dangers of traditional warfare. Later, particularly with some of the waves of Bosnian asylum seekers, the personal stories, as well as the news reports, described many more incidents of ethnic cleansing targeted at individuals identified by the group into which they happened to be born. No doubt, both reasons for flight coexisted simultaneously in many waves of people seeking protection in Hungary.

protections were unimportant when the expectation was that the crisis would subside in a few months and people could then return home.

Furthermore, although there was no legal prohibition on seeking refugee status, most of the others streaming in from former Yugoslavia viewed themselves as people in need of temporary protection, and considered it appropriate to be placed in temporary protection status. Thus, it would be natural for others fleeing to Hungary from the same conflagration to consider themselves, too, as candidates for temporary protection status rather than refugee status, especially since temporary protection adhered to their original perspective on the situation.

In addition, the relative living standards in Hungary, Romania, and former Yugoslavia may have been another factor encouraging asylum seekers from one state to seek refugee status and those from another not to seek it. For many asylum seekers from Romania, the living standard in Hungary was a significant improvement. This would contribute to their desire to seek refugee status and start a new life in Hungary. For many asylum seekers from former Yugoslavia, the living standard in Hungary was a step down. This would make the asylum process and refugee status in Hungary less attractive, and the desire to return home stronger.

The difficulty is that the temporary crisis has not been a short-term one. Many who arrived thinking they could return to their homeland within a few months have now spent several years in Hungary. Second-class status and the inability to work legally are easy to ignore or tolerate for a few months. When the few months become years, these disadvantages begin to chafe. In particular, the lack of access to legal work has ensured that temporarily protected persons remain wards of the state. Moreover, it has decreased families' abilities to function in a normal manner, depriving them of the opportunity to help themselves now and making it increasingly unlikely they will be able to be self-sufficient in the future.

As the temporary stay became long-term, if not permanent, the importance of the legal rights that accompany refugee status became more obvious. This realisation generally came too late, however. Refugee status was now out of reach for those with temporary protection status, no matter how clearly they may have been able to satisfy the refugee criteria in the beginning. By the time they acknowledge that their travail would be long-term and that the legal conditions defining their stay in Hungary were important, they had long since missed the various 72 hour – or even 3 month – deadlines for filing applications for refugee status. Hungarian law has no provisions allowing asylum seekers to switch from temporary protection status to refugee status in mid-stream.

Although there may have been nothing malevolent in 1991 and 1992 about channelling asylum seekers from former Yugoslavia into temporary protection status rather than refugee status, this channelling has continued long after the difficulties of doing so have been identified. Throughout 1995, as new asylum seekers from Bosnia made their way from forced labour camps and ethnically cleansed villages to the southern border of Hungary, they continued to be viewed as temporarily protected persons. It may well be that these asylum seekers believed, as their predecessors in 1991 and 1992 had, that they needed only short-term protection. Even so, the experience gained by Hungarian officials during the prior decade should have taught them the contrary. They should have known that the refugee process was the appropriate path that many of these

newcomers should take. Yet, notwithstanding the human rights reports and the experience stemming from the prior four years, the Bosnian asylum seekers continued to be considered as applicants for temporary protection.

Other unsettling information concerning the disparate treatment of ethnic Hungarian and non ethnic Hungarian refugees arose from a series of interviews with refugees. Many of the ethnic Hungarians granted refugee status told stories of hard times and uncomfortable circumstances in their home countries. They recounted discrimination and their fears of the discrimination they and their children might face in the future. Whether this harsh treatment rose to the level of persecution was unclear. When discrimination and harassment become persecution is often difficult to ascertain. Nonetheless, it is striking that many ethnic Hungarians granted refugee status in the early 1990s recounted experiences that did not appear to constitute persecution. Their stories were more consonant with those of traditional immigrants, impelled to launch a new life in more promising surroundings, than they were with those of traditional refugees, forced to leave by targeted persecution targeted at them.

In contrast, many of the Bosnians granted temporary protection recounted chilling tales of being taken at gunpoint to forced labour camps. Others spoke of being ordered to sell their homes and lands, and then commanded to pay the proceeds as they were forced to board buses that would remove them from their homeland. Their stories, corroborated by international government officials working with refugees, left little doubt that they had a well-founded fear of persecution based on their cultural background and religion.

## CONCLUSION

Interviews with refugees, visits to refugee shelters, discussions with refugee workers, and meetings with government officials all lead to the conclusion that there is a two-tiered refugee system in Hungary. The top tier, by and large, is inhabited by ethnic Hungarians, the bottom tier by refugees of other ancestry. An examination of the refugee laws, in light of the historical and geographical context, also provides evidence that Hungary is particularly hospitable to asylum seekers from ethnic Hungarian communities. Traces of an unacknowledged preference for ethnic Hungarian asylum seekers can be detected in several legal provisions.

For example, knowing that many in Hungary feel a special kinship with ethnic Hungarians outside national borders and may wish to support their decision to move to Hungary sheds light on the constitutional provision concerning asylum. An awareness of the sense of kinship with ethnic Hungarians explains facets of new legislation regulating citizenship. Even the geographical restriction Hungary imposed concerning the scope of the Geneva Convention assumes new meaning in light of the large ethnic Hungarian communities residing in neighbouring countries.

More powerful evidence of a preference for ethnic Hungarians can be seen in the actual administration of the refugee system. Standard legal rules and principles are not applied neutrally. Those who gain access to the initial stages of the refugee procedure, those whose claims actually are adjudicated, those whose refugee claims are successful,

those who benefit from the social programs and the financial support programs for refugees are overwhelmingly ethnic Hungarians.

The refugee legal system in Hungary provide substantial assistance to ethnic Hungarians who wish to emigrate to Hungary and less assistance than would be expected to non-Hungarians fleeing the threat of persecution. The discrimination in favour of ethnic Hungarians itself is not evil or morally reprehensible. Indeed, to many people it may seem natural. Nonetheless, this discrimination in the refugee system works on two levels and is troubling on both. First, it appears that ethnic Hungarians who are fleeing persecution are granted refugee status in much greater numbers than others who are fleeing persecution. Second, it appears that ethnic Hungarians who wish to leave lives of discrimination and hardship, but are not fleeing persecution, are often granted refugee status.

The first phenomenon is a problem of exclusion of bona fide refugees. Legitimate refugees who are not ethnic Hungarians stand less chance of being granted refugee status in Hungary than do their ethnic Hungarian counterparts. The second phenomenon is a problem of inclusion of non refugees. Ethnic Hungarians who do not face a well-founded fear of persecution stand a greater chance of being granted refugee status in Hungary. This approach has perverted the refugee system into an immigration system.

An immigration system is not evil. Furthermore, there is nothing illegal about encouraging and supporting immigration to Hungary by ethnic Hungarians. There is no inconsistency in welcoming both immigrants and refugees to Hungary. Ethnic Hungarian immigrants, however, should not be characterised as refugees and should not be supported by funds set aside for refugees. This misleads the public in Hungary and in the international community about the refugee burden Hungary is shouldering and the assistance that is needed for refugees in Hungary. Moreover, it sends a cynical message to Hungarian society that the legal system can and should be manipulated. It subverts the rule of law. In a country that is working to establish a return to the rule of law after four decades of communist party control, this misuse of the refugee law is a serious problem.

*Béla Jungbert*

### ***Comments on M. Fullerton's Study***

A thorough knowledge of migration, and within this, of the complexity of the international refugee problem and its institutions, and at the same time a failure to digest the empirical evidence accrued during the one-year stay in Hungary, a generalisation of political events as portrayed in American journalism: this is the non-rhyming duality I sense in Maryellen Fullerton's study.

As a matter of fact, her study seems extremely one-sided in view of the year spent in Hungary and the in-depth study of the refugee problem. If a Hungarian researcher had been allotted the same amount of time for studying migration institutions in the US, I doubt he would make the same mistake of blaming the current government for the much criticised, selective immigration and refugee policy – in spite of the existence of a full legal framework –, the strict visa policy, the less than efficient border control, the much-debated decrease of welfare benefits – especially in terms of illegal migrants. Neither would be so quickly levy criticism against the democratic achievements and political aspirations of the host country without first analysing the country's history and development. Our research fellow would probably show more empathy towards the control and management of the positive aspects of migration being of strategic interest and how, at the same time, regulation and control of the more unpleasant aspects of migration emerged as an issue of national security in the USA. She might even show how the no. 1 political power might co-ordinate management of this issue with both national interests and obligations.

One of the main problems of the article is a conceptual interpretation. This is reflected by the author claiming that between 1988 and 1995 Hungary registered over 130,000 refugees, and that many more sought private assistance and never informed the authorities of their presence, while by late 1994 the number of registered refugees dwindled to less than 8,000. The quoted figures are indeed genuine, but their interpretation is misleading. The over 130,000 people is an overall figure, including both those who applied for refugee status and those who received temporary protection, those who were in legal transit towards a third country, as well as those who requested official help for settlement or repatriation, and those who sought legal counselling from the Hungarian authorities to decide which option they should choose. In 1992, the year which Hungary saw the highest number of asylum seekers claiming persecution, about 12,000 people requested and received food and shelter from the state. Others – about four or five times this figure – were, following their registration, spontaneously placed with

Hungarian families, placed in private accommodation or referred to NGOs for assistance. The assumption that the number of refugees who did not register themselves with the authorities was considerably more than 130,000 is simply absurd. In contrast to the challenge posed to the US by the several hundreds of thousand of refugees living illegally in the continent-large country, this is hardly the case in Hungary. It is also true that by 1994 there were less than 8,000 refugees in Hungary since, of the 6,000 individuals who applied for refugee status since 1989, about 4,250 were granted such status and today<sup>171</sup> there are no more than 2,700 convention refugees in Hungary. What the author had in mind were the temporary protected persons from Yugoslavia whose situation she had the opportunity to study. The quoted numbers are indeed correct with reference to these refugees, and it should be noted here that in mid-January 1997, there were about 4,600 individuals receiving temporary protection in the country.

The author misunderstands and misinterprets the fact that there are Hungarian ethnic minorities in all of the countries bordering Hungary and that each democratically elected Hungarian government has specific responsibilities and interests concerning this minority which it can finally officially represent. Today this is a political priority which is at least as important as maintaining good relations with the neighbouring countries. It is also well known that a country's immigration policy is based on utilitarianism, and the US is no exception. Nor is it unique that in granting citizenship, Hungary exercises a positive discrimination in the case of individuals of Hungarian ethnic background. However, Hungarian immigration policy has never applied racial, national or other discriminatory preferences, with sole exception being the geographic reservation concerning non-European refugees, which Hungary amended to the 1951 Geneva Convention. In other words, the claim that refugees who happen to be ethnic Hungarians receive preferential treatment in the Hungarian refugee process is entirely unfounded. The fact is that the greater part of aliens requesting refugee status are already ethnic Hungarians from neighbouring countries as such applicants are the least liable to regard Hungary as a transit country and prefer instead to remain here permanently due to greater facility of cultural integration. Also the overwhelming majority of applicants for refugee status arrive from Romania, and their arrival began well before the events in 1989–90, owing to persecution before and after that period. If M. Fullerton's claim that ethnic Hungarians are recipients of positive discrimination, at least as many of these ethnic Hungarians from Transylvania would have been recognised later as refugees during the above period, which is simply not true. The fact is that only 2,942 Romanian nationals have been recognised as refugees since 1989: and this figure is contrasted with the 30,398 official immigrants<sup>172</sup> to Hungary, it is quite clear that it is merely the author's obsession that the refugee process has been misused as some kind of "Law of Return", for neither practice nor intent for ethnic preferences in contradiction to the 1951 Geneva Convention can be demonstrated. Hungary has no need for the preferential settlement of ethnic Hungarians by manipulating the refugee process – purportedly for lack of an established repatriation programme –, since the country has immigration and citizenship policies regulated by legislation. In any event: the previous and the current governments have both declared

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<sup>171</sup> In mid-January of 1997. (J. T.)

<sup>172</sup> It refers on aliens in possession of an open-ended residence permit. (J. T.)

their main interest to be the guarantee of minority rights to ethnic Hungarians in their respective homelands only insofar as such rights are consistent with existing European guidelines.

The charge of consciously misleading international organisations providing assistance for refugees and of manipulation the number of refugees is a similarly unfounded, but well-known insinuation first voiced by the Budapest Office of the United Nations High Commissioner for Refugees, yet not by its Geneva Headquarters; it is also a fact that since early 1995 the UNHCR has drastically decreased its assistance to refugees in Hungary, and assistance is no longer channelled through government agencies, but into projects which directly involve their beneficiaries. It is common knowledge that the UNHCR offers specific support in the form of projects and that these, their budget and invoices were and are reviewed annually in Geneva. In consequence to the shock caused by mass influx in the early 1990s, the unpreparedness for reception and the still emerging nature of relevant institutional framework, there may have been problem in accumulating proper data, and it is obvious that responsibility for the use of UN funds must be equally shared by Hungarian refugee authorities and the UNHCR. Instead of making groundless allegations to demonstrate that current leaders of the refugee office have created a transparent and controllable system which enables the precise manipulation of UN assistance it might perhaps be more justified to initiate concrete investigations examining specific cases. received from the UNHCR. As a matter of fact, the UNHCR no longer contributes to the most costly aspect of refugee assistance: the maintenance of camps.

Another misunderstanding is that non-European refugees who have been granted so-called “mandate” refugee status by the UNHCR do not obtain labour permits. The fact is that people arriving from ex-Yugoslavia who received temporary protection, similar to other legal aliens in Hungary, can be employed according to relevant legal provisions: they need a residence and a labour permit. The latter is issued by the regional labour authority. It is an entirely different matter that these people often have difficulties in finding jobs, not because of regulations, but because of their qualifications (or lack of thereof) and the tempting and ready availability of part-time or seasonal illegal jobs. Positive discrimination in their favour – in this case, a disregard of the necessary labour permit – is not possible at the moment, and I would like to emphasise that it is unfair to shift the blame onto refugee officials. Nonetheless, an amendment to the Decree by the Minister of Labour (No. 7 in 1991), drafted on the initiative of the Office for Refugee and Migration Affairs stipulates that temporary protected persons residing as inmates can work within the camp without a permit.

The author claims that “traces of an unacknowledged preference for ethnic Hungarian asylum seekers can be detected in several legal provisions”. This claim is unknown to the refugee authority. That the Section on asylum in the Hungarian Constitution offers special protection to those persecuted for linguistic reasons is a fact, but since considerable political and legal efforts have been made to modify preference in the new constitution, it might have been better for a scholar not to simply criticise a country’s effective constitutions, but to study the historical and political circumstances which shaped it.

According to M. Fullerton, ethnic Hungarians are expressly favoured by the refugee assistance system, while refugees of non-Hungarian ethnic background only receive

temporary protection. It is regrettable that the one year spent by the author in Hungary proved insufficient for her to understand that temporary protection is provided, independently of ethnic background, for refugees from ex-Yugoslavia, of whom ethnic Hungarians from the Voivodina (i.e. Yugoslavia) and Baranya (i.e. Croatia) constitute a significant percentage. It should also be borne in mind that 28 per cent of recognised refugees originate from ex-Yugoslavia, since the application procedure for refugee status is readily accessible to them. The author claims that 90 per cent of temporary protected persons are non-Hungarians, but the fact is that in 1995 only 67 per cent, and in 1996 only 50 per cent, were non-Hungarians. The ratio of ethnic Hungarians among the applicants and recognised refugees was basically identical in the year (1995) studied by the author. Considering the period since 1989, we can say that 84.2 per cent of recognised refugees were ethnic Hungarians, and 75 per cent of all applicants. The difference in the legal status of refugees and temporary protected persons does not stem from the two tiers of an identical procedure, but from two different legal titles and processes which have nothing to do with ethnic background.

We are also reproached for requesting that the examination necessary for acquiring Hungarian citizenship be administered in Hungarian. I hope that the author has also criticised this practice elsewhere, namely in the US, where the mandatory oath and examination are conducted in English, whereby those speaking English are at a clear advantage. With regard to the asylum procedure itself, Hungarian public administrative proceedings ensure the applicant's use of his native tongue, by the provision of an interpreter at no expense to the applicant. The asylum procedure is marked by standard protocol and, in every case, the applicant is informed in his native language, of possible options, as well as of the overall procedure and the difference between refugee status and temporary protection.

Finally, we should also bear in mind that behind the often back-stabbing and self-righteous debates on the refugee issue between bureaucrats, lawyers and politicians lies the tragic reality of human fate, considerable international co-operation, as well as the intent and hope for responsible national policy.

*Maryellen Fullerton*

## ***A Rejoinder***

Dr. Béla Jungbert describes my article on refugee law and policy in Hungary as one-sided. If by one-sided, he means that my research in Hungary led me to a specific point of view that is critical of current policy, he is correct. If by one-sided, he means that the fact that I do not read and speak Hungarian required me to rely on interpreters and translations, as well as sources available in English, German, and French, he is correct. If by one-sided, he means that I interviewed or listened to only those with a certain limited range of views, he is wrong.

As a scholar, I consider it fundamental to base my research on as wide a range of informed views as possible. To that end, I made it a goal to speak to as many people as I could who are knowledgeable about refugees and fluent in English. During the twelve months I lived in Hungary, I spoke to asylum seekers, refugees, migrants, church workers, municipal officials, Refugee Department officials, employees of the Ministries of Interior and Foreign Affairs, academics, private lawyers, journalists, psychiatrists, psychologists, social workers, medical personnel, teachers, non-government organisation workers, staff members of international organisations, diplomats, consular officials processing resettlement requests, and many others. I was impressed by the range of views and I learned to listen carefully to contradictory perspectives rather than to take anyone's view for granted. Indeed, I was impressed with the robust debate and criticism I heard about refugee policy and about many other aspects of government while I was in Hungary. I found the openness of debate and the self-criticism of many Hungarians concerning these issues both mature and healthy.

I cannot say the same for Dr. Jungbert's response to my article. Without being too Freudian, I question whether his description of my article as vicious and self-gratifying is mere projection. I reject Dr. Jungbert's suggestion that my analysis should be ignored because I come from a country whose migration and refugee policy is not perfect. If criticism from abroad is only legitimate when voiced by those whose governments are perfect, all international scholarly research and inquiry would cease.

Turning to the substance of Dr. Jungbert's rejection of my conclusion, that Hungarian refugee law and policy discriminate in favour of ethnic Hungarians, I will not repeat here my lengthy description and analysis, but only emphasise a few points. I do not think, and have not asserted in my article, that it is immoral or illegitimate for the Hungarian government to grant preferences in migration and citizenship to those of Hungarian descent. I do think it is unlawful to use the refugee law and policy to discriminate in

favour of ethnic Hungarians. The statistics prepared by the Office of Refugee and Migrant Affairs that Dr. Jungbert heads show that more than 130,000 asylum seekers and refugees entered Hungary between 1988 and 1995, that only 4,218 received refugee status, and that an overwhelming majority of those who received refugee status are of Hungarian descent. These statistics raise the questions of what has happened to most of the other refugees and why so few non-Hungarians, especially those fleeing persecution and ethnic cleansing in the former Yugoslavia, have received refugee status. In my article I examined many reasons that make it more likely that ethnic Hungarians would seek refugee status and many reasons that might inhibit non-Hungarians from doing so. I have discussed each of the factors that Dr. Jungbert claims I have failed to consider. Ultimately, I concluded that these reasons might account for a substantial difference in the rates of refugee recognition, but could not explain the overwhelming disparity. Dr. Jungbert has provided no evidence that causes me to change my conclusion. His mere assertion that the Hungarian refugee laws do not allow discrimination and that no discrimination exists does not undermine the conclusions I reached based on research, observation, and analysis. I do note that Dr. Jungbert refers to the UNHCR's reduction of funds and criticism of Hungarian refugee policy. My article represents my view and not that of the UNHCR, but perhaps Dr. Jungbert's intemperate response to my criticism is somehow linked to his frustration with criticism from other sources.

*Gábor Világosi*

## ***A Politician's Reflections on Hungary's Migration Policy***

Migration is a sensitive issue all over the world. The social and economic differences among states, the increasing number of ethnic, religious or political conflicts, not to mention the expanding possibilities of travel supported by the improved conditions, have all turned migration into one of the greatest challenges of recent times. This challenge is also laden with security policy, economic and humanitarian aspects. Migration has become an issue of defence policy, too.

Migration is an extremely complex phenomenon, extending to the economic, social and cultural areas of a society, from refugees to immigrants, from seasonal labour migration to illegal migration, and to organised international crime. Therefore a reconsideration and re-shaping of the legal institutions of migration are increasingly more timely.

Hence any political goal or carefully elaborated strategy becomes feasible only if it receives the support of the majority of the society of the respective host country.

The implementation of a comprehensive migration policy intended to respond to all inherent challenges requires complex legal regulations and law enforcement based on the existence of relevant administrative institutions, thus ensuring the complete treatment of the various forms of migration.

However, a truly comprehensive migration policy cannot be implemented by public administration or police organisation alone. It also requires the close co-operation of governmental and civil agencies, as well as a realistic attitude of the society, free from xenophobia but at the same time mindful of the country's security interests.

This co-operation of public administration with civil organisations is constant with the fact that there exist different priorities in the activities of the two sides whose interests are otherwise basically identical.

The elaboration of Hungary's migration policy is fundamentally influenced by the country's aspirations for EU accession. In its application for associate membership in the EU in 1994, the Hungarian government affirmed that the country would co-operate within the Maastricht Treaty in the field of home affairs. This objective calls for the co-ordination of Hungarian migration policy with the Union legislation.

The formulation of public administration policies with respect to migration is in direct collaboration with EU member states, more specifically within the framework of the so-called third pillar of the EU.

While the EU does not currently have a comprehensive and uniform migration policy, there is nonetheless an obvious effort to create harmonised legislation and law enforcement. Article K1 of Title VI of the Treaty of the European Union specifies areas of “common interest” thereby necessitates expressing that intergovernmental cooperation in which much larger emphasis is given to the sovereignty of the state with regard to these questions, compared with those issues community level ones.

The only realistic goal of Hungarian migration policy can be to bring continuity to the various humanitarian obligations undertaken and make sure that such initiatives meet a uniform set of standards. Further on, such policy should take into account constitutional regulation, the nation’s economic, social and security interests, as well as external requirements set for us in connection with EU accession a consistent legal framework.

Let us now take a look at the main elements of Hungary’s migration policy.

Since the second half of the 80s – because of events in Romania and in the Southern-Slav region – Hungary has metamorphosed from a refugee sending country to a significant transit and host country. At the beginning of the process, a standardised legal or institutional framework for the mass reception of the refugees practically did not exist.

In 1989, as the first of the members of the former Warsaw Treaty, Hungary acceded to the 1951 Geneva Convention and its supplemental 1967 New York Protocol. Amendment to the Convention was made with a geographical reservation under which Hungary was ready to fulfil its assumed obligations only for persons seeking asylum due to events occurring in Europe. With regard to the political conditions at the time of the accession, and due to the fact that this legal instrument was virtually without precedent in the country, that limitation was acceptable.

In the course of the amendment of the Constitution in 1989, the then still ideologically charged provision on refugee status was revised. The amendment specified the circle of persons recognised as refugees similarly to criteria of 1951 Geneva Convention. According to the Constitution the law on asylum has to be passed by a two-third vote of representatives.

From the summer of 1991, as a result of the Yugoslav crisis, several waves of asylum seekers arrived in Hungary. Instead of claiming individual persecution, their need for protection could be justified by wartime conditions in their countries of origin. Most of them declared an intention to return home as soon as possible. The notion of temporary protection, lacking the proper legal and institutional framework, evolved as a result of circumstances. Following registration, the accommodation for and legal practice concerning temporarily protected persons would not have been possible without the cooperation with municipalities, non-governmental organisations and institutions of different communities.

Since Dayton Accords and the peace treaty signed in Paris created the basic conditions for peace, as of January 15, 1996, the Hungarian government no longer provides temporary protection for new arrivals from the former Yugoslavia.

In addition to participating in the 1951 Geneva Convention, Hungary is also party to relevant international agreements, especially to protective instruments such as the 1950 European Convention of Human Rights, which obliged the signatory parties to protect fundamental human rights. Hungary recognised the authority of the European Human

Rights Commission for addressing individual complains and the jurisdiction of Strasbourg.

The legal status of recognised refugees is regulated by Law Decree 19 of 1989, which entered into force on October 15, 1989. This decree stipulates that refugees should be regarded as “quasi-Hungarian citizens” in terms of the application of the laws, the only differences being that:

- they do not have the right to vote;
- they may not be employed in jobs which are by law restricted to Hungarian citizens;
- they are not obliged to perform military service;
- they enjoy preferential treatment in receiving Hungarian citizenship through naturalisation;
- they can receive Hungarian language classes free of charge;
- they can receive bilingual passports as defined in the 1951 Geneva Convention.

Following the ratification of the above international guidelines, the necessary amendments to the existing Hungarian laws were also enacted and the institutional framework necessary for the implementation of these agreements were created. Although an administrative and welfare system for refugees was created during 1988–89, its modernisation still remains a task for the future.

It can thus be stated that the elaboration of the asylum law and the status of temporary protected persons which differs from that of recognised refugees can no longer be delayed. The maintenance of the geographical reservation by Hungary to the 1951 Geneva Convention is unnecessary and incompatible both with the Constitution and future accession to the European Union.

Preparation for a standardised EU asylum law is underway and once it is enacted, existing geographical restrictions will also be lifted. According to the bill drafted concurrently with the ratification of the law, geographic particularities made to the 1951 Geneva Convention will be dropped. It is a common knowledge that Hungary was the first to ratify the Convention in this region on the eve of the political changes. It is also obvious that legal status of the refugees from Romania, whose number ran into tens of thousands by that time, had to be legalised using the instruments of international law. Ratification of the geographical prerequisites at that time seem justified since the collapse of Communism and the disintegration of the Soviet Union threatened to yield a flood of uncontrollable migration. In spite of the full legal regulation of the protection system for refugees and asylum procedure, Hungary still lacks an asylum law, even though the Constitution explicitly states the necessity for granting asylum.

In the process of formulating government policy and regulations on aliens arriving in and residing in Hungary, our working parameters are basically determined by the country’s accession to the EU and our borders becoming the external ones of the European Union. We will have to establish border protection systems and visa policy congruent with EU standards. At the same time, we cannot ignore that numerous ethnic Hungarians live in the neighbouring countries. Maintenance of contact between the ethnic Hungarians living beyond the borders and the mother country should be guaranteed.

Following EU accession, there will be two groups of aliens distinguished at the point of entry. The citizens of the member countries will be entitled to free movement and stay,

while a protective policy will be applied to the citizens of other countries. For them, entry and stay will be possible only amidst increasingly rigorous conditions. Consequently, Hungarian regulations concerning the immigration and residence of foreigners must be modified with regard to the domestic job market and employment policy forecasts. As to the future, in order to form a standardised all-encompassing migration policy, Hungary must execute the formulation of a labour market strategy, as well as settlement of the legal status, the provision of shelter to illegal who cannot be deported due to human rights consideration.

Illegal migration should draw the hardest possible treatment applied by all countries. The danger of illegal migration lies in the fact that it is directly connected to international organised crime. It is a well known fact that organised criminals deal in the trafficking of illegal migrants, drugs and arms along the mayor routes of transit. Hungary is prepared to introduce strict border controls on the external borders to curb illegal migration and international organised crime.

It has to be repeatedly stressed that the implementation of a successful migration policy needs well orchestrated government actions supported by the society, and the active participation of non-governmental organisations.

*Boldizsár Nagy*

## ***Can the Hungarian Migration Policy Be Moral?***

The question is timid: should we moralise? The head of the Refugee Office in Poland allegedly told the organisers of yet another forum on the Central European refugee problem that he was only willing to participate in the planned meeting if he could hear something other than long-known facts. Was he right? – we might ask. Is it really possible to refer to ideals when drafting new laws? Should we acquiesce to the thought that facts determine legislation, and therefore it is indeed unnecessary to ruminate on ideals that are in contradiction to certain policies? Is there no alternative to *Realpolitik*? Is any effort based on the perception of history as an infinite flow of debits and credits naive or unrealistic? This short essay suggests that the formation of the Hungarian migration policy should include moral considerations.

### **HISTORY, HUMAN DIGNITY AND FORCES ACTING AGAINST THE UNLIMITED POWER OF THE STATE TO EXCLUDE**

As far as I can see, the past few decades have not answered the question of whether states exist according to the power maximising laws of the Hobbesian world (a point on which the realist and neo-realist schools of international relations tend to agree), or the Grotian world view, which places reason and God, as well the laws of the international community, above national ambitions. Studies on international relations suggest a primacy of the facts and of utilitarianism. The careful observer can nonetheless perceive opposite trends as well.

It seems instructive to review the process of human rights' codification and implementation, even more so, since Hungary's migration policy is closely related to the human rights and minority rights obligations of Hungary.

In international law the unprecedented extent of atrocities during World War II led to the legal protection of human rights, which, through the punishment of war crimes at Nuremberg, the Universal Declaration of Human Rights (1948), the Convention on the Prohibition of Genocide (1948), the European Convention on Human Rights (1950) and the Convention Relating to the Status of Refugees (1951), gave rise to an intricate

network of human rights agreements.<sup>173</sup> It is not my intention to provide here an overview of the intellectual history of human rights. I would merely like to point out that here we have a moral answer to a moral crisis: the individual annihilated in war who appeals for protection on the basis of personal dignity, since the signatories of the International Covenant on Civil and Political Rights acknowledged that human rights “derive from the inherent dignity of the human person”.<sup>174</sup>

However, the recognition of human rights was afterwards indeed subjugated to the whims of politics, and while Russian and other Eastern European dissidents stood in the focus of President Carter’s foreign policy, as hardly a CSCE summit could pass without their being mentioned, the Iranian and Haitian dictatorships, not to mention those of earlier Portugal and Spain, could cheerfully live their lives overshadowed with torture, missing persons and humiliation. The sudden dedication to human rights issues following the Tienanmen square massacre seems to have already dwindled [at the close of 1996 – E. G.].

The principle has nonetheless survived despite of its controversial application; that states should renounce the practice of total control – tolerated until World War II – over their own citizens. States have preserved their absolute power as far as the protection of their borders and decision making governing policies exclusion and inclusion are concerned. The only exception – a value-oriented exception – is the Geneva Convention on Refugee Status of 1951: according to which no refugee can be denied the right to enter simply because it is unclear whether he is indeed a refugee or simply a migrant with no relevant claim to refugee status.

The second major breakthrough in the unlimited right to selection by the state was created by the European Economic Community, when it acknowledged the right of workers right to free movement and the right of establishment throughout the Community<sup>175</sup> as one of the four main components of the common market.

In its present form, the freedom of movement (including the right to reside in any one of the fifteen member states) extends to almost all citizens within the European Union, not only to employers and employees, but also to students, pensioners and individuals possessing the necessary assets, with only the poor and those without adequate health insurance being excluded. Apart from the Union and other territorial systems – such as the co-operation between the Scandinavian states –, there is no inherent right of entry and residence, nor has this been proposed in Hungary.

## **THE FIVE SUGGESTED PRINCIPLES OF A MIGRATION POLICY**

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<sup>173</sup> The UN alone is the depository of twenty-five universal human rights agreements and their protocols. To this must be added the various regional agreements in Europe, Africa and America.

<sup>174</sup> International Covenant on Civil and Political Rights, Preamble

<sup>175</sup> For the sake of precision I would here remark that agreements on the abolition of visas which may spring to mind in this context do not curtail the territorial state’s right to exclusion: by entitling a 30 to 90 day stay without visa, they preserve the state’s right to require applications in the case of all other – longer or non-preferred – visits. They may also deny entry to persons already having a visa or exempted from the visa obligation.

One of the objectives of the present conference is to contribute to the elaboration, organisation and establishment of the legal framework of a Hungarian migration policy. These elements should reflect a causal link between socially acceptable and supported principles underlying the migration policy and the daily administrative practices involved in migration. This is certainly not the case today, when instead of strategic concepts and preferences adopted by legislative organs, we have the endless repetition of the same pet subjects, as well as a host of inconsistent and uncoordinated proposals which are frequently delayed, such as the repeated postponements of the submission to Parliament of the new bill on refugee status in Hungary.

Migration takes three major forms: regular migration, when the individual changes residence of his own free will and in accordance to existing laws; irregular migration which can then be subdivided into two groups, namely forced migration (flight), and illegal migration (illegal border crossing and residence of aliens). Any migration policy must consider these three types of migration, yet manage them according to different principles. These principles are not grouped according to migration types, but rather intersect with them.

What, then, are these principles?

- The principle of solidarity and international burden sharing;
- The principle of historical embeddedness;
- The principle of responsibility to the nation;
- The principle of long-term macro-economic utility;
- The principle of the rule of law.

Let me briefly review how these principles can influence various aspects of migration policy.

### **The Principle of Solidarity and International Burden Sharing**

According to its primary definition, this principle applies to refugee assistance. It is one of the basic tenets of both Christian and non-Christian ethics that the more affluent should assist the impoverished, and that life-saving assistance cannot be denied to those in need, if such actions do not endanger the life of the assistance-giver. There are at least 150 countries which are poorer than Hungary, even if the opposite seems to be the case in view of our past and in our portrayal in German television serials.

The conclusion is rather obvious: any Hungarian refugee policy must acknowledge that the country cannot deny assistance to asylum seekers even if this requires sacrifice from the Hungarian population (and before we begin to feel truly sorry for ourselves we should consider the fact that the government has spent considerably less on asylum seekers and refugees than on the rehabilitation of a single iron mill in Diósgyőr.)

This principle, however, also has a secondary meaning which extends to both types of irregular migration: forced and illegal. The latter includes smuggling of humans, illegal immigration and its consequences. What is needed in terms of this interpretation is that the burden of irregular migration should be shared by the affected countries. In an abstract sense this means that these states should not shift the burdens of irregular migration on to another state, either directly or indirectly. Geographical reservations,

return agreements and the category of safe third countries should be analysed accordingly.

### **The Principle of Historical Embeddedness**

To explain the concept of historical embeddedness, I wish to describe two phenomena. The first relates to the past and expresses the moral obligation to view history as a continuum. Thus states which had previously received favours were, in turn, obliged to repay these “debts” in order to preserve credibility. The structures of international relations are constructed of myriad’s of tiny bricks of a nation’s actions. Hungary, as a refugee-producing country throughout this century, is hereby indebted to the earlier receiving countries. Thus, when fate lays the role of a receiving country upon her, she should not retreat into historic amnesia.

The other meaning of historical embeddedness refers to the present as history. Since 1989, and especially the Southern Slav crisis, it is fairly obvious that Central and Eastern European politics are also an integral part of universal history and that they can precipitate unexpected reactions. Any migration policy must take this into account. The laws should define eligibility for temporary protected status and the state apparatus should have a set plan the reception of large-scale influxes, including such practical issues as how and from where can 15,000 beds be transported to any corner of the country within 24 hours should events so require.

### **The Principle of Responsibility to the Nation**

The principle of responsibility to the nation primarily affects regular migration and influences three areas. Most visible in present day Hungarian politics is its influence on the immigration of ethnic Hungarians from neighbouring countries. Quite obviously, the guiding principle of any migration policy concerning ethnic Hungarians should be responsibility to the nation. However, this does not necessarily lead to an easing of immigration and naturalisation restrictions. If the mother country considers her primary objective to keep ethnic minorities in their original homeland, she should not offer too enticing possibilities. Otherwise these factors might inspire individuals to opt for migration, who, for the lack of the easy immigration should actually achieve a better life for themselves in their present environment.

If the primary objective is to keep Hungarian ethnic minorities where they are, Hungarian migration policy makers should make every effort to avoid a situation in which neighbouring countries are left outside the European Union, while Hungary itself becomes part of a Union whose visa policy will be binding without exceptions, thus forcing the nationals of neighbouring countries to apply for a visa. This threatening situation can be avoided either by procuring exceptional treatment for the citizens of neighbouring countries in the accession treaty with the European Union, or by supporting their admission into the Union (as Hungary promised in the basic treaties signed with Slovakia and Romania respectively).

Beside the conclusions concerning ethnic Hungarians, this principle also affects Hungarian migration policy governing the emigration and the diaspora, and even the regulation of naturalisation. While I support the possibility of re-naturalisation, I strongly oppose the maintenance of the notion that second and third generation descendants of

Hungarian citizens who emigrated 40–60 years ago should be considered Hungarian citizens – especially if they do not maintain even loose ties with the mother country – and should thus have an unrestricted right to immigrate to Hungary. We know of cases when the child of a Hungarian émigré born in Austria was, after serving a prison sentence, deported to Hungary in spite of the fact that he spoke no Hungarian, had no relatives in Hungary and had spent the previous forty years of his life in Austria. The legal ground for his deportation was, that he qualified as Hungarian citizen because of his father and did not “inherit” Austrian citizenship from his mother who – according to legal stipulations in Austria at that time – lost her Austrian citizenship upon marrying a Hungarian citizen.

The third possible aspect of responsibility to the nation affects long-term or final emigration. Responsibility to the nation does not mean that a long-term or final emigration should be impeded, but that these processes should be recognised and monitored. The availability of reliable statistics on the number of individuals who have only left the country temporarily and those who have left for good could perhaps be achieved with gentle legal instruments. A sensible regular migration policy can hardly be formulated if it concentrates only on one direction of migration – namely immigration –, yet does not take into account which social resources (housing, labour, benefits) have been liberated by emigration.

### **The Principle of Long-Term Macro-Economic Utility**

The principle of nation-wide or at least medium-term utility affects two branches of migration. It must obviously be determined in all cases of regular migration which do not involve motivations based on moral obligation (family reunification, repatriation, etc.). This is what I would call a utilitarian immigration policy, which is not concerned with neutral annual quotas, but would instead defined which criteria make one immigrant more desirable than another in view of the Hungarian labour market.

I’m not inclined to identify those selection criteria and their relative importance. If I nonetheless mention a few considerations, my basic intent is to provoke a debate among colleagues presently working in the field of sociology and economy. In my view the following should be acknowledged as elements of an immigration policy:

- Demographic trends will make immigration desirable, if not downright necessary. Thus what needs to be formulated is a policy not of exclusion, but of controlled reception.
- Immigration priorities may acknowledge Hungarian origin as a preferential factor, but only if we accept that this might endanger the presence and, thus, the survival of ethnic Hungarians in their respective homelands.
- Chronic shortages in the labour and servicing market, as well as in areas which cannot be filled by experts trained in Hungary, could justify the preference of immigrants to fill these gaps;
- A long-term capital investment of a specific amount could guarantee preferential treatment in exchange for guarantees that such capital will be maintained for ten years.

- An immigration policy could create well-regulated subsystems involving the formal participation and financial responsibility of “sponsoring” communities or legal entities supporting immigrants.

The other area influenced by macroeconomics utilitarianism is the fight against illegal migration. It is the task of the state to combat forces which lead to deteriorating social welfare and living standards. The fight against the competitiveness of illegal workers and services, as well as against crimes committed or incited by legally or illegally residing foreigners, is the task of a migration policy based on the principle of macroeconomics utility, and strengthened by a number of bilateral and multilateral international legal agreements.

In applying the principle of macroeconomics utility, legislators would do well to think ahead to the moment in about ten years’ time when the country will become a member of the European Union. I am convinced that a new situation will arise once we have joined the single market and it becomes possible for Hungarian workers, service providers and entrepreneurs to work without restriction in other member states. This situation will probably not arise the minute Hungary joins the Union, but about 5 to 10 years later, owing to the interpolation of a transitional period at the insistence of the member states. Policy makers who insist on macroeconomics utility should also consider the influence of such a policy through the analysis of well-known parallels (especially in Spain and Portugal).

### **The Principle of the Rule of Law**

Neither emotions, ardent love of one’s nation, nor dry utilitarianism should lead to a migration policy and regulations in violation of legal obligations. The principle of the rule of law involves two, but nonetheless inextricably linked precepts. On the one hand, it calls for a respect for the Hungarian Constitution and the Hungarian legal system, and on the other it obliges Hungary to fulfil her obligations as set forth in various treaties and, in the lack of written treaties, customary international law. The link is created by paragraph (1) of § 7 of the Constitution.<sup>176</sup> In 1993 the Constitutional Court ruled that

“Paragraph (1) of § 7 of the Constitution means that according to the provisions of the Constitution, the Republic of Hungary participates in the community of nations; this participation is thus a constitutional command for internal law. It follows from this that the Constitution should be interpreted in a manner that the generally accepted rules of international law should indeed be applied.

The second part of paragraph (1) of § 7 – the guaranteeing of the harmony of accepted obligations and internal law – extends to all ‘accepted’ international obligations, including the generally recognised rules.”<sup>177</sup>

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<sup>176</sup> “The legal system of the Republic of Hungary accepts the generally recognized rules of international law, and furthermore guarantees the harmony of accepted international legal obligations with internal law.”

<sup>177</sup> Constitutional Court decision 53/1993 (October 13) (on the non-applicability of the statute of limitations to war crimes and crimes against humanity).

The international lawyer can contribute most creatively to the formulation of a migration policy with reference to the principle of respect for the rule of law.

In her recent report,<sup>178</sup> Katalin Gönczöl, the parliamentary commissioner of human rights, noted that the current practice of custody as applied by the alien police violates the principle of the rule of law and endangers legal security. The principle of the rule of law requires that Hungary respects human and civil rights of regular and irregular migrants – from the protection of data and personal freedom to the principle of non-refoulement – as set forth in Hungary’s laws and international obligations.

The activity of the Hungarian NGOs in promoting human rights and other guarantees concerning migration is well known. Therefore I would rather like to mention one particular aspect, the attitude toward Schengen instruments and, in a wider sense, to the decisions adopted by the ministers responsible for immigration in the EU states.

The law in force must be respected, even if we do not particularly like it. The most important task as far as non-binding decisions are concerned – such as the ministerial decision of the EC in December of 1992 concerning manifestly unfounded claims, host third countries, and countries of origin in which there is no serious risk of persecution – is critical analysis, such as the strongly-worded statement issued by the European Parliament, the elected body of representatives of the Union’s citizens when the Schengen Agreement was applied by a special Convention.<sup>179</sup> In this statement, the first Schengen Agreement, ratified in 1985, was described as “concealing the total lack of a political will on the part of the Council and Committee to institute full freedom of movement for persons”. It was noted that “the free movement of persons is an integral part of the internal market and within the objectives of the European Union, in accordance with the Article 7a EC” which was in contradiction to the Schengen Agreement and its provisions for a “Fortress Europe”. The parties were requested to “guarantee access to asylum procedures unhindered by strict visa requirements”. In addition, member states of the Union were reminded that the system which came into effect on March 26 was debated and created without approval of the European Parliament and the parliaments of the member states, even though these organs play a crucial role in the practice of democratic government.

Ladies and Gentlemen: Respect for the law, the consideration of European norms must not be limited to the imitation of restrictive movements. Any careful observer of legislative events in Brussels should also look to Strasbourg. That is, practical action is not necessarily governed by practical benefit, but by the innate dignity of every human being.

“Can we moralise?” – was the timid question posed at the beginning of this paper. I hope that it has become clear that yes, we can and, in the light of human rights and refugee considerations, we definitely should. Philosophers, as well as major legal texts, constitutions and agreements all illustrate that answers to major issues cannot be entered into small accounting columns of expense and profit, that society should not be

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<sup>178</sup> Cp. the December 6 issue of *Népszabadság*.

<sup>179</sup> O.J. No C 109/169, May 1, 1995.

envisioned as a beehive of employers and employees, and that we should indeed look to our roots and guiding stars, acknowledging that a life which does not bring profit can nonetheless be one of dignity. By the same token, activities which increase the GDP can also be morally shameful.

Let me call your attention to what three Hungarian NGOs noted at a recent press conference:

“Over half a million people fled from Hungary during the course of the 20<sup>th</sup> century; all of them found shelter, and the majority found a livelihood and a home in their new homeland. Hungary owes it to the international community to provide shelter in a humane manner, based on clear-cut laws to those, who – for political reasons, as a result of persecution owing to, race, religion, nationality or social background or out of a fear of torture, inhuman and degrading treatment – have been forced to flee their homeland.”<sup>180</sup>

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<sup>180</sup> Press statement issued by the Hungarian Helsinki Committee, the Hungarian Center for the Protection of Human Rights (MEJOK) and the Hungarian Association for Migrants (MENEDEK) Budapest, December 2, 1996.

*Judit Tóth*

## ***Choices Offered by the Migration Policy Menu***

The conference on “Political strategy and migration policy” was based on two preconceptions. The first, that it is beyond debate that there is need for a migration policy, and that the only “real” issue of the debate is which elements and principles this policy should be based on. The formulation of a migration policy has not been urged in any party platform, government decision, on any forums influencing public opinion or the press. Neither the press, nor street demonstrations have ever demanded that the government, the parliament or at least the Office for Refugee and Migration of Affairs should set down the principles of migration or the concept of an asylum law. Even though a few non-governmental organisations (such as the Hungarian Helsinki Committee, the Hungarian Association for Migrants, the MEJOK) have repeatedly called for the formulation of migration policy, and for a wide debate over more recent developments in migration, these rather quiet voices have gone unheeded to date. Briefly, there is no pressure on the government for the formulation of a comprehensive migration policy even in its most rudimentary form. It appears that we should first debate whether Hungary needs a migration policy at all.

The second preconception is that immigration and refugee issues interest the political élite. For this reason, invitation to this conference was extended to political parties and their experts. As a regular participant in meetings on international migration, most of the faces I see around the table are familiar and I can thus safely assert that in keeping with their practice of the past 5–6 years, the political parties have remained absent. Since 1990, the political élite has shown little interest in the causes and consequences of international migration. Therefore the exciting question of how we should formulate a migration policy will now be answered by researchers and experts. This exchange of ideas will no doubt be useful and stimulating in view of a more multidisciplinary approach. Insofar as the suggestions and proposals that we hear today can be organised into a coherent system, we will be tempted to assume that the political actors will consider the proposals made by researchers and analysts. However, the illusion of political decision-making based on scholarly and professional knowledge is slightly undermined if we peek behind the parliamentary scene, as it is painfully obvious that policy-making is not based on professional considerations. We must therefore resign ourselves to the fact that the political élite and researchers – also an élite in the sense that

the problems of migration are presently only the concern of a small group – live separate lives.

Political indifference is not necessarily bad, as Endre Sik has pointed out. The tension between politics and the researchers of migratory movements would be a far greater problem if researchers and successive conferences were unable to channel political misunderstandings into a publicly accepted direction. Even though there are opinions that the problem of immigration and of migration in general will, with the approach of the parliamentary elections, appear on the parties' election leaflets, there is nothing yet to substantiate this. If, however, this is indeed the case, we should perhaps make the preparations necessary to "orient" politicians at the next conference. In other words: following several years of delay, it is more than likely that a series of principles concerning refugees and immigrants will suddenly surface on the political agenda without professional preparation, and this will indeed offer the possibility for "mixed" conferences, with participants both from the scholarly and the political arena.

I will now briefly review the main considerations which may influence immigration policy. Since we know much less about the emigration of Hungarians abroad, the model will essentially concentrate on immigration to Hungary.

I have distinguished six important "dimensions" among the possible building blocks of an immigration policy. I have tried to single out and rank within these dimensions the "elements" whose future occurrence is most likely. It must repeatedly be emphasised that the basic objective is the creation of a value-neutral system, even though – obviously – this can hardly be ensured in the concrete formulation of a migration policy. I have attempted to put together a "menu", from which the "guest" can order according to his political taste – a diet menu, a traditional Hungarian platter or perhaps an avant-garde dish...

- The first dimension is the political time-frame, i.e. the period of time to which the co-ordinated system of immigration principles, objectives and instruments refers to. A short-term policy can, at the most, extend to the beginning of negotiations concerning accession to the European Union, a mid-term policy until the actual joining, while a long-term immigration policy will extend until full membership is achieved. As a full member, Hungary will receive a set of ready-made principles governing migration policy, leaving less room for governmental and legislative manoeuvring, with the exception of issues belonged to the sphere of national competence which can be determined autonomously (these can include issues such as the preferential acceptance of workers, students, trainees from a third country on the basis of bilateral agreements. Insofar as Hungary is joining the EU, ethnic Hungarians living in neighbouring countries can receive preferential treatment to only a limited extent using this technique.) Obviously, the human rights obligations, especially the ECHR, must be applied concerning legal and illegal immigrants. This will have two consequences. Political decision makers do not have a free hand since international legal guarantees already define the course of Hungarian administrative activities and legislation. Earlier defaults (such as the education on human rights, the training of law practitioners, officials and judges) must be speedily remedied while preparing for, but also independently of, the accession.

The three alternative time dimensions call for co-ordination with different policies from the creators of (im)migration policy. Short-term policy calls for co-ordination with the principles of police and security policy, mid-term with investment, social, cultural, educational and employment policy, while long-term with foreign policy. (See the point “A” in the Menu.)

- The second dimension, based on Hungary’s geographic location, as well as on historical and economic considerations, covers the identity and origins of immigrants. Ethnic Hungarians<sup>181</sup> across the borders and Europeans<sup>182</sup> will no doubt play an important role. The latter will include groups from Romania, the Ukraine and ex-Yugoslavia. The eventual settlement of the Yugoslav crisis will increase migration to Hungary owing to unemployment, the unlikely prospect of returning to the former homeland and the collapse of the infrastructure. This may, in turn, be followed by an influx from Europe in broader sense, from the EU and the developed countries of the continent, as well as from developed overseas countries (the USA, Canada, Australia and Japan). (See the point “B” in the Menu.)

- The third dimension is the direction and time period that immigrants stay in Hungary. Owing to Hungary’s geographic location, the majority of the 40–42 million foreigners who enter the country each year will in the future also be transit travellers, spending only a short period of time in the country. The second major group will be commuting migrants who arrive regularly or irregularly, with the same purpose or in the same direction. The third group is formed by those who do not wish to settle in Hungary. Another, smaller group are those whose majority, perhaps arriving with the intent of finality, will only stay until they are moved from the country by force (exactly because of the lack of conditions necessary for their residence). The last and smallest group is made up of those who want to and are, in fact, able to settle down in Hungary. (See the point “C” in the Menu.)

- The fourth dimension involves the definition of why migrants come to Hungary and what they would like to accomplish here. The following, somewhat simplified, groups can be distinguished by a variety of motives and rationales. Most immigrants are inspired to migrate by a drastic reduction in living standards and they are thus primarily seeking employment opportunities, medical treatment, education and training possibilities, and/or to purchase consumer goods. A not inconsiderable part of immigrants arrive because of their perception of the lack of security in their homeland, and they would like to stay until conditions at home change. The other group of arrivals come in search of business and investment opportunities. This includes legal and illegal money-making (from barter, suitcase-trade to business ventures, from gambling to prostitution), as regulated by law. The legal or illegal employment of migrant workers with higher educational attainment who have human rather than financial capital is directed at building a career. The effects of privatisation, the increase in the flow of capital and the arrival of multinational firms

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<sup>181</sup> Except for the scenario projected by József Gagyí member of the Cultural Anthropology Workgroup (Csíkszereda, Transylvania, Romania), according to which the Szeklers tend to migrate or commute to areas characterized by economic upswing, growing industrialization and investments. Once the coastal infrastructure investments will begin in Romania, the number of illegal commuters to Hungary may well decline.

<sup>182</sup> About 98–99 per cent of the foreigners who entered Hungary in the past ten years were European nationals. The ratio of nationals from neighbouring countries (Czech Republic, Slovakia, Romania, ex-Yugoslavia, former Soviet Union) is also rising.

and agencies suggest that highly-trained foreign professionals will continue to arrive in the future.<sup>183</sup> Another, smaller group of migrants are refugees, seeking asylum in Hungary. Yet another, not very large group of migrants is attracted by Hungarian educational and cultural institutions, and by training possibilities. Although there are no precise figures, quite a few migrants come for personal reasons, such as family reunification. (See the point “D” in the Menu.)

- The fifth dimension involves the objectives of immigration policy makers. One possible option, based on current and past practice, is that there are no objectives, migrants are let to come and go as they please. The other objective is to enforce respect for the legal rules on aliens. The third option is to ensure a peaceful coexistence with the host community since social stability and security are valued. In this case, the priority of an immigration policy is the prevention, or rapid and effective treatment, of conflicts between the host community and immigrants.<sup>184</sup> One precondition to this is to ensure that immigrants have a rudimentary knowledge – which facilitates adaptation – of daily life, since this enables the temporary, practical bridging of differences in culture and tradition between the host community and the immigrants. A greater effort is needed for the next option, the immigrants’ integration. It involves the harmonisation of their legal and social opportunities with those of the local population, as well as their social, employment integration and a basic knowledge of Hungarian. Another option is if we want to use immigration for gaining advantages. This can take the form of encouraging the immigrants’ economic activity (e.g., by attracting investors), the improvement of Hungary’s demographic indices (by encouraging the influx of young people or active workers), or a “brain drain” (and thus saving the social cost of training), etc. Another option might be the immigrants’ total cultural and social assimilation, through which they acquire citizenship.<sup>185</sup> (See the point “E” in the Menu.)

- The sixth dimension involves the means by which the above mentioned objectives can/could be achieved. The different options have different priorities, and all involve smaller or larger costs. Thus, financial resources heads our list. Obviously, it is by no means irrelevant whether we wish to cover these costs from the central budget or from other social funds. If costs are covered by the central budget, there is greater possibility for the creation and maintenance of a state-run system of migration. (Even though this should not be seen as a strict rule since in many countries we find a socially and financially efficient combination of the principle of “finance centrally and organise locally through non-governmental organisations”.) One important variant of the means

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<sup>183</sup> The number of foreigners employed without labor permit – illegally or lawfully – by foreign-owned companies, the staff of diplomatic and various international organizations is on the rise owing to the abolition of visa requirements. Obviously, there are no precise figures, only estimates.

<sup>184</sup> This may include conflicts erupting from competition on the business, labour, medical treatment, education and welfare benefits market, as well as conflicts arising from the clash of different cultures, communication problems, the growth of prejudices or active xenophobia.

<sup>185</sup> The knowledge of Hungarian is a requirement set forth in the alien and citizenship laws. This is clearly related to the preference of ethnic Hungarians. The Hungarian linguistic and cultural community has a historical ethos which is thus transformed into an assimilation factor. (Judit Tóth: Who are desirable immigrants in Hungary under the newly adopted laws? In: *Refugees and Migrants: Hungary at a Crossroads* (eds.: Fullerton–Sik–Tóth), 1995, Budapest, pp. 57–68.

for achieving the objectives of immigration plans emphasis on informing the host society about the magnitude of influx and even on the immigrants themselves, on organising information campaigns for the acceptance of migrants in order to avoid conflicts, a technique somewhat reminiscent of the Age of Enlightenment. Another variant is when this government or official information is transmitted directly to potential immigrants in the country or countries of origin or through other international organisations (e.g. deterring of undesirable migrants). A further possible approach is based on the tautness and coherence of legal regulation, on strict sanctions and on the efficiency of public administration. We should not, however, become over-confident. Migration is a complex phenomenon whose intricacies still need to be analysed in order to broaden our knowledge. Our present, fragmentary knowledge is insufficient for pinpointing the elements for which legal instruments can and should be used to direct the process into desired channels. The quality of regulation can be improved with due moderation, as can the administrative, legal and organisational system (such as databases necessary for administration, language skills of the officials, co-ordination of legislation, the transparency of the procedure, shorter deadlines). If financial resources and effective public administration are lacking, another possible approach is a continuous consultation, strengthening of co-operation and the search for a consensus with interest groups, non-governmental organisations or even political opponents. The inclusion of these actors promotes the transparency of the immigration system as a whole, as well as the reduction of state roles in the provisioning, and – indirectly – enhances the responsibility of local communities and the budgetary position of the migration issue. This last element can also be described as the international co-operation of the host country. It involves both the international performance in the official, as well as in the sphere of “unofficial diplomacy”. (See the point “F” in the Menu.)

The options from the elements listed above enables the formulation of various immigration policies or their modules (See the *Menu*). For example, we can, in the short run (A/1), expect ethnic Hungarians as immigrants (B/1) whose majority are commuters (C/1), employed legally or illegally, who purchase consumer goods and come for medical treatment, preferably financed by the Social Insurance Fund in Hungary (D/1). The most important task is to enforce a respect for the law (E/2) and in order to achieve this goal, the government makes use of its resources and the co-operation of various social organisations (F/5). Nothing is lacking for this intellectual pursuit, not even the indifference of the political élite.

## **IMMIGRATION POLICY MENU**

### **A) Time-range**

1. Short-term (until the start of the accession negotiations in EU)
2. Mid-term (until the accession of Hungary in EU)
3. Long-term (Hungary as member state in EU)

### **B) Who/whence?**

1. Ethnic Hungarians from the neighbouring regions
2. Non-Hungarians from the neighbouring regions (ex-Yugoslavia, Romania)
3. Europeans from a larger region (from EU countries, other developed European countries)
4. Immigrants from Overseas developed countries (USA, Canada, Japan)
5. Immigrants from other countries

### **C) How long do migrants want to stay?**

1. Only for transit (Transit migrants)
2. Commuters
3. Until their voluntary departure
4. Until their force departure
5. Until their final settlement

### **D) Why did migrants come and what do they want to achieve in Hungary**

1. Deteriorating living standards (for employment possibilities, medical treatment, education shopping)
2. Deteriorating security (for greater security)
3. For legal or illegal "business" ventures, investment
4. For career opportunities
5. Persecution, flight (for protection, refuge)
6. For Hungarian education, training (cultural considerations)
7. Other (for family reunification, love, etc.)

### **E) What do we want from migrants (objectives)**

1. Nothing, they will go away or come as they wish
2. They should respect the law and public order, which should be enforced if necessary
3. Peaceful co-existence, preserving social stability and security
4. Ensuring their adaptation to daily life
5. Social and labour market integration, learning Hungarian
6. Economic, demographic, etc. advantages through their reception
7. Naturalisation in exchange for assimilation

### **F) What measures should be taken for attaining these objectives?**

1. Informing our own society, information campaigns
2. Informing international public opinion, information campaigns, propaganda abroad (country of origin/international organisations)
3. Financial resources (provision of budget and social funds)
4. Legal regulation and improvement of public administration and law enforcement
5. Inclusion of NGOs in policy-making and consultation
6. International co-operation (in legal legislation burden sharing, administration and formulation of migration policy, etc.)

*Pál Péter Tóth*

## ***What Should Hungarian Migration Politics Look Like?<sup>186</sup>***

Following over four decades of isolation, international migration to Hungary was increasingly determined by processes set in motion prior to 1990. At this time the country was basically unprepared to receive refugees. Since 1990, new legislation, adapted to rapidly changing circumstances, has regulated the entry and residence of aliens. However, Hungary has still not formulated a coherent migration policy incorporating the country's national interests.

Beside the end of the country's isolation, the following elements best characterise the changes which shaped international migration to Hungary since 1990.

- Hungary's official attitude toward ethnic Hungarians in neighbouring countries has changed considerably;
- owing to her geographic location and unresolved problems of minorities in the Danubian region, as well as armed conflict between the countries of ex-Yugoslavia, Hungary has become a target and transit country of international migratory movements;
- most immigrants are ethnic Hungarians from the neighbouring countries;
- little is known about the migration of Hungarian citizens.

### **THE ATTRACTION OF HUNGARY**

The causes of the attraction of Hungary were created by the peace treaties concluded at the close of World Wars I and II. Following the conclusion of the Treaty of Trianon, the more than 3 million ethnic Hungarians who fell within the newly enlarged boundaries of the neighbouring states were faced with the decision of having to choose between their homeland and Hungarian citizenship. Those who opted for Hungarian citizenship had to leave their homeland, while those who chose their homeland became Slovakian, Romanian, Serbian or Austrian nationals.

The forcing of ethnic Hungarians into newly-drawn borders was coupled with a distinct anti-Hungarian policy, forcing many hundreds of thousands to flee their new country. The exact number of ethnic Hungarians who fled to, or were resettled in, Hungary, or who emigrated to a third country is not known at this time. However, a good

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<sup>186</sup> Research made possible by a National Scientific Fund grant (OTKA No.17922).

indication of the magnitude of this migration is the fact that between 1919 and 1923 about 200,000 people arrived to Hungary from areas annexed to Romania.

Following the revision of the Trianon borders in 1938, the citizenship of over 5 million people was changed and they became citizens of another state – in this case Hungary – without setting their foot outside their homeland. The partitioning of Transylvania, the annexation of the Felvidék (southern Slovakia) and the Délvidék (northern Yugoslavia) led to the re-settlement of people who had earlier fled to Hungary from these territories, as well as the exodus of other ethnic minorities from Hungary. In the case of Transylvania, this involved the migration of about 200,000 ethnic Hungarians and the same number of ethnic Romanians.

This situation changed again at the end of World War II: the peace treaty signed at that time disregarded the ethnic principle, but in addition to restoring pre-war boundaries, newer chunks of territories inhabited by ethnic Hungarians were awarded to Czechoslovakia. At the same time, the Sub-Carpathian region was taken from Czechoslovakia and annexed to the Soviet Union. Following the disintegration of the Soviet Union, this region became part of the Ukraine.

At the end of World War II, between 1944–1945, a significant number of Hungarians faced a difficult choice, the result of which was a formerly unprecedented number of Hungarians fleeing to Hungary and then from Hungary. In the case of Hungarians, this was compounded by the fact that ethnic Hungarians and Hungarian nationals living in those territories annexed between 1939 and 1941 to neighbouring countries were regarded as enemies. They suffered retaliation, physical annihilation, were stripped of all rights, shipped off to labour camps and driven from their former homes. Due to a lack of reliable contemporary statistical data, it is impossible to give a precise figure of how many left the country or fled from their former homeland. This “forced” migration began with the mass deportation of the Jews, the forcible removal of the overwhelming majority of ethnic Germans (about 250,000 persons) and the Hungarian–Czechoslovak population exchange, involving the resettlement of about 90,000 ethnic Slovaks. At the same time, there was a major influx of ethnic Hungarians from Romania (130,000), Czechoslovakia (115–120,000), as well as from Yugoslavia and the Soviet Union (over 70,000).

Similar to the political scene in other Danubian countries, the Communist take-over was solidified by 1948, and, in essence, Hungary lost the former attraction which she had exerted on her citizens and which had influenced and, in many respects, determined emigration, as well as their repatriation. One consequence of the Communist take-over was that the normal or natural form of international migration came to halt. Following the 1947–49 wave – which was by far eclipsed by the number of emigrants in 1945 – the borders were practically sealed. The 1956 uprising triggered yet another wave of emigration, with about 200,000 people leaving the country. In the following decades about 8 to 10,000 persons left the country each year, both legally and illegally.

In spite of the changes, there are still about 2,750,000 ethnic Hungarians in the neighbouring countries. According to the latest (1991) census there were 6,801 ethnic Hungarians in Austria, 586,884 in Czechoslovakia, 378,997 in Yugoslavia, 1,620,199 in Romania and 155,711 in the Soviet Union.

## **KEY CONSIDERATION IN FORMULATING A HUNGARIAN MIGRATION STRATEGY**

As in other countries, Hungary cannot afford to be indifferent to which citizens leave the country, and who arrive “to replace” those who have left. It is usually difficult to demonstrate a direct and solid link between refugees, immigrants and those who apply for citizenship, and those who after the application procedure are actually naturalised. In contrast to general international experience, however, there is a correlation between many new arrivals and those who decide to settle in Hungary, primarily due to the recent history of the region. The peace treaties concluded after World Wars I and II were essentially conceived in a spirit of revenge and the territories seized from Hungary were irrevocably carved up between former Czechoslovakia, ex-Yugoslavia, Romania and the former Soviet Union. From the moment they annexed their new territories, these countries concentrated on breaking the economic strength, assimilating and eliminating the national identity of their ethnic minorities.

Even though the countries created after World War I have by now disintegrated, the status of the areas inhabited by ethnic Hungarians has remained essentially unchanged. Consequently, the forced and spontaneous migration of ethnic Hungarians away from these regions will continue unless the present socio-economic conditions and relations with the majority population do not change. Hungary’s “pull” cannot be attributed to the country’s economic potential, but rather the general situation of a population which even as citizens of another countries, still considers itself Hungarian. Consequently, it is the internal stability, economic situation and minority policy in these neighbouring countries which essentially define the magnitude of migratory pressure on Hungary. Even so, Hungary’s migration policy and strategy should be formulated in a way as to avoid any amplification of the pressure created by this situation, since this would undermine the positive status enjoyed by ethnic Hungarians in neighbouring countries.

At the present time, decisions concerning international migration are – in the absence of a coherent and long-term migration policy – essentially influenced by an assumed social expectation, the existing migratory pressure, and executive officials. In view of historic preliminaries, of possible associate membership of some of the region’s countries in the European Union, as well as of the demographic decline of the country’s population, the question arises as to what kind of immigration policy strategy is needed to ensure that the reception of potential citizens also serves the best interest of the country and of the Hungarians in general.

Current administrative activity, which influences neither emigration or immigration has made painfully clear the following facts:

1. As far as the present and future of the Hungarian society is concerned, it is not at all irrelevant which processes are strengthened, weakened or neutralised by prospective immigrants when set against the demographic and social backdrop of Hungary’s population.
2. In consequence of rapid change, relevant legal rules and their implementation tend to fulfil their original function to a decreasing extent, and therefore will have to be subordinated to common migration strategy when such is reformulated.

3. The management of various tasks in connection with emigration and immigration is not merely a police issue. Therefore, the institutional framework of international migration needs to be redefined, and the interest and support of affected communities must be generated.

In other words, the formulation of a Hungarian migration strategy can no longer be delayed; this strategy must be based on analysis of the wide-ranging debates concerning this issue. In the interest of formulating a Hungarian migration strategy, I suggest to establish a Hungarian Emigration and Immigration Council which would be independent of shifting political interests.

Since 1990, emigration and immigration – a constant social problem and political issue – can no longer be neglected. Nor can we circumvent the problem of identifying those who have arrived with the intention of staying in Hungary for shorter or longer periods of time. We must consider the following questions: which are their countries of origin, what are their traditions, what are their intentions, what interests do they represent and what will they be leaving behind when they abandon their former citizenship in favour of a Hungarian one? What are their demographic and sociological characteristics, and which of the processes characterising the Hungarian population will they strengthen or weaken?

We must also address the question of whether Hungary needs immigration or such a high number of new citizens. This can also be put another way: can we be indifferent to the changes in the status of those ethnic Hungarians who, as subjects of the Kingdom of Hungary were Hungarian citizens until the close of World War I, but now live as minorities in neighbouring countries? When formulating a migration policy strategy we can and should subordinate to Hungary's national interests – both in terms of domestic and foreign policy – the increasing desire of ethnic Hungarians to live in Hungary. In the case of Romania, this is also linked to the general economic and political conditions in the country, the attitude of the Romanian majority to their ethnic minorities, the differing culture, traditions and customs of the majority, and the desire of former Romanian nationals to resettle in Hungary. As yet, little is known about the social changes and interrelations among ethnic Hungarians, their relation to the majority population, the preservation of national identity which would be affected by their migration to Hungary. Similarly, nothing is known about the changing patterns created in the fabric of Hungarian society by newly-naturalised ethnic Hungarians. For the lack of basic research, there is no answer to the question of whether the migration of ethnic Hungarians from Yugoslavia triggered by war will end and be stabilised on a lower level or whether the current level will be maintained. Similarly, it remains unknown as to which point ethnic Hungarians living in southern Slovakia consider it within their interests to remain there; when they will decide to leave in greater numbers.

The final question is whether the immigration and naturalisation of ethnic Hungarians from the Czech Republic, Croatia, Austria, Romania, Serbia, Slovakia, Slovenia and the Ukraine should be encouraged or, on the contrary, discouraged. Before answering this question we must consider the effects and consequences of the emigration of ethnic Hungarians to Hungary on the future of ethnic Hungarians remaining in these countries.

Ferenc A. Szabó

## *Subsidiarity and Immigration Policy*

The formulation of an immigration policy is a sensitive issue all over the world. This is also true for Hungary. This year I was surprised to note the unpredictable emotions it aroused even in highly-qualified professionals.

The series of stimulating debates organised in 1995–96 on the initiative of professor Dr. Mária Kopp and a young, enthusiastic journalist, Zsuzsa Galgóczy, in the Behavioural Research Institute of the Semmelweis Medical University has, hopefully, not passed unnoticed in scholarly circles. Besides the problems related to changes in the basic paradigms of healthcare, the organisers also included certain questions on the fate of Hungary: among others, they initiated a debate on issues related to population policy. At one of these debates I raised the issue of population policy in Germany and Israel, mostly because I felt that certain elements might be useful in formulating Hungary's migration strategy, especially in view of the country's chronic population decline. One of the demographers participating in the debate reacted by recounting that on one of his trips to Paris he took the metro and was alarmed to see more and more African and Arab passengers as the metro approached the outlying districts. His reaction surprised me since I was speaking not of Afro-Asian immigrants, but was rather proposing the absorption of ethnic Hungarians who had already left their homeland and who could, instead of moving to Sweden, Australia or other countries, increase the numbers of a declining population in the mother country. The debate was later published in the periodical of *Magyar Szemle*.

György Vukovich,<sup>187</sup> who was not present in the original debate, commented on my views in a separate article, also published in that periodical. He claimed that immigration policy cannot be an instrument of population policy. Hungary should pursue an active population policy and the ethnic Hungarians currently in the country should be encouraged to return to their homeland. Naturally, I felt I had to reply to this bizarre critique, and in another article I argued at greater length that a pro-natal population policy can be expected from neither a left-wing nor a conservative government. The current situation, characterised by an ageing, declining population which will soon be unable to generate the necessary pensions and maintain a social security system, could perhaps be remedied using other means. The repeated appeals for the necessity of

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<sup>187</sup> Demographer, the president of Central Statistical Office at that time. (J. T.)

combating early mortality, a key issue continuously stressed by leading demographers and sociologists alike, is unlikely to improve Hungary's demographic situation.

Insofar as we truly wish to change the appallingly tragic demographic composition of Hungary's population, we must also search for other solutions. I first encountered the interpretation of subsidiarity in terms of national-minority problems in a writing by Imre Borbély, a writer and active politician in Temesvár, who is also László Tőkés'<sup>188</sup> counsellor. What is subsidiarity? The term is predominantly used in German scholarship. It is practically the equivalent of solidarity – a term worn thin and monopolised by various left-wing movements, class struggles and interest groups – which is now employed by the Christian Socialist movement. Subsidiarity favours addressing social problems at their roots, through reciprocal assistance and formulation of interests. A lasting and efficient solution to social problems can only be expected if all affected parties are truly interested in solving a particular problem. An approach based on subsidiarity holds that large, centralised organisations are inadequate for solving such problems, primarily because of the less than adequate efficiency of these organisations, but also because such an approach emphasises the importance of autonomous local action. The anti-totalitarianism of subsidiarity excludes the omnipotence of the state. Reciprocal assistance based on common interests, the co-ordination of local initiatives, can contribute to a reassessment of difficult, long-neglected social issues and aid in their successful solution.

Even though the proponents of subsidiarity use this method for addressing social problems, the method itself is broader and can be used for resolving national and demographic problems. Approaching subsidiarity from German immigration policy we find that the absorption and settlement of ethnic Germans from Eastern Europe improved not only the situation of the German minorities who, owing to the twists and turns of history, found themselves in an unfavourable historical environment, but also encouraged the emergence a specific strata in the German labour market which does not struggle with cultural or linguistic difficulties in the course of integration, as opposed to other nationalities who sought employment, who were of a different religion or – in the case of certain population groups – who had a radically different mentality. Obviously, there can evolve conflicts between distinct population groups even in spite of affinities and similarities. Following the honeymoon of German re-unification, several conflicts emerged between “Ossis” and “Wessis”. Even so, these conflicts can be more easily resolved owing to an essentially identical national identity than would be the case even if these conflicts were also burdened with ethnic and religious differences.

National subsidiarity can also be approached from another angle. Following the gradual re-settlement of ethnic Germans there was no need for social solidarity in this area since their absorption – in this case an economic and social, rather than a linguistic or religious assimilation – is only a matter of time and thus the problem will effectively be solved. This can be promoted if the population of the host country perceives that the new arrivals serve their interest in dealing with an easier variant of the guest worker problem.

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<sup>188</sup> Leader of the Reformed Church in Romania (Transylvania) and honourable Chairman of the Hungarian Coalition Party in Romania. (T. J.)

National subsidiarity in Israel differs from the practice in Germany. Similar to the former German diasporas, Jewish communities emigrating to Israel consider their settlement in the mother country to be final. However, several thousand years of Jewish culture and tradition have made minority existence a fact of life to such an extent that there exist Jewish communities which, in spite of their solidarity and sympathy for Israel, nonetheless prefer to remain in their present homeland. Zionist propaganda was unable to trigger the mass emigration of American Jewry to Israel owing to the economic advantages enjoyed by the Jewish community. However, examples to the contrary can also be quoted, when a Jewish community decides to remain where it is since in spite of its links to the Biblical homeland, as the ties binding it to its present homeland are much stronger. One good example for the latter is Hungarian Jewry.

More distant communities can also maintain close ties through subsidiarity. They can support each other, assist the needy and, if necessary, provide shelter for refugees or people whose prospects are bleak. While in Germany subsidiary aid is – in spite of a demonstrable reciprocity – essentially one-sided owing to population ratios and economic strength, the case is entirely different in the case of international Jewry. Only a smaller part of world Jewry lives in Israel and there are many countries beside the US where their living standards are better than in the Near East.

It is thus natural that in the sixth decade following its foundation, the State of Israel tends to receive rather than to give – at least as far as financial support is concerned. What Israel can offer lies more in the intellectual, cultural and religious sphere. Intensive links are thus not only reflected in economic and financial transactions, but extend to all areas, including individuals who constitute a national society, who are sent on study trips, who exchange their experiences and preserve their common tradition using all possible instruments. In times of crisis this reciprocal co-operation intensifies and can extend to the domain of biology and, in our case, to demographic aid. The isolation and the unproportionately small demographic weight carried by Israel in the Near East is a well known fact. The state has systematically and continuously increased its demographic potential since its foundation. The State of Israel is ready to absorb all Jewish masses whose life is endangered or who live under bleak political and economic conditions which can be remedied through subsidiary solidarity.

Both in Israel and in Germany the state plays an active role. Without this, co-operation could hardly be achieved. But neither could it have emerged and been successful for long decades, were it not wholeheartedly supported by the smaller communities which make up these two states. Macro-society, reflected in the state, offers an essential framework for social processes on the micro-level. The field of subsidiarity is in fact a genuine, living or easily activated network which reacts immediately to new problems. The interacting impulses enrich national – and in the case of Israel – religious existence, if necessary, through the mass movement and rescue of individuals or groups, similar to the recent resettlement of famished Ethiopian Jewry, without regard to the financial sacrifice.

In spite of certain differences, the German and Jewish examples shares distinct parallels with the Hungarian question. One of the differences is that the majority of ethnic Hungarians live not far from the other side of the border, in areas to which they did not migrate but where, through the twists and turns of history, they have been

stranded owing to border changes. Yet this is not quite as clear-cut as it may seem. The history of humankind, including that of the Hungarians, can be described as a history of migrations. And these migrations are clearly not over. Internal migrations, which may be of the same magnitude as international migrations, and which are not always restricted to the migration from village to towns, are hardly over. Hungarian history provides several examples for internal migrations, beginning with the Hungarian Conquest, through various settlements and re-settlements throughout history. According to recent research, the Szeklers were drawn from various tribes and were settled in Transylvania to guard the border. In time, they were replaced by Saxons invited to settle there from the west, and the Szeklers were moved to their present settlement territory where, as a consequence of overpopulation, they migrated in all directions.

The southern areas of Hungary which were depopulated after the Turkish wars were repopulated 200–250 years ago through a systematic internal and external resettlement programme. Large-scale migrations continued in the 19th and 20th centuries. Beside overseas migrations, two main internal migrations can be noted in the Age of Dualism: a north to south migration, resulting in the population of the Great Hungarian Plain, and a migration from the peripheries to the centre, through which Budapest evolved into a metropolis. The Trianon borders increased these migrations for one or two years – owing to successive waves of refugees – but at the same time also restricted them thanks to the erection of border barriers. However, as soon as migration again became possible, these natural processes continued. Hungarian migration again picked up during World War II, and these migrations were not triggered simply by border changes and war itself. The ethnic Hungarians who found themselves under Romanian rule, migrated towards the centre of Hungary in search of work and a better life when northern Transylvania was annexed to the country. The present migration from Romania can be seen as a sudden sweeping migration in the wake of several decades of isolation.

There is considerable opposition to the immigration of ethnic Hungarian, not the least of which is a few that territories historically populated by Hungarians will now be lost forever. One variant of this opinion holds that there is hope for some kind of historical jurisdiction in the Carpathian Basin. However, global tendencies and the direction of European development contradict this hope. The importance of borders is dwindling and the process of globalization which also affects our continent has created a new situation. Following the changes in Eastern Europe, the radical improvement of living standards through international migration has become a realistic option for people living in this part of the world. The spiritualization of the borders will also change the nature of migration. Temporary employment abroad may become a mass phenomenon since one is not forced to leave one's country forever upon receiving an excellent job offer. Even so, many of those who have genuinely left with the intent of staying only temporarily may become citizens of another country.

In spite of favourable conditions, the number of ethnic Hungarians who try their luck in Hungary will not increase dramatically. The potential option of returning to one's homeland will no doubt prompt those who would change their lives to a careful consideration of possible alternatives. If decision making is prolonged, a more circumspect decision is made. It would not be a matter of forced migration, but rather one of choice under natural conditions.

There is little emphasis on the fact that the demographic composition of ethnic Hungarians who wish to work or to settle in Hungary is extremely favourable. They are dominated by young, dynamic age groups, and they have a higher than average educational attainment. It is a global phenomenon that the majority of individuals who seek to work abroad come from more enterprising and talented groups of society. Neither should we forget that they are usually men, i.e. they are recruited from the more mobile sex, who are not only more willing to gain experiences abroad than women, but are also prepared to return if that seems a more practicable solution. A population of young, skilled males would improve the unfavourable demographic balance if they chose to settle in Hungary.

Another widespread opinion concerning immigrants is that their arrival is undesirable since it would swell the ranks of the unemployed. This superficial opinion is from time to time also nourished by professionals with their ill-phrased questions. Only the less educated believe that there exists absolute unemployment. Unemployment is generally restricted to specific industries and on the level of relative interactions. Unemployment is almost always a structural problem. Most foreigners fill jobs which are rejected by locals. In many Western European countries the number of unemployed citizens sometime runs into the millions, while at the same time there are about as many employed guest workers. This is why I was surprised to read György Csepeli's analysis in *A szuverenitás káprázata* [The illusion of sovereignty], published by the Korridor Political Research Centre. Prevailing Hungarian attitudes towards immigration were summed up on the basis of a sociological survey, in which the first in the series of "statements" was that "Hungary should be more strict towards illegal immigrants", the second that "Crime is on the rise because of immigrants", and the third that "Immigrants take jobs from those who were born in Hungary". These three rather negative statements – with which 91, 74 and 63 per cent of the respondents agreed – were followed by the alternative of making Hungarian citizenship more easily accessible to ethnic Hungarians, which was viewed favourably by 53 per cent. At the same time, only 20 per cent of the respondents agreed with the statement that "the country will become more receptive to new ideas and cultures through immigrants", and only 8 per cent thought that "immigrants are useful to the Hungarian economy". The survey was carried out by TÁRKI, and although it reeks of prejudices and ignorance, it was nonetheless deemed useful for constructing elaborate concepts which are now sanctimoniously repeated: unfortunately, the Hungarian population feels only so much solidarity towards possible immigrants.

The respondents were not informed that the overwhelming majority of possible immigrants are ethnic Hungarians, including many young adults and men from ex-Yugoslavia who fled to Hungary to evade military conscription or even death. Our good sociologists failed to ask whether respondents would have agreed that "immigrants fill jobs which Hungarians reject" or that "most immigrants are ethnic Hungarians who did not enjoy minority rights in their former homeland, could not learn a vocation in their own tongue and who could not receive higher education in their own tongue".

There can be no doubt that Hungary needs to apply the principle of national subsidiarity and, in a wider sense, acknowledge the promotion of national interest by reciprocity. It would be futile to rebuke the man on the street when everyday existence is biased. There was a time when reciprocal assistance based on national sentiments was the

rule, when demographic and settlement issues were judged in this light. The germs of a national attitude based on subsidiarity can, with some exaggeration, be attributed to Friar Julianus' journey who, in the shadow of the imminent Mongolian attack, tried to convince all Hungarians of his day to join forces.

Illuminating examples of subsidiarity can be quoted from the Turkish occupation period even if those who practised it called it by another name. Did not the independent Transylvanian Principality<sup>189</sup> sustain Hungarian statehood, culture, language and ethnicity through subsidiarity, when the greater part of the country suffered under the yoke of alien powers? The outstanding thinkers at the turn of the century worried about overseas migration, about the dispersal of the Szeklers and the fate of the Csángó in Moldavia. The country carved up by the Treaty of Trianon was not simply mutilated, but also suffered a rather retrograde political establishment, and for a long time the organisation of the "new faced Hungarians" was only made possible by a considerably more democratic Czechoslovakia. No matter how unique a phenomenon, the writers of Transylvania also practised a form of cultural subsidiarity when they founded the Erdélyi Helikon and the Szépmíves Céh. Antal Szerb's *Magyar irodalomtörténet* [Hungarian literary history] won the first prize of a competition announced in Transylvania. While Hungarian literature in Hungary was dominated by the kitsch churned out by Herczeg and Gárdonyi, the banner of high-quality literature was held high by Tamási, Kós and Benő Karácsony, as well as the *Korunk* circle in another country. Neither should we forget the Yugoslavia of the 1960s and 1970s where ethnic Hungarians enjoyed much greater creative freedom and were also allowed to establish their own contacts with the West.

Leaving now the examples taken from literature and culture, and returning to the issue of immigration and demography, it should be borne in mind that, although little known, Hungary which was bled by two world wars did not suffer a population decline because the country was renewed by the arrival of several hundred thousand ethnic Hungarians.

When population decline in Hungary began in 1981, ethnic Hungarians were still in a phase of population growth, not only in Ceausescu's Romania with its ban on abortion, but also in the Csallóköz and in the Sub-Carpathian region. The settlement of a part of this population in the mother country – through immigration – would have definitely served the country's interest since it would have filled the demographic lacunae created by the lack of clear-cut concepts, social insensitivity and, also, by the lack of subsidiarity-based approach.

The acceptance of the principle of subsidiarity and its implementation obviously needs time, and the current condition of Hungarian society and its leading élite is not exactly conducive to this. This is why the amendment of immigration laws is extremely important. There is need not only for a general relaxation and liberalisation, but also for the clear-cut and definite preferential treatment of ethnic Hungarians. Also needed is a reconsideration of the management of extraordinary situations. In the past decade successive waves of migration reached Hungary and their management calls for greater

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<sup>189</sup> During the XVI–XVII centuries this entity was a tax-payer of the Turkish Empire, and her foreign independency was limited by the Turkish emperors. (J. T.)

flexibility in legislation and a larger measure of empathy, human and national receptivity than was actually demonstrated by Hungarian officials.

Looking back on recent immigration history, it is understandable that the reception of refugees fleeing Ceausescu's oppressive regime was not quite as it should have been since Hungary was itself awaiting significant political changes. In contrast, the refugees of the southern Slav crisis were in principle received by a democratic system. There is little in the way of explanation for the persistent survival of state and social parsimony, such as the banishment of the Bosnian asylum seekers from Nagyatád to Debrecen.<sup>190</sup> But let us take another example, that of the ethnic Hungarians from Slavonia and the Drávaszög. Almost five years have passed since the ethnic Hungarians from Kórógy, Szentlászló, Kopács, Veresmart, etc. have been driven away by the war and cruel ethnic atrocities. They have been replaced by armed Serbs, driven from other areas, determined to conquer these areas and make it their home. In spite of all efforts by international political and military organisations, this problem seems unresolvable, at least in the lifetime of escaped persons. Hungarian officials, however, still wait for the crisis to be solved in the hope that those who fled can return. In the autumn of 1996, passing through the lines of armed IFOR soldiers, they could place flowers on the graves of their ancestors, but they were not allowed to visit their former homes. Can we truly believe that once the international military intervention is over their fate will be settled? It is painful to accept the loss of a village – such as Kórógy – inhabited since the Árpáadian Age, but we must probably resign ourselves to this grim fact. However, society's most valuable asset is man, rather than lands or territories. The protection of the productive, consuming man who is capable of biologically renewing himself should be all-important. The few thousand ethnic Hungarians who fled from Croatia are now dispersed in Hungary and throughout the world. Their young are looking toward Germany. Their fathers begged the mother country for land and for a home in vain, even though the depopulated Ormánság with its excellent soil lies less than an hour's drive away from their former homeland. We should at last absorb them, giving them land and work in other words, a livelihood.

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<sup>190</sup> In 1996 the shelter of temporary protected persons in Nagyatád was closed for financial reasons. The remained inmates were moved to another shelter in Debrecen. (J. T.)

*Imre Lévai*

## ***Global Migration in the World System<sup>191</sup>***

The global economic recession that began in the late sixties and the early seventies shook up the relative socio-economic stability of industrialised Western and Eastern regions of the world and increased instability in the underdeveloped South. Then, the collapse of “state socialism” in Eastern and Central Europe at the end of the eighties and the beginning of the nineties – with all its socio-economic effects and side-effects – created a radically new world political situation that found the international community and organisations, governments, political parties and movements, and others completely unprepared. At this critical stage of developments huge masses of migrants and refugees, aggravating unstable situations, appeared on the scene. It did not, however, come all of a sudden. The words of Zolberg et al. from 1986 sounded prophetic:

“Refugee movements [...] reflect a fundamental characteristic of the contemporary world, namely its transformation into an interconnected whole within which national societies have been profoundly internationalised. Moreover, the effects under consideration do not constitute a collection of random events but occur in the form of distinct patterns; and these can be related in turn to the patterns of social conflict that foster refugee movements. Today as in the past, these conflicts tend to arise in the course of two major types of political transformation: abrupt changes of regime, particularly social revolutions as well as the responses of incumbents to revolutionary challenges, and the reorganisation of political communities, particularly the formation of new nation states out of former colonial empires.” (Zolberg–Suhrke–Aguayo, 1986:153)

It must be emphasised that the present global economic and political transformation unfolded gradually and structurally from the existing international order and it can hardly be seen as the unpredictable effect of unilateral actions of certain (groups of) countries. The rapid but uneven progress of the Scientific and Technological Revolution, on the one hand, and the emergence and expansion of the multinational corporation, on the other,

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undermined the established balance of economic and political powers after the Golden Age of Accumulation or the reconstruction period from the mid-forties till the mid-sixties (Lévai, 1988). This global contradiction is the underlying reason for all the distressing phenomena of economic, commercial and financial crises in the contemporary world system. The widely differing and conflicting capital and labour interests of our times are at the heart of these crises.

Labour migrations seem to offer the evolutionary (that is non-revolutionary, “natural” and “peaceful”, “rational” and “liberal”) course to reduce both the resulting political and economic tensions, the increasing labour unrest and labour distress. Naturally, the two aspects rarely appear in their naked form as they tend to “overlap” and, above all, are disguised by various intermediary (nationalistic, chauvinistic, cultural, religious, and so on) interests.

Various ways and means of migration may bring relative economic progress and escape from political oppression to migrants and at the same time enhance the tendencies of marginalisation and un(der)employment in a fragmented labour market. Drawing rigid distinctions between dualistically opposed sectors of the labour market (such as primary and secondary, formal and informal, organised and unorganised, “integrated” and “marginalised”) is, however, unproductive both theoretically and empirically. Realistically, economic activities exist along a virtual continuum.

Global, regional and local patterns of migration form a comprehensive system and are organic parts of the world capitalist system. They form various interwoven segments of the world labour market. Global (proactive and reactive) labour migrations create and mobilise the global “industrial reserve army” (i.e., the relative surplus population) of our age according to and as a result of world capital accumulation processes. Conversely, global, regional and local disproportions of accumulation require a relatively free flow of capital to equalise profit-rates and also relatively mobile labour reserves in distressed areas to maximise profits.

Enduring crisis symptoms indicate the inevitable fragmentation of the world economic, commercial and financial order established after World Wars I and II – or the 20th century thirty-year German war (Modolski, 1978). There is no sign of any real force that could pull the world out of the trough of this protracted wave. The unchecked disintegration of the world communist system appears to be the result of an immanent (disguised) process of uneven world capitalist (under)development that started in the late sixties with the fourth well-documented Kondratieff-cycle. This process, however rapidly it accelerated in the past few years, has not yet come to an end: chaotic social, economic and political changes in some major regions (e.g., in the former Soviet Union, in the Middle East) may bring unexpected news to us at any moment. Feverish and wasteful growth in the People’s Republic of China, for instance, is a time bomb, threatening not only the Chinese people but also the world community. Japan, in the meantime, aspiring after Asian hegemony, is struggling with prolonged recession. The “workshop of Asia” may share the fortune of the British “workshop of the World”: at the turning point of a coming world economic cycle she could become subordinated to a continent-sized power.

The main issue here is whether global development trends are predestined by the Kondratieff-cycle and whether we can rely on its upswing in the immediate future. Or are we instead seeing a major (secular) change of world economic cycles that will likely bring us still further aggravation of the crisis? Do the global “anti-cyclical” policies similar to those suggested by the Club of Rome two decades ago or the “planetary consciousness” initiated by the Club of Budapest recently offer feasible alternatives to various catastrophe scenarios? Would the “end of history” (Fukuyama, 1989), the apparent global “diffusion” of a liberal democratic political order, herald the beginning of a new era for mankind in world history or is the realm of freedom still far away and are we still trapped by self-imposed necessities? How will people and states act and react once mass migration appears as the last resort to survive imminent global, regional or local calamities or maladies?

There can be no doubt that we live in a transition period but we do not know where this transition leads. Loose talk about “post-industrial society”, “post-modern age” and “post-something anything” has limited interpretative power. The current paradigmatic crisis in scientific and intellectual life follows a downward trend in Bródy’s 200-year-long cultural cycle (Bródy, 1994), though very few students of the social sciences venture to see and verify secular trends in world history (Lévai, 1997 and forthcoming). History, however, continues and historians will see whether issues raised now will be answered. As for myself, a Dark Age of Chaos appears to unfold before my eyes; I do not see definite trends – let alone megatrends (Naisbitt, 1984; Naisbitt–Aburdene, 1990). My optimism leads me to reiterate that chaos does not necessarily produce catastrophe or the total destruction of the system. The (world) system may arrive at a new cyclical route around another state of equilibrium and the new cycle will be named after its discoverer (Lévai, 1996).

The dramatic political and socio-economic changes in the world system mentioned above generated specific new types of international migration and refugee flows in the past few years. “Chain reactions” of push and pull effects, which are cumulative processes, have started and are now taking their own course. The world community has to face grave consequences of this “new exodus” of the modern age: according to the latest available UN data more than 20 million refugees and 20 million displaced persons are making their escape from troubled waters to safe haven in the world today. However, less than one per cent of refugees are harboured in developed regions of the West (Meissner, 1992).

Economic and political decision-makers should respond immediately to this challenge. Whole regions in the world have simultaneously become “pushing” and “pulling” points and the nations concerned are mere observers of this process. In addition to the growing masses of unemployed and marginalised people, we find “pushing” masses of illegal immigrants (some of them criminals) that are threatening viable (more or less stable) socio-economic structures. Considering the latest protectionist measures adopted by some states (and their possible consequences), we see that the risk is more than the issue of unemployment and marginalisation, in general; there is a serious socio-economic (and even political) risk of disintegrating established social networks of co-operation and security, in particular.

Clearly, high-sounding statements – such as: “the refugee dilemma should be resolved in the sending countries proper” – accomplish nothing. Furthermore, international intervention in refugee-producing situations can be supported only in extreme cases and must be exceptional (see Hoffman, 1981). Already refugees from neighbouring countries and even the remotest parts of the world are not just at but inside the gates. Again Zolberg et al. show insight:

“The idea of solving the ‘global refugee crisis’ by stepping up development assistance to modify socio-economic conditions in the countries of origin is clearly insufficient. To the extent that the causes are international, the solutions too require actions at the international level; in particular, since refugee-producing situations are related to foreign intervention, solutions require concerted diplomatic action.” (Zolberg–Suhrke–Aguayo, 1986:167)

An experienced Hungarian foreign policy expert, referring to international migration, puts the issue the other way round:

“Prevention of migration, as understood in Hungary, means that people of various countries should be given the possibilities to live freely, happily, undisturbed and on an adequate material level in their places of residence. By guaranteeing the conditions for it, the countries of Europe could not only effectively prevent international migration, but they would also secure long-term stability for the continent.” (Szöke, 1992: 321)

The Geneva Convention and the New York Protocol Relating to the Status of Refugees undoubtedly need reconsideration and amendment or a new international arrangement must be elaborated that addresses the recurrent problem of “new” (temporary, war-time) refugees, the epochal changes that have taken place since 1951 or 1967, and the principles of international solidarity and burden-sharing (Goodwin-Gill, 1986) that are not recalled often enough. A clear distinction between discrete patterns of proactive and reactive migrations may offer an adequate starting point for adapting codified principles to actual practice. Until this is done, the international community in the present delicate world economic and political situation must be circumspect and flexible when tackling the refugee dilemma. Recipient states, taking account of geopolitical realities, should co-operate and harmonise immigration policies with each other – if possible, on community level (*vide* the Schengen Agreement and the Dublin Convention of the European Union).

Obviously, asylum seekers may face threats to their lives or violations of their human dignity and therefore have the right to protection – whatever language they speak or whatever their parents’ origin. Nonetheless, generosity to asylum seekers that is biased economically or culturally would result in quite adverse effects, as Zolberg et al. warn us:

“A generous admission policy toward a certain group encourages them to leave; not only can this be used propagandistically to claim the people are ‘voting with their

feet', but the outflow of certain socio-economic groups may also weaken the country of origin in a more material sense." (Zolberg–Suhrke–Aguayo, 1986: 155)

After the latest distressing events in Africa (Rwanda), America (Haiti), Asia (Cambodia) and Europe (Yugoslavia), to mention just the most shameful cases, the international community and the United Nations must see and codify a clear-cut distinction between critical (e.g., pre-war and post-war) and chaotic (war-time) situations. This distinction is important if our much distinguished modern (civilised) age intends not only to interpret but also to change the world of six billion people, including millions of migrants and refugees. We have already heard of crisis-management – but who has ever heard of chaos-management? It appears we must learn it.

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# Appendix 1

## Register of Non-governmental Organisations for Refugees

### *Mahatma Ghandi Human Rights Movement*

**Address:** H-1142 Budapest, Szatmár u. 88/A

**Tel.:** (36-1)-131-9471; **fax:** (36-1)-118-1414

**Contact persons:** Gibril Deen Chairman, Zoltán Aszalós Project-co-ordinator, H-1066 Budapest, Ó u. 5.

**Year of establishment:** 1992

**Main activities:** The organisation supports non-European refugees residing in Hungary, providing assistance for subsistence (food, accommodation), social integration, settlement, legal counselling and official administration. The organisation operates a refugee centre (for 40 persons), a Hungarian language school and a football team (African Stars), and presents cultural events featuring African culture. In addition, the Movement works to combat discrimination in media. It supports about 500 refugees yearly.

**Number of volunteers and employed persons:** About 20 volunteers and 3 employed persons are involved in the activities.

**Main contributors:** Dutch Embassy, Soros Foundation, ECRE, Budapest Mayor's Office, and Ministry of Public Education

**Partner organisations:** Pedagogical Institute in Budapest, UNHCR, Hungarian Red Cross, Inter-Church Aid, and Martin Luther King Association

### *Hungarian Helsinki Committee*

**Address:** H-1085 Budapest, József krt. 34. I / 5.

**Tel.:** (36-1)-334-4575 and 303-2168; **fax:** (36-1)-314-0885

**E-mail:** helsinki@elender.hu

**Contact person:** Ferenc Kőszeg, Executive Director

**Year of establishment:** 1989

**Main activities:** The HHC regularly conducts fact-finding missions to monitor the enforcement of human rights in Hungary. The findings of such missions are made public in regular reports, which are distributed widely among domestic and international non-governmental human rights organisations. Since 1994 the Human Rights Counselling Office of the HHC has provided free legal aid and representation before the Hungarian and international fora to anyone whose rights under the European Convention of Human Rights have been violated. Starting in 1995 the HHC has provided free legal aid for migrants, refugees and asylum seekers. The HHC undertook a fact-finding mission on the Kerepestarcsa alien police community shelter, and published a report in English as well as in Hungarian on the human rights situation of aliens accommodated in the shelter. Based on local fact-finding, HHC has published newsletters in English, providing information on asylum seekers from former Yugoslavia (Temporarily Protected Persons) residing in Debrecen (summer 1995) and Nagyatád (September 1996) refugee camps.

**Number of volunteers and employed persons:** 5 persons

**Main contributors:** German Marshall Fund, Open Society Fund, Hungarian Soros Foundation, Ford Foundation, Canada Cooperation Fund

**Partner organisations:** Hungarian Association for Migrants, Centre for Defence of Human Rights (MEJOK), Constitutional and Legislative Policy Institute (Budapest), European Romany Rights Centre (Budapest), Hungarian Civil Liberties Union (Budapest), International Helsinki Federation for Human Rights (Vienna), Legal Protection Bureau for National and Ethnic Minorities (NEKI, Budapest), Romany Press Centre (Budapest), Romany Civil Rights Foundation, UNHCR

**Other relevant information:** The HHC has published a newsletter (HR Monitor) in English and in Hungarian since 1996. The HR Monitor deals with legal issues affecting of temporarily protected persons and asylum seekers (such as migrants from former Yugoslavia). The most recent project (the Legal Clinic) involves law students, lecturers and legal practitioners in legal counselling for indigent criminal defendants and migrants who face expulsion and refoulement.

#### *Hungarian Maltese Charity Service*

**Address:** H-1125 Budapest, Szarvas Gábor u. 58-60.

**Tel:** (36-1)-200-8372, 200-8371, 176-0177; **fax:** (36-1)-176-0277, 200-8370

**Contact person:** Imre Kozma, President

**Year of establishment:** 1989

**Main activities:** Since 1991 the organisation has provided programmes to support migrants. Various assistance projects provide help for socially deprived migrants,

counselling for temporary displaced persons from former Yugoslavia, and distribute food and clothes. Information on supported refugees is available in the Maltese Charity Service's own database. The group has also organised some training sessions, and meetings to help implement UNHCR's project. Pursuant to an agreement with the Office for Refugee and Migration Affairs, the Maltese Service helps repatriating migrants by providing one-time financial assistance, packets for the return journey and packages for life at home.

**Number of volunteers and employed persons:** 4 social counsellors

**Main contributors and partner organisations:** Office for Refugee and Migration Affairs (Ministry of the Interior), UNHCR

**Other relevant information:** Regional centres of the Service operate in Pécs and Szeged; 6 county centres operate in Baranya, Somogy, Tolna, Bács-Kiskun, Csongrád and Békés counties.

#### *Refugee Service of the Hungarian Red Cross*

**Address:** H-1116 Budapest, Fonyód u. 4.

**Tel:** (36-1)-208-0202; **fax:** (36-1)-208-0201

**Contact person:** István Major, Head of Service

**Year of establishment:** 1989

**Main activities:** According to the agreement concluded with UNHCR, the Service provides immediate assistance (accommodation in shelters run by the Service, other types of social assistance to assist integration) for non-European asylum seekers and Mandate refugees. The shelter and assistance programme has supported roughly 2,500 refugees and about 10,000 temporary protected persons from former Yugoslavia. Most recently the Service has assisted repatriation efforts. The Service directs the Red Cross local branches in assisting refugees and migrants in the different regions, assists migrants in need residing in public shelters run by the Border Guard, and publishes newsletters on refugee issues.

**Number of volunteers and employed persons:** 10 volunteers and 7 employees

**Main contributors:** International Federation of Red Cross, National Societies of Red Cross (for instance, those in Germany, France, Denmark, and Austria)

**Partner organisations:** Ministry of the Interior, Police, Border Guard, Inter-Church Aid, IOM, UNHCR, ICRC, and ECRE

#### *Hungarian Association for Migrants*

**Address:** H-1068 Budapest, Benczúr u. 33.

**Tel./fax:** (36-1)-342-9571

**E-mail:** sik@tarki.hu

**Contact persons:** Endre Sik, Chairman; Judit Tóth, Project Co-ordinator

**Year of establishment:** 1995

**Main activities:** The Association works to ensure the legal protection of vulnerable migrants as well as to represent migrants correctly in the political process. For these purposes legal counselling is provided for asylum seekers, refugees, temporarily protected persons and non-refouled migrants through law offices in Budapest, Szeged and Pécs. Our 6 legal practitioners ensure legal advice and representation in the administrative process and judicial procedure free of charge. Association lawyers provided the necessary legal work occasioned by the UNHCR programme for small business grants for temporarily protected persons settled in Hungary. Moreover, the Association has made major efforts to improve the asylum law and refugee policy (comments on draft legal rules and proposals on migration policy submitted to government agencies), and to educate the public about migration through conferences on integration of refugees, the role of migrants in the informal economy and ethnic preferences, through regular meetings with other NGOs, and local and international experts, as well as through dialogue with mayors' offices. This Association has also prepared leaflets relating to refugees' and migrants' rights in 5 languages, and distributed them in camps, shelters, detention centres, crossing-points, mayors' offices and to NGOs. The Association publishes a monthly newsletter (*Ottalomkeresők*) in Hungarian that surveys developments in legal practice, statistics on migratory movements, and opinions of NGOs working in this field (300 copies distributed to mayor offices, NGOs, camps). Supported by the PHARE programmes, the Association co-operates with the editor of Migration News Sheet and other refugee support organisations, as well as exchanges relevant information on legal cases with lawyers in other countries.

**Number of volunteers and employed persons:** 5 part-time employees

**Main contributors:** UNHCR, European Union, Canadian Co-operation Fund, Dutch Embassy, and IOM

**Partner organisations:** Mayor's Offices of Local Self-governments, Institute for Political Sciences (HAS), UNHCR, ECRE, AIRE (London), Migration News Sheet (Brussels), Office for Refugee and Migration Affairs, Border Guards, HHC, MEJOK, R. Wallenberg Association, Mayor's Office (Frankfurt)

*Martin Luther King Organisation*

**Address:** H-1113 Budapest, Zsombolyai u. 3.

**Tel./fax:** (36-1)-166-4116

**Contact person:** Dr. Csaba Mester

**Year of establishment:** 1991

**Main activities:** The principal objective of the MLKO is to mediate conflict between Hungarians and coloured people (irrespective of their origin or legal status) stemming from prejudice, bigotry, extreme nationalism, pathogenic beliefs, hysteria triggered by ignorance of foreign countries, isolation or misunderstandings. The other focus of our activities deals with the trans-migration of foreigners who arrive in Hungary as refugees and whose assistance is in close connection with the geographical reservation of Hungarian Government to the 1951 Geneva Convention. On-going projects are as follows:

- research and documentation of neo-Nazi phenomena in Hungary since 1991;
- free legal advice for victims of human rights violation since 1991;
- education and public awareness campaigns to combat prejudices, misunderstandings and racism (“Understand” Project at elementary and secondary schools, for instance 43 classes in District IX and 37 classes in District VIII will be visited by volunteers in 1997);
- education for non-European refugees (language and cultural-orientation courses) together with Red Cross, Ministry of Public Education and UNHCR (“Reachout” Project);
- management of Coloured Club for mixed marriage parents and their children to help overcome daily problems (religious, racial, legal).

**Number of volunteers and employed persons:** 10 volunteers and 1 employee

**Main contributors:** Soros Foundation, Hungarian Parliament, Canadian Embassy, Swiss Embassy, and the PHARE Programme

**Partner organisations:** UNHCR, Red Cross, HQ of Police, Border Guard, Office for Refugees and Migration Affairs, self-governments (in the capital, etc.), COLPI, Interights, ECRE

## Appendix 2

### *The Annotated Bibliography of the Yearbooks of the Research Group on International Migration*

#### **REFUGEES, MIGRANTS, FORTUNE HUNTERS (1992)**

Original title: *Menekülők, vándorlók, szerencsét próbálók*

(Editor: *Sik, Endre*)

*Hárs, Ágnes*

#### **Migration and Labour Market**

The article analyses the effects of the presence and the economic activities of foreign labourers on the Hungarian labour market. The author attempts to project the future impact of international migration on the national labour market.

*Hunyadi, Zsuzsa*

#### **Guest Workers from Transylvania**

The author, interested in the flow of information about job opportunities, conducted interviews with farmers and entrepreneurs employing guest workers and with foreign labourers. The article contributes to a better understanding of guest workers.

*Hárs, Ágnes*

#### **Guest Workers in Hungary**

The article contains two case studies based on interviews from field work among the new illegal or semi-legal actors on the labour market. The first documents the experiences of an informal working group from Transylvania employed in the construction sector. The second describes the story of a native Romanian goose shepherd hired by a farm family in the south of Hungary.

*Závecz, Tibor*  
**Reduced Sympathy**

The study is based on surveys carried out in 1989 and 1990 that examined attitudes toward refugees. The changes are analysed according to different socio-demographic variables. The toleration or rejection of ethnic Hungarian refugees is emphasised. A scale of prejudice was also developed on the basis of selective toleration.

*Sik, Endre*  
**The Inevitable Growth of Prejudice  
toward Refugees in Contemporary Hungary**

The hypothesis expressed in the title is based on trends described in Závecz's work. The author examines the stereotype that refugees are a burden on the economy, which leads to barriers to their quick social and economic integration.

*Tóth, Olga*  
**Female Refugees from Transylvania in Hungary in 1989**

The study describes the sociological characteristics, the motivation, and the success of integration of female refugees as opposed to males. Certain significant differences, including some advantages (e.g., easier change of course of life after the migration, more stable partnerships) are described.

*Rédei, Mária*  
**Demographic Characteristics and Impacts of Aliens  
Having Obtained Residence Permits During Recent Decades**

The author examines the period prior to 1980, as well as the period from 1980–1990. The author contrasts their demographic characteristics and assesses their possible demographic impact. The regional differences in the patterns of resettlement are also described.

*Dövényi, Zoltán*  
**Locality: The Territorial Aspects of Refugee Affairs in Hungary**

The research, carried out from 1988 until 1990, focused on the capability of different medium and small regions of Hungary to absorb refugees. Based on analyses of infrastructure, ethnic composition, labour and real estate market, sixteen advanced regions are selected as suitable for refugee resettlement.

*Tóth, Judit*

**Policy and Refugee Affairs: Refugee Policy**

The author examines two possible ways for Hungary to handle refugee affairs. One scenario involves the restrictive admission of refugees, which, however, requires an advanced infrastructure and the development of certain priorities in refugee affairs. The other scenario involves the admission of a large-scale influx. Consequences for refugee policy are drawn with respect to documents that Hungary has signed concerning refugee issues.

**ON THE ROAD (1993)**

Original title: *Útkeresők*  
(Editor: *Sik, Endre*)

*Brym, Robert*

**The Migration Potentials of Czechoslovakia, Hungary, Lithuania and Russia**

The Canadian author analyses the magnitude of the migration potentials, the direction and the demographic basis. Four main conclusions are drawn concerning the tendencies, scale of migration, and effect of greater political freedom on migration.

*Sik, Endre*

**The Migration Potential of Romania**

Based on survey data and consultation with Romanian experts, the author constructs a scale and typology of possible and probable migrants by examining the dimensions of social mobility, level of education and ethnicity. The highest scoring ten per cent are considered potential migrants.

*Sik, Endre and Tóth, Judit*

**Ethnic Romanian Refugees in Hungary**

The authors combine the results of two prior research projects. One, carried out between 1989 and 1991, described socio-demographically the ethnic Romanian refugee group, which was distinct from the ethnic German and Hungarian refugees who also came from Romania. The other concerned the integration of the same group. The analysis is followed by seven interviews with Romanian refugees.

*Drexler, Sabina–Pohoryles, Ronald–Schmid, Gabriele*  
**EUROLINK (A Possible Social Policy Model of Integration  
for Romanian Refugees in Austria and Hungary)**

The joint Austro-Hungarian project attempted to outline the characteristics of migratory movements from Romania and the administrative reactions in the two countries. The magnitude, the composition and the institutional framework of admission were analysed. Finally, the authors summarised their proposals for bilateral co-operation to control mass migration (e.g., information programmes, assisted repatriation, etc.).

*Kovács, Róbert*  
**Foreigners in Hungary: Settlements and Refugees**

During a 1992 survey the differences of prejudice in local communities were examined. Six economic and five border regions were distinguished, and regional imbalances were illustrated by maps. The distribution of positive, tolerant and negative attitudes toward refugees were analysed and put into social and historic perspective.

*Kovács, Róbert*  
**Foreigners and Local Mayors**

In 1992 approximately 1,000 mayors were surveyed, and the data suggested substantial differences in their levels of prejudice depending on demographic factors (age, belief, and level of education of mayors), on political affiliation (of mayors with parties), and on the ethnic and social origin of the aliens (Gypsies, Africans, Chinese, Arabs, etc.). The analysis showed certain positive prejudice toward ethnic Hungarians.

*Böhm, Antal*  
**Prejudice and Xenophobia in the Value System of Local Leaders  
(On the Basis of an International Comparative Study)**

As part of an international co-operation research project (New Democracy and Local Governance) a survey was taken in 30 towns in Hungary. The questions aimed at examining manifest and latent prejudice. The answers are contrasted with those from the Swedish study.

*Czakó, Ágnes*  
**Romanian Refugees and Evolving NGOs**

The article examines how local community organisations have developed since the first influx of refugees in 1988. Internal as well as external (social, political) factors are examined. The institutionalisation of refugees and the disappearance of refugees from the statistics are explained. Citations from interviews illustrate the author's conclusions.

*Tóth, Judit*

**Hungary as Breakwater? (Elements of Recent Refugee Policy and History)**

The role of Hungary in international migratory processes is put in perspective in the article. The consequences of a lack of legislation are analysed. The author asks whether the driving principle of new legislation will be “integrated rigidity” or serving as the “protective shield of Europe” or something else.

**COMING? LEAVING? STAYING? (1994)**

Original title: *Jönnék? Mennek? Maradnak?*

(Editors: *Sik, Endre and Tóth, Judit*)

*Oláh, Sándor*

**The Migrant Worker Potential of Transylvania (1990–1993)**

Temporarily labour migration from a rural region of Romania to Hungary was examined. Empirical data, survey analysis, and local observations accompanied and augmented the historical, demographic, and social description of the sending area. The hidden objectives and motivations of the micro-society were also analysed.

*Biró A., Zoltán*

**Aspects of the Migrants' Iconography**

From the perspective of communication anthropology the author analyses migrants and those who do not to migrate. He develops a typology of norms and verbal processes that relate to migration and examines its role in decision-making.

*Sik, Endre*

**Intentions to Migrate from Hungary in 1993**

A survey in 1993 measured intentions to work abroad or emigrate. The small percentage of people who answered positively were analysed according to their backgrounds, the process of decision-making and the effects of personal networks on migration intentions.

*Nyíri, Pál*

**The Chinese Community and its Life in Hungary**

The socio-cultural approach provides a colourful picture of the Chinese community in Hungary, which began in 1989 and was disrupted in 1992 by the police and aliens administration. Both the community (structure, hierarchy, conflicts, culture) and the conditions of reception (society, labour market, police) are described from 1989 to the present. Much of the community has disintegrated, but a fraction has started on the difficult road toward integration.

*Tóth, P. Péter*

**New Citizens of Hungary (Naturalisation in 1988–1992)**

The socio-historical analysis is focused on historical events that inspired certain peculiarities of the Hungarian citizenship law. The author describes the continuing practice of ethnic preference and examines the social background of recently naturalised persons.

*Tóth, Judit*

**Desirable Immigrants?**

The article is an analysis of the Aliens Law and the Citizenship Law of Hungary. Passed in 1993, both are characterised by ambivalence, inconsistent preferences, and prejudice toward aliens. The effects of a moral commitment to ethnic Hungarians crossing the border can also be detected in the laws. The work is based on codified texts, legal practice, and published cases.

*Katona, Y. Magda*

**Migration Potential As Related to Inter-Ethnic Conflicts in the Middle East, India, and the Former Soviet Union**

The study concentrates on root causes of outflows from the countries concerned toward Central Eastern Europe, and toward Hungary in particular. Political and social factors (e.g., Islamic fundamentalism, disintegration, minority conflicts) are taken into account.

*Nagy, Boldizsár*

**Asylum and Hope**

Forced migratory movements influencing Hungary since 1988 are examined in light of European and world-wide migrations. A distinction between major groups is drawn and adequate legislation is urged. The author supports his discussion with pertinent data.

*Huseby-Darvas, Éva V.*  
**There is No Other Shelter**

The article examines the situation of female refugees from ex-Yugoslavia (Croatia and Bosnia) from an anthropological perspective. The work is based on interviews and observations in refugee camps. The conflicts in camp, the intentions to return home, and ethnic identities are described.

*Einwachter, János*  
**Refugees in Camps**

The author, a social worker, examined two government-run refugee centres. The establishment, the institutionalisation, the daily lives, and the living conditions are described. The psychological burdens of refugees are also depicted.

**REFUGEES AND MIGRANTS: HUNGARY AT A CROSSROADS (1995)**  
(Editors: Fullerton, Maryellen–Sik, Endre–Tóth, Judit)

*Dövényi, Zoltán*  
**Spatial Aspects of the Refugee Issue in Hungary**

The author provides detailed information on the origins, numbers, and location of refugees and asylum seekers who entered Hungary during the last half of the 1980s and the first half of the 1990s. Using a geographer's approach he analyses the different waves of refugees and the impact of their residence in Hungary.

*Nagy, Boldizsár*  
**Changing Trends, Enduring Questions Regarding Refugee Law  
in Central Europe**

Taking a comparative law perspective, the author examines legal issues concerning refugees in Hungary, Poland, the Czech Republic and Slovakia. He places the refugee and migration policy of Hungary in the context of refugee flows in Central Europe.

*Tóth, Judit*  
**Who Are the Desirable Immigrants in Hungary  
Under the Newly Adopted Laws?**

This analysis of the recently enacted legislation concerning foreigners and citizenship in Hungary emphasises that both laws grant government authorities broad discretion and at the same time fail to define the legal status and rights of those to whom the laws apply. The author calls for public discussion and debate to improve the legislation.

*Tóth, Pál Péter*  
**Refugees, Immigrants and New Citizens in Hungary, 1988–1992**

A historical description of four legislative acts regarding Hungarian citizenship in the nineteenth and twentieth centuries provides a background for examining the data concerning applications for Hungarian citizenship between 1983 and 1992. Citizens of more than 75 countries applied for Hungarian citizenship, but only a minuscule number of ethnic Hungarians from former Yugoslavia sought Hungarian citizenship.

*Hárs, Ágnes*  
**Migration and the Labour Market**

Approaching migration from the perspective of the labour market, the author questions the widespread notion that migrant labour displaces local employees and creates unemployment among the native-born population. Detailed interviews of Hungarian employers and migrant workers, as well as close attention to labour patterns in construction and agriculture in Hungary, suggest that displacement of local workers is not a significant problem.

*Rédei, Mária*  
**Internal Brain Drain**

The report describes the recent employment practices of multinational companies in Hungary and emphasises the role that head hunter firms have played in identifying local talent. The data indicate that many Hungarian employees have great difficulty with making decisions, but that many Hungarians are now replacing foreigners in highly specialised jobs.

*Csepeli, György and Sik, Endre*  
**Changing Content of Political Xenophobia in Hungary: Is the Growth of Xenophobia Inevitable?**

The sociologists examine the growth of xenophobia and hostile attitudes toward refugees and migrants in recent years. They note the lessening of notions of ethnic solidarity with Hungarians from across the borders and the surprising development of xenophobia toward ethnic Hungarian immigrants who have not obtained Hungarian citizenship.

*Berencsi, Zsuzsa and Sik, Endre*

**Intentions to Emigrate and to Work Abroad in Hungary in 1993–1994**

This study of individuals who say they intend to emigrate or work abroad temporarily reveals that those who intend to emigrate tend to be young, male, urban, educated, and have family members and friends who have already visited or worked abroad. Economic motives almost always fuelled the desire to work abroad or emigrate for both men and women, and though men were more likely than women to seek work abroad temporarily, women were as likely as men to seek to emigrate.

*Horváth, Lajos*

**Asylum Seekers at Nagyatád**

One of the senior directors of the large refugee camp at Nagyatád examines the challenges that have accompanied life in that institution. The original expectation that refugees would be a short-term problem in Hungary left both the authorities and the refugees unprepared for the problems of long-term camp life.

*Huseby-Darvas, Éva V.*

**Puzzling Voices, Pleading Words: Refugee Issues, Refugee Camps  
and Refugee Women in Hungary**

Based on interviews of refugee women at refugee camps in Hungary, the anthropologist describes the disorientation, isolation, and changes in roles that many experience. She reports on the ethnic group conflict and competition in the camps, as well as the increased gender and family conflict that can often erupt in physical abuse.

*Laczko, Frank*

**Temporary Protection and Ex-Yugoslav Refugees in Hungary**

Reporting on the findings of a survey of refugees living in private accommodations in southern Hungary, the author urges a policy that would encourage refugees to live in ordinary villages and towns and achieve self-sufficiency. He proposes a series of programs that would help camp inhabitants overcome obstacles in moving to private settings, acknowledging that certain groups of refugees will face more difficulties than others in making such a transition.

*Nyíri, Pál*

**From Settlement to Community (Five Years of the Chinese in Hungary)**

As a participant observer of the Chinese settlers in Hungary in the early 1990s, the author describes social organisation and migration strategies, including occupations, finances, political backgrounds, ties to the homeland, community organisations, criminal gangs, popular culture, and the beginning of the acculturation process. In a sequel he notes that despite the harsh response of Hungarian authorities to the Chinese migration, the social development of the Chinese settlers has accelerated and a Chinese community has taken root in Hungary.

*Biró, Zoltán A.*

**The Socio-Cultural Bases of the Migration Process  
in Eastern Transylvania, 1985–1989**

The anthropologist examines the social processes that regulate emigration by looking at those that are still in their homeland but have already made the decision to emigrate. Focusing on several counties in eastern Transylvania in the late 1980s, he identifies subtle social controls that inhibit many from imagining the possibility of leaving. In an apparent paradox the verbal communications that strongly discourage emigration actually anticipate that emigration will occur, but set boundaries on those who can join the potential emigrant group.

**REFUGEES IN CAMPS, DIASPORAS, AND POLITICS (1996)**

(Original title: *Táborlakók, diaszpórák, politikák*)

(Editors: *Sik, Endre and Tóth, Judit*)

*Huseby-Darvas, Éva V.*

**Ambiguities of Security and Violence in Hungarian Refugee Camps  
During the 1990s**

The anthropologist describes the ambiguities stemming from the of refugees' desire for security and safety in a temporarily shelter in Hungary after surviving various tragedies in their homeland and from the daily conflicts between refugees, which sometimes lead to violence. An ethnic Hungarian woman's suicide and serious physical assaults involving two Bosnians in the camp reveal the enmity and self-destruction induced by frustration and stress in a closed institution. Dialogues with the refugees illustrate that camp life deepens the gap between hopes and reality and the gap between the refugees belonging to various cultural and social backgrounds. The common

experience leads to a new refugee community, as well as to disintegrating families, personalities, and violence.

*Berencsi, Zsuzsa*

**Economic Strategies and Power Relations in a Refugee Camp:  
Their Effects on Internal and External Relations of Camp Residents**

Through personal observations the sociologist examined the socio-economic relationships in several refugee camps. Interpreters, kitchen workers and leaders of residents' self-governments use their language abilities and tendency to conform to monopolise the information, internal jobs, preferred bedrooms and all other advantages available in the camp leaders rely on this "overly stable" stratum, who also exert influence over the external relations to the local economy and labour market.

*Horváth, Lajos*

**Refugees in Nagyatád: Through the Eyes of the Local Community**

The author summarises the results of a representative survey of the local population of Nagyatád monitoring the changes of attitude toward refugees in the camp since 1991. The answers of the local inhabitants were compared with the opinions of two control groups (the regular staff of the camp and the people of a surrounding village). According to the survey, the rural farmers offering illegal employment to the refugees are the only group welcoming the aliens and keeping in contact with them. Nonetheless, prejudice has not increased significantly in the local community although the population has not been educated about refugees and has had only sporadic personal contacts with them.

*Berencsi, Zsuzsa*

**The Escape Route – from Bosnia to Csongrád and Beyond  
(Refugees in the Csongrád Camp at Closing)**

What are the main characteristics of the decision-making process for refugees when a refugee camp is closed? The researchers followed the residents in Csongrád camp from spring to autumn in 1995 as the camp was closed. Only ten per cent of the interviewed households intended to start an independent existence, and as time passed even fewer "pioneers" decided to leave camp life. The majority – influenced by rumours and group pressure – moved to a less comfortable camp where they continued a dependent life in a close knit group of refugees from the same region. The paper describes both the fears, language barriers, and motivations of refugees who having spent four years in the Csongrád camp before its closing and their re-evaluation of their fate after they were resettled in the Nagyatád camp.

*Őrszigethy, Erzsébet*

**A Tale of a Happy Refugee Family: From Yugoslavia to Budapest**

The author has written a modern “saga” of a refugee family. Four generations of the Kereki family had to leave their house, work and possessions behind in Vojvodina and move to Hungary in 1992. A short historical background of the region is described, together with the fate of each family member in the recent decades. Due to their powerful ability to establish a new life and to their luck in finding jobs and dwellings in Budapest, the story has a happy ending, though the reader will learn about the dysfunction of the aliens police, the refugee administration and migration policy.

*Kapitány, Ágnes and Kapitány, Gábor*

**Crossing Cultures – The Exchange of Culture  
(Acculturation of Intellectuals from Transylvania)**

Based on structured in-depth interviews, the authors studied Transylvanian intellectuals who had resided for at least one year, in Hungary and their encounters with the more individualised and goal-oriented society in Hungary where the culture, language and inter-personal relations are less archaic than in Transylvania.

*Szakáts, Mária*

**Integration Strategies of Transylvanian Hungarians in Hungary**

When Transylvanian migrants appeared in Hungary in the late 1980s, they experienced major transition periods in both the sending country and the receiving country. The author surveyed Transylvanians in Hungary and examined statistical data to assess the role of personal networks and the importance of post- or pre-migration friendships, common political preferences and newly established associations for the process of integration. This research may contribute to the understanding of the notion of a “lost homeland” in a subculture in which emigration has been traditionally considered a betrayal.

*Nyíri, Pál*

**Individual and Community: Chinese NGOs in Hungary from 1989 to 1995**

The paper focuses on the traditional ethos of the Chinese diaspora and the founding of Chinese associations in Hungary. Being a non-traditional community, the institutionalisation produces certain pluralism among the Chinese in Hungary. The diaspora in Hungary differs from the Chinese diaspora in Western Europe and Asia. Since 1992 a dual community structure has developed. The first and most influential community organisation views itself as the exclusive representative of all the Chinese in

Hungary and strives to keep good contacts with mainland China. The other community organisation is more open, less orthodox and urges the integration of the Chinese into the Hungarian society. Both centres have economic influence and publish their own newspapers.

*Nyíri, Pál*

### **The Chinese People in Hungary and the World-Wide Chinese Commercial Web**

The new diaspora of Chinese businessmen appeared in the Hungarian market in the 1990s. Many small companies were followed by larger companies, and the number of Chinese firms reached approximately one thousand by 1994. Those Hungarians with reduced purchasing power welcomed this economic “boom” of Chinese retailers, shopkeepers, restaurant owners and investors, but the Government has taken various measures against the low price, low quality Chinese products. The world-wide Chinese commercial web relying on traditional family contacts has invested millions of USD in Hungary. Nonetheless, the investors are considering moving their stocks and distribution centre from Hungary to a neighbouring country.

*Tóth, Judit*

### **China and the Chinese in the Hungarian Media**

This analysis of news, articles, and reports on China and the Chinese at home, in Hungary and elsewhere examines the contents and attitudes of publications in the Hungarian media from 1992 to 1995. The Hungarian media’s perspective on daily events and the contradictions between a reform communism and a new-born market economy is very simplified and is mainly imported from foreign press agencies. These publications do not stimulate feelings of solidarity between Hungarian readers and the Chinese. Indeed Hungarian publications focusing on extreme, unusual events involving Chinese people may increase the level of xenophobia.

*Hablicsek, László and Tóth, Pál Péter*

### **The Impact of International Migration on the Demographic Situation in Hungary from 1994 to 2010**

The demographer authors analyse the relationship between the international migration to Hungary and the size of the Hungarian population. They make three basic points. First, international migration is an important demographic factor that has been absolutely ignored in the Hungarian estimations until recently. Second, migration data may help estimate errors in the census that results because social strata (emigrants, illegal aliens) cannot be accurately counted. Third, the authors hypothesise net demography trends in Hungary between 1994 and 2010, taking into account the future numbers, fertility and mortality patterns of the emigrants.

*Nagy, Boldizsár*

**The Feasibility of an Area without Internal Frontiers in the European Union  
after the Accession of the Central and East European States**

The Action Centre for Europe (London) posed the question whether an area without internal frontiers can be retained after the accession of the Central and East European States. The author's analyses three major types of movements, regular migration, forced migration and illegal migration, and reviews the benefits and disadvantages that would accrue to the European Union and to the newly acceding Central European states respectively. (The Czech Republic, Hungary, Poland and Slovakia are considered here.) The study lists a great number of impacts on the labour market, on the culture of the affected societies, on the freedom to form a national asylum policy, and so on. The author's personal view is that the extension of the Union to the Czech Republic, Hungary, Poland (and to Slovenia, which is not analysed here) should not pose significantly greater structural difficulties than the last extension of the EU.

*Jungbert, Béla*

**Trafficking Aliens as a Form of Illegal Migration**

The paper provides a pragmatic summary of the various reasons, patterns, actors, regional specialities and measures of the world-wide phenomenon of trafficking in aliens. International organisations cooperate to combat illegal migration, and the author illustrates the results of the national and international fight against such trafficking. As a transit country in the middle of a migration route, Hungary has faced 40 million border crossings per year and has had a relatively high proportion of rejection/refoulement at the border (approximately 2.7 million aliens from 1992 to 1995).

**MIGRATION AND POLITICS (1997)**

(Original title: *Migráció és politika*)

(Editors: *Sik, Endre and Tóth, Judit*)

*Labreveux, Philippe*

**The Small Business Grant Programme and Self Sufficiency**

Approximately 75,000 Yugoslavs have arrived and resided for shorter or longer periods of time in Hungary since 1991, 90 percent of them used Hungary as a transit route. Having identified that there was no policy to integrate the former Yugoslavs into Hungarian Society, the UNHCR restructured the assistance system in order to provide a greater chance for temporarily protected persons to become self-sufficient so that their subsistence outside the camps would be ensured. The Small Business Grant Programme was launched in 1995 in close co-operation with NGO workers. The Programme, which

replaces the weekly support for about 100 families, is both an attempt to provide more effective assistance and a review of the official policy toward temporarily protected persons.

*Neményi, Eszter*

#### **The Implementation of the Small Business Grant Programme: First Experiences**

The author interviewed 70 beneficiaries who obtained the Small Business Grant Programme grants in 1995 to determine whether the Programme could replace the regular support payments. She provides examples of difficulties and recommends modifications (the amount of grant per family should be increased to provide significant assistance; the selection criteria must be clear; free legal aid is necessary for lawful implementation; craft production should be fostered rather than agricultural activities). The author strongly endorses continuing the Programme and providing additional assistance for social integration.

*Őrszigethy, Erzsébet*

#### **Stories of Temporarily Protected Persons Who Are Small Entrepreneurs**

After interviewing 37 new entrepreneurs who obtained funds from the UNHCR Small Business Grant Programme, the sociologist described 4 composite, typical experiences in 1996. The first couple was experienced but young. They invested the grant in reconstructing a beer-garden in a village close to the border with former Yugoslavia. Another family invested in growing vegetables in a greenhouse until they can return. A third refugee family used the grant to open a joiner's shop but the support was not enough for subsistence in the countryside. Another family invested the small grant in a pig farm next to the border, but their new rural life started with serious hardship. Based on the fragile existence of the beneficiaries of the grants, the author concludes that the legal conditions are too inflexible for entrepreneurs as well as for temporarily protected persons.

*Sik, Endre*

#### **Selection and Chances in the Small Business Grant Programme**

The sociologist examines the information and application process of the Small Business Grant Programme run by the UNHCR in Hungary in 1996. The statistics show that Croat or Hungarian men with families who are about 30, have a mid-level education, and submitted serious business proposals early in the process had the greatest chance of receiving a grant. Other factors correlated with success include telephone in residence and education in technical fields.

*Kovács, András*

#### **A Survey of Temporarily Protected Persons Residing in Hungary in January 1996**

When the peace agreement was concluded in Dayton, the Hungarian refugee authority expected that temporarily protected persons would quickly return home. A survey of the plans of temporarily protected persons was administered in January 1996. The majority of those who voluntarily completed questionnaires had no intention to return home due to the lack of security and to inadequate living conditions. A minority said they wanted to return home under certain conditions for emotional reasons. The unemployed, the Bosnians and those living in camps were more likely to say they intended to return home. Between those intending to return home and those intending to remain in Hungary, there were no significant differences in age, prior occupation, living standards, ethnic origin and level of information. As the majority of this population does not intend to leave quickly, the author urges establishing an integration policy.

*Kovács, András*

#### **Joint Mission in East Slavonia**

The author was a member of a joint mission that visited East Slavonia in order to collect information on the realistic possibilities of repatriation in April 1996. The note describes the general situation in the area controlled by UNTAES, the demilitarisation process, the ruined infrastructure and dwellings as well as the tensions and lack of security. The author summarises the physical and mental obstacles and ethnic barriers to return in the near future. He anticipates an extended programme of reconstruction by the Croatian authorities and a long period preparing temporarily protected persons for repatriation and reintegration.

*Tóth, P. Péter*

#### **A Survey of Temporarily Protected Persons Residing in Hungary in September 1996**

The renewal of identity cards for temporarily protected persons in September 1996 provided an opportunity for a sociological survey. The completed questionnaires provides a picture of the age, sex, occupation and standard of the temporarily protected population. The war and flight caused an obvious decline in living standards; the social mobility of temporarily protected persons was clearly negative. The ethnic origin of the respondents correlated with intentions to return home as well as with expectations for the future either in Hungary or at home.

*Huseby-Darvas, Éva V.*

#### **Repatriation and the Intentions of Refugees from Ex-Yugoslavia**

Although the peace agreement was concluded in October 1995, lengthy interviews with temporarily protected persons and refugees in camps in Hungary in 1996 provide evidence that few camp residents intend to repatriate. The majority of Bosnians was neither ready to return home in the absence of security nor to move to a newly opened

camp in Debrecen. In this section of her extended anthropological study of the integration of Bosnian refugees into the USA, and Hungary, the author describes the Bosnians' conflicting emotions, especially their remorse for refusing to return to their homeland which has suffered in spirit and in physical destruction from severe ethnic tensions.

*Illés, Sándor and Hablicsek, László*

#### **Long-term Ramifications of International Migration**

The demographers analysed the demography statistics in Hungary for the 40 years from 1955 to 1995. The authors examined the impact of international migratory movements on demography during this period. A complex research method was developed to account for emigration in 1956, immigration waves since 1989. Each projection suggested a declining population in 1980–85 that could be balanced by the arrival of immigrants to Hungary.

*Dövényi, Zoltán*

#### **Remarks on the Spatial Distribution of Migrants' Residences in Hungary**

The socio-geographical analysis focuses on Hungary as a new host country since 1992. Although the terminology and statistics relating to aliens are ambiguous, the author relies to on the data from two surveys (1992, 1995) to outline the location of immigrants who have settled or resided for some years in the countryside. The spatial distribution of different immigrant groups are shown in maps and charts. About half of the immigrants are city-dwellers; the others preferred to live in bigger villages. The survey of local community leaders indicates how public opinion became more selective concerning deviant migrants (criminals) and newcomers from distant regions.

*Gagyí, József and Oláh, Sándor*

#### **Travel Methods of Migrant Workers to Hungary**

The anthropologists scrutinised the regularly repeated travels of migrant workers from only one region in Romania to Hungary in April 1996. They approach travel by bus as a cultural niche because the passengers gradually have created an informal network; their goals and interactions have become new phenomena of the local micro-society in a transition economy. About 45 bus lines operated weekly during the period of investigation and their main directions and functions have been outlined. Observation provided information on how bus lines gather commuters (or seasonal workers) and why newly established bus companies have been preferred in the 1990s.

*Bertalan, B. Erzsébet*

#### **Illegal Migrant Workers in the Village Epres**

The sociologist provides a colourful picture of a village where the local farm families have employed regularly seasonal workers since the late 1980s. The target village is located near Budapest; migrant workers without authorisation to reside in Hungary have been recruited from Romania (Transylvania) for some years. The observer describes the personal contacts that gradually developed between the rural areas of the receiving and sending communities that allow the farmers to select the best, hard-working, cheap but competent workers for harvest or for other agricultural work. The paper analyses the adaptation of the migrant workers to the local expectations and the impact of this migratory movement on both communities (in terms of mutual economic advantages, new marriages, the hierarchy of recruiters/migrant workers, capital transmission, the division of work between employees and those who provide accommodations, and so on). The numerous case studies are examples of local, effective absorption of international migration.

*Tóth, Judit*

#### **Preface to an American Researcher's Paper**

In these short comments on the following paper, the author comments on the methods and conclusions of a colleague from overseas. The author sadly agrees with her American colleague that there must be a new approach to the whole issue of asylum in Hungary featuring clear refugee principles, the removal of the geographical reservation to the 1951 Geneva Convention, and the speedy adoption of a comprehensive refugee law that fills the gaps in the laws, especially in the areas of temporarily protection and social integration.

*Fullerton, Maryellen*

#### **Ethnic Preference and Refugees in Hungary**

The Hungarian paper, a short version of the English article published in the *International Journal of Refugee Law* (December 1996), is the result of the professor's sabbatical year in Hungary researching the refugee policy in practice. As a lawyer, the author focused on the legal obligations concerning asylum imposed by international law, constitutional provisions, and administrative regulations. Based on interviews, statistical data, and an analysis of legal rules and the literature on refugees in Hungary, she concluded that the refugee regime discriminates in favour of ethnic Hungarians and that the refugee system provides a more attractive option than traditional channels immigration and naturalisation.

*Jungbert, Béla*

#### **Remarks on the Work of M. Fullerton**

The author disputes M. Fullerton's conclusions that refugee law and administrative practice contain ethnic preferences in favour of Hungarian minorities from the neighbouring countries. He emphasises the American professor's short residence (one year) in current day Hungary and inability to speak Hungarian and suggest she lacks a historical understanding, which may account for her total misinterpretation of the whole complex of migration and refugee issues in Hungary in the recent past. He argues that statistics on asylum seekers, temporarily protected persons and recognised refugees disprove M. Fullerton's statement that the asylum system discriminates against non-Hungarians.

*Tóth, Pál Péter*

#### **Political Strategy and Migration Policy**

This short introduction refers to the main goal of the conference on "Political Strategy and Migration Policy" (December 10, 1996). Researchers were invited to discuss the main elements of a more stable strategy that would endure beyond the changeable governmental approaches.

*Világosi, Gábor*

#### **Introductory Speech**

The State Secretary briefly outlines the main steps that have been taken on the road towards creating a working refugee regime in Hungary since 1989. As a leader on refugee issues, he summarises the urgent tasks: preparing a new Asylum Bill, lifting the geographical reservation relating to 1951 Geneva Convention, establishing of a labour force strategy, and creating a legal and support system for refugees and temporarily protected persons.

*Nagy, Boldizsár*

#### **The Possibilities for a Migration Policy Based on Moral Principles**

From the perspective of international law principles, the author proposes the following fundamental tenets of a moral migration policy: 1. solidarity with migrants in need of protection; 2. burden-sharing with host countries; 3. historical continuity in mutual assistance between nations; 4. provision of a framework of lawful migration; 5. distinctions between migrant groups (refugees, investors, migrant workers, etc.); 6. respect for constitutional law, human rights and international commitments. The moral basis must be central to migration policy, rather than a superficial aspect. (conference paper)

*Tóth, Judit*

#### **Possible Elements of a Migration Policy: A Puzzle**

The lack of interest in international migration issues shown by the political elite in the 1990s causes the author to question whether Hungary needs a comprehensive migration policy for the near future. Although the political leaders' views and opinions are not defined, experts and academics have outlined many different approaches. The paper lists the necessary elements of an immigration policy in six various dimensions: 1. the time scale of a migration policy; 2. the characteristics and origins of authorised migrants; 3. the length of time newcomers intend to reside in Hungary; 4. the bases for migration and the migrants' intentions in Hungary; 5. the policy-makers' expectations toward immigrants; 6. appropriate instruments for carrying out policy. Listing the sub-elements likely to be adopted by policy-makers, the paper contains pieces of a puzzle that policy-makers can rearrange when it is in their interest to do so. (conference paper)

*Tóth, P. Péter*

#### **Proposals for a Political Strategy on Migration**

The author stresses that a practical strategy must be based on scientific knowledge and actual facts concerning migratory movements in our region. He considers the immigration waves from 1988 to 1996 and the sociological features of those newcomers, the historical and geographical factors that attract migrants (especially neighbours) to Hungary, and the importance of the public opinion in the receiving society toward immigrants and their motives. (conference paper)

*Jungbert, Béla*

#### **Contribution**

The director of the Hungarian refugee authority, provides a short list of current challenges for the government agencies in the field of immigration: the complexity of international legal and illegal migration, the asylum law vacuum in Hungary, the issues of accession to the European Union, the institutional reform of the entire migration authority, and some possible ethnic preferences in the receiving policy. The political and administrative solutions of problems raised by migratory movements will be difficult to find. (conference paper)

*Szabó, A. Ferenc*

#### **Subsidiarity and Immigration Policy**

The author inquires from a historical and demographic perspective whether migration policy would be an effective instrument of renewing the Hungarian population in Hungary. He suggest that subsidiarity decision-making on local levels would be an acceptable principle of a new migration policy to replace a national program. Although policies towards German minorities beyond the border and the migration of the Aussiedler to Germany caused social conflict in the mother country, as did the Jewish diaspora and the return of Jews to Israel, this type of friction would be reduced in the near future due to ethnic and religious proximity. In the case of Hungary and Hungarian

minorities living across the borders, history suggest that the sending and target countries of migration share mutual interests. The author endorses an immigration policy that gives preference to the immigration of ethnic Hungarians' to Hungary in order to maintain a demographic balance. (conference paper)

*Valkovics, Emil*

### **Migration Policy in the Context of Demography**

The demographer takes into account the perspectives of three main players in international migration: the sending society, the migrant's community and the host country. Certain impacts of domestic migratory movement can be used as elements for modelling international migration in terms of age, active periods, and health conditions of migrants. This knowledge may contribute to establishing a migration policy based more on facts and less on emotion. (conference paper)

*Ancsin, Sz. Gabriella*

### **Socio-Economic Features of Yugoslav Migrants Settled in Szeged**

This socio-geographic analysis on the location and economic features and preferences of newcomers focused on Szeged, the next "harbour" for Yugoslav refugees and migrants in southern Hungary. Using the up-to-date registry of firms from 1989 to early 1996 as a data base, the author examined the capital brought to Szeged, and the number of rooms officially rented downtown or in the suburbs in order to demonstrate the economic patterns of migratory movements. The majority of companies founded during this period was located in the same part of the city; the average capital of the family enterprises was below 1 million HUF (8,500 USD). (conference paper)

*Hárs, Ágnes*

### **Migration Policy and the Labour Market**

The economist questions whether Hungary can establish a comprehensive migration policy independent of ongoing migratory movements and of social and economic policy. Because Hungary is a transition economy and society, it should not define an immigration policy without collecting information on the actual situation of the labour market, the operation of migrants' networks, and on the costs and benefits of receiving migrants. The author offers "trial and error" as a working method towards developing a migration policy. (conference paper)

*Lévai, Imre*

### **International Migration and Refugee Policy**

Relying on objective dimensions of international migratory movements, the sociologist endorses a less emotional refugee policy for contemporary Hungary. From the perspective of globalisation and long-term impacts of immigration as well as of the reception of migrants, the movement of people is a historical phenomenon of the labour market and demography. Sharing the opinion that international migration reflects world-wide conflict situations, the author proposes not only emergency management, but chaos-management of refugee waves. (conference paper)

*Tóth, Judit*

**Illusions and Realities in the Relations Between Hungary and Chinese Migrants**

The author investigates the conflicts between the official Hungarian policy on Hungarian–Chinese relationships and the acts taken by authorities and government agencies towards Chinese traders, investors and other migrants in Hungary. Great political, economic, cultural, legal and geographic distances have remained between Hungary and China, but friendly relations and strategic co-operation occurred in the late 1980s. Interviews with knowledgeable Hungarian authorities (e.g., aliens police, border guards, labour authorities, customs officers, education and cultural agencies) revealed that the false hopes of a huge economic potential for Hungarian exports and for Chinese investments in Hungary were shattered in the early 1990s. Neither the public nor the government authorities were prepared for Chinese migrants with completely unknown economic and social aspirations. In the transition period, nonetheless, the public and poor consumers, in particular, found Chinese products and traders much more acceptable than did the press, bureaucrats and officials in agencies that lacked both a migration policy and a policy co-operation with China.

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