

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Hungary

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1. Demographic background

According to the data of the 2001 census, in Hungary 98.6% of the population of ten million declared Hungarian as their mother tongue. Therefore the country can be considered as monolingual. According to official census figures, the number of persons belonging to various national minorities in Hungary is relatively low. However, organisations representing national minorities quote higher figures than the census results. According to such estimates, there are 200,000-220,000 ethnic Germans (62,105, according to the 2001 census), 100,000-110,000 Slovaks (17,693), 80,000-90,000 Croats (15,597), 25,000 Romanians (7,995) and 5000 Serbs (3,816) live in Hungary. According to various estimates the Roma community has 400,000-600,000 members (189,984 in the official census). The number of foreigners living in Hungary is insignificant: according to official data which counts the number of foreign citizens who have residence permits or immigration or settlement permits there are just 175,000 persons, the majority of whom are ethnic Hungarians from neighbouring countries.

In Hungary the Roma are the one racial or ethnic minority, whose social status is substantially different from that of the majority society. The Roma are visibly discriminated against – in certain cases even segregated – in the areas of employment, education, housing and access to various services. The situation of the Roma considerably deteriorated with the economic transition brought about by the change of regime: they were the first to be made redundant by the collapsing state-owned enterprises and agricultural cooperatives. The rate of unemployment of the Roma has been constantly high due, in addition to discrimination, to their low education levels and living far from industrial centres. The Roma characteristically are employed in agriculture, construction and in various low-skilled jobs for instance, among railway track workers interviewed for the needs of this project. In the current economic crisis the anti-Roma attitudes of the majority society have become increasingly manifest, including both verbal and physical assaults.¹ In 2008 the government tightened the rules on means-tested social aid, yielding to the pressure exercised by the general public belief that ethnic conflicts are rooted in the life styles of large Roma families living on state aid.

The Constitution guarantees equal rights and the free use of the mother tongue to all national minorities. The Office of National and Ethnic Minorities predates the Directive, having been established in 1990 to safeguard those rights. Furthermore, on 7 July 1993 the Parliament adopted an Act on the rights of national and ethnic minorities. Since 1995 a separate Ombudsman has dealt with the protection of minority rights. Nonetheless, Parliamentary representation of ethnic minorities remains very uneven.

In Hungary the Racial Equality Directive was enacted by the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. This law, however, applies the notion of diversity in an extensive way and prohibits

¹ See: Boy, 4, murdered in hate war against Hungarian gypsies. *The Sunday Times* March 1, 2009. On-line version: <http://www.timesonline.co.uk/tol/news/world/europe/article5821924.ece>

discrimination by race, ethnicity, sex, age, religion, wealth, disability, health status, sexual identity, family status, union membership etc. in the areas of employment, housing, trade and services, schooling, social security and health care. As a result, Equal Opportunity Plans, mandatory for workplaces in the state sector, as well as the Equal Treatment Authority set up by the law, are supposed to address all of these issues. Nevertheless, in the practical application of this law the general trend is to deal with the least conflict and prejudice ridden areas such as gender, and family friendly measures.

2. Industrial relations background

After the change of regime a plural trade union structure was created and union density sharply decreased (to 17% according to 2004 data). Currently the union movement is highly fragmented. Unions are typically active at workplace level – the overwhelming majority of collective agreements are concluded at the enterprise level. According to official registration statistics, the coverage of these agreements is around 35%. At the same time, since 1992 employees may elect works councils as a parallel representation structure to trade unions. However, in the relatively significant sector of small and medium size enterprises, as well as in some multinational companies, there is practically no interest representation at all. As a consequence, industrial relations are characterised by cooperation rather than conflicts. Strikes are relatively rare, and whenever they do take place these are usually in state-owned companies and public utilities (typically in transportation), where small number of strikers can successfully paralyse the service.

For this study we interviewed members of the main trade union confederations sectoral and local trade union representatives and employers' confederations. The interviewees came from the Democratic League of Independent Trade Unions (Független Szakszervezetek Demokratikus Ligája, LIGA). The confederation represents altogether 100 thousand members both from the private and the public sector; the National Association of Hungarian Trade Unions (Magyar Szakszervezetek Országos Szövetsége, MSZOSZ). The confederation represents about 200 thousand members mainly from the private sector; the Trade Union of Commercial Employees (Kereskedelmi Alkalmazottak Szakszervezete, KASZ) which represents about 20,000 members in the commerce sector; the Local Industry and Municipal Workers' Union 2000 (Helyiipari és Városgazdasági Dolgozók Szakszervezete, HVDSZ 2000) which represents 12,000 local government employees in the field of city maintenance; and the Equal Opportunity Section at Free Trade Union of Railway Workers (Vasúti Dolgozók Szabad Szakszervezete, VDSZSZ-Szolidaritás). It represents 12,000 railway workers of different trades. From the employers, we interviewed confederation representatives, specifically, the National Federation of Craftsmen Boards (Ipartestületek Országos Szövetsége, IPOSZ), which represents 42,000 small sized enterprises, including self-employed and family businesses; the Confederation of Hungarian Employers and Industrialists (Munkaadók és Gyáriparosok Országos Szövetsége, MGYOSZ), the biggest employers' confederations in Hungary with 5,000 private sector member companies, altogether employing 1,200,000; and the National Federation of Consumer Cooperatives (Általános Fogyasztási Szövetkezetek Országos Szövetsége, ÁFEOSZ)

which represents 300 consumer co-operatives and their companies altogether employing 40,000.

Along with the dual channel workplace interest representation, the coverage of sector collective agreements is low. Agreements are rarely extended because both trade unions and sectoral organisations of employers are weak. While Sectoral Dialogue Committees have been functioning since 2002, the system of collective bargaining has remained decentralised. At the national level, six confederations represent employees, which, together with the nine national employers' organisations, participate in the National Interest Reconciliation Council. In addition to its consultation function with the government (for instance, on bills concerning the "world of work"), this forum negotiates the annual national agreement on the minimum wage. It is a unique feature of the Hungarian situation that some of the employers' organisations represent the small entrepreneurs and the self-employed. It is difficult to know exactly the density of employers' organisations as multiple membership is frequent, and the internal structure of confederations is not transparent due to the lack of a hierarchical structure and to the mixture of various membership statuses.

3. Trade union and Employer awareness

3.1 Trade unions:

In common with other laws concerning the world of work, the laws on the transposition of the Racial Equality Directive (Act CXXV of 2003 on Equal Treatment and amendment of Act XII of 1992, the Labour Code) were discussed at tripartite National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT)). While it was no secret that during the 2003 round of consultations the government and employers' opinions sharply clashed (employers rejected the idea of making the Equal Opportunity Plan mandatory for the private sector, and eventually the act passed by the Parliament prescribes this obligation only for public sector employers with over 50 employees), six years later the representatives of confederations regularly participating at the sessions did not recall this. While sectoral and workplace trade unions did not participate in the consultations in 2003, some of the sectoral trade unions were asked to give their opinions about the draft of the amendment of the law later on.

OÉT had an Equal Opportunity Subcommittee, which played a crucial role in preparing the legislation in 2003. Several of the respondents, who were representatives of trade unions (and of employers), took part in this forum. The Subcommittee, however, became "extinct" and has not held any sessions over the past years.

All of the trade union representatives interviewed knew of the national anti-discrimination laws, but their knowledge about the EU directive was limited; it was only equal opportunity and legal experts, as well as persons participating in events involving international cooperation, appeared familiar with it.

All of the trade union respondents knew about the Equal Treatment Authority, and several of the trade unions had concluded formal cooperation agreements with it. Their relationship, however, was limited to information and consultation functions and participation at professional events.

3.2 Employers:

While all of the employers' organisations and companies were aware of the anti-discrimination legal regulations, the depth of their knowledge varied considerably. Of those interviewed, the EU Directive was known only to equal opportunity and legal experts, as well as to participants in events involving international cooperation.

None of the participating representatives of confederations remembered the OÉT consultation over the equal opportunities bill and the individuals interviewed were not involved in drafting legislation in any form. At the same time, recalling the subject matter of those disputes, several said that the employers were right in their demands and they must have had a uniform standpoint in OÉT. "It would not have been realistic for a small private business". As the interviewee from the Confederation of Hungarian Employers and Industrialists (MGYOSZ) said:

'We are supposed to represent the companies of the private sector. For them, especially for the small ones, it would have been too great an administrative expense to produce an Equal Opportunity Plan.'

All of the respondent employers were aware of the Equal Treatment Authority but not all of them cooperated with it. When the cooperation was in place, it was limited to information and consultation functions and participation at one another's professional events.

4. Comments on the Equality Body

Despite the cooperation agreements outlined above, none of the interviewed trade unions has made use of the legal possibility of filing complaints with the Authority.

The companies in the sample together with one of the employers' organisations participate in were participating in the programs of the Equal Treatment Authority, as well as in international programs, where they presented their own experiences. These qualified as "best practices" especially in the field of gender and family friendly workplaces.

5. Trade union and employer policies and measures

5.1 Trade union policies and measures

It appears typical for confederations and sector trade unions to have an Equal Opportunity Committee/Work Team. In several cases, this had resulted from the expansion of the scope of activities of the previously established "Women's

Committee". In the larger trade unions such committees had been set up not only at the national but also at the regional level.

The most important equal opportunity related task of workplace trade unions is to prepare the Equal Opportunity Plan prescribed by law for the state sector and negotiate it with the employer. These Equal Opportunity Plans, however, work least effectively in the area of racial and ethnic discrimination. While according to the interpretation of the data protection Ombudsman, although the collection of data on racial and ethnic origin for the purposes of positive discrimination is permitted, many companies fail to do so. Even if they ask for this information in questionnaires, the respondents generally are very reluctant to report on their racial and ethnic backgrounds.

According to one of the trade union confederations, the law has failed not only because it does not apply to the private sector but also because its implementation in the state sector is also problematic - not all of the companies required to prepare an Equal Opportunity Plan meet this obligation.

It is not typical for trade unions to have a centrally designed policy on racial and ethnic discrimination. As expressed by a leader LIGA confederation: *'this is not a central issue at the confederation level.'*

The most widespread trade union service is legal aid, which theoretically covers discrimination cases; help in discrimination cases was mentioned as being very important by almost all of our respondents. Nevertheless, most of the trade union interviewees were unaware of any actual cases of discrimination complaints. The only exception was VDSZSZ, which in 2005 undertook the representation of laid-off Roma track workers against the company. As all the persons laid off at that particular unit for economic reasons were Roma, the court decision was that the employer had to pay substantial amounts of damages to the 12 workers. This was probably the first such law suit in the country, and proved to be so sensational that the Minority Ombudsman and a Parliamentary Committee also dealt with it. Other trade unions try to strike an agreement with employers informally in case of discrimination complaints, saying that the protection of victims has not been legally resolved in Hungary. On the whole, the opinion of trade unions was that they receive very few complaints about discrimination according to a representative of KASZ.

There is discrimination when recruiting but complaints are rare. Few Roma manage to get in (the workplace) and the employers have become very cautious: for instance their advertisements do not say that they are ready to employ only young people, but that employees are sought by a 'young-minded workplace'.

Trade union interest protection basically focuses on members and the workplace, and in practice they are unable to address problems in the recruitment process in any way. Several trade union respondents mentioned employers' attitude towards the Roma, stating that some commonly referred to their teams of Roma workers, using derogatory terms – for example, referring to them as “the Brazilian production line”.

On the initiative of one of the confederations, the 'Network of Law Point' has been set up from central funding. Since its launch in February 2009, the 141 offices of the new legal aid service, dealing not exclusively with discrimination, has taken up 600 cases.

There is no national-level trade union action against racial and ethnic discrimination. Their only activity in this respect is to participate in programs launched by the state.

In the recent period, however, one trade union has become known for its extreme racists (anti-Semite and anti-Roma) statements. We wanted to interview the "Trade Union of Policemen Ready to Act" ("Tettrekész Rendőrszakszervezet") but they declined our request. The Christian confederation called National Federation of Workers' Councils (Munkástanácsok Országos Szövetsége, MOSZ) first accepted the Police Trade Union as a member but is currently preparing their expulsion for, inter alia, advocating extreme racist ideas.

Several trade union leaders said that, as a consequence of the 2003 act, the reach of the equal opportunity policy has widened: the other dimensions mentioned by the laws were added to the earlier policy concentrating on women and families. At the same time, however, based on the interview data, it appears that the overwhelming majority of actual trade union action in relation to equal opportunities is still focused on the situation of women and the balance of work and family, and in practice none of the actions address discrimination against racial, ethnic or migration groups. For many trade unions, these issues do not count as problems needing solution; should the leadership put them on the agenda, they would have to face the prejudices of their own membership. This is underlined by the opinion of the representative of LIGA confederation:

Anti-Semite and anti-Roman speech exists within the trade union, and when it happens we try to make them understand why it is wrong... Unfortunately members do say such things quite often because everyone has some personal experience with and opinion about the Roma

With the creation of the legal environment, the most important change that took place in trade unions was education. In the training of officers, labour law is an important subject, and this now includes discrimination laws. Several trade unions reported providing regular training for their workplace staff about discrimination laws.

There is practically no social dialogue on the issue of discrimination. Joint action by employers and trade unions were found only in the case of activities initiated by the state or on demand from abroad (conferences, documentation of 'best practice' etc.), and the overwhelming majority of these events still focus on gender and family. Nevertheless, we were informed of one case the trade union suggested that anti-discrimination clauses should be included in the collective agreement, essentially in line with the company's Equal Opportunity Plan. This suggestion, however, was rigidly rejected by the employer.

5.2 Employer policies and measures

Respondents clearly stated that in their areas of activity (in the organisation or, in case of confederations, in the organisation and its member organisations) they had not come across complaints about discrimination, therefore the problem has not been raised within the organisation and they have not addressed it. According to the respondents at MGYOSZ:

The Roma problem has only just been (i.e. in response to the ever graver ethnic conflicts due to the economic crisis) put on the political agenda and has not reached us yet.

Organisations with a considerable number of Roma employees (and entrepreneurs in organisations representing SMEs) emphasised that there were no above average levels of problems in workplaces with the Roma, though their presence was not well accepted in all professions and activities due to a lack of trust and prejudice on the part of consumers.

At the same time, in the two companies that had an Equal Opportunity Plan and Code of Conduct, the stated company principles included the prohibition of discrimination and, theoretically, positive discrimination for racial and ethnic minorities. In reality, however, the equal opportunity policies of companies concentrated primarily on gender equality and on the balancing of family and work, and in some cases addressed the problems of first job seekers, older employees and persons with disabilities, but hardly any issues at all related to racial and ethnic minorities.

Essentially copying the model of its parent company, the interviewee representing a multi-national company spoke of it having introduced diversity management programs. The HR department of the company runs an Equal Opportunity Committee, and in all of its units there are equal opportunity rapporteurs in charge of the implementation of company policy and of developing new programs. The company has developed a complaints procedure, and runs a Global Helpline, where employees can report complaints in their native language. The training of both senior managers and new recruits includes diversity management. The company policy primarily focuses on women and family friendly workplace, and currently has started to, very carefully, open up towards the integration of Roma employees within the frames of its Corporate Social Responsibility (CSR) program. For instance, it has launched a grant program for Roma interns; in the case of new petrol stations, they try to encourage franchisees to employ some Roma.

As required by law, the state owned large company in our sample had prepared an Equal Opportunity Plan, which the Human Resources directorate tried to implement rigorously. Their women and family friendly programs had earned them several awards. However, they had rejected the idea even of assessing the needs of racial and ethnic minorities, saying that it would involve substantial extra costs for such a large company. *'We do not record racial or ethnic origin as such information has no importance for the company's labour practices. Our decisions are not made on that basis'*, said one company representative. The company has developed a procedure

for complaints in the framework of the Plan, and the training of both managers and new recruits includes diversity management.

Almost all of the respondents acknowledged that they knew there was discrimination in recruitment in general but that discrimination as a problem needing a solution did not occur within the organisation.

Laws have a force of deterrence, we pay more attention to such situations ... adverts for jobs are phrased with caution, job interviews are conducted in a manner so as to avoid accusation, for instance, the senior manager is never alone with the interviewee. (Interviewee, IPOSZ)

However, there was no support identified from the interviews for employees who have fallen victim to discrimination.

Two of the employers' organisations and their trade union partners participate in the state financed project "Legal Point", in the framework of which legal aid offices were set up or run in their offices in several hundreds of towns. This freshly launched service primarily helps citizens with labour law issues, which theoretically covers support for victims of discrimination.

Generally speaking, employers assume no national level role in fighting racial and ethnic discrimination. The most that they do is to participate in programs initiated by the state.

The issue of racial and ethnic discrimination has had very little prominence within the organisations. One organisation is known to have sent a circular e-mail to members about the new anti-discrimination laws. As this failed to invite any meaningful reactions, further action was not taken (such as training or conferences within the organisation).

We only have the function of giving information but we cannot prescribe anything for the companies. It is not a priority for employers, Hungarian employers are rigid on the whole. (Interviewee from MGYOSZ)

One of the organisations representing small enterprises organised a broad educational program for entrepreneurs and their book-keepers, providing – in addition to teaching practical business skills - legal training covering antidiscrimination legal regulations and procedures.

The respondent from the multi-national company spoke of it having developed its diversity management policy in 2002, well before the national law came into force. Most likely the parent company had developed these practices when the Directive was issued and disseminated them among its subsidiaries.

As for the state-owned company in the sample, it developed its policy in response to the statutory requirement, but some of its elements had already been in practice.

The training and legal aid programs of confederations are related to the new legislation; furthermore, the actions launched by the state in which the confederations participate are also relatively new.

At the level of employers' organisations there is no social dialogue whatsoever over this issue.

At the multinational company the employer wanted to include the criterion of diversity management into the collective agreement, but the trade unions rejected the idea thinking that it would increase the requirements placed on employees and that it might potentially serve as an excuse in discipline procedures or case of lay-off. Eventually, only the principles were included in the preamble of the collective agreement.

As required by law, at the state-owned company all of the trade unions active at the work place were involved in preparing the Equal Opportunity Plan. The sessions were of a 'brain-storming' nature. The decision not to carry out a survey on racial and ethnic origin was made in agreement with trade unions. The collective agreement also does not include clauses on equal opportunity in this company.

6. Views on how to tackle discrimination better

6.1 Trade unions:

The main benefit of the laws passed in 2003 for trade unions was that "employers know at least what they are not supposed to do. And those employers who maintain their discriminatory practices are at least careful to avoid accountability", according to the interviewee at LIGA. There is some improvement in the employees' legal awareness, too, though very slow. He added:

The effect of the laws can only be a very slow improvement because discrimination is a social phenomenon, rooted in prejudices permeating society. The law is only a medication for the symptoms – the underlying causes can only be removed through socialisation, education.

A specific suggestion was that the Equal Treatment Authority should be strengthened and be granted rights similar to the ones of the Labour Inspectorate, such as levying fines for discrimination.

6.2 Employer respondents

The employer organisations interviewed did not acknowledge that discrimination was a problem in their areas. Their typical opinion was that "in those areas of the economy where there is discrimination (for instance in the construction industry and in agriculture), the law failed to bring about much change." At the same time respondents generally do not see the solution in further legislation. According to the interviewee from a state company: "The law is not able to solve complex social problems, but with its simple logical patterns it creates new problems." They objected to the sanctions introduced by the law as well as the principle of reversed burden of proof.

According to the majority of suggestions, the solution of the problem is education. As the interviewee at MGYOSZ said: '*Hungarian society is conservative. It is hard to reset minds. The key to the problem is non-segregated education*'. Some specific recommendations for procedures were offered too. According to the organisation representing SMEs, it is not the state that should intervene via legislation and sanctioning, but an agreement should be reached in tripartite bodies about the necessary action. The leader of ÁFEOSZ said:

The employment of the Roma could be easily solved through state subsidies for companies employing them. It is that simple! In capitalism money makes the world turn around: positive discrimination only works if it is worthwhile. Employers are not stupid, they would require regular work and life styles of their employees. Such a measure would have a positive effect because currently huge amounts of money are spent on benefits and sheltered employment. We should be where we were 20 years ago when the majority of the Roma worked, which was good for the companies, too.