

No work permit, no protection – legal guarantees for migrant workers in Hungary

Borbála Anna Bodolai

Abstract:

What legal guarantees are provided for migrant workers in Hungary? When taking this question into consideration, attention is needed to be paid to the rights of both documented and undocumented migrant workers. Our findings show that as a consequence of Hungary's nationalising employment policies, which despite its economic nonsense primarily aim to protect the Hungarian labour market from foreign workforce, undocumented migrant workers are basically excluded from the access to health care, education or justice, and labour rights are not guaranteed to them. Apart from being deprived of the same rights that natives enjoy, regular migrant workers might also face discrimination stemming from their status.¹

In Hungary, 11.056 individual work permits were issued for migrants in 2012, and this number included 170 seasonal work permits in the sector of agriculture.² These statistics do not include migrant workers with a status of permanent residence or immigrant, or those who are – according to Government Decree 16/2010 – exempt of the requirement of employment authorisation.³ The exact number of undocumented migrant workers is not exactly known, but research data and labour inspectorates' statistics prove the presence of foreign informal labour

¹ In general, the system of different immigration status is very fragmented in Hungary. According to Act II of 2007 on Entry and stay of third-country nationals, there are seven different kinds of residence permits and four different kinds of settlement permits (temporary residence): 1) settlement permit issued before the Act took effect 2) temporary settlement permit 3) national settlement permit 4) EC settlement permit. Employment of third-country nationals requires authorisation (a work permit and a residence permit authorizing third-country nationals to engage in 'gainful employment', however, there are exceptions in the law. Among others, third-country nations who hold the certificate of national settlement permit or immigrant (certificate of national settlement permit before the new law took effect) do not need an authorisation if they want to get employed. The difficulty is that different rights are associated to these different kinds of status.

² 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 p. 5-13

³ Hárs, Ágnes 'A külföldi munkavállalók statisztikai számbavételének kérdéseiről' Available at: http://www.demografia.hu/letoltes/kiadvanyok/Demografia/2003_2-3/Hars%20Agnes_tan.pdf p. 237

in the construction, agriculture sector and domestic services (domestic servant, maid, nursing children or care of elderly people) in Hungary.⁴

Undocumented migrant workers (i.e. those lacking required authorisation for gainful employment) are basically deprived of any legal guarantees. Access to legal aid and education for their children are basically non-existent. Since undocumented migrants do not have a registered address, in most cases they are refused services by hospitals and general practitioners too. This also means that undocumented migrants may access for free only emergency care or need to pay for medical services (sometimes in advance). A study on labour rights of undocumented migrant workers, quoted in the interview conducted with the head of the National Labour Inspectorate indicated that ‘there is some contradiction in the regulation’.⁵ Illegally employed foreigners are covered neither by the Labour Code nor by the Law on Labour Inspectorate. The reason for this is that foreigners cannot be illegally employed, consequently no labour relation exists. In order to enjoy any legal guarantee, migrant workers need to have the proper authorisation to work and an adequate residence permit.

However, even a legal status and proper authorisations do not guarantee equal treatment for migrant workers with the majority in Hungary. Concerning the access to health care by migrants: a reform, which started in the 1990s in Hungary, has replaced the universal insurance scheme with a system relying on health insurance contributions by the employer. According to the Hungarian health care and social security regulation⁶, all social service provisions depend on the registration of a permanent address, which is the basis for issuing the social security card. Migrants can only contribute to the public insurance scheme if they are regularly employed and have a permanent address in Hungary.⁷ In the absence of the social security card, migrants can only contribute to the private insurance scheme. However, this can be extremely expensive and even as high as the minimum wage per month.⁸

When it comes to the access to education, many international agreements and covenants clearly state the right to education for children independent of their status, to which Hungary is also a party.⁹ Despite clear provisions of these international legal acts and the contracting states’ general duty to comply, there is a discrepancy between the provisions and the daily

⁴ ‘Employment and working conditions of migrant workers —Hungary’ Available at: <http://www.eurofound.europa.eu/ewco/studies/tn0701038s/hu0701039q.htm>

⁵ See supra note 5 p. 112

⁶ Act CLIV of 1997 on health care and Act LXXX of 1997 on persons entitled to social security benefits

⁷ Many migrant workers are forced to become entrepreneurs as a result of the complicated bureaucratic procedure for obtaining a work permit, which will not satisfy these criteria.

⁸ ‘Undocumented Migrants’ Health Needs and Strategies to Access Health Care in 17 EU countries’ (June, 2010) Country Report – Hungary (PICUM- Platform for International Cooperation on Undocumented Migrants) Available at: <http://files.nowhereland.info/711.pdf>

⁹ See for example Article 28 of the United Nations Convention the Rights of the Child, Article 2 of Protocol 1 of the European Convention on the Rights of the Child (case: Timishev v. Russia), Article 17 of the revised European Social Charter

practice of ensuring these rights in Hungary. Hungary is one of those countries, where the law only mentions the right to education for migrant children with regular residence permits.¹⁰

Provisions in relation to migrants' education are set forth in the law on Public Education Act.¹¹ Article 110 (1-9) of this law extends the right to education to non-Hungarian nationals who hold the legal status of immigrant, permanent resident and to minors with humanitarian residence permit but accompanied by a guardian or minor holding a residence permit jointly with his or her parents. However, if the stay is less than one year long, education will only be compulsory on the request by a parent.

Despite the guarantee to have the access to education in case the stay exceeds one year, there may be a myriad of obstacles, which in practice could prevent the enjoyment of the right to education by migrant children. These may include the followings: administrative hurdles for the child and for the school, discrimination and discretion, fear of being apprehended, integration and motivation.¹²

The Act on Legal Aid¹³ provides for the access to justice for socially disadvantaged people, such as to receive professional legal advice and representation in courts, which helps them assert their rights and resolve legal disputes. Under the current regulation, legal aid is available in both civil and criminal proceedings. The Act itself does not specifically mention undocumented migrants or migrant workers. Non-Hungarian nationals may require legal aid if they are asylum seekers and victims of human trafficking, however, it is unclear from the law whether third-country nationals in general can require legal aid.¹⁴

As for labour rights, the Labour Code does not contain any special provisions on migrant workers.¹⁵ A good illustration of the discrimination against regular migrant workers is the regulation on their status when it comes to losing the job positions. According to the Labour Code, a migrant worker would be entitled, for example to unemployment guarantees in case of losing the job since he or she pays all social security taxes in Hungary including deductions to unemployment fund.¹⁶ But when a migrant actually loses the job, he or she also automatically loses the legal status and residence and will never get unemployment support. Such situation forces this migrant worker to leave Hungary or stay in illegality in the country.

¹⁰ Report by the Rapporteur: Mr Pedro Agramunt Font De Mora (16 September 2011) 'Undocumented migrant children in an irregular situation: a real cause for concern' (Council of Europe) *CoE Doc. 12718*

¹¹ 1993 LXXIX Public Education Act amended in 2003 by Act LXI of 2003 (Preambles, Articles 3, 6, 110)

¹²For further information see CoE Doc. 12718 Report by the Rapporteur Rapporteur: Mr Pedro AGRAMUNT FONT DE MORA, Undocumented migrant children in an irregular situation: A real cause for concern. (Council of Europe, 16 September 2011)

¹³ Act LXXX of 2003

¹⁴ EDAL Country Overview – Hungary, available at: http://www.asylumlawdatabase.eu/en/content/edal-country-overview-hungary#_ftn6

¹⁵ In addition to this act, the employment of foreigners is specifically regulated in the Government Decree 16/2010.

¹⁶ Zayonchkovskaya, Z.H A. UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants. July, 2004. p. 14 available at: <http://unesdoc.unesco.org/images/0013/001395/139533e.pdf> p. 63

If the person wants to get employed again in Hungary, the whole authorisation procedure needs to be reinitiated by the new employer.

In addition, even if the status of migrant workers is legalized, employers might violate certain labour regulations. Based on the Act on Labour Inspection, the task of the Inspectorate is the protection of employees.¹⁷ However, migrant workers are poorly protected when it comes to wages, working time and working conditions: firstly, because of ineffective sanctioning of labour rules in general; secondly, in case of any violation of labour rules when a third country national is employed, then not only the employer will be fined but also the migrant worker, who may face a loss of residence status and face expulsion.¹⁸ The reason: she or he ‘was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision’.

It can be concluded that regulations on employment conditions and the access to basic social services, such as health care, education and justice are somewhat discriminative towards regular migrant workers and they are basically non-existent for undocumented migrant workers. These problems are strongly connected to the fragmented system regulating different residence status for third-country nationals, especially when it comes to labour rights and guarantees. The solution would be a simplification in the system regulating residence of third-country nationals and a more unified approach in guaranteeing rights for immigrants independent from their status.

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¹⁷ Act LXXV of 1996 on Labour Inspections

¹⁸ Section 43 of Act II of 2007 on entry and stay of third-country nationals