

## Alien Administration

**Annotation:** This article is about the alien law and legislation, which is the collection of all those regulations that express in terms of provisions of law the position of a particular government vis-à-vis individuals who are not the citizens of the country but are in some kind of connections through various social relations with that state. The alien legislation is not an independent branch or area of the law but the collection of those provisions of law of which the subject is an alien – defined in a wider or narrow sense. In a narrow sense only those mainly administrative norms belong to this category that regulate the legal status of the aliens differently than that of the own nationals. In a wider sense it is the collection of all those norms that were created on the one hand to define the (special) legal status of the aliens, and on the other hand to refer to the status of the aliens that is – in some respect, under special conditions - identical with that of the own nationals.

**Key words:** Alien law, alien administration, alien policing, migration, migration law

### 1. Alien Legislation, Alien Policing and Free Movement

*The alien legislation* is the collection of all those regulations that express in terms of provisions of law the position of a particular government vis-à-vis individuals who are not the citizens of the country but are in some kind of connections through various social relations with that state.<sup>1</sup> The alien legislation is not an independent branch or area of the law but the collection of those provisions of law of which the subject is an alien<sup>2</sup> – defined in a wider or narrow sense. In a narrow sense only those mainly administrative norms belong to this category that regulate the legal status of the aliens differently than that of the own nationals (e.g., entry, stay). In a wider sense it is the collection of all those norms (not only administrative but civil law, labour law and family law, etc.) that were created on the one hand to define the (special) legal status of the aliens, and on the other hand to refer to the status of the aliens that is – in some respect, under special conditions - identical with that of the own nationals (e.g., employment, housing).<sup>3</sup>

The complexity of the material and procedural norms attached to the *alien administration (entry, residence) and policing (prohibitions)* means one area of the alien legislation in its narrow sense sees from the perspective of the public administration legislation. Additional areas of the alien legislation (in the narrow sense): set of norms relating to the *immigration, citizenship and refugee matters*.<sup>4</sup>

The alien policing does not have an itemized legal definition. Based on the relevant regulation it is obvious that the alien policing – having developed into an independent part of the policing covers

- the border crossing and the entry of the aliens,
- their stay in Hungary,
- practicing their rights and the control over that,

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<sup>1</sup> Cf.: ÉLIÁS Pál: A külföldiek jogi helyzetével kapcsolatos alapvető kérdések (*Fundamental questions relating to the status of foreigners*). In: KONRÁD Edit: *Idegenjog I.* Budapest, Magyar Tudományos Akadémia Államtudományi Kutatások Programirodája, 1987. 1.

<sup>2</sup> HAUZINGER Zoltán: Idegenjog kontra idegenrendészet (Alien law vs. alien policing). in: Gaál Gyula - Hautzinger Zoltán: Rendészettudományi gondolatok. Magyar Rendészettudományi Társaság. Budapest, 2014. 116.o.

<sup>3</sup> MÁDL Ferenc – VÉKÁS Lajos: *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga (International private law and the law of international economic relations)*. Budapest, Nemzeti Tankönyvkiadó, 1997. 223.

<sup>4</sup> Vö. HAUZINGER Zoltán: *A külföldiekre vonatkozó magyar jogi szabályozás fejlődése és története. (Evolution and history of the Hungarian legal regulations applying to foreigners)* Szakmatörténet. Egyetemi jegyzet. Budapest, Nemzeti Közszolgálati Egyetem, Rendészettudományi Kar, 2012. 6.

- the deployment of sanctions, as well as
- the implementation of the law by the authorities when aliens leaving the country<sup>5</sup>.

One pillar of the regulation is a provision of the Fundamental Law<sup>6</sup> declaring that those staying legally in the territory of Hungary are entitled – with some exceptions stipulated by the law - to the free movement, the free selections of the domicile and to leave the country (free movement). The prohibitions stipulated by the Fundamental Law are related to the free movement: „Foreigners staying in the territory of Hungary may only be expelled under a lawful decision, “Collective expulsion shall be prohibited” (prohibition of expulsion) <sup>7</sup>. Furthermore: “No one shall be expelled or extradited to a State where he or she would be in danger of being sentenced to death, being tortured or being subjected to other inhuman treatment or punishment.”<sup>8</sup> (non-refoulement).

This right is stipulated by the Treaty establishing the European Community as one of the four fundamental rights – i.e., the free movement of people. All citizens of the Union are free to move and stay in the territory of the member countries while respecting the conditions and limitations stipulated by the Treaty and the provisions for its implementation.<sup>9</sup>

## 2. History of Alien Policing

### 2.1. Alien policing regulations in the 20<sup>th</sup> century

It is clear from the above that the history of alien policy is inextricably intertwined with that of *the freedom of movement* as a constitutional fundamental right. Since however, in the history of law free movement meant the freedom of movement and settlement within a given country, it was only much later, in the 20<sup>th</sup> century when modern states had come into existence and borders had begun to be guarded, that international migration came to be regulated. Until the World War One people could cross borders and settle wherever they chose to in Europe without administrative obstacles.<sup>10</sup> This is when the obligation to hold passports became a mandatory requirement for travellers, and later in the wake (in the era of) the emigration of masses after World War Two the state socialist legislation found its main task to be to have the “peace camp” keep itself sealed off from the west and to restrict citizens’ freedoms.<sup>11</sup>

In Hungary the first specific regulation of alien policing was contained in Act V of 1903 adopted during Kálmán Széll’s term in office as prime minister. The act prescribed an obligation for foreigners to report their lodgings to the authority along with an obligation to report their intent to take up residence. Among the regulations emphasis should be laid on the controlling of foreigners and the coercive measures that could be applied against them. This was the first regulation that provided for alien policing authorities.<sup>12</sup> Beforehand, the police

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<sup>5</sup>Vö. IVANCSICS Imre: Az idegenrendészet. (*Alien policing*) In: KILÉNYI Géza: *A közigazgatási jog nagy kézikönyve*. Budapest, Complex, 2008. 1667.

<sup>6</sup> Basic Law Section XXVII (1)

<sup>7</sup> Basic Law Section XIV (1)

<sup>8</sup> Basic Law Section XIV (2)

<sup>9</sup> Treaty Establishing the European Community Article 18. (1).

<sup>10</sup>PAP András László: *Mozgásszabadság. (Freedom of movement)* Budapest, L’Harmattan, 2009. 13.

<sup>11</sup> Cf.: Ibid.

<sup>12</sup> In small and large villages the *chief constable of the day*, in larger owns the police commissioner, in Budapest capital city (in regard to notifications) the council or (in the case of proceedings against a foreigner) the chief commissioner of the State Police , while in the area of competence of the border police the police commissioner in charge of the area concerned along the border.

had powers of an authority relating to municipalities (issuing occupancy permit certificates, permission of settlement).

After World War One Hungary had to receive huge numbers of Hungarian refugees driven out of the successor states. From 1930<sup>13</sup> on the controlling of foreigners was assigned to the competence of the police in the wake of the establishment of the National Central Authority Controlling Aliens (Külföldiek Ellenőrző Országos Központi Hatóság (KEOKH)) supervised by the Ministry of the Interior.<sup>14</sup> At the same time, the central authority became the appeals forum in regard to cases escalated from rural authorities of the first instance.

Alien policing operations were, after World War Two, carried out by a specific department of the party state's secret service and the KEOKH was re-established in the framework of the reorganisation of the police from 1946 on.<sup>15</sup> Though right from the inception the police had been controlled by the communists but the alien policing function was – owing to its importance – soon transferred to the “even more reliable” State Protection Authority (Államvédelmi Hatóság (ÁVH)), right up until 1956 (the disbanding of the State Protection Authority).<sup>16</sup> KEOKH was reintegrated in 1957 into the organisation structure of the Political Investigation Department (Politikai Nyomozó Főosztály) in the scope of competence of the Ministry of the Interior and later on, from 1961 it was transformed into one of the departments of the counter-intelligence organisation.

The scopes of competence relating to alien policing were profoundly reorganised by Decree 2/1973. (V. 30.) BM issued by the Ministry of the Interior: the majority of the cases relating to residence permits were assigned to the police departments and the central body of alien policing continued to function as one of the units of the National Police Headquarters Administrative Policing Department.(Országos Rendőrfőkapitányság Igazgatásrendészeti Csoportfőnökség). On the one hand the alien policing regulation that had been operating under very strict controls as was typical of the socialist Hungary made it extremely difficult – in addition to Hungarian citizens to travel abroad – the entry and stay of foreigners in Hungary and on the other hand it ensured that the holders of the political power have up-to-date information on all foreign persons living in the territory of Hungary.<sup>17</sup>

The tightness of the applied alien policy was not eased – indeed, alien policing regulation was elevated to a higher level – by Law-Decree 19 of 1982 on foreigners staying in Hungary by simplifying, on the one hand, the meaning of the term “foreigner” (including non-Hungarian citizens) and, on the other hand, containing much more detailed regulations on the coercive actions that may be applied to foreigners. The execution of the Law-Decree was complemented by Decree 7/1982. (VIII. 26.) BM adopted by the Ministry of the Interior designating, besides KEOKH, the county (Budapest) police headquarters and the district, town and Budapest district police headquarters, the bodies authorised to issue visa (Ministry of Foreign Affairs, foreign representations and, at border crossing points, the border guard) as alien policing authorities. During the period preceding the political transition alien policing was a “hot bed” of arbitrary (or, to put it in a more refined form: discretionary) application and

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<sup>13</sup> Between 1918-1924 issues relating to the administration of refugees were dealt with seven local units of the National Refugee Office.

<sup>14</sup>TÖTTÖS Ágnes: A kulturált idegenrendészet – az idegenrendészeti ügyintézés fejlődése. (*Civilised alien policing – development of alien policing procedures*) In: GAÁL Gyula – HAUTZINGER Zoltán: *Pécsi Határőr Tudományos Közlemények X.* Pécs, Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoportja, 2009. 331.

<sup>15</sup> Cf.: Ibid

<sup>16</sup>WETZEL Tamás: *A bevándorlás kérdése Magyarországon.(Issue of immigration in Hungary)* Budapest, Publikon, 2009. 23.

<sup>17</sup>HAUTZINGER: ibid. footnote 3 59.

enforcement of the law, therefore it was enshrouded in an even more than the customary degree of non-transparent secrecy.<sup>18</sup>

The last decade of the 20<sup>th</sup> century saw profound external (and internal) political and social changes in this field as well.<sup>19</sup> Hungary's regional international environment changed radically and all of the states (societies) of the Central and Eastern European region were gaining momentum.<sup>20</sup> It was in 1989 that the Interdepartmental Committee for Refugee Affairs (Menekültügyi Tárcaközi Bizottság) was set up under the leadership of the Ministry of the Interior primarily and first in order to deal with the large number of ethnic Hungarians holding Romanian citizenship, fleeing from persecution in the Ceausescu regime. Act XXIX of 1989 on Emigration and Immigration removed immigration (settlement) from the scope of the alien policing legislation and it set down no positive conditions only negative ones, for ruling out immigration.<sup>21</sup>

The adoption of *Act LXXXVI of 1993 on the Entry, Stay in Hungary and Immigration of Foreigners* brought about a major turn in the history of alien policing in Hungary, since it was then (and by the adoption of that Act) that at the legal institution of alien policing underwent a profoundly new regulation by law. This was all the more timely at that point because the legal status of foreigners who intended to enter Hungary on business, as tourists or for other lawful purposes had to be freed from any and all contradictions and also because proper legal grounds had to be created for lawful actions against foreigners endangering public order and/or committing unlawful acts.<sup>22</sup> As for the authorities, the Refugee Office (Menekültügyi Hivatal) was replaced – also under the direction of the Ministry of the Interior – by the Refugee and Migration Office (Menekültügyi és Migrációs Hivatal). Upon the effective date of the Act (01.04.1994) immigration was reintegrated, in terms of its structural position, in the alien policing. Part of the issues relating to immigration were – from 1998 – removed from the organisation structure of the police and transferred to the scope of competence of the administrative offices.

In the first step of the development of the structure the government put in place the *Office of Immigration and Citizenship (Bevándorlási és Állampolgársági Hivatal, (BÁH))*, of the Ministry of the Interior from 1 January 2000 thus in the wake of the adoption of *Act XXXIX of 2001 on the Entry and Stay of Foreigners* (hereinafter: Idtv.) and by an amendment to Act CXXXIX of 1997 on Asylum it became possible to put in place a single migration organisation. The aims of the establishment of the BÁH included harmonisation of the previous diversity in the application and enforcement of the law, an improvement of the technical/professional standards and the development of service provision separated from the police and policing.<sup>23</sup> To conclude the process, in January 2002 the Government set up the regional directorates of BÁH to function as bodies of local/territorial competence.

## 2.2. Changes in the rules on migration

Today, the freedom of movement has – partly as a result of the activities of the European Court of Justice – become a universal subjective right that requires up-to-date migration policies and regulations from the signatory states, that apply not only to citizens of

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<sup>18</sup>Cf. IVANCSICS: *ibid.* footnote 5. 1667.

<sup>19</sup>TÖTTÖS: *ibid.* footnote 14. 334.

<sup>20</sup> E.g. the social transformation in Romania, the splitting of Czechoslovakia, the disintegration of the Soviet Union and Yugoslavia, the Kosovo war. (Cf. TÖTTÖS: *ibid.* footnote 14.)

<sup>21</sup> “No foreigner whose settlement would violate the security of the state, public order, public health, public morals, other rights and freedom or who has committed a serious crime or leads a criminal life (...) shall be permitted to immigrate”.

<sup>22</sup>HAUTZINGER: *ibid.* footnote 3. 67.

<sup>23</sup>TÖTTÖS: *ibid.* footnote 14. 332.

the European Union. Providing for the free movement and stay of nationals of EEA countries was a precondition for Hungary's accession to the European Union which could be guaranteed by Act XXXIX of 2001 on the Entry and Stay of Foreigners (Idtv.) in accordance with the EU legislation then in force. *Directive (EC) 2004/38* adopted in 2004<sup>24</sup> (Directive) introduced revised regulations for the free movement of persons, in fact by enshrining the principles developed in the case law applied by the European Court of Justice. It was made clear however, that it would not be possible to regulate the rules on the entry and stay of EEA nationals (and their family members) and those on the entry and stay of nationals of third countries, in a single act of law (that is, the Idtv.). For according to the Directive the right of free movement and stay is granted to EU nationals by the Contract and not by a secondary law. The right of stay therefore stems not from the residence permit (of a constitutive effect) but is granted by the Community law.<sup>25</sup> Furthermore, the adoption of the new legislation was justified by the fact that the regulation – of a rather limited volume, in comparison to its importance – put in place by the Idtv. does not sufficiently distinguish between nationals of different statuses, therefore it did not meet (no longer met) the special requirements under the Community law concerning EEA nationals.<sup>26</sup> It was with a view to all of the above that the Parliament adopted the new regulation of alien policing – for two different categories of persons – that is *Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence* and *Act II of 2007 Admission and Right of Residence of Third-Country Nationals*.

The expansion of international migration and its uncontrollability in the conventional sense of the term results in increased security risks.<sup>27</sup> The body of alien act outgrows its homogeneous framework in this regard and thus the regulation is being enriched by rules not only on the legal status of foreigners but also on national security factors and regulations as well.<sup>28</sup>

### 3. The regulation of alien policing

#### 3.1. International and EU regulation

Since the effective Hungarian regulation (in the Basic Law) of the freedom of movement is profoundly affected by international treaties and the EU legislation, it should only be reasonable to present a brief summary of these regulations hereunder.

The *International Covenant on Civil and Political Rights* (ICCPR) and the *European Covenant on Human Rights* (ECHR) both lay down the goals and interests to be taken into account in imposing any restriction on the freedom of movement.<sup>29</sup> In relation to the expulsion of foreigners the ICCPR prescribes the right to being heard, to legal remedy and to representation,<sup>30</sup> while the ECHR prohibits foreigners' collective expulsion and the expulsion of own citizens.<sup>31</sup>

<sup>24</sup> Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the union and their family members to move and reside freely within the territory of the member states, amending regulation (EEC) No. 1612/68 and repealing directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

<sup>25</sup> Cf. to the rules of the Idtv. on stay.

<sup>26</sup> Cf. to the General justification attached Act I of 2007.

<sup>27</sup> SZABÓ A. Ferenc: *Népesedés, Migráció, Biztonság. (Population, Migration, Security)* Budapest, ZMNE, 2010. 70.

<sup>28</sup> HAUTZINGER: *ibid.* footnote 3. 69.

<sup>29</sup> These include national security, public order, crime prevention, public health, public morals, the rights and freedoms of others, along with other public interests specified by the law. Cf. ECHR Fourth Additional Protocol Article 2 (3), ICCPR Article 12 (3).

<sup>30</sup> ICCPR Article 13

<sup>31</sup> ECHR Fourth Additional Protocol Article 4 and Article 3 (1)

The ECHR contains rather deeply detailed regulation in regard to the restriction when it stipulates,<sup>32</sup> that no restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, and that the liberty of movement and freedom to choose his residence may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.<sup>33</sup>

According to the *Treaty on the Functioning of the European Union (TFEU)* every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.<sup>34</sup> One of the fundamental elements of the free movement of persons is the free movement of employees including the elimination of any discrimination on the basis of citizenship among the employees of the member states in regard to employment, remuneration and other working or employment conditions.<sup>35</sup> The freedom may be exercised in view of restrictions justified on the basis of considerations relating to public order, public safety or public health, and it does not apply to public service. The provisions of the TFEU provide for the freedom of establishment. This includes the right to set up and manage self-employed business activities, the establishment of undertakings and companies/firms under the conditions laid down for its own nationals by the law of the country where such establishment is effected.<sup>36</sup>

The Charter of Fundamental Rights of the European Union also provides, among the rights of citizens, for the freedom of movement and residence, diplomatic and consular protection as well as the right to employment among the freedoms, as well as protection against removal, expulsion and extradition.<sup>37</sup>

### **3.2. On the entry and residence of persons with the right of free movement and residence**

#### **3.2.1. The scope of the Act**

*The personal scope of Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence (hereinafter: Szmtv.)*

- *EEA nationals and their family members, and*
- *the family member of a Hungarian citizen who does not have Hungarian citizenship.*

The signatory states to the treaty on the European Economic Area as well as Iceland, Lichtenstein and Norway (previously: European Free Trade Association [EFTA] countries). Pursuant to the agreement signed in 1999 and entered into force in 2002 between the European Community and its Member States and the Swiss Confederation concerning the free movement of persons the Szmtv. applies to the citizens of the Swiss Confederation as well.

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<sup>32</sup> Fourth additional protocol Article 2 (3) and (4).

<sup>33</sup> CHRONOWSKI: *Mozgásszabadság. (Freedom of movement) Mozgásszabadság* [In: *Magyar alkotmányjog III. Alapvető jogok* (szerk. Drinóczi Tímea), Dialóg Campus, Budapest – Pécs 2006] c. fejezet 2011-ben átdolgozott változata

<sup>34</sup> TFEU Article 20 (2), Article 21

<sup>35</sup> Ibid footnote 32

<sup>36</sup> TFEU Articles 49-51

<sup>37</sup> See Charter of Fundamental Rights of the European Union, Articles 45 and 46, Article 15 (2) as well as Article 19.

According to the Szmtv. a *family member* is the spouse or common-law spouse of an EEA national or Hungarian citizen<sup>38</sup>, along with their direct descendants who are under the age of 21 or are dependants or their dependant ancestors. Family members also include for the purposes of the law, the person who has parental custody of a minor child who is a Hungarian citizen whose entry and residence as a family member has been authorised by the authority. Furthermore, the Szmtv. applies also to persons accompanying (joining) EEA or Hungarian citizens who

- are dependants of the EEA/Hungarian citizen concerned
- have been living with such citizen for at least one year in the same household, and
- have been taken care of by the Hungarian or EEA national on serious health-related grounds,
- who had been dependants or members of the household of an EEA national in the country from which they are arriving, for a period of at least one year, or who require the personal care of an EEA national due to serious health grounds.

### **3.2.2. Rules on entry and residence**

#### **a) Residence planned not to exceed ninety days within a period of one hundred and eighty days**

An *EEA national* may enter the territory of Hungary with a valid travel document or personal identification document or – in the category specified by international agreement – an expired personal identification document or other document recognised of for the purpose of entry.

A person *accompanying* or *joining* an EEA citizen or Hungarian citizen may enter the territory of Hungary with

- such valid travel document whose period of validity is at least three months beyond the planned date of exit and has been issued within not more than ten years, and a valid visa for a planned period of residence not exceeding ninety days within the next one hundred and eighty days.

A visa may be issued for a person holding a valid travel document, certifies the purpose and circumstances of the planned period of residence and has sufficient means of subsistence (for residence and return) and who does not endanger the public order, internal security, public health or international relations of the member state. (These conditions are set out in the Schengen Borders Code.)<sup>39</sup>

The Szmtv. – in accordance with the durations specified in the Directive – permits residence not exceeding ninety days *unconditionally (without specific permit)*.

#### **b) For residence exceeding ninety days within a period of one hundred and eighty days**

*EEA nationals* meeting the following conditions are entitled to residence exceeding ninety days within a period of one hundred and eighty days, subject to reporting and the so-called registration certificate issued in the course of the reporting procedure according to the applicable piece of legislation<sup>40</sup>,

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<sup>38</sup> Provided the common-law relationship was established before a Hungarian authority or an authority of another EU member state.

<sup>39</sup> Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders.

<sup>40</sup> An EEA national must notify his or her residence to the authority specifying his or her personal data and filing the documents that certify that he or she meets the conditions and criteria for residence, on the basis of which a registration certificate is issued. The registration certificate proves the fact and date of the notification. For family members who are citizens of third countries the authority issues residence cards.

- the purpose of whose residence is to engage in some gainful employment,
- who have sufficient resources for the whole duration of the stay for themselves and for their family members to make sure that their residence does not impose unjustified burdens on Hungary's social services and have health insurance coverage, or who provide for the coverage of the costs of such services themselves, or
- who have been admitted to a public education or a higher education institution to pursue studies<sup>41</sup> and have, throughout the entire duration of their residence in Hungary, sufficient resources for the whole duration of the stay for themselves and for their family members to make sure that their residence does not impose unjustified burdens on Hungary's social services and have health insurance coverage, or provide for the coverage of the costs of such services themselves.

The *family members of EEA nationals* are also entitled to the right of residence, provided the above conditions are met by the EEA national.

### c) Permanent residence

The *right to permanent residence is granted by the Act to all EEA nationals and their family members* providing that *they lawfully reside in Hungary for a period of five years without any intermission*. Children born of parents having this right in Hungary also have the right to permanent residence. The right of an EEA national or his/her family member to permanent residence is certified by the permanent residence card.<sup>42</sup> The right to permanent residence of an EEA national or his/her third country national family member lapses upon two years of continuous absence.

### 3.2.3. Restriction on the right of entry and residence

*The right to entry and residence may only be restricted in observance of the principle of proportionality and on the basis of the "conduct or behaviour" of the individual concerned.* Restriction may be based on behaviour or conduct that is truly, directly and seriously endangering some fundamental value of society, including, in particular public order, public safety or national security or public health.

The authority controlling border traffic may – by a resolution to be executed forthwith – deny the entry of an EEA national or his/her family member (at its discretion) if the individual concerned does not meet the entry criteria or is under an entry and residence ban.

Such person must be *banned from entry and residence* for the enforcement of whose banning from entry and residence Hungary has undertaken a commitment or in regard to whose banning from entry and residence the EU Council has taken a decision. The period of the ban is three years on the first occasion which may be extended by another three years whenever the conditions and criteria for such extension are still met. No appeal may be lodged against a ban on entry and residence.

The decision ordering the ban on entry and residence may at the same time order *expulsion by the alien policing authority*. An EEA national or his/her family member with a permanent right of residence may only be expelled from the territory of Hungary for reasons of national security. The justification for the ban on entry and residence ordered simultaneously with the expulsion order must be reviewed at the request of the individual concerned. No appeal may be filed against the decision but its judicial review may be requested. Expulsion may take place with official escort (*deportation*). To ensure removal the acting authority detains the EEA national or his/her family member before deportation.

<sup>41</sup> Including vocational education and adult training with an accredited training programme.

<sup>42</sup> At the same time, it is also stipulated by law that the EEA national or his/her family member may also prove his/her right of residence in "any other credible way" in addition to those specified by the Act.



*Detention for deportation* may be ordered for a period not exceeding seventy two hours. This may be extended by the competent district court until the execution of the deportation, by not more than thirty days on each occasion. If the EEA national or his/her family member has escaped from detention before deportation or has left the designated place of residence for an unknown place, the authority may issue a warrant of arrest. The authority orders *restriction on leaving abroad* against the EEA national or his/her family member withholding of whose travel document has been requested of the authority by court or the prosecutor.

To check compliance with the ban on entry and residence the authority records the face *photograph* and *fingerprint* of the person who has been expelled by the court or against whom the acting court banned from entering and residing in Hungary alongside the expulsion order.

### **3.3. On the entry and residence of third country nationals**

#### **3.3.1. The scope of the Act**

Act II of 2007 Admission and Right of Residence of Third-Country Nationals (*hereinafter Harmtv.*) applies to *non-Hungarian citizens and stateless persons who do not – pursuant to the Szmvtv. – have the right of free movement or residence in Hungary*. Even in its title the act is aimed at introducing the concept of “*third country nationals*” in the Hungarian law, in accordance with the terminology of community regulations on migration issues. Third countries are countries other than Hungary (“first country”), the EEA member states (“second state”) for the purposes of Community legislation.

#### **3.3.2. Rules on entry and residence**

##### **a) Residence planned not to exceed ninety days within a period of any one hundred and eighty days**

*As a general rule entry and residence in Hungary for a stay planned not to exceed ninety days within any one hundred and eighty day period necessitates a visa<sup>43</sup> according to the Harmtv.* The act stipulates the conditions for the issuance of a visa – that is valid for a period not exceeding five years – in accordance with the provisions of the Community Visa Code<sup>44</sup>.

##### **b) Residence exceeding ninety days within a period of any one hundred and eighty days**

In the case of residence over ninety days the citizen of a third country

- must have a valid travel document, and
  - a visa for residence over ninety days (visa for residence, seasonal employment or national visa),
  - residence permit<sup>45</sup>,
  - immigration permit,
  - (temporary, national or EC) permanent residence permit or
- permit for return or for continued travel,

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<sup>43</sup> Airport transit visa, uniform visa (valid for the whole of the territory of the member states), visum for a specific restricted area (valid for the territory of one or more specific member states).

<sup>44</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (VIS)

<sup>45</sup> A third country national with a valid residence visa or national visa may, after the expiry of the period of residence specified in the visa, continue to reside in Hungary with a residence permit. A residence permit applies to residence for a definite period of time not exceeding two years (and may be extended once by two years). A residence permit may be issued for family unification, gainful employment, pursuance of studies, research, medical treatment or voluntary activities.

- accommodation or place of residence in Hungary and must certify
- the objective of his or her entry and residence and that
- has resources sufficient for his or her accommodation, subsistence for the whole of the duration of his or her residence and for the costs of exit as well,
- qualifies as being covered by insurance for the full range of health services or can cover the costs of his or her health services and
- is not under expulsion and is not banned from entry and residence and his or her entry and residence does not endanger Hungary's public safety, national security and public health interests, and
- is not subject to an SIS warning signal ordering prohibition of entry and residence.

For those not meeting the above conditions and criteria entry and residence may only be permitted on an exceptional basis, for the fulfilment of an international obligation, for some urgent humanitarian reason or in the national interest.

*The Harmtv. grants resident status* to a third country national who has been provided with a national permanent residence permit, EC permanent residence permit or an interim permanent residence permit. The permanent residence statuses may be exchanged. A resident third country national – *apart from interim permanent residence* – is entitled to reside in Hungary for an indefinite period of time and has the rights enshrined in the Basic Law and in specific other legislation.

A national residence permit may be applied for – with the aim of permanent residence – by a person holding a residence permit (or interim permanent residence permit) under rules more favourable than those applying under the Community law. For in this case (as a general rule) “only” three years’ lawful stay is stipulated as a prerequisite for the issuance of the permit but it does not grant the same mobility in the territory of the Community as does an EC permanent residence permit.

By introducing the EC permanent residence permit and the interim permanent residence permit the Harmtv. has, in fact, accomplished the transposition of Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents since the purpose of both legal institutions is to enable long-term residence in the given country. A prerequisite for the issuance of the EC permanent residence permit is lawful residence in Hungary for a period of five years or the holding of an EU Blue Card, provided the applicant has been residing in Hungary lawfully for at least two years and has stayed as resident in territories of EU member states for at least five years.

An interim permanent residence permit for a definite period of time<sup>46</sup> is issued to a third country national who wishes to stay in the territory of Hungary for gainful employment, pursuance of studies or other certified purposes.

A third country national must *notify* to the alien policing authority:

- his or her personal identification data
- the identification data of his/her travel document
- number of visa or residence permit,
- date and place of entry
- address of residence (accommodation)
- the starting and expected ending date of the use of the place of residence.<sup>47</sup>

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<sup>46</sup> For five years, which however, may be extended for additional five-year periods.

<sup>47</sup> The provider of accommodation keeps records of the data of the third country national staying at a commercial accommodation or other accommodation maintained by a legal person, using the prescribed form (guest book).

### 3.3.3. Restriction or prohibition of the right of entry and residence

The authority controlling border traffic shall *refuse the entry* of the citizen intending to enter for period of residence not exceeding ninety days – pursuant to the provisions of the Schengen Border Code – and *returns* the individual concerned.<sup>48</sup>

The alien policing authority orders the third country national to leave the territory of Hungary if his or her continued residence is no longer lawful. The authority will order *expulsion or prohibition of entry and residence* in regard to a third country national whose entry or residence does not meet the conditions prescribed in the Harmtv. To execute expulsion the individual may be *detained*. *Removal* is the execution of the order to return or expulse, with escort. The alien policing authority orders *prohibition of travelling abroad* in regard to a third country national at the request of the court, the prosecutor or the investigative authority, to retain his or her travel document.

The authority has the power to check compliance with the statutory rules. The authority *issues warrant of arrest* of a third country national under alien policing proceedings if he or she has escaped from detention, left his or her designated place of residence or has failed to fulfil a final and definitive expulsion order.

To prevent repeated proceedings, and to identify personal identity the authority ordering detention prior to expulsion, expulsion, residence at a designated place, or detention by the alien police, or the authority executing judicial expulsion, records the third country national's *photo* and *fingerprint* (for face recognition and fingerprint recognition).

## 4. Rules of the alien policing procedures deviating from those laid down in Act CXL of 2004 on the general rules of public administrative procedures and services (Ket.)

*Alien policing procedures come under the scope of the Ket. with the difference that the provisions of the act on procedures must be applied when no different procedures are stipulated in the Act (acts) on alien policing.*

*The provision of information for the customer is crucial* in alien policing procedures (particularly as regards their rights, obligations and the available legal remedies). In a procedure started at the customer's request the customer must appear when submitting his or her request (petition) and for the purpose of the issuance of the registration certificate, in person before the authority concerned. It is a guarantee regulation that the *decision or resolution of the authority or the court must be communicated to the customer present, in his or her mother tongue or in some foreign language he or she understands*. If the customer is staying at a place unknown, the decision is communicated in the form of an announcement.

Of the rules on the bearing of costs it should be emphasised that costs relating to the use of the mother tongue and the communication of the decision are borne by the authority in proceedings started at request. The costs of other procedural acts and the costs of translation and interpreting in the procedure of the issuance of the visa are borne by the applicant. In proceedings started *ex officio* the costs relating to the use of the customer's mother tongue are borne by the acting authority.

## 5. The bodies involved in alien policing procedures as specified in the Szmtv.

The following authorities are involved in alien policing procedures:<sup>49</sup>

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<sup>48</sup> A traveller may be returned to the territory of the country from which the given citizen has come, which must permit re-entry of the individual, where the citizen's regular place of residence is to be found or where he or she will be permitted to enter.

- the minister in charge of alien policing and refugee affairs (according to the prevailing regulation: the Minister of the Interior),
- the minister in charge of foreign affairs,
- the Office of Immigration and Nationality (BÁH, Office)
- the local/territorial bodies of the BÁH,
- the Hungarian consular officer authorised to issue visas and
- the police.

The issuance of visas is part of the remit of the minister in charge of foreign affairs, consular officers and the BÁH. As a general rule a visa application is decided by a consular officer. Pursuant to specific other legislation, visa applications of family members of persons enjoying diplomatic privileges and exemptions or other privileges and exemptions based on international law are decided by the minister in charge of foreign affairs. Exceptionally, a visa may be issued at the border crossing point<sup>50</sup>. In such cases the application for the visa is immediately transmitted by the police on-line to the Office, which makes the decision immediately, but by all means within three hours. The visa is then issued for the applicant by the police.

The following must be notified to the regional directorate of the Office (with competence in the area of residence)

- EEA national's residence beyond three months,
- EEA national's and family member's application for a permanent residence card, and
- third country national family member's application for the issuance of a residence card, as well as
- other data specified by law (loss/destruction of travel documents, death of family member, change of name etc.).

The data specified by law are transmitted by the regional directorate to the Office (central data managing body). The Office's regional directorate orders

- prohibition of entry and residence,
- expulsion,
- detention by alien police,
- residence at a designated place,
- removal,
- arrest warrant,
- restriction of exit
- prohibition of travelling abroad.

The satisfaction of the statutory conditions and criteria pertaining to the entry and residence of foreigners is checked by the police (as the authority controlling border traffic), before permitting entry to the territory of Hungary. The police (as alien policing authority) is empowered to order the following in regard to a foreigner

- refusal of entry and return,
- prohibition of entry and residence,
- detention before expulsion,
- expulsion and
- issuance of arrest warrant.

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<sup>49</sup> Government Decree 117/2007. (V. 24.) Korm. on the implementation of Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence.

<sup>50</sup> Provided, the family member that is a third country national, meets the statutory conditions and credibly explains that he or she had not been in a position to apply for a visa in advance.

## Literature

- ÉLIÁS Pál: A külföldiek jogi helyzetével kapcsolatos alapvető kérdések (*Fundamental questions relating to the status of foreigners*). In: Konrád Edit: *Idegenjog I.* Budapest, Magyar Tudományos Akadémia Államtudományi Kutatások Programirodája, 1987. 1.
- HAUTZINGER Zoltán: *A külföldiekre vonatkozó magyar jogi szabályozás fejlődése és története. (Evolution and history of the Hungarian legal regulations applying to foreigners)* Szakmatörténet. Egyetemi jegyzet. Budapest, Nemzeti Közszerológati Egyetem, Rendészettudományi Kar, 2012. 6.
- HAUTZINGER Zoltán: Idegenjog kontra idegenrendészet (Alien law vs. alien policing). in: Gaál Gyula - Hautzinger Zoltán: Rendészettudományi gondolatok. Magyar Rendészettudományi Társaság. Budapest, 2014.
- IVANCSICS Imre: Az idegenrendészet. (*Alien policing*) In: Kilényi Géza: *A közigazgatási jog nagy kézikönyve*. Budapest, Complex, 2008.
- MÁDL Ferenc – VÉKÁS Lajos: *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga (International private law and the law of international economic relations)*. Budapest, Nemzeti Tankönyvkiadó, 1997.
- Pap ANDRÁS László: *Mozgásszabadság. (Freedom of movement)* Budapest, L'Harmattan, 2009.
- SZABÓ A. Ferenc: *Népesedés, Migráció, Biztonság. (Population, Migration, Security)* Budapest, ZMNE, 2010.
- TÖTTÖS Ágnes: A kulturált idegenrendészet – az idegenrendészeti ügyintézés fejlődése. (*Civilised alien policing – development of alien policing procedures*) In: Gaál Gyula – Hautzinger Zoltán: *Pécsi Határőr Tudományos Közlemények X.* Pécs, Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoportja, 2009.
- WETZEL Tamás: *A bevándorlás kérdése Magyarországon. (Issue of immigration in Hungary)* Budapest, Publiikon, 2009.

**Kľúčové slová:** cudzinecké právo, správa cudzineckých záležitostí, policajná činnosť v súvislosti s cudzincami, migrácia, migračný zákon

## Súhrn

Článok sa zaoberá cudzineckým právom a legislatívou, ktorá je zbierkou všetkých predpisov špecifikujúcich postoj vlády voči jednotlivcom, ktorí nie sú občanmi danej krajiny, ale sú na základe rôznych spoločenských vzťahov v istej väzbe s týmto štátom. Cudzinecká legislatíva nie je nezávislým odvetvím práva, ale zbierkou predpisov, kde subjektom je cudzinec, ktorý je širšie alebo užšie definovaný. Užšia definícia vymedzuje, že najmä administratívne normy patria do kategórie, ktorá upravuje právne postavenie cudzincov inak ako vlastných občanov. Podľa širšej definície ide o zbierku všetkých noriem vytvorených na špecifikovanie právneho postavenie cudzincov, ako aj pre potreby obhájenia statusu cudzincov, ktorý je za určitých okolností identický s vlastným občanom.

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