

## **‘Irregularities’ in the Hungarian legislation on third-country nationals’ employment**

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### **Abstract:**

*The Hungarian law on third country nationals’ employment is overcomplicated, many times incoherent and instead of attracting immigrant workers to fill the labour force shortages, it restricts their regular employment possibilities and helps to maintain irregular forms of employment. This article will illustrate this statement by employment and labour inspectorate statistics coupled with examples from the Hungarian legislation on third country nationals’ employment.*

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The complex nature of migration issues would require a comprehensive migration strategy. In Hungary, there have been a couple of suggestions to adopt such a document, but at this moment no broad migration strategy exists.<sup>1</sup> Within the different policy areas, immigration-related objectives are either completely missing or have a sporadic character.<sup>2</sup>

The employment of foreigners should be one of the strategic policy areas to meet economic objectives both at national and European level and its prominence should be reflected in both employment and migration policies. Yet, according to a study from 2002, the Hungarian legislation’s primary aim in relation to immigration and migrants’ employment was to protect the Hungarian labour force.<sup>3</sup> The policies are reinforced by the general fear of the Hungarian public opinion that foreigners would potentially endanger Hungarians’ labour market position – despite the fact that immigrants’ share on the Hungarian labour market, compared to the total number of employees, is around 3-4 per cent, and they are usually employed in the most competitive sectors.

These fears appear all the nonsense especially in the light of a survey published in 2012 by Man-Power Group, which reported that 23 per cent of the interviewed companies indicated that it is labour force shortages that affect them negatively. The same study suggests that the

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<sup>1</sup> Up to this moment there are no concrete plans, however, according to Section five of Government Decree 1657/2012. (XII. 20.), a comprehensive migration strategy need to be created for the period of 2014–2020.

<sup>2</sup> Fazekas, Károly – Scharle, Ágota (2012) ‘A magyar foglalkoztatáspolitikai két évtizede, 1990-2010’ (Budapest)

<sup>3</sup> Kiss, Gyula (2002) ‘Az Európai Unió munkajoga’ (Budapest, Osiris) p. 40

highest labour force shortages are present, among others, in the professions of skilled workers, operators, accountants and computer scientists.<sup>4</sup> This suggests that there is a labour market gap which could be filled with migrant workers – statistical data underline this.

According to statistics of the National Employment Service, 11,056 individual work permits were issued in 2012 to third-country nationals. This means that by 31. December 2012, 18,418 third-country nationals had a valid work permit in Hungary. A slight increase (4.7 per cent) compared to 2011 is a result of the rise in the number of immigrants from Asia. In 2012, 26.5 per cent of all work permits was issued in the commerce, 20 per cent in the processing, 15.6 per cent in the catering and 8.6 per cent in the construction sectors. The same data indicate that the most work permits were issued for the Chinese (3,202), the Ukrainians (2,170) and the Serbians (753) in 2012.<sup>5</sup>

However, when emphasizing the high number of skilled workers among migrants, it is important to note that migrants often face obstacles when it comes to recognition of their education and skills. A good illustration for this is that between October 2011 and October 2012 only five EU Blue Cards were issued within Hungary.<sup>6</sup>

Another difficulty migrant workers often face in Hungary is irregularity. Irregular work practices are extremely widespread in the Hungarian economy in general. A World Bank report in 2007 said: ‘Hungary has one of the highest levels of undeclared labour in the EU’.<sup>7</sup> Working outside the formal sector has been common since the 1960s in Hungary and it has remained widespread even after 1990s. ‘Unregistered work and activity were tolerated and accepted as an important component of the ‘social peace’<sup>8</sup>– an element that helped compensate the shortcomings of the social security scheme.

Irregular work is even more common in sectors with seasonal or casual employment character where also migrant workers are typically employed in Hungary. In 2011, the Labour Inspectorates investigated 21 931 employers and 199 118 employees. Undeclared labour amounted to 14 per cent of the total number of various labour law violations. According to the results, 20 per cent of all undocumented workers (not only foreigners) were employed in the

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<sup>4</sup> ‘Munkaerőhiány az ipari termelő cégeknél’, Népszabadság, 30.05.2012 Available at: [http://nol.hu/lap/mo/20120531-munkaerohiany\\_az\\_ipari\\_termelo\\_cegeknel](http://nol.hu/lap/mo/20120531-munkaerohiany_az_ipari_termelo_cegeknel)

<sup>5</sup> Székács, Tamás (2012) ‘A külföldi állampolgárok magyarországi munkavállalásának főbb sajátosságai’ Nemzeti Foglalkoztatási Hivatal Available at: [http://www.afsz.hu/engine.aspx?page=stat\\_kulf\\_munkavall\\_mon](http://www.afsz.hu/engine.aspx?page=stat_kulf_munkavall_mon) p. 5-13

<sup>6</sup> ‘Intra-EU mobility of third-country nationals’ (2012) EMN FOCUSSED STUDY, Hungary Available at: <http://emn.intrasoft-intl.com/Downloads/download.do;jsessionid=FD719DBCC751DE29FE6D6707C102932B?fileID=4116> p. 7, 16

<sup>7</sup> World Bank (2008) ‘Reducing undeclared employment in Hungary – synthesis report’ Available at: <https://openknowledge.worldbank.org/handle/10986/8115>

<sup>8</sup> Hárs, Ágnes – Sík, Endre (2008) Hungary – Towards Balanced Tightening of Regulations on Irregular Employment In: Kupiszewski, Marek – Mattila, Heikki (2008) ‘Addressing the irregular employment of immigrants in the European Union: between sanctions and rights’ (Budapest, International Organization of Migration) p. 93

construction, 8 per cent in commerce, 11 per cent in the catering and 30 per cent in security service sectors.<sup>9</sup>

Restrictive employment policies and the law on foreigners' employment force many migrant workers to get involved in 'shadow activities'.<sup>10</sup> Experts usually identify specific problems: firstly, incoherent regulation and the system with regard to issuing work permits; secondly, the inefficiency of the law regarding foreigners' seasonal employment; and thirdly, the concessive nature of guidelines in terms of punishment and sanctioning.<sup>11</sup>

Concerning the first, the employment of foreigners is (over)regulated and highly restricted by the Employment Act and Government Decree 16/2010.<sup>12</sup> The procedure of obtaining a work permit is long and highly bureaucratic. The process needs to be initiated by the employer and should include a labour market survey in addition to the assessment of health and qualification certificates. Only after this evaluation can the employer apply in its country of origin for a labour visa and in Hungary for a residence permit. In addition, the obtained work permit is issued for a specific workplace and only for one year. When the employee wants to change the workplace or prolong the permit, this whole procedure starts from the very beginning.

Regarding the second element, foreigners' seasonal employment, statistical data suggest that even if it is possible to obtain certificates with simplified administrative procedures and taxation of labour in certain sectors, they are only used in 'emergency case' of an inspection.<sup>13</sup> Since 2009 the number of these permits has been under 500 yearly.<sup>14</sup> One of the reasons for this could be that seasonal migrant workers still get employed outside the official labour scheme and the potentials of the legislation remain unutilized.

A good illustration of inadequate regulation which in the end reinforces irregularity is the recent law on domestic work. Female domestic workers (especially from the neighbouring countries) often get employed at Hungarian households. According to law XC of 2010 on domestic work, it is possible to employ domestic workers (irrespective of the working hours or salary) outside the formal economy and without the obligation of any tax payments or social security contributions. The payment of a registration fee (1000 Hungarian Forint, which is equivalent with approximately 3.4 Euros) is the only requirement employers are obliged to meet in this situation. There are two serious problems with this regulation. Firstly, that the registration fee does not entitle domestic servants to social security provisions (she or he needs to pay the contribution individually) and as a result of the lack of any state control, they

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<sup>9</sup> 'A munkáltatók többsége még most sem tartja be a szabályokat' 21.04.2012 MTI Available at: [http://hvg.hu/kkv/20120421\\_munkaltatok\\_szabalysertes](http://hvg.hu/kkv/20120421_munkaltatok_szabalysertes)

<sup>10</sup> Juhász, Judit – Szaitz Mariann (2007) 'Migráció és feketemunka Európában II- Migration and Irregular Work in Europe (MIGIWE II)' (MTA Földrajztudományi Kutatóintézet Panta Rhei Társadalomkutató Bt.)

<sup>11</sup> See supra note 7 p. 31

<sup>12</sup> Act IV of 1991 on Employment

<sup>13</sup> See supra note 9 p. 111

<sup>14</sup> See supra note 4 p. 5

become extremely vulnerable. Secondly, the person employed under this law will become visible before the competent authorities with the registration and might be sanctioned if it turns out that no social contribution is paid.

It is, however, more than likely that the employment of undocumented migrant workers has been brought about by major exigencies: both the employer and the employee are somewhat forced into this situation. While employers feel constrained to make profit, employees struggle for their jobs. In the end it looks that instead of trying to counter-act, Hungarian laws, reinforce this process and foster the maintenance of irregular forms of employment.

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