REDIAL PROJECT

National Synthesis Report – Hungary

Report on the Hungarian Court Cases Implementing the Return Directive (2008/115/EC)

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I. The framing conditions

1. I write this report in the framework of the Redial Project. The report is based on the judgments collected by my good colleague in this project, Judge Árpád Kiss. I also did a research on the publicly available collection of judgments, but found no items which ought to be added to the pool.

2. This report is not an overall description of the implementation of the directive. Its aim is to analyse the judgments collected by Judge A. Kiss in a wider doctrinal and European case-law context in order to establish if there are any trends relating to the interpretation of the Return Directive by the Hungarian courts.

3. The focus should be on articles 7-11 of the directive, covering voluntary departure, removal and its postponement, return of unaccompanied minors and the imposition of entry ban. In fact no practice worth of analysis surfaced concerning Articles 9-11.

4. The information base is limited: it comprises eleven judgments, coming from three different courts, altogether six judges.

5. Transformation of the Return Directives provisions appear –mainly – in Act II of 2007 on the entry and stay of third country nationals (2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról) (as amended) and in its implementing regulation, Government Decree 114 of 2007 (114/2007. (V. 24.) Korm. rendelet a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról)

6. Hungarian courts tend to rely on domestic sources. None of the reviewed judgments mentions any of the relevant CJEU judgments. The refinement of notions as it unfolds in the jurisprudence of the CJEU leaves no visible trace on the Hungarian court practice. Its impact is indirect: once during a recast the Commission incorporates CJEU dicta into its proposal, then – through the transposition of the directive – the judgments start to affect domestic legal routine, but hardly before that.

7. There is a problem with the translation of the term "return decision" and "obligation to return". "Return decision" is translated with the Hungarian term "kiutasítási határozat" the corresponding English expression of which is "expulsion decision/resolution". That term "kiutasítás" (expulsion) had been part of the Hungarian law on foreigners and carries a strong law-enforcement bias. "Obligation to return" is translated within the directive as "visszatérési kötelezettség" which is the proper translation. That means that "return" does not have a settled meaning: in the context of "decision" it is "expulsion" in the context of "obligation" it is "going back = return".

The term "return procedure" is translated as "kiutasítási eljárás" (expulsion procedure) in preambular para 10 and Article 3 para 7 of the Hungarian version of the directive. In Article 15 para 1 the same English term appears as "kitoloncolási eljárás" (removal procedure).

The very same term appearing in para 40 of the El Dridi judgment is an illustration to the uncertainties. The English text of the judgment refers to "the stages of the return procedure". The Hungarian version of the same judgment uses none of the terms appearing in the Hungarian translation of the directive but introduces (correctly in my view – BN) a third one: "visszatérési eljárás szakaszainak" (stages of the return/going back procedure).

The confusion is then exacerbated by the fact, that "visszatérés" (return, going back) appears in the official Hungarian text of the Preambular paragraph 2 of the directive, whereas the English uses "removal"!

II. Article 7 of the directive

8. Article 7 concentrates on the conditions of voluntary departure and essentially fixes three scenarios: the normal length (7-30 days), the extended length (no formal time limit, if circumstances justify) and the shorter than 7 days or no time for voluntary departure scenario, which in itself is composed of three subsets: risk of absconding, abusive application for legal stay, societal risk ((public policy, public security, national security).

9. As it is well known, directive 2008/115/EC clearly prefers voluntary departure over deportation and sets the criteria in which the latter are justified. In principle the Hungarian legislation reflects the directive's approach.[1]

[1] See Section 42 of Act No II of 2007. The translation offered by the Hungarian section of EMN is this:

Expulsion and Voluntary Departure[1]

Section 42

(1) The immigration authority, if it finds that a third-country national who has lawfully resided in the territory of Hungary no longer has the right of residence, shall adopt a resolution to refuse his/her application for a residence permit or to withdraw the document evidencing right of residence of the third-country national in question, and – with the exceptions set out in this Act – shall order him/her to leave the territory of the Members States of the European Union. The third-country nationals may seek remedy against the expulsion order in the appeal submitted to challenge the resolution adopted to refuse the application for residence permit or to withdraw the document evidencing right of residence.

(2) If the court's decision is for expulsion or the immigration authority considers that the conditions for the third-country national's expulsion under this Act do exist, the immigration authority shall – with the exceptions set out in this Act – adopt a decision ordering the third-country national in question to leave the territory of the Member States of the European Union.

(3) The immigration authority shall prescribe the time limit for voluntary departure in its resolution ordering expulsion, or in its ruling adopted for carrying out the expulsion ordered by the court so that it falls between the seventh and the thirtieth day following the time of delivery of the resolution for expulsion to the third-country national, if the third-country national affected agrees to leave the territory of the Member States of the European Union on his/her own accord, except where the cases defined by this Act apply. The time period provided for above shall not exclude the possibility for the third-country national concerned to leave earlier.

(4) Where justified by the personal circumstances of the person expelled – such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links –, the immigration authority may – upon request or on its motion – extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in an public education institution, the immigration authority may – upon request or on its motion – extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure shall be ordered by way of a ruling.

(5) Enforcement of ruling on the extension of the time limit for voluntary departure may be contested.

10. Nevertheless among the eleven cases under scrutiny most do not even consider voluntary departure. Among the five orders extending the detention of expelled persons none raises the question whether alternatives to return by way of deportation existed, although in one of them the affected person was a Chinese national, having studied in the Netherlands already two years and having spent a time in the US within a student exchange program, before being arrested in Budapest for the lack of a valid Schengen visa or residence permit. (See para 23 below)

11. Of the other six cases entailing the judicial review of return decisions two expressly addresses voluntary return.

12. One of them[2] dealt with a Guinean national (GN) in a case formally started against the Office of Immigration and Nationality (OIN), the authority, responsible for immigration, asylum and nationality affairs. The challenged decision was adopted on 21 February 2013 and entailed a forced return (removal) decision against the GN. The removal entailed official escort back to Guinea and a one year entry and stay ban.

The Court recalls elements of the decision of OIN which according to the authority justified the refraining from allowing voluntary departure. According to the authority the GN "did not undertake to leave the territory voluntarily" and "does not possess the travel document and ticket neither the financial means to cover these, which would be indispensable for travelling home". When considering whether to order removal, "it had importance, that Plaintiff has no Hungarian or EEA citizen member of family, living in Hungary, neither does he/she have family members relying on him/her, nor does he/she have savings.

According to the Court's account of the attacked decision it was based on Article 65 (1) c of Act II of 2007, which speaks of removal with official escort made necessary by national security, public security or public policy reasons or as a fulfilment of an international obligation. The defendant (The OIN ordering the removal) in the court procedure argued that its decision was "necessary and proportional" in light of the grave violations of the residence rules. "Greater social interest attaches to obeying the law than to the residence of the Plaintiff in Hungary", OIN argued. The Court's judgment does not address these issues as it annulled the attacked decision on the basis of other grounds.

13. In assessing the relevant aspects of the case one may note the following. The grounds for refraining from granting a voluntary departure are listed in Art 7 para 4 of the directive. Neither the risk of absconding, nor the fraudulent/manifestly unfounded application for a

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(6) No time limit for voluntary departure shall be specified, or the immigration authority may set the deadline for leaving the territory of the Member States of the European Union before the seventh day following the time of delivery of the resolution for expulsion in the following cases:

a) the third-country national's right of residence was terminated due to his/her expulsion or exclusion, or for whom an alert has been issued in the SIS for the purpose of refusing entry and the right of residence;

b) the third-country national's application for residence permit was refused by the authority on the grounds referred to in Paragraphs *b)* and *d)* of Subsection (1) of Section 18;

c)[1] the third-country national has expressly refused to leave the territory of the Member States of the European Union voluntarily, or, based on other substantiated reasons, is not expected to abide by the decision for his/her expulsion;

d) the third-country national's residence in Hungary represents a serious threat to public security, public policy or national security.

(7) If according to the immigration authority's resolution, expulsion is to be carried out by way of deportation, a time limit shall not be specified for voluntary departure.

(8)[1] The provisions of Subsections (3)-(4) shall apply with respect to persons eligible for preferential treatment, taking due account of their special needs stemming from their specific situation.

[2] 15.K.31.371/2013/5 Decision of the Administrative and Labour Court of Budapest.

legal stay seem to have been raised in the case[3]. The reference in the attacked OIN decision is to the national security, public security, and public order clause of Act II of 2007. However, no information which can be distilled from the judgment seems to show the presence of either of them.

14. Without starting and abstract analysis of the triad of national security, public security and public policy, there are good grounds for believing that GN's presence has threatened none. (By the time of the court's judgment he/she had lived in Hungary for at least 4 years as his/her first asylum application was submitted in 2009, he/she had been recognised as a person authorised to stay, without any security measure constraining the freedom of movement.)

15. What is certain, is that the reasons raised by the OIN justifying the non-granting of voluntary departure (no passport, no tickets, no saving and the will to stay in the EU) do not meet the threshold of Article 7 para 4 of the directive.

16. The other judgment[4] is of smaller relevance as the court here again abstained from the analysis of the criteria of voluntary departure. It only engaged the fact that the expelling authority (the immigration authority dealing with the policing of foreigners) relied on a statement of the other branch of OIN (the refugee authority) declaring the conditions in the country of origin (Egypt) as not justifying *non-refoulement* without revealing and deliberating the factors which "proved" the non-existence of a *non-refoulement* obligation.

17. Nevertheless, the judgment contains a few hints as to the interpretation of Article 7 by the authority. As it can be reconstructed, the Egyptian applicant was called upon to voluntarily leave the country by 30 September 2013. He did not, but before the deadline for departure expired he had submitted an application for international protection on 18 September. While that procedure was in progress (being a repeat application), the immigration authority once again decided on the return of the Plaintiff. The authority – possessing a non-supported statement of the refugee authority on the 'returnability' from the point of *non-refoulement* – issued a return decision entailing a removal order. As the court recalls, the authority relied on Article 42 of Act II of 2007, notably on the fact that he may have delivered false data, concluded a marriage of convenience and had submitted "a series of applications in order to legalise his stay". In the assessment of the authority the order on forced removal was justified as "the Plaintiff had not undertaken to leave the territory of the EU voluntarily, does not possess the financial means necessary to travel home and had recourse to any means in order to be allowed to stay".

18. The assessment of the case reveals, that the desperate steps by the Plaintiff made in order to avoid being returned to Egypt which he saw as threatening with serious harm were re-qualified by the authorities as manifest signs of non-cooperation. He had used a false name and concluded a marriage which is categorised as marriage of convenience. No supporting facts are offered for that categorisation. As the Act II of 2007 does not use the language of the directive[5] (fraudulent or manifestly unfounded, risk of absconding) in the context of not providing a period for voluntary departure but has its own four element list one can only speculate. Presumably the statement that the plaintiff did not wish to leave Hungary (and therefore the EU) voluntarily was re-interpreted by the

[3] In fact the Court makes a remark which suggests that the applicant may have been the close family member of someone living in Hungary. Read together with the OIN remark on what sort of family members the Plaintiff does not possess, this may be a third country national.

[4] 17.K.33.554/2013/2.

[5] The confusion concerning the use of the terms mentioned in point 7 strikes back here. As seen in fn 1, Article 42 of Act No II of 2007 in its para 6 essentially sets an unintelligible requirement: here is the same text, now in my translation: "(6) No time limit for voluntary departure shall be specified, or the immigration authority may set the deadline for leaving the territory of the Member States of the European Union before the seventh day following the time of the return decision in the following cases:

a) The reason for the termination of the third-country national's entitlement to residence is that he/she is subject to a return decision, to an entry and stay ban, or to an entry and stay ban ordered by a SIS alert." This text entails a circular conditionality: the return decision need not set a period of voluntary departure (or may set shorter than 7 days) if the affected person is subject to a return decision.

authority as a risk of absconding and the several applications all aimed at extending legal stay as fraudulent applications.

III. Article 8 of the directive

19. The essence of article 8 of the directive is, that it allows, but at the same time sets limits to removal (i.e. the forced return), especially if it entails coercion. This reporter disagrees with point 41 of the El Dridi decision which assumes that granting "a period of...voluntary departure" is a form of enforcing a return decision as the text suggests,[6] especially as Article 3, para 3 makes it clear that return is either a voluntary compliance with an obligation to return *or* an enforced return and para 4 of the same article makes it clear that enforced return is equal to removal, i.e. "physical transportation out of the Member State".

20. Therefore this report concentrates on how the judgments relate to the necessity of removal instead of voluntary departure and what level of enforcement/coercive elements are deliberated.

21. The five decisions (court orders) on extending the immigration detention or detention in order to prepare return[7] in principle only reviewed whether the detention ordered by the authority for 72 hours should be extended upon the request of the authority. Actually all of them extended the detention by 26-30 days. As this analysis is not about detention but about the measures adopted in order to remove the foreigner, the following remarks will concentrate on the justification of forced return (removal).

22. Three of the five decisions dealt with Kosovars, who irregularly entered Hungary from Serbia. The persons under removal procedure first had applied for asylum then they withdrew their applications. All of them had a valid Kosovar ID, so their identity could not be in doubt. In all these cases the basis of detaining was Para 1 (b) of Article 54 of Act II of 2007, according to which[8] the authority may order the immigration detention in order to implement removal of those, who have refused "to leave the country, or, there are good grounds for believing that they are delaying or preventing the implementation of the return decision, or there is a risk of absconding". Nothing in the record indicates any of these factors; neither does the court create a link between the detention and the actual conditions of the affected foreigners. The three decisions, coming from the same judge and largely identical in their text, simply claim that since "nothing has changed in the circumstances having served as the basis of ordering detention", the court extends the detention. Whether those circumstances ever justified detention is not scrutinised by the court. There is no consideration in the two pages long judgments of why persons, who had valid ID cards would delay or prevent return, once they themselves had withdrawn their application for asylum.[9] Instead the judgments, largely limit themselves to reproducing the applicable rules.

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[6] "It follows from the foregoing that the order in which the stages of the return procedure established by Directive 2008/115 are to take place corresponds to a gradation of the **measures** to be taken **in order to enforce** the return decision, a gradation which **goes from** the measure which allows the person concerned the most liberty, namely **granting a period for his voluntary departure**, to measures which restrict that liberty the most, namely detention in a specialised facility; the principle of proportionality must be observed throughout those stages".

[7] 5. Ir.42.853/2013/2; 5. Ir.42.856/2013/2; 5. Ir.42.911/2013/2; 39 Ir.2.365/2014/2; 39 Ir.222/2015/3 Act II of 2007 differentiates between "idegenrendészeti őrizet" (Article 54) the function of which is "to ensure the implementation of removal" and "kiutasítást előkészítő őrizet" detention to prepare return (Article 55), the function of which is "to conduct the aliens' police procedure" in cases when the identity or the title to stay of the third country national is not clarified or when his/her readmission to another EU Member State, based on a bilateral readmission treaty, is in progress.

[8] Author's translation.

[9] Withdrawal of asylum application is a frequent practice by those, who realise that if they do not withdraw the application (and leave the EU territory) then they might be returned to Hungary under the Dublin III regulation, whereas after departure and a later irregular, un-noticed re-entry they may clandestinely cross the territory of Hungary and make it to their preferred destination country. So the earlier they are removed from Hungary the earlier they can prepare for the next attempt.

23. The two other cases entailing detention in preparation of return were based on non-clarified identity in the case of a Palestinian person and on readmission to another EU Member State based on bilateral treaty in case of a Chinese person. Although detention to prepare return is optional according to Act II of 2007 in both cases (non-clarified identity and/or lack of title to stay, readmission within the EU), the orders of the court do not reflect any sign of considering the obligation to resort to gradation as envisaged by point 41 of the El Dridi judgment. This is conspicuous in the case in which a Chinese national who flew in from the Netherlands on 21 September 2014 wished to return to the Netherlands (in expectation of a residence permit, for which he/she had applied on 28 July 2014) five days later, on 26 September. Then the person was arrested at the boarding gate, just before entering the plane. Identity clarified, clear intention to leave the country, presumable good faith behaviour (to some extent) as earlier record of residence permit in the Netherlands and Schengen visa, valid till August 23 were all at hand and so was a valid student card testifying that the person was a last year student of Stenden Hogeschool. Still detention extended till 26 October with a view to apply the Hungarian-Benelux readmission agreement of 2003.[10]

24. There are four further judgments.[11] All of them are based on challenges against decisions of the immigration authority and all of them adjudge whether the immigration or the refugee authority appropriately assessed the future harm awaiting the person upon return to the country of origin or to a third country[12]. In other words the return decision and the question of voluntary departure or enforced removal is not in the centre of these judgments. Nevertheless references to the decisions of the administrative authorities, contain remarks on the choice of the authority.

25. In one of the cases[13], it can be established that the Turkish Plaintiff, who claims to be a Kurdish person fears return as he had received a call for military duty. He claims to be threatened with persecution due to his ethnic origin. He had already had two unsuccessful procedures for being recognised as in need of international protection. After the last became final on 15 April 2014, the immigration authority has adopted a return decision, giving 30 days for leaving the territories of the EU Member States. The rest of the case is unrelated to the Return directive as it deals with the duty to find out the safety or not of a given part of Turkey in respect of the Plaintiff. (The appeal is denied, partly based on the safety of Turkey, partly on the lack of credibility.)

26. The second case under scrutiny[14] related to a Tanzanian national who had entered Hungary irregularly a decade before his "authorised to stay" (*non-refoulement* protection) status was terminated in May 2012. He had no criminal record and undertook to voluntarily leave the territories of the EU Member States. Nevertheless the immigration authority ordered removal to Tanzania, with official escort. The reasoning supporting the necessity of removal is confusing: the judgment mentions that the authority did not accept the offer to voluntarily leave as the person had no valid passport, ticket and financial resources and therefore "in light of the behaviour of the Plaintiff shown so far, it is unlikely that he will acquire the passport during the procedure, which is a precondition for the voluntary departure upon a return decision". (Page 2 of the judgment) However later (at page 6) the judgment returns to the justification of (forced) removal. There the court recalls that the immigration authority had ordered the removal based on Article 65, para (1) c and (2) of Act II. of 2007, which is the paragraph referring to national security, public security and public policy (plus international obligation). The Plaintiff, who had no criminal record and lived for several years legally in Hungary understandably challenged this.

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[10] See Act No. CXXI. of 2003 promulgating the treaty.

[11] 12.K.32.236/2014/11, 15.K. 31.962/2013/6; 15.K. 33.123/2013/4; 17.; 20.K.33266/2013/6.

[12] Refugee status and eligibility for subsidiary protection had to be decided by the refugee branch of OIN, whereas the mere non-refoulement protection (authorised to stay) was enshrined in Act No. II of 2007 and therefore was granted by the immigration authority. However, before the decision on returnability (refoulement), the immigration authority was obliged to solicit the views of the refugee Authority (see Art 128 of Government decree 114 of 2007, implementing Act No. II of 2007).

[13] 12.K.32.236/2014/11.

[14] 15.K. 31.962/2013/6.

The court first recalled the argumentation of the authority, which on the one hand referred to the lack of passport, finances and travel ticket, but on the other hand it made a reference to the "illegal" arrival (a decade ago – BN), the fact that after the termination of the authorised to stay status the person made no steps to regularise his stay. This, in the assessment of the court, showed a disregard of the laws and a lack of cooperation with the authorities which meant that "his flight without escort constitutes a danger to the safety of the flight" (Page 6).

27. The court ventured into offering an interpretation of public policy. These are its words:[15] "As the Defendant (the Office of Immigration and Nationality) has rightly pointed out in its counter-claim, public policy is the regulated co-existence within the society subject to the legal and moral norms, therefore it is breached if the Plaintiff has stayed illegally in Hungary for more than a year".

28. The comment offers itself: such a broad interpretation of public policy, essentially entailing any disharmony between legal and moral norms on the one hand and actual behaviour on the other, even if that gap does not entail criminal activities, certainly goes beyond a conceivable EU meaning.[16]

29. The third case[17], again does not concentrate on conditions of removal. Essentially it was an appeal against the decision of the immigration authority denying the applicability of the *non-refoulement* injunction in respect of Serbia. As the Plaintiff herself made statements, according to which she indeed wanted to return to Serbia and did not apply for refugee status in Hungary, much of the case was moot. It deserves attention to the extent, that the judgment reveals that (forced) removal was once again ordered accompanied by a two years long entry and stay ban, simply because the person did not possess the conditions necessary for stay in Hungary.

30. One might consider that forced removal was ordered because the directive was not implemented due to Article 2, para 2 a) (apprehension or interception in connection with irregular[18] crossing of the border) and therefore the Hungarian authority could act as it wished, did not have to meet the criteria of forced removal as enshrined in the directive.

Two arguments speak against that interpretation:

- the Hungarian law does not enshrine the differentiation between the main rule in Article 2 para 1 (scope: illegal stay) and the potential exception Article 2 para 2 a) (refusal of entry or interception "in connection" with irregular border crossing)

- the Plaintiff in the given case managed to cross Hungary and travel to Austria from where presumably she was returned to Hungary.

31. The last case to be reviewed[19] involves a person who first arrived irregularly to Hungary in 2010, submitted and then withdrew his application for asylum, then was returned from Germany under the

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[15] The Reporter's translation.

[16] See the old case of *Adoui and Cornuaille v Belgian State and City of Liége* (Joined cases C115/81 and 116/81), where the Liége court still found it appropriate to raise 15 questions, among other this: "Would the Court kindly give a definition of the concept of public policy…". The Court gave an interpretation of public policy in the context of free movement rights (which admittedly do not relate to TCN-s, but nevertheless ought to have the same meaning). "It should be noted in that regard that reliance by a national authority upon the concept of public policy presupposes, as the Court held in its judgment of 17 October 1977 in Case 30/77 Bouchereau [1977] ECR 1999, the existence of 'a genuine and sufficiently serious threat affecting one of the fundamental interests of society'. Although Community law does not impose upon the Member States a uniform scale of values as regards the assessment of conduct which may be considered as contrary to public policy, it should nevertheless be stated that conduct may not be considered as being of a sufficiently serious nature to justify restrictions on the admission to or residence within the territory of a Member State of a national of another Member State in a case where the former Member State does not adopt, with respect to the same conduct on the part of its own nationals repressive measures or other genuine and effective measures intended to combat such conduct." (Point 8 of the judgment.)

[17] 15.K.33.123/2013/4.

[18] One of the usual translation mistakes: whereas the directive here does not speak of illegal but of irregular crossing, the Hungarian translation nevertheless uses the Hungarian term for illegal ("illegális").

[19] 20.K.33266/2013/6.

then applicable Dublin II regulation. Thereafter a removal order with official escort was adopted. It assumed that the person was Palestinian and the destination country of the removal was Israel. A three year-long entry and stay ban was also inflicted upon the person, all this – in the words of the court – because he did not meet the conditions for stay in Hungary.

Actually the person was not returned to Israel and in the coming years – after repeated efforts to leave Hungary towards Western Europe – he was four times taken back or readmitted to Hungary under the Dublin regulation or under the bilateral treaty with Austria. Finally in August 2013 the Embassy of Algeria identified the person, who thereafter was subject to the amendment of the original return and removal decision in which Algeria replaced Israel as a destination country (and presumably the personal data had to be changed according to the new information acquired from the Algerian Embassy – the judgment does not mention this second element). The actual appeal challenged the view of the refugee branch according to which Algeria was safe, therefore removal to it could take place.

32. This is a case in which the risk of absconding (following five previous absconding) was clearly present. So enforced removal was justified.

Nevertheless one may note two interesting elements: first the complete procedure of adopting a return decision including the ordering of removal with escort against someone whose identity is falsely established. If the authority could not acquire reliable evidence concerning the person's country/territory of origin, how could it order removal with escort? Second, one of the returns from Austria took place on the basis of a bilateral readmission agreement, concluded in 1992 and in force since 1995.[20] This means that Austria found it more convenient to return the person without a right to stay within the EU to another Member State, than to arrange for his travel to a non-EU destination.

IV. Articles 9-11

33. As the cases in the database do not deal with the postponement of removal nor with unaccompanied minors, neither do they concentrate on the legality of ordering entry bans or on their proportionality, this report brings no appreciable results in those respects.

V. Conclusion

34. The content of this report may disappoint the Reader, who was expecting a detailed engagement with EU law on behalf of the Hungarian judiciary.

35. The effort of a few devoted judges (including to collaborator in this project, Judge Árpád Kiss and some of his colleagues) notwithstanding, the overall landscape is gloomy: the immense Heimwärtstreben of the judges, the momentum to exclusively look at the black letter Hungarian law and nothing beyond, prevails. Neither judgments of the CJEU (let alone of other member States' courts), nor juridical doctrine is ever mentioned in the eleven judgments, not even by using the words, without referencing a source. The EU law is beyond the horizon.

36. The finer analysis has revealed that although the transposition of the directive has been accomplished, in reality the implementation of Act II of 2007 and the accompanying Government Decree is heavily influenced by the following factors:

- the lack of tradition in return decisions not entailing removal and giving a period for voluntary departure,

- the prevailing securitising logic in the administration of foreigners. The policing of foreigners before 1989 was intensively penetrated by (false) national security mentality. Bureaucratic memory (and some personal continuity) ensure that the foreigner – especially if not in full harmony with all applicable laws – is seen with suspicion.

[20] Promulgated in Hungary as Act V. of 1996.

- the immigration authorities do not realise the minor differences between the directive's text (especially as its translation is less than perfect) and the law in force. So a return decision may easily be accompanied by a removal order even if the basis of the return decision is nothing more than the lack of conditions for stay. Risk of absconding, as well as the public policy exemption from voluntary departure, are almost automatically seen as granted.

37. The court orders and judgments at hand were not ending litigations about these terms, but mainly about the safety or not of the designated country, or the justification or not of the extension of detention. Therefore no detailed arguments on the alternative modes of departure/removal came up in the texts under scrutiny.