



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013

ENAR SHADOW REPORT

Racism and related discriminatory practices in employment in Hungary

Bea Bodrogi and András Kádár

Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

Published by the European Network against Racism (ENAR) in Brussels, March 2014, with the support of the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013), the Open Society Foundations, and the ENAR Foundation.

PROGRESS is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields. The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries. For more information: <http://ec.europa.eu/progress>

The Open Society Foundations work to build vibrant and tolerant societies whose governments are accountable and open to the participation of all people. For more information: <http://www.opensocietyfoundations.org/>

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission or of the Open Society Foundations.

ENAR reserves the right not to be responsible for the accuracy, completeness or quality of the information provided in this report. Liability claims regarding damage caused by the use of any information provided, including any information which is incomplete or incorrect, will therefore be rejected.



Executive summary

The aim of this report is to provide insight from activists and professionals working in the field to combat racism and discrimination in Hungary. This report focuses on the situation of racism and discrimination in the field of employment in Hungary for the period between March 2012 and March 2013, and will be used as an advocacy tool to influence policy. Within this topic, we have examined discrimination on ethnic grounds with regards to two affected groups: Roma and migrants.

The protracted economic crisis and increasing unemployment in Hungary over the last few years have caused serious problems in the labour market to surface. One phenomenon is that employees are increasingly exposed and vulnerable as a result of the crisis and the limited number of available jobs. In the case of Roma and migrants, discrimination further exacerbates their already tenuous chances of obtaining employment.

As part of its efforts to address unemployment, the government places especial emphasis on public work programmes, and made substantial changes to the entire public work system in 2011. Under the new system, public work is closely linked with the social aid system which together, have made a significant impact on Hungary's Roma population. The interests of Roma employees would be best served by them finding long-term work on the primary labour market. One step towards this could be public work programmes, which provide at least a temporary (for a few months) legal employment contract. However, researchers in sociology and economy have noted that public work programmes are generally not likely to increase participants' future chances of employment, and can in some cases even harm the chances of unemployed persons finding work on the open labour market.¹

The ombudsman's studies of the new public work system, as well as the experience of NGO fieldworkers, have all shown that Roma job-seekers are likely to be affected by direct or indirect discrimination within the operation and organisation of the public work programmes. They are vulnerable in several respects, as the unfavourable rules applying to public work (in connection with the welfare system, the obligation to cooperate, lower wages, etc.) and the prejudice of some local leaders and authorities can all result in multiple sources of discrimination for Roma.

Due to strict regulations on data processing, data on ethnic background currently cannot be collected in Hungary. Thus, because of the lack of systematic data collection by official authorities, there are no databases on which researchers and statistical experts can rely, so they need to devote much effort to collecting data directly from data subjects.

Recommendations:

- Studies and analyses should be made of the public work system and of its macroeconomic effects in order to facilitate policymaking in this area.
- The public work system should be designed in a way that assists workers in entering the open job market through special government funded programmes.

¹ Messing V., „Divided Labour Market”, in Társadalmi integráció a jelenkori Magyarországon, Kovács, Dupcsik, Tóth, Takács (ed), Osiris, 2012.

- Guarantees should be built into the public work system ensuring the conditions for equal opportunity and work that respects human dignity. To this end, the recommendations and legislative amendments formulated by the ombudsman in the Dignity in Work Project should be followed.²
- A data collection and monitoring system should be set up that is independent from local governments that uses set criteria to evaluate access to public work programmes and whether Roma and other disadvantaged groups are being treated equally.
- Free legal aid services should be set up that are accessible at local level or by telephone, in order to answer questions from Roma and public work employees in disadvantaged situations regarding public work employment contracts and equal treatment issues.
- Legislative conditions should be created for the simplification of the collection and processing of ethnicity-related data.

Similarly to the situation of Roma, vulnerable migrants most frequently experience disadvantages upon entering the labour market.

Recommendations:

- The conditions of access to employment for different groups of persons under international protection should be unified so that stateless persons and persons with a tolerated status would also be exempt from the obligation to request an employment permit, and employers should be encouraged to hire members of vulnerable migrant groups by removing administrative obstacles to the employment of non-Hungarian nationals, by introducing incentives similar to those in place for other vulnerable groups (such as persons with disabilities, caring responsibilities, etc.), e.g. employers employing persons belonging to such groups could be exempt from paying a certain percentage of their social security contributions for a period of time.
- Services aimed at integrating migrants into the labour market (e.g. trainings into professions, language courses) should be made more flexible and tailored to the needs of the target group.

² Dignity in Work Project, 2013/4, AJB Project of the Parliamentary Commissioner for Civil Rights, p.90-142.

Table of Contents

Executive summary	2
1. Introduction	5
1.1 Definitions	5
1.2 Statistical overview	6
2. The context: labour market and legal framework	8
2.1 Outlook of the labour market	8
2.2 Legal framework	11
3. Manifestations of racism and structural discrimination in employment	12
3.1 Perceptions of discrimination in employment.....	12
3.2 Incidence of discrimination in employment	15
3.3 Patterns of inequality over the course of time	16
3.4 Discrimination in access to employment.....	17
3.5 Discrimination in the workplace	21
3.6 Economic sectors	22
4. Tackling the challenges	23
4.1 Public policies.....	23
4.2 Access to effective remedies	24
4.3 Civil society initiatives	29
5. Conclusions and recommendations.....	32
5.1 Political and societal developments related to racism and discrimination	32
5.2 Conclusions and recommendations.....	32
6. Bibliography	36

1. Introduction

Racism is a reality in the lives of ethnic minorities in Hungary. The extent and manifestations of this fact are often unknown and undocumented, especially in official data sources. As a consequence, it can be difficult to analyse the situation and develop solutions. Even when there is extensive official data, NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR's national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated actions, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and provide insight from activists and professionals working in the field to combat racism and discrimination in Hungary, as an advocacy tool by which to influence policy. This report takes on a narrower focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Hungary for the period of March 2012 to March 2013. The results will be used at the national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Report will have a demonstrable impact for changing policy and bringing about necessary policy reform.

The report is divided into four sections. In the introduction, we give an overview of the national and ethnic minorities and migrants living in Hungary and their representation among the population. In the second section, we describe the labour market position of the above groups, as well as the domestic legislation in employment discrimination. The central section of the report will focus on the manifestation of racism and structural discrimination in employment. By looking for facts, evidence and statistical data, the incidence of labour market discrimination and racism will be demonstrated. In the fourth section, we collect information about the way discrimination and racism on the labour market are being tackled in Hungary. The final section will present the report's conclusions and recommendations for policy and actions to be taken to tackle employment discrimination in Hungary.

1.1 Definitions

According to the statutory definition of national minorities, "a nationality is any ethnic group with a history of at least one century of living in the territory of Hungary, which represents a numerical minority among the citizens of the state, and is distinguished from the rest of the population by their own language, culture and traditions, and at the same time demonstrates a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history."³

The law recognises the following 13 minorities: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian.⁴

The Roma, forming the largest ethnic minority in Hungary, are a heterogeneous population in terms of ethnic identity, social status, language use, level of integration/segregation, and consequently their labour market position. Furthermore, great proportions of those who are perceived as Roma

³ Article 1, Act CLXXIX of 2011 on the Rights of Nationalities

⁴ *Ibid.*, Annex 1.

have multiple identities, may not self-identify as ‘Roma’ and/or are born from mixed marriages. Majority societies and institutions however look at this population as one homogeneous group. Bearing this in mind, in this report we will still need to refer to “Roma” as a single group, as any available statistical information and data uses this homogenising category.

There is no unified statutory definition for “migrant”. The draft of Hungary’s migration strategy for the period of 2014–2020 defines migration (later: Draft Migration Strategy) as “the travel of persons without Hungarian citizenship to Hungary”, and distinguishes between different types of migrants (i) on the basis of personal status and (ii) on the basis of the legality of movement.

- On the basis of personal status, the following categories are set up: (i) persons vested with the right to free movement; (ii) third country nationals; (iii) persons granted international protection; and (iv) stateless persons;
- On the basis of the legality of the movement, the following categories are set up: (i) regularly entering and residing persons and (ii) irregularly entering and residing persons.⁵

NGOs also use a – primarily sociological – definition, defining “migrants” as persons who leave their country of origin or usual country of residence in order to move to another country with the aim of settling (i.e. for at least one year).⁶

1.2 Statistical overview

The last census in Hungary took place in 2011. Answering questions concerning ethnicity was voluntary.⁷ According to the results of the census, out of approximately 9 938 000 citizens, approximately 8,314 000 declared themselves to be Hungarians, while 315 000 persons claimed affiliation with the Roma minority.⁸ Prior to the census, Roma activists carried out a strong campaign to convince Roma people to declare their Roma ethnicity, and although there has been a significant rise in the number of those who declared their affiliation with this national minority, census numbers are still far below the estimated number of Roma in Hungary. Different estimates put their number between 500 000 and 750 000.⁹ Census data puts the number of Germans in Hungary at 186 000, making them the second largest ethnic group in Hungary.¹⁰

There are different sources containing data on the number of migrants in Hungary and although the data from these sources are not fully comparable due to the different approaches and categories they use, the proportion of migrants within the total population can be estimated (also taking into account the obvious fact that no data on the numbers of irregular migrants are available).

According to the census data, besides cca. 9 794 000 persons with Hungarian citizenship (including those with dual citizenship), there are cca. 143 200 persons who do not have Hungarian citizenship,

⁵ Hungarian Ministry of Interior, Migration Strategy and seven-year Strategic Planning Document related to the Asylum and Migration Fund to be established by the European Union in the 2014-2020 Cycle, <http://www.kormany.hu/hu/dok?page=2&source=1&type=302#!DocumentBrowse>, accessed 3 September 2013. It needs to be noted that the different subcategories (e.g. “third country national”, “person vested with the right to free movement”) do have statutory definitions in the respective laws, but the inclusion of these would exceed.

⁶ Gyulai G., *Foreigners in Hungary, a Guide for Journalists on Presenting the Theme of Migration and Asylum*, Hungarian Helsinki Committee, Budapest, 2011, p. 13.

⁷ Article 3 (2) Act CXXXIX of 2009 on the 2011 Census.

⁸ 2011 Annual Census (later: Census data), Hungarian Central Statistical Office, Budapest, 2013, p. 7.

⁹ http://www.demografia.hu/letoltes/kiadvanyok/Demografia/2007_1/Hablicsek4.pdf

¹⁰ Census data, p. 22.

but have their registered residence in Hungary. The largest group is that of Romanian citizens (cca. 38 600 persons) followed by Ukrainians (cca. 11 800). The number of persons from Asian countries was cca. 22 300, and very few persons had come from African and American countries (cca. 2 800 and 4 700 respectively). The number of stateless persons was 113.¹¹

According to statistics by the Office of Immigration and Nationality (OIN), the number of non-Hungarian citizens residing regularly in Hungary on 31 December 2012 was 213 732 (a 6% decrease compared to 31 December 2011). This number includes 1 561 refugees, 683 persons with subsidiary protection and 151 persons with tolerated status.¹²

As to trends in the area of asylum claims, there has been a significant rise in the number of persons asking for asylum. In 2012, altogether 2 157 persons filed a claim (68 persons were recognised as refugees, 240 were granted subsidiary protection and 42 tolerated status). Due to a favourable legislative change on 1 January, since 2013 up to the time this Report was drafted, there were 13,930 claims have been filed (with 70 persons recognised as refugees, 104 persons receiving subsidiary protection and 4 tolerated status).¹³ Since 1st July 2013, the legal framework had been amended and became more restrictive again; as a result, the number of asylum claims is expected to return to the pre-2013 level.

Religious diversity in Hungary

There are also new data on belonging to religious communities or faiths.¹⁴ Of those claiming to belong to a church or to be of a certain faith, 71%, or 3 872 000 persons, claimed to be Catholic. The second largest is the Protestant church, with 1 153 000 believers, making up 21% of all those claiming to be religious. A further 215 000 declared themselves to belong to the Evangelical church. There are relatively few Orthodox Christians and Jews in Hungary, and their numbers have dropped since 2001. Among the smaller churches, the most respondents described themselves as Baptists or as belonging to the Faith Church (a Hungarian Pentecostal Church), numbering over 18 000 in both cases.

¹¹ Ibid., p.52.

¹² Website of the OIN, <http://www.menekultugy.hu/statisztikak.php>, accessed 3 September 2012.

¹³ Data provided by the OIN.

¹⁴ Ibid., p.23-24.

2. The context: labour market and legal framework

2.1 Outlook of the labour market

In Hungary, the economic and social restructuring that came after the collapse of the communist regime had a significant impact on the labour market processes. Starting from the end of the 1980s, more than one million jobs were terminated, which led to a fundamental shift in the structure of the labour market. Many Roma were employed in sectors, such as the construction and metallurgical industries, in which mass lay-offs occurred as part of the transition from a socialist to a market economy.¹⁵ The global economic crisis which began to unfold in late 2008 further exacerbated the employment gap between Roma and non-Roma. Certain factors had a significantly negative impact on their chances to obtain employment: low levels of schooling, lower levels or absence of professional training, or residence in an impoverished area with few jobs available.¹⁶ As a result of the combination of these factors, the majority of Roma employees were the first to lose their jobs, and have since not been able to reintegrate into the primary labour market.¹⁷

There is no comprehensive reliable data on Roma employment. The main reason for this is the variation in methodologies applied in surveying Roma and constructing indexes for employment. In addition, the legislative background makes it extremely difficult to collect data on Roma and protected groups in general in Hungary.¹⁸

The last comprehensive study of employment in Hungary was conducted in 2003.¹⁹ Since then, much research and many case studies have been done, but these have generally focussed only on specific groups of Roma or on certain geographical areas. What all studies agree on is that since the transition in regime in the 1990s, the difference in the unemployment rates between Roma and non-Roma, has been significantly greater and this gap has essentially remained as such ever since. The reasons for this difference lie in several factors that build on one another. It is mainly the low level of schooling, geographical disadvantages and discrimination on the job market that limit the access of Roma to jobs, while in the case of Roma women, another factor is the high rate of childbearing.²⁰

“As shown by the results of a survey commissioned by the UNDP, the World Bank and the European Commission on Roma in Hungary in 2011, 23% of Roma aged between 15 and 64 were employed, 61% of them were employed as unskilled workers and 66% of the unemployed Roma had earlier been employed as unskilled workers. According to another survey, in the 35-50 year age-group, the proportion of Roma men engaged in some regular work is about one-third of that of the non-Roma men, and the employment position of Roma women (compared to that of Roma men) is much worse than that of the non-Roma women. Roma women are practically excluded from employment due to multiple disadvantages they suffer on the labour market, disproportionate distribution of work in the family and limited access to day care institutions for children (nurseries, kindergartens and day care at school), and only 13-16% of them are employed.”²¹

¹⁵ Report of the Parliamentary Commissioner for Civil Rights in case no. 5317/2012., p.31., later: report of the Commissioner.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ This issue will be addressed at the end of this section, under the topic of data collection, p. 11-12.

¹⁹ Kemény i., Janky B., On the employment and income relations of Gypsies based on the 2003 annual Gypsy study, in *Esély* 2003/6., Budapest.

²⁰ Report of the Commissioner, op.cit., p.4.

²¹ Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary,

A significant number of Roma are outside the official, declared labour market and perform temporary jobs on the grey and black job markets which are the lowest paid and the most vulnerable sectors.²² There is a wide range of unofficial work – from regular temporary contracts to jobs of unpredictable duration, including collecting used, discarded goods and performing other undeclared commercial activities, such as selling products at local agricultural markets.²³ All of these generate income, even if they do not fall under the scope of official employment statistics. This is further corroborated by the quantitative data of the latest study conducted in 2010.²⁴ According to these data, only 10% of the population considered to be Roma do not work and have never worked. Another 22% are unemployed at the moment but have – occasionally or regularly – work previously. The largest group within the population considered to be Roma is made up of those who do not work on a regular basis: 48% who work on an occasional basis or at a job outside of the primary labour market.²⁵ Thus, the study shows that the proportion of Roma actually engaged in gainful activities is nearly three times the figures for those officially counted as registered employees.²⁶

Another study examined four spheres: civil servants, persons holding public offices, the entrepreneurial sector and civil society.²⁷ This study found that the proportion of Roma in all four spheres was much lower than the percentage of Roma in the general population; in the spheres examined, Roma were best represented in civil society, with a proportion of 2.6%.²⁸

As to the employment of migrants, the following can be said. There are serious methodological difficulties hindering the statistical analysis of the issue. As it could be seen above, under the Statistical overview section, the total number of migrants compared to the Hungarian population is rather low. In addition to that, the group is far from being homogeneous. The approximately 220 000 non-Hungarian citizens residing regularly in Hungary include persons with very different backgrounds, ranging from citizens of the EU to stateless persons. In addition, according to reliable sociological studies, there are big differences between the employment patterns of migrants from different ethnic backgrounds (e.g. Chinese and Vietnamese workers – among whom the activity rate is high – are characteristically self-employed or employed in family enterprises, as opposed to ethnic Hungarians from neighbouring countries and Ukrainians, most of whom are employed by persons they are not related to).²⁹

As a result, although aggregated statistical data do exist (which in fact show that the activity and employment rates of migrants are somewhat better than those of Hungarian citizens³⁰), they do not

http://romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf, p.67., later: Civil report., accessed 7 August 2013.

²² Report of the Commissioner, op.cit., p.31.

²³ Ibid

²⁴ Mód P., Roma Society 2010., Marketing Centrum OPK Kft.

²⁵ Ibid.

²⁶ It is important to note that the cited study was criticised by many experts in the field, primarily because of its methodological errors. See: Messing V., Notes in the margins of a 'Roma' study, <http://socio.hu/2pdf/3messing.pdf>, accessed 7 August 2013.

²⁷ Simonovits B. and Koltai J., Relations between Employers' Attitudes, Labour Market Employment with Protected Characteristics and Insuring Proper Working Conditions, the 4th study of the „Equal chances on the labour market” research series, Budapest 2011.

²⁸ Ibid., p.7.

²⁹ Hárs Á., « The Labour Market Situation of Third Country Migrants”, in Immigration and Integration, Hungarian Data, European Indicators, Kovats A. (ed), MTA Társadalomtudományi Kutatóközpont, Kisebbségkutató Intézet, Budapest, 2013, p. 60.

³⁰ Ibid., p. 55.

appropriately reflect the experience of those vulnerable migrant groups that do face serious discrimination on the labour market according to NGO accounts.³¹ At the same time, the number of the members of such vulnerable groups is too small to be statistically measurable. Therefore, other methods are needed to survey their experience in this regard (these methods and the results will be described under the Section 3.1. dealing with perceptions).

Legislation presents various obstacles to the collection of research data on Roma and other protected groups. Under the Hungarian data protection law, “special data” means any personal data relating to (i) racial, or national or ethnic minority origin, political opinion or party affiliation, religious or ideological belief, or membership in any interest representing organisation, sexual life; (ii) state of health, pathological addictions, or criminal personal data. Data related to the ethnic or racial origin thus fall under the category of “special data”.³²

“Special data shall not be processed unless (a) the data subject has given his/her written consent; or (b) regarding the types of special data set out in group (i) above, the processing is necessary for the implementation of an international treaty promulgated in an Act of Parliament, or it is prescribed by an Act of Parliament, either in order to enforce a fundamental right provided for in the Fundamental Law or in the interest of national security, crime prevention or criminal investigation, or national defence; or (c) in the case of data falling into group (ii) the processing is prescribed by an Act of Parliament with an aim based on public interest.”³³

Thus, unless written consent is provided or an Act prescribes that records be kept of such data, data collection regarding protected grounds is not possible. The practical result of these strict data protection rules is that public authorities have completely stopped collecting data concerning sensitive issues. This is obviously very detrimental with regards to the monitoring of discrimination in various areas.

In November 2009, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection issued a joint set of recommendations concerning the collection and/or registration of ethnic data in certain contexts.³⁴ The aim of the recommendations was to put an end to the situation in which discrimination cannot be measured due to the lack of reliable data. They identified four situations in which this would be desirable: criminal justice, positive measures (where external perception would be decisive, i.e. the categorisation of a person as belonging to a minority group would not be based on whether he/she identifies himself/herself as being a member of that group, but on the perception of the environment³⁵), as well as the exercise of cultural rights (such as the right to minority education) and participation in the representation of minorities, e.g. minority self-government elections (where the concerned person’s own ethnic affiliation would determine the right to participate). The recommendations contain a number of objective criteria based on how a person could be identified

³¹ Interview with András Kováts, Director of Menedék - Hungarian Association for Migrants (3 September 2013).

³² Article 3, Act CXII of 2011 on the Right to Informational Self-Determination and the Freedom of Information, later: Data Protection Act.

³³ Article 5, Data Protection Act.

³⁴ <http://www.kisebbségiombudsman.hu/data/files/158627216.pdf>, accessed 7 August 2013.

³⁵ The reason for this is the realization that discrimination is based on the discriminator’s perception on whether a person belongs to a particular minority. A police officer stopping and searching someone on the grounds of his/her Roma origin, will not check in advance whether that particular person identifies with the Roma minority.

as belonging to or perceived to be belonging to a given ethnic minority. The recommendations made have not been followed up by the decision-makers.

2.2 Legal framework

In principle, anti-discrimination law in Hungary offers strong protection against discrimination in employment.

The Equal Treatment Act (ETA) was adopted on 22 December 2003 and entered into force on 27 January 2004.³⁶ The Act is a comprehensive piece of legislation focusing on ways to combat racial discrimination. It prohibits both direct and indirect discrimination on 19 grounds, including racial origin, colour, nationality, origin of national or ethnic minority, mother tongue, religious or ideological conviction.³⁷ The list is open ended, since discrimination based on “any other status, attribute or characteristic” is also prohibited. As a result, protection against discrimination based on one’s migrant status is provided even in those cases when discrimination based on racial or ethnic origin may not be invoked. For instance, Hungary’s equality body, the Equal Treatment Authority, established that there was direct discrimination by a company providing financial services because it rejected to provide a Romanian citizen, settled in Hungary, with a loan for a home-cinema system on the basis of his foreign citizenship.³⁸ The Authority established that the automatic exclusion of foreign nationals, without any mechanism devised to thoroughly examine their relevant personal circumstances (job, salary, etc.), constitutes direct discrimination that may not be objectively justified by the increased risk of not being able to enforce the claim if the applicant fails to repay the loan. .

A broad range of fields are covered under the Equal Treatment Act including, among others, employment. The Act further applies to the whole public sector and to certain private actors, including employers with respect to employment relationships. The Act established Hungary’s equality body, the Equal Treatment Authority (described in more detail under the Section on non-judicial remedies) and defines its powers and relevant specific rules relating to its work.

Since its adoption, the Act has been amended with respect to a number of areas, including employment: for example, as a result of the 2006 amendments, the payment of different salaries, wages or other benefits to individuals on the basis of their colour, race, nationality, national or ethnic origin that was – at least in principle – objectively justifiable according to the text of the law, may not be exempted by relying on the general justification clause any more.

Another piece of legislation that needs to be mentioned is Act I of 2012 of the Labour Code (hereafter: Labour Code). Article 12 of the Labour Code contains the requirement of equal treatment, placing special emphasis on the “equal pay for equal work” principle.

If the discrimination is manifested in the unlawful termination of the employment, under Article 82, the employer shall compensate the employee for the damages suffered. Full compensation is restricted by Paragraph (2) of the provision, according to which a maximum of twelve-month salary may be claimed by the employee. In relation to Article 83, if the termination of the employment constitutes a violation of the right to equal treatment, the employee may request the court to order his/her reinstatement (in other cases involving unlawful termination of employment, this option is

³⁶ Act CXXV on Equal Treatment and the Promotion of Equal Opportunities.

³⁷ Article 8 of ETA.

³⁸ <http://www.egyenlobanasmod.hu/jogesetek/hu/56-2007.pdf>, accessed 3 September 2013.

not available as a main rule, so Hungarian labour law provides extra protection against discrimination in this context).

In other cases of discrimination (i.e. not involving a case of unfair dismissal), the employer is liable to pay full damages to the employee, as per Article 167 of the Labour Code.

3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

Over the last two decades, several sociological studies have been made with regards to prejudice towards the groups examined. With respect to Roma, it can be said that prejudice permeates all strata of society and forms the basis of institutionalised and non-institutionalised discrimination which can be seen on the labour market, in education, healthcare, housing policies, the media and in other areas of everyday life.

According to an international survey, 42 % of the Hungarian Roma respondents aged 16 and above looking for work in the past 5 years said that they experienced discrimination because of their Roma background.³⁹

A recent study sought to investigate what society thinks about discrimination affecting disadvantaged groups.⁴⁰ The majority of respondents saw discrimination against persons of Roma origin as being widespread in Hungary. They believed that Roma are more likely than other groups to face discrimination with regards to hiring, firing, allocation of responsibilities at work, in dealings with the police and in education.⁴¹

This same study also interviewed Roma: 95% of them answered that discrimination on the basis of ethnicity is a widespread phenomenon in Hungary which has gained more momentum over the last few years, and that there is no hope of it changing for the better.⁴²

They cited discrimination in the workplace as the most serious, while recognising that income gained through employment would offer them an opportunity to break free from the vicious circle of poverty and deprivation.⁴³ The study further corroborated the commonly-known fact that Roma women are in a situation where they experience multiple disadvantages – compared to Roma men and to non-Roma women, Roma women respondents systematically had higher rates of complaints of discrimination because of factors related to both their ethnicity and gender.⁴⁴

Sociological studies on labour market discrimination against migrants and the perceptions thereof by both the majority and migrant groups are also available. According to the Discrimination in the EU in 2012 survey, discrimination based on ethnic origin is seen as widespread by 70% of respondents in

³⁹ European Union Agency for Fundamental Rights, The situation of Roma in 11 EU Member States, Survey results at a glance, 2012., http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf

⁴⁰ Neményi M. (leading researcher), Increase in legal awareness with regards to equal treatment between 2010 and 2013: focus on women, Roma, the disabled and the LGBT community, Equal Treatment Authority, Budapest, 2013.

⁴¹ Ibid., p. 32.

⁴² Ibid., p. 52.

⁴³ Ibid., p. 52.

⁴⁴ Ibid., p. 38.

Hungary.⁴⁵ It should be noted that “ethnic origin” is likely to have been interpreted by most Hungarian respondents as Roma ethnicity, so this result is not conclusive concerning migrants.

A relevant survey from this respect may be the research institute TÁRKI’s 2012 survey, which showed that 40% of respondents may be regarded as openly xenophobic, i.e. this ratio of respondents agreed with the statement that no asylum seekers should be allowed to enter Hungary.⁴⁶ This is a significant increase compared to the results of the previous five years, when this ratio had fluctuated between 29 and 32%.⁴⁷ This survey confirmed that the social groups most impacted by the economic crisis are more prejudiced against foreigners than others. The percentage of openly xenophobic respondents was between 43 and 52% among respondents who are unemployed, indigent or have a low level of education.⁴⁸

Another survey more specifically examined biases against migrants in relation to employment. The respondents had to tell whom they would choose for three different jobs (cleaner, janitor and clerk) from among fictitious persons of different ethnic origins (an ethnic Hungarian, Arab, Chinese and Kenyan woman and man). The respondents were shown the photograph and a mini employment-biography for all the fictitious applicants, and had to make their choice on this basis. Over 80% of the respondents chose either of the two ethnic Hungarian applicants for all the jobs, in some cases this went up to close to 90%, which shows that access to employment is the primary problem migrants face in the Hungarian labour market.⁴⁹

Surveys approaching the problem from the perspective of the migrants also raise interesting issues. The Immigrant Citizens Survey conducted between October 2011 and January 2012 in – among other cities – Budapest on a sample of 1200 migrants, provides surprisingly favourable data on the employment of migrants, especially in comparison to the other cities surveyed. For instance, the unemployment rate was only 5% as opposed to 15-25% in most places.⁵⁰ Furthermore, Budapest was among the three cities (out of 15) in which the majority of respondents did not report problems in finding a job. 41% of the respondents did encounter problems, which was the second best result after Berlin (36%).⁵¹ In addition, discrimination was not among the three problems most frequently quoted by those respondents who reported difficulties.⁵² In addition to the already quoted limited numbers of migrants belonging to the most vulnerable groups (e.g. refugees and persons under other forms of international protection), experts explain this with a number of factors, the first one being that the Hungarian legal framework is so strict when it comes to the conditions of entry for third country nationals (secured living and accommodation, health insurance, etc.), that those who can “make it”, form an already strongly selected group, the members of which are less likely to encounter problems when trying to find a job. The other factor is that discrimination is rarely overt: due to the specificities and difficulty of the Hungarian language, it can often be disguised as

⁴⁵ Discrimination in the EU in 2012, Report. Special Eurobarometer 393, Wave EB77.4. TNS Opinion & Social. p. 27.

⁴⁶ Simonovits B., „Discrimination against Immigrants – from a Majority and Minority Perspective”, In: Immigration and Integration. Hungarian Data, European Indicators, op. cit., p. 159.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., p. 169.

⁵⁰ Huddlestone T. and Tjaden J. D., Immigrant Citizens Survey – How Immigrants Experience Integration in 15 European Cities, King Baudouin Foundation and Migration Policy Group, Brussels, 2012, p. 23.

⁵¹ Ibid., p. 24.

⁵² Ibid., p. 25.

language requirements.⁵³ This explanation is substantiated by the fact that in the survey, 32% of those who faced problems reported language difficulties as the reason thereof.⁵⁴

Prejudice against Roma, Jews and migrants permeate both public and political discourse in Hungary. In November 2012, an MP from the Jobbik party made the following statement in Parliament in connection with the conflict in Gaza: “this is the time for us to count how many people of Jewish origin are in the Hungarian Parliament and in the Hungarian government, as they present a national security risk for Hungary.”⁵⁵ After some time, both the government and the opposition ended up condemning this statement (which became known as the “list of Jews” statement). It also took a long time until a demonstration was jointly organised by civil society and members of political parties to condemn antisemitism.⁵⁶ Similar demonstrations of solidarity towards Roma and migrants are rarely seen in contemporary Hungary. In January 2013, an editorial by Zsolt Bayer⁵⁷ appeared in a Hungarian daily having close ties to the government, in which he described Roma as animals: “These animals shouldn’t be allowed to exist. Not under any circumstances. This must be dealt with – immediately, and by any means necessary”.⁵⁸

Hungarian NGOs and a narrow circle of journalists condemned this article, and several months later, the Media Authority fined the newspaper. It is also important to note it occurred in 2012 when the trial regarding the six (serial) murders of Roma – a crime which sent deep shockwaves through the Hungarian Roma community – began. Except for expressions of solidarity by civil society, neither case resulted in a broad condemnation of racism in Hungary.

Although the causes for strong prejudices against Roma are a complex issue, it is certain that both political discourse and the portrayal of Roma in the media contribute significantly to the current situation.⁵⁹ Every party which has come to power since the change in regime has, to different degrees and in various ways, contributed to this deterioration in political discourse. Expressions such as “Gypsy crime” and “living on aid instead of from work” are still part of public discourse today. Generally, a paternalistic approach is taken in dealing with and solving issues affecting Roma.

As it was outlined above, surveys show strong xenophobic tendencies within Hungarian society. It is interesting to note that some of the surveys on this subject tested whether the respondents would allow members of a fictitious people, the “Piresians”, to enter Hungary.

The survey started with a question on whether asylum seekers in general should be allowed to enter Hungary. 29% of the respondents said that no asylum seekers of any nationality should be allowed to enter the country. 10% responded that all asylum seekers ought to be provided with access to Hungary. The remaining 61% said that, it would depend on the ethnic origin of the asylum seekers whether they should be allowed to enter. This latter group was then asked about which groups Hungary should allow access for (Arabs, Chinese, Russians, Romanians, etc.). Among these groups, the respondents were also asked about whether Piresians should be allowed entry, and a to which a

⁵³ Interview with András Kovács, Director of Menedék - Hungarian Association for Migrants (3 September 2013).

⁵⁴ Huddleston T. and Tjaden J. D., *Immigrant Citizens Survey – How Immigrants Experience Integration in 15 European Cities*, op. cit., p. 25.

⁵⁵ Index.hu, “Jobbik: Requesting a list of Jews”, 26 November 2012.

⁵⁶ Hvg.hu, „Facism is a virus and Jobbik is its host” demonstration on Kossuth square, 2 December 2012.

⁵⁷ Zsolt Bayer is a major public figure, journalist, member of the ruling party Fidesz and a close friend of Prime Minister Viktor Orbán.

⁵⁸ Magyar Hírlap Online, “Ki ne legyen”, Bayer Zs., 5 January 2013.

⁵⁹ Bodrogi B., “Gypsy stereotyping in the media”, CivilMedia, 26 November 2012.

significant ratio of them (59 and 68% in 2006 and 2007 respectively) of those asked said that it would depend on the ethnic origin of the asylum seekers whether they should be allowed to enter answered “no”.⁶⁰

Since the proportion of foreigners in the Hungarian population is as low as 2%, most people do not have any personal contacts with migrants. Besides traditional attitudes and perceptions and the increasing popularity of the political party Jobbik (which – as part of the “package” – attacks not only the Roma and Jewish people, but also migrants), Hungarian media also plays an important role in presenting a negative image of migrants. According to a 2011 research by the Hungarian Helsinki Committee, migrants, asylum seekers and refugees are often reported as criminals or threaten national security, while personal stories and articles dealing with the culture of migrants hardly appear.⁶¹

Recent examples of societal suspicions, fears and the lack of proper information are presented in the opening of a new temporary reception centre in Vámoszabadi (Western Hungary) in August 2013, which was greatly needed on account of the increased number of asylum seekers arriving to Hungary. When the first news about the plans to open a centre in the outskirts of the village with of 1 600 residents, some locals started to collect signatures and organised demonstrations against the measure. Fears of contagious exotic diseases and of deteriorating public safety (including the raping of local girls and the abduction of local children) were quoted.⁶² Although the tensions seem to be easing as a result of personal encounters after the arrival of the first groups of asylum seekers, the case shows that the governmental communication concerning migration is at best half-hearted. When for instance the Minister of Interior, Sándor Pintér, was asked whether there will be any impact of the – then 1 000 – signatures against the camp, he said: “I could send 10 million signatures to the European Union that Hungary does not want any refugees. But we also fall under the EU’s asylum regime, and we have to respect the rules”.⁶³

3.2 Incidence of discrimination in employment

Over the last decade, several studies and research projects have examined the issue of discrimination in employment. The findings of studies examining discrimination against Roma are unanimous: low employment rates are not only due to low levels of schooling and geographical disadvantage, but also because of discrimination against them.⁶⁴

An examination of types of discrimination shows that Roma most frequently experience a disadvantage at the hiring stage, specifically at the entry to the labour market.⁶⁵ The European Roma Rights Centre (ERRC) conducted two studies on this topic, which found that it is a “common phenomenon that employers reject candidates simply because they are presumed to be of Roma origin. Of the respondents, 29% stated that employers openly told them that they were rejecting

⁶⁰ <http://www.tarki.hu/hu/news/2007/kitekint/20070308.html>, accessed on 31 August 2013.

⁶¹ Prischetzky R. and Szabó E., *Migrants in the Hungarian Media, or Immigration and Foreigners as seen by the Press in 2011*, Hungarian Helsinki Committee, Budapest, 2011.

⁶² *Népszabadság*, „The Vámoszabadi Spirit”, Hajba F., 28 July 2013.

⁶³ Index, “No Use Demonstrating, the Refugee Camp will Open in Vámoszabadi”, 20 June 2013.

⁶⁴ Fleck G. and Messing V., *Transformations of Roma employment policies*, In *Focus, Labour market discrimination*, Budapest, 2010, p.82.

⁶⁵ *Heti Világgazdaság* online, “Roma face obstacles from the job interview onwards”, 20 September 2011

them because of their ethnicity."⁶⁶ If we examine this trend over the last 10 years, the case-law, virtually without exception, points to difficulties and obstacles to obtaining employment.⁶⁷

We have relatively little information about discrimination in the workplace towards the groups surveyed. Between 2010 and 2013, there have been no rulings by either a court or an administrative tribunal (Equal Treatment Authority) in this respect.⁶⁸ An important study examined this issue in 2010, in particular, looking into what employers think of their employees who belong to the protected groups.⁶⁹ The study covered four spheres of employment: civil society, the private sector, civil servants and holders of public office. Respondents were questioned with regards to discrimination in respect of the following protected characteristics: age, ethnicity, sex, condition of health and family status. Employers who took part in the study were clearly the most critical with regards to Roma. While they were able to identify to some extent with elderly employees or employees having small children (as they were themselves directly or indirectly affected by these issues), most employers were not able to understand or at least get a sense of the disadvantages faced by Roma on the job market.⁷⁰ Employers took the stereotyped and prejudicial approach to Roma which is prevalent in Hungarian society: Roma themselves are to blame for their condition, they are lazy, unable to show up for work on time and dressed appropriately, they are hard to motivate and do not fit in.⁷¹

In relation to migrants, a 2010 study⁷² showed that the different migrant groups have somewhat different experiences concerning the incidence of discrimination in employment. Surprisingly, the group that reported the highest degree of discrimination in relation to access to employment (64% of the respondents claimed to have experienced some discrimination while looking for a job) were ethnic Hungarians from the Ukraine. They were followed by Arabic people (50%), Ukrainians (47%) and Vietnamese respondents (42%). The percentage of those reporting discrimination during job searching was as low as 24% among Chinese respondents, which is explained by the fact that self-employment and employment in family businesses is very widespread among them. When it comes to discrimination in the workplace, the order changes with Ukrainian employees being the most exposed (44% reporting discrimination). Interestingly, both Arabic and Vietnamese respondents reported a smaller degree of discrimination (21 and 32% respectively) than ethnic Hungarians (37%).

3.3 Patterns of inequality over the course of time

As partly outlined above, there has been a recent rise in the degree of xenophobia according to the relevant surveys. After the change of regime, between 1992 and 1995 there was a quick increase, from 15 to 40%, in the number of those who were openly xenophobic and fully rejected the idea of accepting asylum seekers in Hungary. Between 1996 and 2001, there was significant fluctuation with the highest percentage of openly xenophobic respondents (43%) measured in 2001. After this date,

⁶⁶ Fleck G. and Messing V., *Labour Market Discrimination*, p.83.

⁶⁷ NEKI case-law: <http://www.neki.hu/archivum-feher-fuzet/>, Equal Treatment Authority case-law: <http://www.egyenlobanasmod.hu/jogesetek/>

⁶⁸ In one case, the Equal Treatment Authority reached a finding of harassment on the workplace due to the plaintiff's Arab origins. ETA, Application Nos. 25/2011 (not final).

⁶⁹ Simonovits B. and Koltai J., "Relations between Employers' Attitudes, Labour Market Employment of Employees with Protected Characteristics and Ensuring Proper Working Conditions, 4th study in the "Equal chances on the labor market" research series, Budapest 2011.

⁷⁰ *Ibid.* p. 8.

⁷¹ *Ibid.*

⁷² Simonovits B., "Discrimination against Immigrants – from a Majority and Minority Perspective", *op. cit.*, p. 168.

a period of relative stability came with percentages ranging from 24 to 33%, however, in 2012, there was again a sudden rise to the 2001 level (40%)⁷³ that may be explained by the mainstreaming of xenophobic/racist discourse started by the extreme rightist Jobbik, and not sufficiently condemned by other political parties (on both the political left and right) due to a fear of losing votes.

3.4 Discrimination in access to employment

Discrimination in access to employment against migrants

According to NGO experience,⁷⁴ access to employment is the key stage from the point of view of the discrimination of migrants. This is primarily true for the most vulnerable groups of migrants, i.e. persons who have been granted some form of international protection and stateless persons, because in the case of other groups, i.e. those who voluntarily move to Hungary for work, the conditions for long term stay are so strict under the pertaining laws that those who meet the criteria are unlikely to have problems finding a job.

This view is in fact confirmed by the Ministry of Interior where in the Draft Migration Strategy it is stated that:

“For the different groups of regular migrants the acquisition of the permit to stay for longer periods of time in Hungary is dependent on secured living and accommodation, which presupposes that they have a sufficient background as far as accommodation and income is concerned. As opposed to them, stateless persons and those under international protection are in a very disadvantaged situation, they do not have either income or accommodation, they are often unskilled and do not speak Hungarian.”⁷⁵

With regard to members of these vulnerable groups, it can be said that making “cold calls” has practically no hope of success: unless the job search is done through personal networks, these categories of migrants stand no substantive chance of being employed in Hungary.

Overt xenophobia is rare, the usual explanations include the lack of command of the Hungarian language and the impossibility of verifying the required qualifications (many of these persons do not have their diplomas, and – precisely because they had to flee their country of origin or residence – they are not in the position to acquire copies). According to NGO experience, employers are often afraid of the additional administrative burdens that may result from employing a migrant, and sometimes they refer to possible objections from co-workers.

In connection with the language requirement, it was pointed out that even in the case of jobs where the command of Hungarian does not seem a genuine and occupational requirement, employers may successfully refer to the need for applicants to have mandatory labour safety training,⁷⁶ which is available only in Hungarian. The failure to provide such training in the languages spoken by the otherwise suitable applicants may amount to the failure of providing reasonable accommodation. Unfortunately, the Hungarian legal situation is rather unclear when it comes to this form of discrimination. It would definitely be important to test the system through litigation.

⁷³ Ibid., op. cit., p. 159.

⁷⁴ This section is based on an interview with András Kováts, Director of Menedék – Hungarian Association for Migrants, 3 September 2013.

⁷⁵ Hungarian Ministry of Interior, Migration Strategy and seven-year Strategic Planning Document related to the Asylum and Migration Fund to be established by the European Union in the 2014-2020 Cycle, <http://www.kormany.hu/hu/dok?page=2&source=1&type=302#!DocumentBrowse>, accessed 3 September 2013.

⁷⁶ Article 55, Act XCIII of 1993 on Labour Safety.

NGOs with expertise in the area have pointed out that apart from the 520-hour free Hungarian language education to which refugees and persons under subsidiary protection are entitled to,⁷⁷ there are no other forms of state support that provide substantive help for the concerned persons in accessing the labour market. For instance while there are certain benefits available for employers employing members of different vulnerable groups (disabled persons, persons with caring responsibilities, career starters),⁷⁸ no such benefits are provided to employers recruiting workers belonging to vulnerable migrant groups. (An example of such a benefit would be that under Act IV of 1991 on the Promotion of Employment where the State Employment Service may provide employers for a maximum of 1 or – in cases concerning persons unable to find employment for over 2 years – 2 years with support amounting to 50% or 60% of the salary and social security payments of disadvantaged workers or workers with disabilities respectively, if the employer:

- a) undertakes to maintain the employment for the whole period of the provision of the support;
- b) has not dismissed with reference to circumstances concerning its own operation the given employee within 12 months preceding the submission of the request for support; and
- c) undertakes not to dismiss the employee with reference to circumstances concerning its own operation during the time the support is being provided.

This assessment is again confirmed in the Draft Migration Strategy, which states the following:

“In spite of the fact that they do not need a work permit, persons under international protection find it difficult to find a job. The causes include the lack of command of Hungarian, [...] low qualifications, and the mistrust felt by employers towards foreigners [...]. The vocational training of persons under international protection is hindered by the fact that accredited trainings are usually dependent upon accomplished primary school studies, so the migrants have to accomplish such studies first. The other obstacle of participation in vocational training is posed by the lack of the sufficient command of Hungarian. Bread winners attend vocational trainings in limited numbers, as – in the absence of other opportunities – they try to earn living in the black economy.”

The disadvantages faced by stateless persons and persons with a tolerated status (i.e. persons who are not entitled to either a refugee status or subsidiary protection, but may not be returned to their country of origin due to the international principle of non-refoulement) are especially severe. As opposed to refugees and beneficiaries of subsidiary protection, these categories need a work permit to get employed.

According to a study on the situation of stateless persons in Hungary, “far from being a mere technical formality, this limitation may render access to employment particularly burdensome, considering the limited validity of the humanitarian residence permit and the usual procedural delays and difficulties in obtaining a work permit”.⁷⁹

As the study points out, “this procedure creates a further bureaucratic obstacle to the successful employment and integration of stateless persons, as most employers would refrain from becoming involved in such a lengthy and cumbersome procedure.”⁸⁰

⁷⁷ Article 51, Government Decree 301/2007. (XI. 9.) on the Implementation of Act LXXX of 2007 on Asylum.

⁷⁸ Act IV of 1991 on the Promotion of Employment and the Allowances for the Unemployed.

⁷⁹ Gyulai G., Statelessness in Hungary. The Protection of Stateless Persons and the Prevention and Reduction of Statelessness, Hungarian Helsinki Committee, Budapest, 2010, p. 32.

⁸⁰ Gyulai G., Gyulai G., Statelessness in Hungary, op. cit., p. 32.

The problem is aggravated by the fact that the work permit's validity cannot exceed the validity of the residence permit the concerned person holds. In the case of stateless persons, there has been a favourable change in this regard, since – as opposed to the earlier regulation, according to which their status had to be reviewed annually – at present they are granted a three-year residence permit, and only after the initial three years is their status reviewed every year. This means that in the case of a stateless person it may be worth for an employer trying to obtain the work permit, as it can be issued for a relatively long period of time.

Persons with a tolerated status can get a work permit without the above described labour market examination (i.e. without the authority having to make sure that no registered job-seeker is suitable for the job), but their status is still reviewed on an annual basis, so employers may be discouraged from employing them because the work permit will usually not be valid for more than 9-10 months.

For both categories, a further problem is posed by the fact that – as opposed to refugees and persons with a subsidiary status – stateless persons and persons with a tolerated status are not entitled to free language courses and to all those services that are aimed at assisting job search.

A special problem for stateless persons is that – as opposed to persons falling under other international protection categories – they need a work permit to get employed.

Public work as a forum for discrimination

Since the early 1990s, Hungarian governments have made public work a priority as a means of dealing with long-term unemployment. About 15 years later however, public work has expanded significantly. In 2009, the socialist government in power at the time launched the “Path to Work” programme in order to encourage people who were long-term beneficiaries of social aid and who had been unemployed for a long time to receive a salary instead of aid. As a result of the programme, the number of public employees multiplied sevenfold in one year, raising their numbers to 186 000 in 2010.⁸¹ In 2011, the right-wing government introduced important changes to the programme, along with a new model whereby public work programmes were closely interrelated with the social aid system. By 2012, there were 261 700 public employees.⁸² Currently, public work programmes are being implemented at three levels: local municipal government, the regional and the national levels.

It is important to note that, over the last few years, no comprehensive impact study has been conducted to analyse the results of this expansion of public work programmes. In addition, there is no study containing data with regards to the ethnicity of public employees. In 2011, employment centres used estimates to determine the number of Roma affected by public work.⁸³ According to estimates, local governments employ 72 700 Roma within the public work framework, while approximately 6700 Roma found jobs at the national public work level.

Researchers in sociology and economy note that public work programmes are generally not likely to increase participants' future chances of employment, and can in some cases even harm the chances of unemployed persons finding work on the open labour market.⁸⁴

⁸¹ Messing V., *Divided Labour Market*, in *Társadalmi integráció a jelenkori Magyarországon*, Kovács, Dupcsik, Tóth, Takás (ed), Osiris, 2012.

⁸² Civil report p. 75.

⁸³ Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 5317/2012; p.7.

⁸⁴ Messing V., *Divided Labour Market*, p.4.

In 2012, the Commissioner performed several comprehensive studies of the new public work system.⁸⁵ Among these, one study that especially investigated the issue of equal opportunity for Roma reached the conclusion that Roma job-seekers could be affected by direct or indirect discrimination within the operation and organisation of the public work programmes.⁸⁶ Complaints received by the Legal Defence Bureau for National and Ethnic Minorities (NEKI) and the Hungarian Civil Liberties Union (HCLU), have shown that since the introduction of the new public work system in 2012, numerous problems have arisen both with regards to legislation and to its implementation. In the first half of 2012, NEKI received about 50 to 60 complaints from Roma in connection with public work alone.⁸⁷

- **Difficulties in accessing the public work system – abuses by the local governments**

It can generally be said that in most towns and villages, there are not enough public work jobs available. For this reason, in smaller localities that do not have market jobs, the unemployed become completely dependent on the local governments and on their leaders. As the institutions of the local governments provide the majority of services, the local government is essentially the only (public) employer available to the unemployed. Although in theory, it is the employment centres that select public employees, practice has shown that selection is actually the result of a bargaining process between the employment centre and the local government, with the final decision resting with the employer, i.e. the local government.⁸⁸

The selection of candidates is often made on the basis of a subjective judgement, as the local leaders (mayor, notary) “call all the shots” in smaller towns. All of this is further reinforced by the disintegration of local communities and their fragmentation along political, religious and ethnic lines, but most importantly due to the connections to local power structures.⁸⁹ Human rights NGOs report that the most glaring cases of vulnerability are found in those local governments where (partly due to their leaders) relations between Roma and non-Roma are the most strained. The towns of Érpatak and Gyöngyöspata typify the problem: in both towns, municipal leaders use public work programmes and their official powers in order to control, intimidate and marginalise the local Roma population.⁹⁰

- **30 days of gainful activity**

Reports of NGOs and findings of the Commissioner agree that local governments and the relevant authorities did not give appropriate information about available jobs, and that, due to the limited number of opportunities for volunteer work, many people did not have access to work despite their willingness to work. As we noted above, access to public work programmes is particularly difficult for Roma: their ability to enforce their interests is low and prejudice on the part of local leaders makes it difficult for Roma to meet the 30-days work requirement.

⁸⁵ Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 3025/2012; later: Comprehensive report

⁸⁶ Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 5317/2012; p.33.

⁸⁷ According to author’s consultations with NEKI.

⁸⁸ Comprehensive report, p. 47.

⁸⁹ Messing V., „Divided labour market”, p. 12.

⁹⁰ jogtalanul.blog.hu/2012/05/15/a_kozfoglalkoztatasi_ordogi_kor, accessed 7 August 2013

3.5 Discrimination in the workplace

Different types of discrimination in public work

In addition to the systemic problems outlined above, the report of the Commissioner for Civil Rights investigating whether Roma are being provided with equal opportunities summarised the following types of discrimination suffered by Roma in public work:⁹¹

- Roma job-seekers are hired for shorter amounts of time (six hours a day, or for less months) than non-Roma;
- when Roma and non-Roma with the same levels of schooling are hired, Roma are assigned to lower-status physical work (outside), while non-Roma job-seekers are given indoor office and cleaning jobs;
- foremen take a condescending tone towards Roma public employees;
- the training period for the job is used as an opportunity to violate human dignity and to humiliate employees;
- employment contracts with Roma are more often subject to extraordinary termination, as the slightest mistakes are often punished by dismissal.

The public work contract

Public work is a special contractual form of employment. With a few exceptions, it is subject to the regulations applicable to employees.⁹² Among others, a contract for public work can only be signed for a definite period with no probation time, it offers less time off and the salary for public work employment are below minimum wage.⁹³ In all of his reports on the issue, the Commissioner emphasised that employment contracts under the current Hungarian public work model contain certain elements that result in placing the public employee in a vulnerable position.

Wages

The pay for public work jobs is below minimum wage. Thus, a person employed under a public work employment contract of a definite term, working eight hours a day (often doing hard physical labour) will receive a significantly lower salary than the national minimum wage, despite the fact that the obligations of public work employees are fundamentally the same as those of ordinary employees. Labour law experts and the Commissioner state that there is no reasonable justification for this, and that this provision violates the principle of equal treatment.⁹⁴

With the help of the LMP (Green) party, a person employed at an eight-hour public work position brought a complaint to the Constitutional Court with regards to the amount of the wages and with regards to its weekly payment.⁹⁵ The complaint cited violations of the right to human dignity and of the prohibition of discrimination, and called upon the Court to strike down the relevant provisions of the governmental decree.⁹⁶

⁹¹ Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 5317/2012, p. 33.

⁹⁴ Ibid., p. 54.

⁹⁵ The payment of public work wages was made on weekly bases originally. From February 2013 the wages are paid on monthly basis. <http://lehetmas.hu/hirek/34485/kozmunkasok-bere-alkotmanybirosaghoz-fordul-egy-kozmunkas-az-lmp-segitsegevel/>, accessed, 7 August 2013.

⁹⁶ The case is pending before the Constitutional Court.

Apart from the study⁹⁷ mentioned under the Section on the incidence of discrimination in employment, there are neither statistical data nor anecdotal evidence based on which the nature of workplace discrimination against migrants could be reliably mapped up.

This may be related to the fact that according to experts, if successful access is made to the labour market, the prevalence of workplace discrimination does not pose a problem, the dimensions of which are in any way comparable with those arising in relation to discrimination in the recruitment process.⁹⁸

In this regard, the following shall be put forward. As it was pointed out above, for those who voluntarily move to Hungary for work, the conditions for long term stay are so strict under the pertaining laws that those who meet the criteria are unlikely to have problems finding a job and also unlikely to experience significant discrimination at the workplace. Therefore, discrimination within the workplace may arise as a severe problem in relation to the most vulnerable groups of migrants, i.e. persons who have been granted some form of international protection and stateless persons.

However, as it was also pointed out above, the number of such persons is very small. On 31 December 2012, there were 1 561 refugees, 683 persons with subsidiary protection and 151 persons with tolerated status registered by OIN. These numbers include children and other inactive persons, therefore, the number of active migrants is even smaller, and due to the difficulties of accessing employment, the number of those in relation to whom the question of workplace discrimination may be raised is minuscule.

Furthermore, there is a unique employment situation in relation to certain migrant groups. According to the relevant sociological surveys, members of the relatively large migrant groups, i.e. the Chinese, Vietnamese, Turkish and Arabic communities, characteristically work as self-employed entrepreneurs (the ratio of self-employment among these groups is very high: 66%, 75%, 74% and 62% respectively),⁹⁹ or they are employed by entrepreneurs from their own ethnic communities, so they are in a way protected against discrimination based on their ethnicity in the workplace.¹⁰⁰

According to experts,¹⁰¹ the sector in which discrimination after access to employment is the most prevalent is illegal household jobs and nursing of elderly people. These jobs are often done by ethnic Hungarian women from Romania and the Ukraine. Almost all of them work for low wages and illegally, which makes them very vulnerable to abuse, as they enjoy no legal protection. There is ongoing research into their situation, but no publications of the subject are available yet.

3.6 Economic sectors

There are no data on labour market discrimination against migrants broken down by economic sectors, however, as explained above, self-employment is very characteristic in the largest immigrant communities, especially in the trading sector (with special focus on textiles and clothing) and catering. Whereas the average percentage of enterprises dealing with trading is 20.7%, among

⁹⁷ Simonovits B., „Discrimination against Immigrants – from a Majority and Minority Perspective”, op. cit.,

⁹⁸ Interview with András Kováts, Director of Menedék – Hungarian Association for Migrants, 3 September 2013.

⁹⁹ Hárs Á., « The Labour Market Situation of Third Country Migrants” op. cit. p. 60.

¹⁰⁰ Simonovits B., „Discrimination against Immigrants – from a Majority and Minority Perspective”, op. cit.,p. 168.

¹⁰¹ Interview with András Kováts, Director of Menedék – Hungarian Association for Migrants, 3 December 2013,

enterprises owned by migrants of Chinese or Vietnamese origin this is as high as 83% and 89.3% respectively. 54.5% of the enterprises owned by persons of Turkish migrant background deal with trading. Catering is also characteristic among Turkish enterprises with 10.4%, as opposed to the average ratio of 4.9% (among Chinese enterprises this percentage is also higher than the average: 8.1%).¹⁰²

4. Tackling the challenges

4.1 Public policies

National Roma Integration Strategy

In 2011, the government adopted the National Social Inclusion Strategy (hereinafter the ‘Strategy’) which is directly linked to the EU Framework for National Roma Integration Strategies.¹⁰³ In the Strategy, the government sets out the mid-term challenges, goals and necessary interventional guidelines to promote the social and job-market integration of persons living in poverty (including Roma) over a 10-year timeframe.¹⁰⁴

With regards to employment, the Strategy mentions three main areas: encouraging placement on the open labour market, transitional employment and public work programmes.¹⁰⁵ In the latter case, the government itself arranges for employment for those who do not have any real work opportunities within the scope of the first two areas. In 2011, the government conducted a major overhaul of the public work system, linking it with the social welfare system.

Draft Migration Strategy

The Draft Migration Strategy outlines – among others – the following tasks aimed at enhancing the vulnerable migrant groups’ access to employment:

- The review of language trainings, the development of more flexible, efficient language learning programs;
- Counselling and training for migrants which reflect the actual needs of the labour market;
- Making it easier for stateless persons to access employment (by “organizing and developing trainings through collecting and analyzing relevant information pertaining to the subject” and “legislative measures may also be required”¹⁰⁶);
- Provision of migrant-specific training to personnel of training institutions;
- The development of appropriate mechanisms for the recognition of professional qualifications obtained outside the EU;
- The introduction of active labour-market tools to enhance the labour-market integration of persons under international protection;
- The development of special tools to increase employment among vulnerable groups;
- Migrant-specific training for personnel of labour centres.

¹⁰² Várhalmi Z., “Migrant Entrepreneurs in Hungary”, In: Immigration and Integration. Hungarian Data, European Indicators, op. cit., p. 95.

¹⁰³ http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf, accessed 7 August 2013.

¹⁰⁴ Ibid., p.7.

¹⁰⁵ Ibid., p. 81.

¹⁰⁶ Hungarian Ministry of Interior, Migration Strategy and seven-year Strategic Planning Document related to the Asylum and Migration Fund to be Established by the European Union in the 2014-2020 Cycle, <http://www.kormany.hu/hu/dok?page=2&source=1&type=302#!DocumentBrowse>, accessed 3 September 2013.

It needs to be noted that the migration strategy is still a draft, and – obviously – a lot depends on its actual implementation once it has been adopted.

In addition, we cannot cite any comprehensive public policies or programmes taking action against discrimination in the workplace during the reported period. However, as part of a four-year programme, the Equal Treatment Authority (hereinafter ‘Authority’) has been and is carrying out important activities in addition to hearing cases, which should be mentioned.

Services to the public

Starting on 1 September 2009, the Authority set up centres providing services to the public in all 19 of Hungary's counties. The aim of these centres is to provide – at the county level and in person – information for potential victims of discrimination.¹⁰⁷ Responding to the vulnerable position of public employees, the government has put together materials that contain basic information about public work programmes and that advise affected parties to turn to the Authority's county-level service centres in the event of any complaints.¹⁰⁸

Research

In the framework of a 4-year grant, altogether seven research studies have been or will be carried out.¹⁰⁹ The following have already been completed: (i) Gender Wage Gap and Segregation in Contemporary Hungary; (ii) Employee Selection Practices in the Light of Discrimination; (iii) Impact of the Equal Opportunity Plan; (iv) Relations between Employers' Attitudes, Labour Market Employment of Employees with Protected Characteristics and Insuring Proper Working Conditions; (v) Awareness of One's Rights as a Victim of Discrimination – With Special Focus on Women, Roma, People with Disabilities, and LGBT people.¹¹⁰

Trainings

The Authority coordinated a series of trainings on equal treatment that were held in Budapest and at the regional level for employees of administrative officials, NGOs, employers, advocacy organisations for workers, etc.¹¹¹

The activities outlined in the above section are extremely important and were long overdue. For some of them (research, training), the Authority used the collaboration of experienced NGO staff.

4.2 Access to effective remedies

4.2.1 Judicial remedies

Victims of discrimination in employment may bring a case before the “labour and administrative” courts. As outlined in the Section on the legal framework, if the discrimination is manifested in cases regarding the unlawful termination of the employment, the employer shall compensate the employee for the damages suffered. Under the heading of lost income, a maximum of twelve-month salary may be claimed; however, other damages (including moral damages) may be enforced without any limitation. With reference to Article 83, if the termination of the employment constitutes discrimination, the employee may also request the court to order his/her reinstatement.

¹⁰⁷ <http://egyenlobanasmod.hu/tamop/ugyfelszolgalat#aktualis>, accessed 7 August 2013.

¹⁰⁸ <http://www.kormany.hu>, accessed 7 August 2013.

¹⁰⁹ The European Social Fund and the Hungarian State supported the researches in HUF 911 million (EUR 3,036,670).

¹¹⁰ <http://www.egyenlobanasmod.hu/tamop/kutatasok#tanulmanyok>, accessed 7 August 2013.

¹¹¹ <http://www.egyenlobanasmod.hu/tamop/kepzesek>, accessed 7 August 2013.

In other cases of discrimination (i.e. not involving an unfair dismissal), the employer is liable to pay full damages to the employee, as per Article 167 of the Labour Code. It is important to note that the court may not create an employment relationship, i.e. if the discrimination is manifested in the employer's refusal to employ a person, the court cannot order the plaintiff's employment.

Lastly, the court may declare an unlawful agreement (including agreements of discriminatory nature) null and void under Article 27.

As to the barriers to litigation, the following can be said. There is no obligation to retain a lawyer, but professional legal assistance may provide a significant advantage, since the court is bound by the evidence presented to it by the parties, in both the claim and evidentiary motions. State funded legal aid (including representation by a patron attorney) is available, but the indigence threshold is very low. Another deterring factor may be that if the plaintiff loses the case he/she has to pay the other party's legal costs.

In addition, while the general statute of limitations is three years in labour matters, in certain cases (such as dismissals), the deadline for initiating a lawsuit is relatively short: 30 days (Article 287). Another problem is the length of cases. A labour lawsuit may last up to 4 years until a final and binding decision is reached.¹¹²

An important procedural difference of labour cases compared to other similar civil lawsuits, is that under Article 355 of Act III of 1952 on the Code of Civil Procedure, it is mandatory for the court to try to facilitate a friendly settlement before starting to try the case in substance.

Within the Hungarian court system no statistics are broken down in a way that would make it possible to assess how many court complaints have been filed in the past three years concerning employment discrimination based on ethnic origin. Neither are systematically presented available data regarding the characteristic features or outcome of such cases.

There is a search engine containing some, but not all, the decisions delivered by higher courts in Hungary. However, the engine identified only two hits for the terms "Roma/Gypsy" and "equal treatment" for the years 2010-2013. In one of the cases, the Roma employee complained of harassment claiming that his co-workers had called him names referring to his ethnic origin, and the employer had failed to act upon his complaint.¹¹³ In the other case, a cook of Roma origin complained of discriminative dismissal due to a disciplinary violation, claiming when another cook had committed the same violation earlier, he had only been fined and warned.¹¹⁴ The respective courts rejected both claims.

In the first case, the Court partly did not find the nickname used by colleagues to amount to harassment (the co-workers called the plaintiff by the name of a celebrity known to be of Roma origin, however, according to the Court this could have been simply because the plaintiff and this person had the same family name) and partly did not see it proven that the plaintiff notified the employer about the perceived harassment.

¹¹² Interview with Gábor Gyöző, attorney at law at the Hungarian Helsinki Committee (27 November 2013).

¹¹³ Szegedi Ítéletábla, Pf.II.20.725/2009/3., 17 March 2010.

¹¹⁴ Kúria (Hungary's Supreme Court), Mfv.II.10.472/2011, Judgment of 6 June 2012.

In the second case, the Court accepted the justification that the difference between the two cases was that after the first violation (theft of food from the kitchen), the employer warned all cooks that if anybody is caught stealing food in the future, will be not only fined, but dismissed.

No relevant hits were identified for the terms “migrant/refugee/foreigner” plus “equal treatment”.

With regards to the low number of cases, we must first refer back to the above cited study.¹¹⁵ It states that the majority of Roma respondents cited the issues of discrimination and equal treatment as important, yet typically did not bring complaints to appropriate authorities or organisations. The study gave two reasons for this: the general lack of trust in institutions and a lack of information, as barely a third of respondents could name an institution or an organisation that could help them take action against discrimination. Less than one quarter of those interviewed mentioned the Roma self-government, and only a few mentioned the Equal Treatment Authority.¹¹⁶

Another reason – in relation to Roma complaints – may be a decrease in the litigation activities of the NGO Legal Defence Bureau for National and Ethnic Minorities (NEKI). NEKI was for a very long time the most important if not the only NGO providing free legal representation for Roma victims of discrimination. Due to the barriers of litigation outlined above, practically only with the assistance of NEKI could Roma victims of employment discrimination litigate the violation they had suffered with a fair chance of success. In the last few years NEKI’s focus in employment discrimination cases shifted from the courts to the Equal Treatment Authority, with no new employment lawsuits reported in the past three years.

The reason is that there are much fewer risks for the client in the Authority’s proceeding, as it is an administrative organisation, and as such, it is obliged by law to investigate and fully establish the facts of a given case, even if the parties do not set forth evidentiary motions (which they may do). Furthermore, administrative proceedings are significantly shorter than court cases, and neither fees nor the other party’s costs shall be paid by the complainant even if the complaint is rejected (unless he/she acted in bad faith). While the Authority may not grant compensation to the victim and may not oblige the discriminator to apologise or provide moral remedy in any other way, it is not forbidden to file a complaint to the court after the Authority has finished its investigation. Therefore it might be more efficient to start with a complaint to the Authority and decide about litigation in light of the Authority’s decision.

4.2.2 Non-judicial remedies

4.2.2.1 Ombudsman or equality body

Equal Treatment Authority

The Authority is a public administrative body responsible for ensuring equality and equal treatment by monitoring the implementation of the Equal Treatment Act.¹¹⁷ It has powers to take action against any discriminatory act irrespective of the grounds of discrimination (sex, race, age, etc.) or the field concerned (employment, education, access to goods, etc.). It is competent to receive complaints and investigate matters in response to individual complaints, *actio popularis* submitted by NGOs and other stakeholders, or on its own initiative.

¹¹⁵ Neményi M. (leading researcher), Increase in legal awareness with regards to equal treatment between 2010 and 2013: focus on women, Roma, the disabled and the LGBT community, Equal Treatment Authority, Budapest, 2013., p.52.

¹¹⁶ *Ibid.* p. 52.

¹¹⁷ Act CXXV of 2003 on Equal Treatment and the promotion of equal opportunities.

The procedure may only be initiated within one year after the person affected became aware of the violation, and within three years after the violation took place. If the Authority has established the violation of equal treatment, it may a) order the cessation of the situation constituting a violation of law; b) prohibit the continuation of the conduct constituting a violation of law, c) order that its decision establishing the violation of law be published, d) impose a fine, e) apply a legal consequence determined in a special act. These sanctions can be applied jointly. The sum of the fine can range from HUF 50,000 (EUR 167) to HUF 6,000,000 (EUR 20,000). The decisions of the Authority are binding and may be made public.

The Equal Treatment Authority is authorised to try to resolve the conflict by forging an agreement between the parties, if the circumstances of the case seem to allow it. If the parties reach an agreement in the course of the procedure, the Authority includes the agreement in a formal decision; otherwise the Authority continues with the proceeding and decides on the case.

Between 2010 and 2013, the Authority handed down six decisions in workplace discrimination cases affecting the groups studied.¹¹⁸ In five accesses to employment cases, direct discrimination against Roma was found. In three of these, a settlement was reached between the parties, while in the two other cases, the Authority ruled against the party responsible for the discriminatory conduct. In another case with regards to a plaintiff of Arab origin, the Authority found that the plaintiff had been a victim of harassment at the workplace.¹¹⁹

Among these cases, one deserves to be mentioned, in which a Roma applicant was rejected when he applied for a job as a security guard for a company providing security services for a shop.¹²⁰ The applicant asked about the job in person several times, and met all the criteria. He saw that other applicants were hired for the same position while his application was repeatedly rejected. In this case, the Authority ruled that direct discrimination on the basis of ethnicity had occurred and fined the shop HUF 1.5 million (approx. EUR 5000). The high amount of the fine was welcomed.

With regard to the sanctioning practice of the Authority, it can be said that it can apply fines between cca. EUR 1000 and 17 000. The highest amount imposed was HUF 5 000 000 (EUR 16 670) on a bar.¹²¹ The case concerned ethnic discrimination on the basis of ethnicity in relation to the denial of entry. When imposing such a high fine, the Authority took into consideration the fact that the same bar had been found earlier to violate the ban on discrimination by not allowing access for persons of minority origin. The sanctions imposed by the Authority have shown a tendency of increase in the past years. On the other hand, the number of cases in which a fine was imposed has rapidly decreased. In 2012, for instance, the Authority only imposed a fine in two cases as opposed to 11 cases in 2011 and 20 in 2010.¹²²

Since the Authority began its operations, the number of complaints it has received has been growing continuously, which has led to an increase in its workload. In its first year, it received 491 complaints, while in 2012 it handled 2772 cases.¹²³ Besides dealing with complaints, the Authority

¹¹⁸ <http://www.egyenlobanasmod.hu/jogesetek/jogesetek>, accessed 7 August 2013,

¹¹⁹ Equal Treatment Authority, case nr. 25/2011,

¹²⁰ Equal Treatment Authority, case nr. 281/2010,

¹²¹ http://index.hu/kultur/eletmod/2009/12/23/tobb_millios_birsaggal_sujtottak_a_riot_mert_nem_engedett_be_feketeket/

¹²² <http://www.egyenlobanasmod.hu/jogesetek/jogesetek>, accessed 7 August 2013.

¹²³ http://www.egyenlobanasmod.hu/data/2012_tevekenyseg_szamok_tukreben.pdf, accessed 7 August 2013.

also carries out research in connection with equal treatment, holds trainings and – as part of its recently established reference network – it also holds office hours in every county.¹²⁴

Although the Authority is independent according to the law, it is itself an administrative body integrated into the state hierarchy functioning under the supervision of the Government. Since the change in government, the independence of the Authority has been criticised for the following reasons. One was that its president changed in 2010 for no work-related reason and the Advisory Board connected to the Authority was terminated.¹²⁵ Another critique raised by an expert in the field was an observation of the unwillingness of the Authority to impose sanctions on state bodies.¹²⁶

The Commissioner for Fundamental Rights

At present, there is one Commissioner in Hungary: the Commissioner for Fundamental Rights, who has two deputies responsible for the right of future generations and minorities respectively.¹²⁷ The Commissioner investigates violations of fundamental rights and initiates general or individual measures to remedy such violations. He has a restricted scope of powers to assist victims in pursuing their complaints, but can investigate into any authority, including the armed forces, national security services, local governments and policing organisations. He may request information, look into files, visit premises and can hear any employee of the examined authority. When finding a violation, the Commissioner issues recommendations, to which the supervisory body of the authority found to be in breach of fundamental rights must respond within 30 days. Further, the Commissioner may (i) petition the Constitutional Court; (ii) initiate criminal or disciplinary proceedings; and (iii) propose that a legal provision be amended, repealed or issued. The Commissioner's main publicity weapon is his annual report submitted to Parliament.¹²⁸

In 2012, the Commissioner paid special attention to employment-related issues, given that important changes had been enacted in legislation on employment contracts.¹²⁹ He found it important to – because of the changes and in order to protect the rights of workers – perform a comprehensive year-long series of studies to see how workers would be able to enforce their fundamental rights in employment, and the opportunities that the most vulnerable social groups could find work in. The Dignity in Work Project made a detailed investigation of, among other topics, the new employment system. Part of this included a series of investigations in various towns. It should be noted that as part of this project, the Commissioner also investigated whether Roma have access to equal opportunities within the public work system. This study included a wide range of talks with affected minority self-governments, representatives of human rights organisations and other experts. A comprehensive report was written as a result of these studies which formulated recommendations for the relevant authorities and ministries and general conclusions regarding the public work system.

¹²⁴ <http://egyenlobanasmod.hu/tamop/ugyfelszolgalat#aktualis>, accessed 7 August 2013.

¹²⁵ Hír24 online hírportál, Agnes Honecz is the president of the Equal Treatment Authority", 14 September 2010.

¹²⁶ The expert interviewed wished to remain anonymous.

¹²⁷ Act CXI of 2011 on the Commissioner for Fundamental Rights.

¹²⁸ <http://www.ajbh.hu/documents/10180/129110/AJBH+Besz%C3%A1mol%C3%B3%202012/9215dc04-4031-451e-b79c-eff2e2e63925?version=1.1>

¹²⁹ With regards to employment rights, changes were brought through the amendments to the Fundamental Law and to the Labour Code.

4.2.2.2 Mediation or conciliation

Act LV of 2002 on Mediation (hereinafter: Mediation Act) entered into force on 17 March 2003. Under Article 1 of the Act, its aim is to facilitate the settling of civil law disputes emerging in connection with the personal and property rights of private and other persons in cases where the parties' right of determination is not limited by law. As no such limitation exists in relation to Article 76 of the Civil Code on the ban on discrimination, victims of discriminatory acts are entitled to resort to the mediation procedure, once the statute enters into force.

Under Article 36, the agreement reached in a mediation procedure does not prevent the parties from asserting their claim in a court procedure. However, in these cases plaintiffs are liable to pay all costs.

Mediation by the Equal Treatment Authority

Under Article 64 of the GPSA, public administrative authorities are authorised to try to resolve the conflict through forging an agreement between the parties, if the circumstances of the case seem to allow it. Pursuant to Article 75 of the GPSA, if the parties reach an agreement in the course of the complaints procedure, the proceeding authority includes the agreement in a formal decision. If the attempt to have the parties reach an agreement is not successful, the authority continues its proceeding, and – depending on the result of the investigation – decides on the case.

As a public administrative body, the Equal Treatment Authority also has the above authorisations regarding friendly settlements. As of 1 October 2009, under Article 9 Paragraph (3) of the ETAD, the Equal Treatment Authority is obliged to try to forge a friendly settlement among the parties.

4.2.2.3 Labour inspectorate

There has been an unfavourable change in relation to the legal framework concerning labour inspectorates. Until 1 January 2012, Article 3 Paragraph (1) (d) of Act LXXV of 1996 on Labour Supervision prescribed that labour inspectorates (which have the power to impose significant fines) shall examine compliance with non-discrimination provisions. This power was somewhat weakened by the fact that although as a general rule labour inspectors proceed ex officio, under Paragraph (2) of Article 3 of the labour Supervision Act investigations into cases of discrimination could only be conducted upon the request of the victim. Furthermore, in practice, inspectorates received and investigated few discrimination complaints.

However, an amendment to the law completely deprived the labour inspectorates from their power to look into discrimination cases. The reasons attached to the amending legislation stated that since the Equal Treatment Authority has the power to investigate discrimination complaints in the field of employment, there is no point in maintaining the same authorisation for labour inspectorates.

4.3 Civil society initiatives

4.3.1 Trade Unions

In 2012, at the same time that the public work programmes were launched, the Independent Union of Employees in Public Work (KÖFÜSZ) was founded as well.¹³⁰ The aim of this organisation is to improve the working conditions of public work employees, advocating for them at the national and local levels and providing legal assistance to them.

¹³⁰<http://www.liganet.hu/page/88/art/6772/akt/1/html/kozfojlalkoztatottak-szakszervezete-alakult.html>, accessed 7 August 2013.

4.3.2 NGOs activities

An NGO which is particularly noteworthy is NEKI, active for more than two decades in the area of discrimination (including discrimination on the workplace) by providing legal assistance to victims of discrimination, performing research and monitoring and holding trainings in this area for various groups in society.¹³¹ Over the last two years, it has especially focused on public work programmes, in close collaboration with the Hungarian Civil Liberties Union (HCLU). As part of this, a set of practical guidelines were put together for the use of employees in public work which contains the most important information connected with public work and a list of possible legal remedies. The publication was distributed nationwide.¹³² They also wrote a comprehensive report – in collaboration with the HCLU as well – about the legal and practical issues connected with public work programmes, which was used by the Ombudsman in his above-cited reports.¹³³

A good practice that can be used in countering discrimination in the workplace that should be mentioned is situation testing. The introduction and popularisation of this method in Hungary and in Europe can also be traced to NEKI¹³⁴. The usual practice of situation testing is that if they receive a complaint (usually about the denial of access to goods and services or recruitment-related breaches, in both cases based on ethnic origin, i.e. against Roma persons) and then send situation testers to the premises. The results of the testing are accurately recorded by the testers and are used, along with the witness testimonies of the testers, as evidence in civil or labour lawsuits launched on behalf of the original victim. NEKI issued a very detailed methodological guide on situation testing and also conducts trainings on its theory and practice.¹³⁵

Another NGO that should be mentioned is the Partners Hungary Foundation, which plays the role of mediator at the local level and holds trainings on mediation across the country.¹³⁶ This Foundation also coordinated the above-cited Civil Report, made as part of the implementation of the Hungarian National Social Inclusion Strategy and which provides a detailed analysis of the employment situation in Hungary.¹³⁷

In the area of migration, the NGO Menedék – Hungarian Association for Migrants needs to be mentioned, as it assists in the promotion of the social and cultural integration of those refugees and migrants who are planning to stay in Hungary. This is done through targeted programmes and projects through a number of means, including the provision of personal assistance to migrants, conducting campaigns aimed at positively influencing the attitudes of the majority society and organising trainings to strengthen professional competencies of those involved in refugee affairs.

Good-practices of Menedék include their newly evolving practice of targeted job search. Realising that without personal contacts, members of vulnerable migrant groups stand very little chance of finding jobs, Menedék social workers started to look for employers who – due to their personal histories and/or interests or in line with their companies' CSR policies – are more willing to employ

¹³¹ <http://www.neki.hu/magunkrol/>, accessed 7 August 2013.

¹³² <http://www.neki.hu/utmutato-kozmunkasoknak/>, accessed 7 August 2013.

¹³³ Report of the Parliamentary Commissioner for Civil Rights in case no. 5317/2012.

¹³⁴ http://dev.neki.hu/wp-content/uploads/2013/05/522_tesztel+%C4%99si-tanulm+%C3%ADny.pdf, accessed 7 August 2013.

¹³⁵ Ibid.

¹³⁶ <http://www.partnershungary.hu/>, accessed 7 August 2013.

¹³⁷ Civil Report, Chapter on employment pp. 65-81.

migrants. The aim therefore is to map up the labour market needs in order to be able to match their clients with specific demand from employers who are known not to be biased against migrants.¹³⁸

Another noteworthy initiative is the campaign “Pay attention to what they can give you”, which calls the population’s attention to the contributions of foreign cultures to contemporary Hungarian culture.¹³⁹

4.3.3 Other civil society initiatives

The work of the Polgar Foundation, the Autonomia Foundation and the Roma National Self-Government (RNS) should also be noted, though more in connection with employment than with discrimination in the workplace. All three organisations are very active in the field of employment, with Roma as their primary target group. The Polgar Foundation operates primarily in villages with high proportions of Roma populations in the North-Hungary region, supporting the implementation of grass-roots employment programmes based on ideas from local citizens.¹⁴⁰ The Autonomia Foundation meanwhile facilitates the efficiency of government and European programs targeting the improvement of labour market conditions of Roma and the poor.¹⁴¹

Based on the Framework Agreement between the government and the RNS, the RNS has acted as the government’s partner in implementing the National Social Inclusion Strategy, and is responsible for several of its employment projects as well.¹⁴² One programme employed 360 persons between May 2012 and March 2013. The result of the programme is that Roma assistants provided information about public work; helped Roma in public work programmes and in their placement on the primary job market; served as contacts with the county employment centres, public work employers and family aid organisations; prepared a database of Roma job-seekers, and employers/public work employers in the county; as well as helped in the job market (re)socialisation process.¹⁴³

A detailed critical analysis of the agreement between the government and the RNS, as well as its implementation can be found in the Civil Report.¹⁴⁴

In the area of migration, one of the civil society initiatives deserving to be mentioned is the Migrant Solidarity movement. The movement is not a NGO, and all its members are volunteers. The movement’s philosophy is not to represent migrants, but to work together with them and facilitate their direct participation, e.g. through assisting them in organising demonstrations, contacting high ranking state officials directly in relation to issues that are important for the migrant communities, etc.¹⁴⁵

¹³⁸ Interview with András Kováts, Director of Menedék, 3 September 2013.

¹³⁹ <http://menedek.hu/figyeljra/index.html>, accessed, 4 September 2013.

¹⁴⁰ <http://polgaralapitvany.hu/programjaink/foglalkoztatás/>, accessed 7 August 2013.

¹⁴¹ <http://www.autonomia.hu/en>, accessed 7 August 2013.

¹⁴² <http://oronk.hu/>, accessed 7 August 2013.

¹⁴³ Report of the Ombudsman, AJB. 5317/2012., p.9.

¹⁴⁴ Civil Report, p. 77. – this needs more information. Date of report, where it was published, authors etc.

¹⁴⁵ <http://migszol.com>, accessed 3 September 2013.

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

Compared to previous years, the degree and type of discrimination suffered by Roma and migrants has not changed significantly. It can generally be said that prejudice permeates all strata of society and forms the basis of institutionalised and non-institutionalised discrimination which can be seen on the labour market, in education, healthcare, housing policies, the media and in other areas of everyday life. It is important to note it was in 2012 when the trial began regarding the six (serial) murders of Roma – a crime which sent deep shockwaves through the Hungarian Roma community. Except for expressions of solidarity by civil society, this did not lead to a broader condemnation of racism in Hungary.

Although the causes for strong prejudices against Roma are a complex issue, it is certain that both political discourse and the portrayal of Roma in the media contribute significantly to the current situation.¹⁴⁶ Every party which has come to power since the change in regime has, to different degrees and in various ways, contributed to this deterioration in political discourse. Expressions such as "Gypsy crime" and "living on aid instead of from work" are still part of public discourse today. Generally, a paternalistic approach is taken in dealing with and solving issues affecting Roma.

Since the proportion of foreigners in the Hungarian population is as low as 2%, most people do not have any personal contacts with migrants. Besides traditional attitudes and perceptions and the increasing popularity of the political party Jobbik (which – as part of the “package” – attacks not only the Roma and Jewish people, but also migrants), Hungarian media also plays an important role in presenting a negative image of migrants. According to a 2011 research by the Hungarian Helsinki Committee, migrants, asylum seekers and refugees are often reported as criminals or threaten national security, while personal stories and articles dealing with the culture of migrants hardly appear.¹⁴⁷

5.2 Conclusions and recommendations

The protracted economic crisis and increasing unemployment in Hungary over the last few years have caused serious problems in the labour market to surface. One phenomenon is that employees are increasingly exposed and vulnerable as a result of the crisis and the limited number of jobs. This in turn makes it increasingly important to ensure equal opportunity and the protection of the rights of disadvantaged groups in the field of employment.

In this report, we have addressed a narrow segment of employment-related problems with particular attention to discrimination on ethnic grounds between March 2012 and March 2013. Within this topic, we have examined discrimination on ethnic grounds with regards to two affected groups: Roma and migrants.

A commonly-held and very popular misconception is that Roma do not want to work. Meanwhile, field research and studies show that a significant majority of Roma are engaged in gainful activities – only the work that they perform is often considered ‘unofficial’, and thus invisible. Most work on the black market or doing temporary work instead of working on the primary labour market.¹⁴⁸

¹⁴⁶ Bodrogi B., "Gypsy stereotyping in the media", CivilMedia, 26 November 2012.

¹⁴⁷ Prischetzky R. and Szabó E., Migrants in the Hungarian Media, or Immigration and Foreigners as seen by the Press in 2011, Hungarian Helsinki Committee, Budapest, 2011.

¹⁴⁸ Dignity in Work Project, p. 70.

According to the most recent research (2011), only one-quarter of Roma between the ages of 15 and 64 are employed.¹⁴⁹ The same study sets the rate of employment of Roma women between 13% and 16%. However, the rates of temporary employment and informal, invisible employment are extremely high among Roma of working age. Compared to other workers, the employment situation of Roma is much more exposed, uncertain and lower-paid, as employees in informal and temporary work do not benefit from any form of protection.

The chances of Roma on the labour market are increasingly restricted by discrimination in Hungary – a phenomenon which needs to be dealt with on a broad, systemic level.

Due to the fact that regular migrants may – as a rule – only enter Hungary if their employment is secured, primarily persons entitled to different forms of international protection are those who have serious hardships entering the labour market. Their access is hindered by the general biases of society aggravated by the deficiencies of the legal framework discouraging employers from hiring migrants.

The following constitutes a summary of the main findings and recommendations of this report:

Public work employment contracts

The mere fact that the legislator treats contracts for public work as a special category of employment contracts does not provide a constitutional basis for applying regulations that are less favourable. On the contrary, public work employees need more guarantees and regulations ensuring their protection.¹⁵⁰

Equal opportunity and discrimination in public work

In this respect, Roma job-seekers are vulnerable in several respects: the unfavourable rules applying to public work (connection with the welfare system, obligation to cooperate, lower wages, etc.) and the prejudice (not always intentional) of local leaders and authorities can all result in multiple sources of discrimination for Roma.

Discrimination in other areas of employment

Outside of the public work system, an examination of the types of discrimination show that both the Roma and vulnerable migrants most frequently experience a disadvantage at the hiring stage, specifically as regards to the entry to the labour market. If we examine this phenomenon over the last 10 years, the case-law, virtually without exception, points to difficulties and obstacles to obtaining employment. Because of the lack of research and case-law, we have relatively little information about discrimination in the workplace towards the groups surveyed. Between 2010 and 2013, there have been no rulings by either a court or an administrative tribunal (EBH) in this respect.

Ability of workers to enforce their rights

According to a recent study, the majority of Roma respondents cited the issues of discrimination and equal treatment as important, yet typically they had not brought complaints to appropriate authorities or organisations.

¹⁴⁹ The UNDP/WB/EC survey was conducted in May-July 2011 on a random sample of Romani and non-Romani households living in areas with higher density of Roma populations in the EU Member States of Bulgaria, Czech Republic, Hungary, Romania, Slovakia etc., approx. 750 Romani households and approx.350 non-Romani households living in proximity were interviewed.

¹⁵⁰ Dignity in Work Project, p. 128.

Opportunities for legal remedies

Although the Authority has service centres in every county in Hungary, these services are still not easily accessible to persons in highly disadvantaged situations.

Data collection

Due to strict interpretation of regulations on data processing, data on ethnic background currently are not officially collected in Hungary. Thus, because of the lack of systematic (or of virtually any) data collection by official authorities, there are no databases on which researchers and statistical experts can rely, so they need to devote much effort to collecting data directly from data subjects. This of course makes such research very expensive and time-consuming. Accordingly, national surveys are very rare, which constitutes a severe obstacle to assessing country-wide trends and problems and in designing positive measures.

Research and impact studies

However, no comprehensive study, impact study or assessments on programmes to promote Roma employment have been made over the last few years.

Recommendations:

Public employment

- Studies and analyses should be made of the public work system and of its macroeconomic effects in order to facilitate policymaking in this area.
- The public work system should be designed in a way that assists workers in entering the open job market.
- Guarantees should be built into the public work system to ensure conditions for equal opportunity and work that respects human dignity. To this end, the recommendations and legislative amendments formulated in the Dignity in Work Project should be followed.
-
- A monitoring system should be set up that is independent from local governments and that uses set criteria to evaluate access to public work programmes and equal treatment of Roma and minority groups.
- Free legal aid services should be set up that are accessible at local level or by telephone, in order to answer questions from Roma and public work employees in disadvantaged situations regarding public work employment contracts and equal treatment.
- Yearly trainings should be held for staff working in employment centres on public work programmes, representatives of public work employers, labour inspection staff, as well as the mayors and town clerks of affected local governments. These trainings should cover the principle of dignity for all, how the requirements of equal treatment should be met and how cooperation-based mediation processes can be used in organising and operating public work programmes.

Migrants

- Language courses offered to persons under international protection should be reviewed, made more flexible and tailored to the needs of the target group;
- Labour safety education should be offered to migrants in languages other than Hungarian so that the lack of high level Hungarian command would not be an obstacle of access to employment in jobs where language skills do not pose a genuine occupational requirement;
- Benefits should be offered to employers employing persons under international protection in a similar way that such benefits are available for employers in relation to other vulnerable groups (career starters, persons with caring needs, persons with disabilities), for instance actual financial

support, or entitlement to a reduction in the social security contributions employers employing migrants are obliged to pay after the employee.

- The same regulation should pertain to stateless persons and persons with a tolerated status in relation to access to employment as to persons under international protection.

Data processing

- Creating the legislative conditions for the simplification of the collection and processing of ethnicity-related data.

Studies

- Prior impact assessment studies should be conducted on government programmes related to employment, and in particular on programmes designed to assist the employment situation of disadvantaged groups.

6. Bibliography

European Union

Discrimination in the EU in 2012, Report. Special Eurobarometer 393, Wave EB77.4. TNS Opinion & Social

http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf, accessed 7 August 2013

http://fra.europa.eu/sites/default/files/fra_uploads/2109-FRA-Factsheet_ROMA_HU.pdf, accessed 7 August 2013

International organisations

<http://www.neujobs.eu/publications/working-papers/active-labor-market-policies-impact-potential-roma-employment-five-count>, accessed 7 August 2013

<http://www.neujobs.eu/publications/working-papers/active-labor-market-policies-impact-potential-roma-employment-five-count>, accessed 7 August 2013

Governmental sources

2011 Annual Census, Hungarian Central Statistical Office, Budapest, 2013

Hungarian Ministry of Interior, Migration Strategy and Seven-year Strategic Planning Document related to the Asylum and Migration Fund to be established by the European Union in the 2014-2020 Cycle

<http://www.egyenlobanasmod.hu/jogesetek/>, accessed 7 August 2013

Dignity in Work Projekt, 2013/4, AJB Projekt Papers of the Parliamentary Commissioner for Civil Rights

Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 5317/2012

Report of the Parliamentary Commissioner for Civil Rights in case no. AJB 3025/2012 (Comprehensive report)

<http://romagov.kormany.hu/download/8/e3/20000/Strat%C3%A9gia.pdf>, accessed 7 August 2013

National legislation and case law

Act CXXXIX of 2009 on the 2011 Census

Act CXI of 2011 on the Commissioner for Fundamental Rights

Act CXXV on Equal Treatment and the Promotion of Equal Opportunities

Government Decree 301/2007. (XI. 9.) on the Implementation of Act LXXX of 2007 on Asylum

Act XCIII of 1993 on Labour Safety

Act CLXXIX of 2011 on the Rights of Nationalities

Act CXII of 2011 on the Right to Informational Self-Determination and the Freedom of Information

Act IV of 1991 on the Promotion of Employment and the Allowances for the Unemployed

Act III of 1993 on social welfare and social aid

Non-governmental organisations

Bodrogi B., "Gypsy stereotyping in the media", CivilMedia, 26 November 2012.

Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary,

http://romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf,
accessed 7 August 2013

Gyulai G., Statelessness in Hungary. The Protection of Stateless Persons and the Prevention and Reduction of Statelessness, Hungarian Helsinki Committee, Budapest, 2010

Gyulai G., Foreigners in Hungary, a Guide for Journalists on Presenting the Theme of Migration and Asylum, Hungarian Helsinki Committee, Budapest, 2011

Prischetzky R. and Szabó E., „Migrants in the Hungarian Media, or Immigration and Foreigners as seen by the Press in 2011”, Hungarian Helsinki Committee, Budapest, 2011

<http://www.neki.hu/archivum-feher-fuzet/>, accessed 7 August 2013

<http://ataszjelenti.blog.hu/> accessed 7 August 2013

Media reports

Index.hu, "Jobbik: Requesting a list of Jews", 26 November 2012

Hvg.hu, „ Facism is a virus and Jobbik is its host” demonstration on Kossuth square”, 2 December 2012

Magyar Hírlap Online, "Ki ne legyen", Bayer Zs., 5 January 2013

Népszabadság, „The Vámoszabadi Spirit”, Hajba F., 28 July 2013

Index, "No Use Demonstrating, the Refugee Camp will Open in Vámoszabadi", 20 June 2013

Heti Világgazdaság online, "Roma face obstacles from the job interview onwards", 20 September 2011

Hír24 online hírportál, "Agnes Honecz is the president of the Equal Treatment Authority", 14 September 2010

<http://ciganyvadaszat-per.blog.hu/>

<http://lehetmas.hu/hirek/34485/kozmunkasok-bere-alkotmanybirosaghoz-fordul-egy-kozmunkas-az->

Imp-segitsegevel/, accessed, 7 August 2013

Other sources

Messing V., „Devided labour market” (Kettévágott Munkapiac), in Társadalmi integráció a jelenkori Magyarországon, Kovács, Dupcsik, Tóth, Takás (ed), Osiris, 2012

Kemény I., Janky B., On the employment and income relations of Gypsies based on the 2003 annual Gypsy study, In Esély 2003/6. Budapest

Mód P., Roma Society 2010., Marketing Centrum OPK Kft

Simonovits B. and Koltai J., Relations between Employers' Attitudes, Labour Market Employment of Employees with Protected Characteristics and Insuring Proper Working Conditions, the 4th study of the "Equal chances on the labor market" research series , Budapest 2011.

Hárs Á., "The Labour Market Situation of Third Country Migrants", in Immigration and Integration. Hungarian Data, European Indicators), Kovács A. (ed), MTA Társadalomtudományi Kutatóközpont, Kisebbségkutató Intézet, Budapest, 2013

Neményi M. (leading researcher), Increase in legal awareness with regards to equal treatment between 2010 and 2013: focus on women, Roma, the disabled and the LGBT community, Equal

Treatment Authority, Budapest, 2013.

Simonovits B., „Discrimination against Immigrants – from a Majority and Minority Perspective”, In: Immigration and Integration. Hungarian Data, European Indicators), Kovács A. (ed), MTA Társadalomtudományi Kutatóközpont, Kisebbségkutató Intézet, Budapest, 2013

Fleck G. and Messing V., Transformations of Roma employment policies, In Focus, Labour market discrimination, Budapest, 2010

Huddleston T. and Tjaden J. D., Immigrant Citizens Survey – How Immigrants Experience Integration in 15 European Cities, King Baudouin Foundation and Migration Policy Group, Brussels, 2012

Várhalmi Z., "Migrant Entrepreneurs in Hungary", In: Immigration and Integration. Hungarian Data, European Indicators), Kováts A. (ed), MTA Társadalomtudományi Kutatóközpont, Kisebbségkutató Intézet, Budapest, 2013

List of experts interviewed

András Kováts, Director of Menedék – Hungarian Association for Migrants, 3 September 2013 and 3 december 2013.

Erika Muhi, Director of Legal Defence Bureau for National and Ethnic Minorities, 30 July 2013

Simon Mihály, lawyer of the Hungarian Civil Union Liberties, 18 July 2013

Bori Simonovits, researcher at TARKI (Hungarian Research Centre), 22 August 2013

Júlia Iván, Legal Officer of the Hungarian Helsinki Committee's Refugee Program, Budapest, 5 September 2013

Gábor Gyulai, Head of the Hungarian Helsinki Committee's Refugee Program, Budapest, 2 September 2013

Gábor Győző, attorney at law, Hungarian Helsinki Committee, 27 November 2013

Two experts interviewed wished to remain anonymous



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013