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Original scientific paper  
UDK:349.2-056.26(439)  
364.65-056.26(439)  
331.106.3(439)

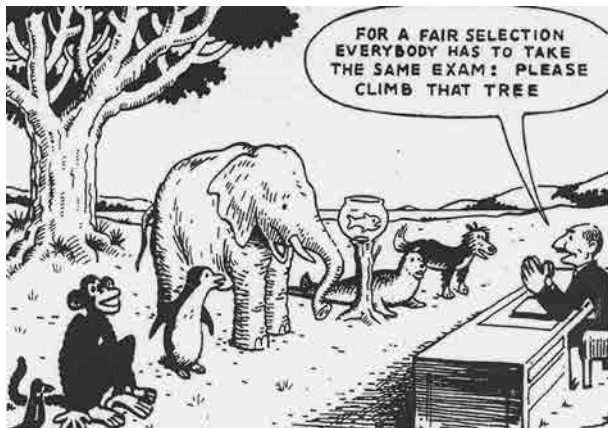
## PLEASE, CLIMB THAT TREE! SOME THOUGHTS ON THE OBSTACLES THAT PREVENT MEMBERS OF 'VULNERABLE GROUPS' FROM ENTERING THE LABOUR MARKET<sup>1\*\*</sup>

*Abstract:* 'Lost', or 'scarred generation', 'economic and social emergency' – these expressions feature in several ILO and European Commission documents on employment chances of youngsters. Unfortunately the use of these disconsolate words is more than exaggerated rhetoric, the unemployment rate of youngsters is indeed permanently and significantly high, their position on the labour market is unstable. The redundancies triggered by the economic crises, and the spreading of uncertain forms of employment strike youngsters most. The paper examines the (additional) obstacles that hinder the employment of those youngsters who also belong to one (or more) of the so called 'vulnerable groups' and offers comments on the various measures aiming at removal of these obstacles. The meaning of vulnerable groups is discussed, with special attention to people with disabilities. The paper argues that education policy, labour law and labour market measures as well as social protection measures are mutually reinforcing and it is certainly decisive that their interaction results in a right protecting Holy Trinity and not a Bermuda Triangle in which rights mysteriously disappear. Hungary is used as a case study to demonstrate the role of hard and soft law measures, active and passive labour market policies in tackling inequality as well as their potentials and limitations. Comments are offered on the difficulties along the road to work as well as in employment. The paper underlines the importance of measures that respond to the requirements of the labour market and at the same time adapt to the special needs of 'vulnerable groups'.

*Key words:* vulnerable groups, youngsters, disability, pregnancy, social inclusion, education, employment, Hungary, Empower Project

<sup>1</sup> \*\* The research was carried out in the framework of MTA-PTE Research Group of Comparative and European Employment Policy and Labour Law [2011TK435, head researcher: Prof. György Kiss]. This paper was written with the support of OTKA, PD 996246 grant.

employment, Hungary, Empower Project



## 1. OPENING THOUGHTS, OR: “PLEASE CLIMB THAT TREE”

“Please climb that tree” - the request quoted in the title is taken from a cartoon spreading on Facebook and depicts a supposedly objective but in fact extremely discriminative recruitment procedure. In the cartoon, animals are standing before a desk. The official behind the desk says: “For a fair selection everybody has to take the same exam: please climb that tree”. This task seemingly – but only seemingly – provides an even ground for the applicants. Obviously this task that is no challenge for a monkey is simply impossible for an elephant or a penguin, not to mention the gold fish.

In this paper I am going to discuss some of the most sensitive young employees, the so-called “lost generation”. I would like to share my thoughts about the obstacles of employing various groups of employees and people that find it impossible to enter the labour market. I will also cover the measures aiming to remove these obstacles in Hungary and elsewhere. Their situation seems to be very much like the situation of the animals tricked in the cartoon. Formally, they enter the labour market with the same chances, but because of their special situation or qualities, they suffer disadvantages, and in many cases they are excluded. After a few words about the promise in the Treaty of Lisbon, I will define what we mean by certain, especially sensitive young employee groups. Then I will discuss the paths leading to the world of employment and inside it available to these groups. In relation to the former, I will speak about the importance of the education system, and in relation to the latter, I will describe several institutions from the idea of flexicurity to active employment policy measures. Finally I will write about the results of the 2013 international Empower Project which aimed to integrate the most sensitive of the sensitive, namely people with disabilities.

## 2. THE “LOST GENERATION”

### 2.1. NOT A DREAM BUT A PROMISE. OR MAYBE NOT?

“The lost generation”, “the scarred generation”, “economic and social emergency” – these are phrases from ILO and European Commission documents about the situation of young people on the labour market.<sup>2</sup> The use of these ominous words is unfortunately not exaggerating rhetoric; the unemployment rate of young people is permanently and prominently high throughout Europe, and their situation on the labour market is unstable. The cutbacks induced by the crisis, and the spread of unstable employment forms affect young people the most. The problem is even more serious when we focus on certain especially sensitive sub-groups in the already sensitive group of recent graduates. While I was pondering the opportunities of some especially sensitive youth on the labour market, the thoughts of professor Ton Wilthagen, expert on flexicurity came to my mind. “America has a dream, Europe has a promise”, he said in his presentation at a conference in Trier. This promise – Mr. Flexicurity proceeds – is in the Treaty of Lisbon: the EU seeks the sustainable development of Europe based on balanced economic growth, and tries to create a competitive social market economy that aims to achieve full employment, social development, and at protecting the environment and improve its quality. This is a very nice promise indeed, but how much of it can become true?<sup>3</sup> The Treaty of Lisbon is meant for one of the “target groups” of this conference, the recent graduates, just as much as for any other EU citizen. At the same time, if we look at the deteriorating chances of employment of the young people trying to enter the labour market, we are more and more pressingly faced by the question: can this promise be fulfilled?

It is a right of all of us to have a worthy job that can provide a reasonable livelihood, and help us develop our abilities. However, not all of us have the same chances to exercise this right. The problems of the so-called “scarred generation”, that is people aged between 15 and 24 years are of an international scale. The numbers talk for themselves: in March 2014 the unemployment rate among young people was 22.8% with such grievous peaks in the Mediterranean as 56.8% in Greece, 53.9% in Spain, and 49.0% in Croatia. In Hungary the unemployment rate of the young is nearly 2.5 fold, that is almost every fourth young person is unemployed.<sup>4</sup>

### 2.2. WHAT DO WE MEAN BY ESPECIALLY SENSITIVE EMPLOYEE GROUPS?

When we talk about the obstacles of the employment of certain especially sensitive employee groups, in fact we have to consider a complex problem affecting a highly heterogeneous group. I would like to emphasise three things. First of all, it is worth to view the problem in the framework of TLM, since the problem affects *not only the employees, but also the unemployed and inactive, and even the participants of the education system*. In other words, we have to consider not only those

<sup>2</sup> Makiko Matsumoto – Martina Hengge – Iyanatul Islam: Tackling the youth employment crisis: A macroeconomic perspective. (Employment Working Paper, No. 124) International Labour Organization, Genf. 2012. p. 1.

<sup>3</sup> Annual Conference of the Academy of European Law on EU Labour Law (Trier, 21-22 March 2013)

<sup>4</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/3-02052014-AP/EN/3-02052014-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-02052014-AP/EN/3-02052014-AP-EN.PDF) (Last visit: 2 June 2014)

having a job, but also those – and this second group is probably even more important than the former – that are outside the world of employment: the unemployed or inactive. Furthermore, as a measure of prevention, it is worthwhile to survey the situation of the young people in the education system, the “would-be employees”. From a practical view (since it is indispensable to have an exact definition in order to be able to take measurements about the problem) it is expedient to take the common ILO definition as our basis. According to this, an unemployed person is someone aged between 15 and 74 years, questioned during the employment survey, who did not work on the given week and has no job from which he or she was temporarily absent; is actively seeking employment; is available, that is he or she would be able to take the job or has already found a job and will start working within 30 days. At the same time, to examine the problem in a complex way, it is practical to have a broader view, and beside the legal definition also consider the sociological and social policy aspect which considers the unemployed as a disadvantaged group. Second, the problem affects *not only* youngsters aged between 15 and 24 years, but also such people that left the education system later than the average. And, last but not least, *the sensitive groups are not homogeneous*. It is also practical to consider not only sensitive groups but *sensitizing factors* as well, that is such situations, states, qualities etc. that make individuals and social groups especially sensitive. A sensitizing factor can be, among others, social background, low level of education, residence (living in an under-developed region), gender, early parenthood, or disabilities. The latter case I will discuss in more depth in the 6th section of this paper.

### 2.3. TLM STATIONS, AND PATHS TO THE WORLD OF EMPLOYMENT

As I already mentioned, when we examine the situation of especially sensitive employee groups on the labour market, it is indispensable to think in the framework of TLM (Transactional Labour Markets), or more precisely *the renewed TLM concept*. This concept discards the idea of static labour markets, and its central principle is that the stations an individual typically experiences during his lifetime (education, employment, unemployment, household) have to be interoperable, and that instead of making these stations stationary, mobility is profitable on the long term (“making transitions pay”).<sup>5</sup> In the light of this, in the case of young people we have to examine how much the education system is suitable, how we can facilitate the transition between education and employment, and also the atypical aspects of their situation on the labour market (in other words, whether special rules apply to the employment of young people). This does not mean that we should ignore the economic dimension of unemployment, which would be burying our heads in the sand. Nevertheless, it is also obvious that plain economical approach without social considerations would result in the vulnerable strata lagging behind even more.

Entering and leaving the labour market and movement within it happen in the form of “transitions”. These transitions pose *risks*, and these affect the disadvantaged groups more. When viewing the TLM stations it is obvious that transitions are not always smooth for young employees. By this I not only mean the transition from education to the world of employment but also the difficulties of balancing between child care and work (especially for women)<sup>6</sup>, and

<sup>5</sup> Bernard Gazier – Jérôme Gautié: The „Transitional Labour Markets” Approach: Theory, History and Future Research Agenda. *Journal of Economic and Social Policy*, 2011/1. Available at <http://epubs.scu.edu.au/jesp/vol14/iss1/6>

<sup>6</sup> This issue is thoroughly explained in Csilla Lehoczkyné Kollonay: Work and family issues in the transitional countries of Central and Eastern Europe. The case of Hungary. In: Joanne Conaghan, Kerry Rittich (ed.): *Labour Law, Work, and Family: Critical and Comparative Perspectives*. Oxford: Oxford University Press, 2005. pp. 289-315.

the inescapable path of social security and social care systems. Also further grows the ratio of unemployed young people that do not participate in education. If we look at other EU countries, we will find various models of regulation (some national tools and good practices will be mentioned in this paper when describing the various stages of TLM). Different unemployment rates between the member states also make it clear that *individual labour markets handle the crisis in different ways*. In practice often those countries handle the crisis better whose labour market is unsegmented, where the social security system is strong, and there is strong inner flexibility (e.g. there is a wide range of working hours schedules).<sup>7</sup>

### 3. FROM EDUCATION TO THE WORLD OF EMPLOYMENT

Obstacles affecting young employees should be examined on the basis of a *career focused approach*.<sup>8</sup> “Career” starts with education. I think all of us agree that without education there is no labour market integration, but it is disputed what forms of education are needed in what ratios, especially considering the crisis. General training or specialisation, university or OKJ (National Training List) education? So tackling the obstacles of the labour market starts with reforming *the forms of education and vocational training*. This can only be achieved by tight collaboration between social partners, local and regional authorities, educational and vocational training institutions.

It is well known that university graduates, compared to people having other qualifications, have better chances on the labour market. Even so, during the past years the unemployment rate has risen beyond doubt even among *university graduates*. Youngsters often have to accept jobs that do not fit the level of education they have achieved. This affects negatively one of the sensitive groups, namely those that have a lower education level, since they are deprived of the jobs that that would fit their level of education. In Hungary from the beginning of the 1990's almost continually decreased the youngsters' share on the labour market.<sup>9</sup> One explanation to this phenomenon would be that they spent more time in education. The current *reform of higher education and compulsory school attendance until the age of 16* has an adverse effect, the remodelling of vocational training broadens the scope of sensitive groups. Participation in the education is decreased by the quota changes; the state financed quotas were drastically cut back on the most popular courses (in spite of the fact that it is typically considered as growth friendly public expenditure, and as such, quality should be a priority here). In several parts of Europe (examples include Belgium, Bulgaria, France, Cyprus, Poland, and Romania) resources dedicated to education have decreased. This tendency is widespread but not common, for example in Austria, the Czech Republic, Denmark or Luxembourg these resources have not decreased or have even increased.

<sup>7</sup> European Commission, Brussels, 28.11.2012. COM(2012) 750 final, Annex, p. 6.

<sup>8</sup> Eszter Barakonyi: Career planning in employment – a dream or reality? (Életpálya tervezés a munkaviszonyban – vágyalom vagy realitás?) In: Ágnes Bálint – Di Blasio Barbara (ed.). *The Thousand Faces of Utopia: Essays. (Az utópia ezer arca: Tanulmányok.)* University of Pécs, Faculty of Humanities, Institute of Education, 2010. pp. 92–103.

<sup>9</sup> Tímea Németh – Eszter Barakonyi – Gyöngyi Pozsgai: The role of education and training in the Hungarian labour market. In: Tamás T. Sikos (ed.): *Intellectual capital as a competitive advantage, or the role of knowledge management in competitiveness: a scientific conference. (Szellemi tőke, mint versenyelőny, avagy a tudásmenedzsment szerepe a versenyképességben: tudományos konferencia.)* Komárom, Selye János University, Faculty of Economic Science, 2010. pp. 1098–1106.

The situation is worsened by the fact that in Hungary people do not commonly work while participating in the education system. A solution to this would be *to develop the apprentice system during education. A well chosen apprenticeship could even serve as a preliminary probationary period* and would be beneficial for both the student/pupil and for the receiving party (the potential employer of the apprentice). Early planning of their career is important for all youngsters participating in the education system, but even more for the sensitive groups. A *special mentor system* within the educational institution could facilitate the choice, and help supply meet the demands.

As I mentioned, the “especially sensitive young employee” category is not homogeneous. Individuals in this category have *different abilities and opportunities*. A good educational policy creates education that provides a personalised training system taking into consideration the individual abilities.

Sensitizing towards the disadvantaged can be part of the curriculum. Participating in the so called *law clinic service* facilitates this. I think this is useful in several ways. On one hand, the classical function is that the students acquire practice, do real world legal work – including administration functions – or carry out certain attorney tasks, legal consulting under the supervision of a tutor having practical work experience or an expert of the given field who at the same time is also dedicated to education. Besides, it is also important that the students, while consciously building their careers, at the same time “become sensitive” to several social issues, since they typically help especially sensitive (whether young or not) employee groups. *This is a good example of combining social solidarity and practice oriented training*. In my opinion such programs can be implemented in almost any scientific field and profession, for example students participating in HR training can help write a CV for those seeking their help, or give advice on what to pay attention to in job interviews, or even acting out the situation.

## 4. INSIDE THE WORLD OF EMPLOYMENT – THOSE THAT ALREADY HAVE A JOB

### 4.1. CLASSICAL INSTITUTIONS: FROM TRADITIONAL PROTECTIVE RULES TO “PREGNANCY ALARM”

#### 4.1.1. GOOD PRACTICE IN RULES

There are several sections in the Hungarian Labour Code that react to special needs of sensitive groups. These protective rules have appeared very early in the history of (universal) labour law and can be regarded as classical. Age (young employees or employees close to retirement), pregnancy, motherhood/fatherhood, or disabilities call for protective rules. Rules protecting young employees (under the age of 18) cover how hard a work is, and provide more favourable working hours, breaks, rest period and vacations than for employees above 18. Rules concerning women and more specifically pregnant women or women with small children also

have long traditions (for example about night shifts, prohibiting tasks that are harmful to health, special leaves, etc.). Traditionally special rules apply to pregnant employees and employees with young children. The physical and mental state of women change during and after pregnancy (due to either natural or reproductive processes), and this calls for increased protection. The reason for this is that temporary inability to perform the main obligation originating from employment (work) through no fault of their own must not cause employees to lose their job, and fear of this must not influence women’s decisions about maternity, and also to prevent dangers and negative effects that losing their job can cause for pregnant women or women with small children.<sup>10</sup>

### 4.1.2. ANOMALIES IN THE LABOUR CODE

At the same time, beside the rules conforming to good practices we can also find such elements in the existing legislation that undoubtedly decrease the level of protection. Now I would like to discuss these. Such is a rule that was recently pronounced unconstitutional and which says that *pregnancy or participating in a human reproductive procedure* only prohibits termination by notice if the employee has previously announced it to the employer. Modern labour law treats women participating in a human reproductive procedure the same way as pregnant women. These rules present themselves as prohibitions, confines, and exemptions, and cover working conditions, working hours, the scope of duties, the temporary modification of which may be necessary, excluding dangerous or harmful to health working conditions, maternity leave, prohibiting termination by notice, etc. Of these, I would like to write about prohibiting termination by notice, since this is what basically determines the chances pregnant women or women with small children have for staying on the labour market. This topic is especially timely because of the decision adopted by the Constitutional Court on 27 May 2014.

Prohibition of termination by notice, and setting up constraints are one of the most powerful tools to protect employees. Prohibitions to dismiss employees pose an absolute constraint on the possibilities of the employer to terminate the employment. The law prohibits to dismiss employees in certain states or situations. One of these traditional situations that are reasonably protected by strong protection is pregnancy. Society and law both avow the justification of prohibition of termination by notice. The Charter of Fundamental Rights of the European Union declares that the family is protected legally, economically and socially. In order to reconcile family and work, everybody has the right to be protected from losing their jobs because of reasons due to child care (Charter of Fundamental Rights of the European Union, Article 33, Paragraph 1-2). The European Social Charter declares the prohibition of termination by notice for the duration of the maternity leave (European Social Charter, Article 8). The ILO Convention No. 183 orders the prohibition of termination by notice due to reasons connected to pregnancy and during leaves in relation to pregnancy, and for a period – defined by member states – after the entry into employment due to pregnancy, giving birth and its consequences or reasons connected to breast feeding. The Hungarian Labour Code (Act I of 2012) is in accordance with international and EU standards (see the prohibition of termination by notice in Section 65, Subsection 3, Paragraphs a and e).

This classical protecting rule was severely harmed by the new Labour Code, stating that the employee is only entitled to this protection if she has notified the employer about her

<sup>10</sup> <http://www.mkab.hu/download.php?h=842> p. 12. (Last visit: 29 May 2014)

state (pregnancy, participation in a test-tube baby programme) prior to the termination. “The provisions of Paragraphs a) and e) of Subsection (3) hereof shall apply only if the worker has informed the employer thereof before the notice was given.” (Labour Code, Section 65, Subsection 5). The Constitutional Court in their decision adopted on 27 May 2014 unanimously declared this provision as unconstitutional and annulled it. The Constitutional Court argued that it unconstitutionally restricts the rights of women deciding to have a baby for privacy and human dignity, and at the same time negatively discriminates those women who do not know yet that they are pregnant. Paragraph 1 of Article VI of the Hungarian Fundamental Law extensively protects the private sphere: private and family life, home, communications and good reputation of the individual.<sup>11</sup> A substantial conceptual element of the private sphere is that no one can enter or even view it without the consent of the one concerned.<sup>12</sup> Article II of the Fundamental Law provides the foundation for protection of the private sphere that cannot be affected by state intervention and which is fully excluded from any state interference, since this is the basis of human dignity. The opinion of the court emphasised that pregnancy or receiving treatment related to a human reproduction procedure is a circumstance that is part of the private sphere of the affected woman and therefore she cannot be obliged to provide this information to her employer. Furthermore, providing this information cannot be considered as voluntary since it is the prior condition of being protected from termination by notice. Although the state is basically free to decide what extra protection it provides for pregnant women or women with small children in the world of employment, the prior conditions of this protection cannot lead to unnecessary and disproportionate limitation of the basic rights of the employees. In this case sharing information belonging to the private sphere is only necessary if it is relevant for the protection against termination by notice, that is if the employment is terminated.<sup>13</sup>

Considering that pregnancy or participation in a test-tube baby programme belongs to the employee's private sphere, and that the early months are “sensitive”, this solution not only violated human dignity but also exposed an already vulnerable group. Of course, there are such jobs where the employer has to know about the employee's pregnancy in order to be able to protect the foetus, but outside of this circle I do not see justified to tie the protection against termination by notice to the announcement of the employee. The Constitutional Court's decision is crucial in this case.

The other institution I would like to discuss is related to part-time work. At the mother's request the employer is obliged to provide her with a part-time job, until the child is younger than 3 years old. “Employers shall amend the employment contract based on the employee's proposition to part-time work covering half of the daily working time until the child reaches the age of three.” (Labour Code, Section 61, Paragraph 3.) This regulation is undoubtedly a beneficial opportunity for mothers with young children, but has a significant drawback, namely that it does not provide for returning to full time employment. The employer is bound to amend the contract to provide a part-time job, but they are not liable to provide a full-time job afterwards.

11 Decision of the Constitutional Court, 32/2013 (22 November)

12 Decision of the Constitutional Court, 36/2005 (390, 400)

13 <http://www.mkab.hu/download.php?h=842> (last visited: 28 May 2014)

#### 4.1.3. HOW COULD A SOLUTION BE ACHIEVED?

How could a solution be achieved? Amongst others, applying the *protective rules* ensuring equal treatment, and *giving preference* (affirmative action). When a youngster is employed as a teleworker, a protective measure is that equal treatment has to be applied in every field (for example in the case of collective redundancies he or she has to be taken into consideration when calculating staff number quotas). Giving preference can be carried out on the national level, *introducing a quota system*, and at the local level. A good example of local level efforts is formulating an Equal Opportunities Plan. Special attention is typically given to women, employees above forty, people with disabilities, Roma people, recent graduates, employees caring alone for two or more children under ten, employees caring for a permanently ill child, and employees caring for elderly parents within the family. It can be seen that the especially sensitive young employees are also protected. Positive measures include flexible working hours, that is defining the working hours in a way that fits sensitizing factors and individual needs. For example for employees with young children it is important to be able to harmonise duties in the family and at work. One tool in achieving this is such a working schedule that is in accordance with the working hours of child care and educational institutions.<sup>14</sup> Also, commuters from settlements with an under-developed infrastructure it can be very helpful if it is possible to flexibly adjust to public transportation (that is such a working schedule that takes into consideration when the first and last line leaves, whether the employee can catch the connection, etc.). Special health related needs of the employees can also be well handled by more breaks.

One of the solutions offered by the Hungarian Labour Code is job sharing, which can be classified as a so called multi-party legal institution. This is a position filled up by more than one (part-time) employee. The employer and the employee can make an agreement that several employees together will make up the working hours. If one of the employees is incapacitated, another employee is liable to substitute him or her, if there is an explicit agreement about this.<sup>15</sup> This agreement can be of great help for example for young parents or employees with a fragile health status.

Referring back to the role of education, from labour law (or more precisely civic law regulated in the Labour Code) institutions I would like to emphasise the importance of the *study contract*. The first institutions whose aim was to help employees participate in education – while maintaining the employment – appeared in Hungarian labour law in the 1950's. This contract regulates the training of the employee, and thus enables the employee to acquire skills and knowledge that fit the employer's needs.<sup>16</sup> The regulation in the old Labour Code (Act XXII of 1992) was more beneficial to the employees since the employer was bound to provide time for completing the studies. There is no such provision present in the current Labour Code.

#### 4.1.4. SPECIOUS SOLUTIONS: CREATING A LOWER PROTECTION LEVEL BY

14 More about this: Attila Kun: Family-friendly – or unfriendly - labour and social law in Hungary?, In: Dalia Perkumienė et al. (ed.): International family and social security law: Study book, Kaunas, Kauno Kolegija, 2013. pp. 153-167.

15 See the comment about job sharing in Zoltán Bankó et. al.: Labour law e-commentary: On-line commentary for the new Labour Code (Munkajogi E-kommentár: Online kommentár az új Munka Törvénykönyvéhez). Budapest, Complex Kiadó, 2012.

16 Zoltán Bankó – Gyula Berke – Edit Kajtár: Questions about law enforcement in relation to the study contract (*A tanulmányi szerződéssel kapcsolatos jogalkalmazási kérdések*). Labour Law Advisory (*Munkaügyi Tanácsadó*), 2007/1. pp. 7–9.

## DIFFERENTIATING RULES

The segmentation of employment protection laws promises a temporary solution, but in the long run makes sensitive employees even more exposed. Examples are different protective measures for atypical (for example fix-term) employment, and different rules concerning recent graduates (for example easier dismissal, and different rules for the probationary period). This problem can mainly be observed in countries of the Mediterranean. In Portugal such measures include decreased redundancy money and the broadening of dismissal for economical reasons.

A typical example of rule segmentation is defining *differentiated minimum wage*. We can see this in several EU countries. Various factors can serve as the basis of differentiation, for example different situation of different sectors, difficulties for youngsters getting a job, and economical differences between regions. The best example for the first one is Germany where the sector based minimum wage system is applied to more and more sectors.<sup>17</sup> The other two factors affect sensitive employee groups and therefore merit more attention. Since the beginning of the economical crisis, the issue of lower minimum wage for *recent graduates* is more and more often on the agenda. The argument for this differentiation is that since young employees find it harder to get a job because of their lack of experience, more favourable (that is: more favourable for the employer), more flexible rules need to be introduced to facilitate their employment. Such measures can be making it easier to dismiss them in the initial period, or introducing lower minimum wages for them. An example is Greece, where the minimum wage was differentiated, and is lower for young people.<sup>18</sup> In my opinion lower minimum wages for young people can help them find jobs but if the minimum wage is low<sup>19</sup>, (especially in the case of part-time work) it will result in that they would fall behind even more.

Although not connected to young employees, it is worthwhile to discuss *regional minimum wage*, since an under-developed region is also a sensitizing factor. In Section 12 the Labour Code orders thus: "In connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. (...) The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and *labour market conditions*." The term "labour market conditions" creates the possibility to set up different regional minimum wages. This regulation on the one hand is (economically) justifiable, since in each region there is different work force demand and supply, and the costs of living differ, nevertheless it poses two very important questions. Both of them are extremely complex and could be discussed in a separate paper, thus I will only briefly mention the problem. One dilemma is in relation to the nature and purpose of the minimum wage (in fact of the wage itself). Wage is at the same time an economical institution (that operates among market conditions), and a social one (whose function is related to existence and livelihood). Salary (and especially minimum wage) should be calculated in such a way that it can fulfil both purposes. The European Social Charter speaks about "just wage", and the Charter of Fundamental Rights of the European Union about

17 István R. Gábor : The effects of minimum wage on employment. (A minimálbér foglalkoztatási hatása). *Labour Review (Munkaiügyi Szemle)*, 2012/1. p. 11.

18 European Commission, Brussels, 28.11.2012. COM(2012) 750 final, Annex, p. 21.

19 In Hungary, according to the 483/2013 (XII. 17.) government decree the lowest possible value of the minimum wage from the 1st of January 2014 is 101.500 HUF (approximately gross 335 EUR), in the case of a monthly salary the guaranteed minimum wage from the 1st of January 2014 is 118.000 HUF (approximately gross 390 EUR).

employees' rights to working conditions that respect their health, safety, and dignity.<sup>20</sup> Thus wages have to be fair, just, and suitable to for the employee to maintain proper living standards. The term "minimum wage" even in its name expresses that it is a minimum. It is a sum set by the government taking into account the given economical and social circumstances, in cooperation with the social partners. Where the lower limit of wages is already rather low (as in Hungary), it is questionable if an even lower level can function as fair exchange-value for human labour. Besides, setting the minimum wage in under-developed regions even lower can easily result in the further deepening of regional differences. The other dilemma is related to discrimination. The question has arisen if regional differences in wages given for the same work do not violate one of the most important principles of the EU, namely the "same wage for the same work" principle. The Hungarian legislator has answered to this question with "no".

## 4.2. FLEXICURITY

In my opinion in the case of people already employed it is important to examine the issue of flexicurity. The principle of flexicurity (flexible security) shows the changed situation of labour law. In place of stability emerged the ideology of safety given by flexicurity; this is a kind of a trade-off during which the goal has become keeping the job (or staying on the labour market) instead of getting proper wages. There is more and more controversy even in Western European countries about ensuring the competitiveness of economy and protecting the positions of the employees.<sup>21</sup> How the rules of labour law and the tools of employment policy change, and whether economical or social goals are prioritised is undoubtedly linked to the actual situation of the economy.<sup>22</sup> In a (lengthy) crisis the classical labour law institutions have less and less significance, more and more active employment policy tools are used and more and more emphasis is given to the idea of flexicurity.

How all this affects the youngsters in question? *Sensible groups are in many cases on the downside of the flexicurity approach*. In their case flexibility usually does not bring security. Whether said or unsaid, a bargain is made, and immigrants, people from under-developed regions, youngsters, and people with disabilities "buy off" their position on the labour market with the minimum wage. Spreading atypical employment forms, that is fix-term contracts and the growing proportion of part-time employment also broadens the sensitive groups. Liberation of the conditions of fix-term employment is widespread in the EU from the 1970's. Although in most countries a fix-term employment can still only be established if given conditions are met, these conditions usually relating to the nature of the work or the operation of the employer were broadened and became less restrictive during the past decades.<sup>23</sup> The Hungarian Labour Code sets a 5 year limit: if less

20 György Kiss: Labour law (Munkajog). Budapest, Osiris, 2005. pp. 159–160; Zoltán Rác: Proportionateness of values and the questions of equal possibilities in relation to wages (Az értékarányosság és az esélyegyenlőség kérdései a munkadíjazás körében). In: Ádám Boóc – Balázs Fekete (ed.) *Il me semblait que j'étais moi-même ce dont parlait l'ouvrage: Liber Amicorum Endre Ferenczy*. Budapest, Patrocinium Kiadó, 2012.

21 Luigi Burroni – Maarten Keune: Flexicurity: A conceptual critique. *European Journal of Industrial Relations*, 2011/1. pp. 75–91; Tamás Gyulavári – Nikolett Hős: The Road to Flexibility? Lessons from the New Hungarian Labour Code. *European Labour Law Journal*, 2012/4. pp. 253–270.

22 See for example: Heyes, Jason: Flexicurity in crisis: European labour market policies in a time of austerity. *European Journal of Industrial Relations*, 2013/1. pp. 71–86. Zoltán Bankó – Gyula Berke – Edit Kajtár – György Kiss: Flexibility in labour law: Country Study on Hungary. Hagen – Leiden, Study Group on a Restatement of European Labour Law, 2006.

23 For more on this see: Zoltán Bankó: Atypical labour law circumstances. (*Az atipikus munkajogviszonyok*.) Budapest–Pécs, Dialóg

than six month pass between *fix-term contracts* between the parties, the total duration of these cannot exceed five years. There is no rule about how many times the parties can contract, but at the same time proper use of the law and prohibition of abusing the law as a general restriction applies. Young employees are over-represented in unstable positions, and although the concept of flexicurity presents atypical forms as an entry point to permanent employment, in reality it is very rare that someone enters into permanent employment from these. An added danger is the summing up of atypical forms. A classical pairing is fix-term and part-time employment; most of the rented work force is employed part-time, and most of teleworkers are self-employed. Fix-term, part-time positions and work force renting<sup>24</sup> are not transit stations but in many cases dead ends that were taken because there was no other possibility.

## 5. FROM INACTIVITY TO WORK: ACTIVE AND PASSIVE TOOLS

Throughout Europe there is a tendency to *change social security systems*. Defining more strictly who is entitled for certain passive provisions, decreasing the duration and amount of the provisions, the gradual utilisation system – they all attempt to facilitate the sooner return to the world of employment (see for example the Swedish, Belgian, Portuguese or Spanish reforms).<sup>25</sup> The undoubted advantage of these reforms is that they encourage self-care and reactivation as soon as possible; nevertheless, if we view them from the point of certain especially sensitive groups, we can see that they don't take into account the fact that *not everybody is equally capable of the proposed self-care*.

It is crucial to use active tools and to adjust them to the “sensitizing factor”. For example such a factor is if the employee lives in an under-developed region. A solution can be mobilisation, which can be *professional or geographical mobilisation*. Good examples include the resettlement benefit in Latvia and mobility benefit in Hungary that provides support for the renting expenses of registered unemployed persons. A good example on the side of institutions is the training of the administrators of the National Employment Service, and creating *client oriented service models*.<sup>26</sup> Or let us take another example. Among sensitive groups *early drop-outs from school* are the most vulnerable group (the percentage of immigrants, disabled people, people from under-developed regions and Roma people is very high among them).<sup>27</sup> Worth noting is a Czech pilot project – for the time being carried out only on the local level and on a small scale – which provides better housing conditions and re-training for excluded families if the children do not drop out of school (which is a significant measure especially for the Roma).<sup>28</sup>

Campus 2010.; Zoltán Bankó: Experiences of the regulation of the status of employees in atypical employment. (*Az atipikus munkajogviszonyban álló munkavállalók státuszának szabályozási tapasztalatai.*) Knowledge Management (*Tudásmenedzsment*), 2013/1. Special Issue pp. 14–20.

24 Gábor Kártyás: Stepping stone or the wrong road? On the role of work force renting in employment policy. (*Dobbantó vagy tévút? A munkaerő-kölcsönzés foglalkoztatás-politikai szerepéről.*) *Chance (Esély)* 2010/4. pp. 3–19.

25 See in more detail: József Hajdú: Social Protection of the Unemployed. Szeged, Pólay Elemér Foundation (*Pólay Elemér Alapítvány*), 2013.

26 Edit Kajtár – Ralf Rogowski: The Role of the European Employment Strategy in Activating Hungarian Labour Market Policies: Personalised services, educational reform and peer review. In: Jaap de Koning – Zenon Wiśniewski (ed.): *Managing Transnational Labour Markets in the New EU Countries*. Amsterdam, University Press, 2007. pp. 151–168.

27 <http://www.eurofound.europa.eu/emcc/labourmarket/youthinfographic.htm>

28 European Commission, Brussels, 28.11.2012. COM(2012) 750 final, Annex, p. 26.

The environmental branch (the green and the renewable sector), the health sector and social work sector and infocommunications sector all have great potential.<sup>29</sup> One of the solutions in fact is not more than *linking the individual elements of the above mentioned Lisbon promise*. As we have seen: the EU strives to build such a competitive social market economy whose primary goal is full employment, social development, and protecting the environment and improving its quality. These are able to *create new jobs, and at the same time focus on social solidarity, better quality of life, and liveable, sustainable environment*.

The EU Council of Ministers accepted the recommendation about creating the *youth guarantee* on 22 April 2013. This program builds on Austrian and Finnish experiences and its aim is to provide youngsters with quality job offers, further education, practical training or professional experience within four months after they leave the education system or become unemployed.<sup>30</sup> Sensitive groups and individuals receive marked attention during this program. We must not forget that these groups are highly heterogeneous, problems and needs of individuals are different, and thus there is no universal solution. The Youth@Work programme launched by the European Commission is also noteworthy; during this programme connections are built between youngsters and small and medium businesses. In Finland the youth guarantee program offers employment, professional experience or educational opportunities, and labour market rehabilitation measures. Another example is Latvia, where unemployed youth between 15 and 24 years old can try three different professions during 9 weeks in a vocational training institution.<sup>31</sup> In Hungary an important program is the *first job guarantee* program during which the state refunds part of the wage and social security charges.

A few words about the role of the National Employment Service. One obstacle for the sensitive groups to get employment is the *deteriorating success rate of labour exchange*. In accordance with the “making labour market transfers profitable” principle state employment services have to create “bridges” to facilitate transfers during careers.<sup>32</sup> To facilitate the seamless transfer between education and work for example they have to closely interact with parties operating in the field of education and vocational training.

## 6. A CONCRETE EXAMPLE: DIFFICULTIES OF GETTING EMPLOYMENT FOR YOUNGSTERS WITH DISABILITIES

### 6.1. A SEA OF RULES

Among sensitive groups I would like to stress the situation of disabled people. The Fundamental Law of Hungary declares the prohibition of negative discrimination including people with disabilities. Hungary guarantees the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status

29 European Commission, Brussels, 28.11.2012. COM(2012) 750 final, Annex, p. 10.

30 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:120:0001:0006:EN:PDF>

31 European Commission, Brussels, 28.11.2012. COM(2012) 750 final, Annex, p. 24.

32 Kajtár – Rogowski 2007.

(Fundamental Law, Article XV, Paragraph 2). The state provides special protection for certain especially sensitive groups, among others for people with disabilities. Paragraph 5 of Article XV of the Fundamental Law declares: by means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities. Also on the level of the Fundamental Law is declared that the state provides support in case of reproductive problems (including disabilities). Paragraph 1 of Article XIX of the Fundamental Law declares that Hungary strives to provide social security for all its citizens. Every Hungarian citizen is entitled for assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an act.

The support and protection of people with disabilities is the object of several acts. Amongst various general laws the Act on the Rights of Persons with Disabilities<sup>33</sup> and the Act on Equal Treatment<sup>34</sup> should be emphasised. Special acts cover many aspects of life (education, social services, housing, labour market, etc.); nevertheless, in spite of this sea of rules, practice is less positive.<sup>35</sup> Henceforth I will concentrate on the triad of education, labour market, and social service system.

## 6.2. EDUCATION, LABOUR MARKET, AND THE SOCIAL SERVICE SYSTEM: HOLY TRINITY OR THE BERMUDA TRIANGLE?

Analysing the advantages and disadvantages of the different employment forms (subsidised employment, protected jobs, open labour market, etc.) is out of the scope of this paper. Instead of this I would only like to call attention to the complexity of the problem, and the system of individual areas amplifying or attenuating each other. It should be very strongly emphasised that individual licenses mutually strengthen each other. Education, labour market, and the social service system form a tight unity, ideally a “Holy Trinity” enhancing due processes, and in the worse scenario, a Bermuda Triangle in which rights mysteriously disappear. Obviously it is more difficult to find a job for people with disabilities, not only when entering the world of employment from the education system, but also when balancing between child care and their jobs (the latter topic is almost a taboo). For people with disabilities often the only viable path is the inescapable route of the social security and social services system.

### 6.2.1. THE FIRST ELEMENT OF THE HOLY TRINITY/BERMUDA TRIANGLE: EDUCATION

If we look at the difficulties facing employees with disabilities from a career based point of view<sup>36</sup>, we can see that the concept of disabilities covers individuals with different abilities and opportunities. Therefore a good educational policy creates a custom made education system that takes into account these abilities. For example in the case of people with disabilities more

33 Act XXVI. of 1998 on the Rights and Equal Opportunities of Persons with Disabilities

34 Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

35 Edit Kajtár – Judit Zeller: The role of legal regulation in fighting negative discrimination on the ground of disabilities. (*A jogi szabályozás szerepe a fogyatékoságon alapuló hátrányos megkülönböztetés elleni küzdelemben.*) Manuscript.

36 Eszter Barakonyi 2010.

attention needs to be paid to partial education. Several NGOs call attention to the fact that if a youngster with disabilities cannot complete a full training it does not mean that he or she cannot acquire partial competencies neither.<sup>37</sup> Separating working procedures, and opening up partial training can greatly enhance integration possibilities for the disabled.

In my opinion it is a good practice in higher education that the Faculty of Law of the University of Pécs has joined the *Empower! Integrated Free University* organised by Fogd a Kezem Foundation (Hold my Hand Foundation). Four faculties of the University of Pécs – Faculty of Law, Faculty of Humanities, Faculty of Health Sciences, and Faculty of Music and Visual Arts – launched a series of lectures for the 2013/2014 academic year that aimed to strengthen socially vulnerable groups. The foundation works for the care and development of mentally challenged young adults, and employs several of them. The lectures focused on the social, legal, psychological and health aspects of their everyday lives. We covered the topics in an inter-disciplinary, holistic approach, and the theoretical lectures were always livened with joint creative work (painting, acting, dance, etc.) During the cooperation five all-day events were organised, each time at a different faculty.<sup>38</sup>

### 6.2.2. THE SECOND ELEMENT OF THE HOLY TRINITY/BERMUDA TRIANGLE: THE LABOUR MARKET

Although people with disabilities form 15% of the world population<sup>39</sup>, their share at the labour market is astonishingly low. *This group is practically “invisible”* on the labour market, their needs and rights are neglected, and at the same time their potential is wasted.<sup>40</sup> Reports that formed the basis of the “Dignity of Labour” (A munka méltósága) programme of the commissioner emphasise as the reason of this invisibility the lack of unified definition of disability in Hungary and the lack of statistical data collection about it. State organisations dealing with issues connected to disabilities do not cooperate, and there are no long term strategies. In his reports the commissioner emphasised the necessity to re-think the National Disability Programme and to involve NGOs to a greater extent.<sup>41</sup>

Looking at the situation of persons with disabilities having a job, beyond classical protective measures we have to mention again the question of flexicurity. The cutbacks due to the crisis, and the spread of unstable employment forms affects especially negatively persons with disabilities, therefore proper jobs and mobility are much more important than flexibility. What can be a solution in employing disabled people? Among others fully meeting the requirement of reasonable adjustments, protecting rules ensuring equal treatment, and giving preference (affirmative action). Giving preference can be realised on the national level, by introducing a quota system, and on the local level. A good example of local level efforts is formulating an Equal Opportunities Plan. Affirmative action can be among others flexible working hours, that is a

37 See the report of the commissioner of fundamental rights on case AJB-3312/2013.

38 EMPOWER free university. Lecturers responsible for the lectures at the Faculty of Law were Dr. Edit Kajtár and Dr. Judit Zeller (Department of Labour Law and Social Security Law, and Department of Constitutional Law, course code: AJSZNO900101).

39 Disability and health. Fact sheet No. 352 November 2012. <http://www.who.int/mediacentre/factsheets/fs352/en/>

40 Edit Kajtár: Life outside the bubble: International and European legal framework of disability discrimination in employment. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 5–21.

41 Reports AJB-2618/2012., AJB-5360/2012., AJB-4832/2012. and AJB-2266/2012.; Ágnes Kozicz: The state of employment of people with disabilities in Hungary – In the light of the investigations of the Hungarian Commissioner for Fundamental Rights. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013. Special edition. pp. 23–29.



working hours schedule adjusted to the sensitizing factors and individual needs. Special health related needs of the employees can be well handled by more breaks.

It is exasperating that most of the employers are rather willing to pay than to employ a person with reduced ability to work, and that from applicants with reduced ability to work disabled people are employed the least.<sup>42</sup> Among the reasons we can find prejudice and lack of information. An initiative that can alleviate this problem – and certainly a good practice – is the *Disability Friendly Workplace* title. Any open labour market employer can apply for the award and the use of the logo, from the business sector, from the public sphere, and from NGOs.<sup>43</sup> The logo carries a message for insiders and outsiders alike: it tells disabled people that it is worth applying for a job to the given employer, and to existing employees that they too will get a fair treatment, should their ability to work decrease. Fortunately there are examples for successful appearance on the labour market from Hungary and from abroad as well. We can think of such catering trade businesses and shops where persons with a reduced ability to work, among others disabled people, are employed. The Hungarian Hotel Panda<sup>44</sup> is for example a 4 star hotel that uniquely employs 95% people with a reduced ability to work. In Spain a lottery company is run entirely by people with reduced ability to work, and another good example is the Slovakian Café Radnička.<sup>45</sup>

### 6.2.3. THE THIRD ELEMENT OF THE HOLY TRINITY/BERMUDA TRIANGLE: THE SOCIAL SERVICES SYSTEM

As I mentioned, throughout Europe there is a tendency to reform social security systems. Defining more strictly who is entitled for certain passive provisions attempt to facilitate the sooner return to the world of employment, re-activation. The observation that certain especially sensitive persons can not always perform the proposed self-care is especially true for people with mental disabilities.<sup>46</sup> In their case custom-made services and support are especially important. One obstacle for the sensitive groups to get employment is the deteriorating success rate of labour exchange. In accordance with the “making labour market transfers profitable” principle state employment services have to create “bridges” to facilitate<sup>47</sup> transfers during careers. (A typical transfer can be from education to work, from unemployment or inactivity to work.) For example to facilitate the seamless transfer between education and work actors of education and vocational training have to closely interact with the employment service and would-be employers. It is justifiable to resort to mentors helping the transition. Since the National Employment Service is unable to respond to the needs of employers with disabilities, the help of special work force exchange agents is invaluable.

42 Lőrincsné Dóra Lajkó: State subsidisation of employers engaging employees with reduced ability to work (*Munkáltatók állami támogatása megváltozott munkaképességű munkavállalók foglalkoztatása esetén*), Munkaügyi Szemle (Employment Review), 2005/7–8. pp. 80–83.

43 If the organisation has a rehabilitation accreditation certificate, and more than 25% of the employees are persons with a reduced ability to work, the organisation cannot apply for the title.

44 <http://hotelpanda.hu/bemutakozas>

45 [http://spectator.sme.sk/articles/view/44347/8/radnicka\\_cafe\\_reopens.html](http://spectator.sme.sk/articles/view/44347/8/radnicka_cafe_reopens.html)

46 See more about this in Edit Kajtár: The obstacles to certain, especially sensitive young employee groups to get employment: edited, annotated version of the contribution to the debate in a workshop organised by the Office of the Commissioner for Fundamental Rights. pp. 1-13. “A fair start – employment opportunities for the young”. A workshop debate. (“Méltó kezdet - A fiatalok foglalkoztatási lehetőségei. Műhelybeszélgetés.”) Budapest, AJBH, 21 June 2013 (in press)

47 Kajtár – Rogowski: 2007

## 6.3. THE EMPOWER PROJECT

### 6.3.1. WHAT IS THE EMPOWER PROJECT ABOUT?

At this point I would like to illustrate the difficulties of people with disabilities on the labour market with a concrete research that was finished recently, paying special attention to positive and negative experiences shared by foreign and Hungarian partners. One, if not most, important tool of integration is labour market integration, therefore the Empower research focused on the employment of people with disabilities.

*Awareness raising and sensitising campaigns* are indispensable in order to disseminate information to the society and make the disabled visible.<sup>48</sup> By involving several states and actors (researchers, NGOs, people with disabilities and their helpers), our project tried to shed light on the most acute problems and provide the necessary recommendations. Cooperation with disabled groups can appear in several forms. In the case of the Empower Project we purchased the conference packs and the presents for greeting and thanking the participants of the conference from Fogd a Kezem Foundation. An important goal is realizing awareness raising campaigns, “making visible” persons with disabilities, presenting their achievements, and achieving a change through these in the attitude of the employers. Although our conclusions provide only one building stone for the improvement of the situation of disabled people, we believe that we did not initiate the dialogue in vain.<sup>49</sup>

### 6.3.2. WHAT THE RESEARCH REVEALED

It is obvious that legal regulation in itself is not sufficient. For example in Poland the rights of persons with disabilities were regulated in an act already in 1997 but employment was not free of conflicts even one and a half decades later. The pension system does not encourage the disabled to get employment, and employers are reluctant to employ “such” employees. Supported decision-making is not yet introduced. The most important tasks for the time being are – as in Hungary – strengthening social integration, awareness raising and providing equal chances. Beside these, it is also indispensable to make the physical environment accessible, to introduce integrated education, and to improve personalised aid and the quality of health care services.<sup>50</sup>

Inexact definitions, and overlaps between categories pose a problem not only in Hungary. In Slovakia if someone is diagnosed as a person with a disability, at the same time it means that

48 Nóra Jakab – Edit Kajtár – Judit Zeller: An Account on the Empower Project sponsored by the International Visegád Fund (*Beszámoló a Nemzetközi Visegrádi Alap által támogatott Empower Projektről.*) *Közjogi Szemle* (Public Law Review), 9/2013 pp. 73–75.; Zita Éva Nagy – György Könczei – Ilona Hernádi: The paths of disability science in a double historical frame, or the first, experimental cross-section of disability science (*A fogyatékoságtudomány útjai kettős történelmi keretben, avagy első, kísérleti metszet a fogyatékoságtudományról.*) *Fogyatékoság és társadalom* (Disabilities and Society), 1/2009 pp. 93–108.

49 Nóra Jakab – Edit Kajtár – Judit Zeller: The Empower Project: International cooperation for persons with disabilities. Summary Report. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 175–191.

50 Agnieszka Górnicz-Mulcahy: Status of persons with disabilities in the Polish legal system. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 31–55.

he or she is a person with a reduced ability to work, and this hinders getting employment.<sup>51</sup> Nevertheless, the Slovakian system helps the employment of the disabled in several ways, for example by ordaining a quota system. The quota system is also part of the Hungarian practice.<sup>52</sup> There are several forms of support: protected jobs, subsidizing self-employed people or covering the costs of a helper at the workplace. In spite of this, disabled people can rarely be seen on the open labour market. Employers and employees often do not have information on the available subsidies, and employers often do not take upon themselves reasonable adjustments.

Although the legal basis exists, the employment ratio of people with disabilities is also very low in Croatia, since most of them choose the pension. Employment of persons with a disability is hindered by the fact that according to legal regulation, the collective agreement can require full ability to work. For signing a work contract, the capacity of act is also required, and because of this also many people cannot enter the labour market. Good practices only sporadically and incidentally can be found. For example in Osijek there is a strong representation of persons with disabilities but this is not everywhere the case.<sup>53</sup>

In Portugal the obligation of equal treatment for people with disabilities was laid down, and labour law regulates the principles of employment of persons with a reduced ability to work. Self-employment, teleworking and outworking are to be favoured. There is a quota system in public employment to encourage employers, and financial support is promised in the private sector. Employers more and more realise: it is more worthwhile keeping their workers if their working abilities are reduced than hiring a new recruit without a disability, because the former are more profitable. In spite of these favourable changes, it is still important to inform the society about people with disabilities and the possibilities to employ them. Employment could further grow if the issue of people with disabilities, and especially employing persons with disabilities received broader publicity, and acquired a better reputation.<sup>54</sup>

In Hungary it is indispensable to re-think the concepts of disability, ability to work, and reduced ability to work. It is pleasing that changes in the labour law regulation point towards social inclusion. Capacity of act is no longer required on the part of the employee, and the new act includes the employer's obligation for reasonable adjustments. I share the opinion of Nóra Jakab: proper regulation should find the balance between exposing and over-protecting the employees. Exposing employees de-motivates them while excessive protection decreases the motivation of employers. Thus employment of people with disabilities is an economical and social question, and general labour law institutions will only be able to answer this question after some social refinement.<sup>55</sup>

51 Viktor Križan: Employment of citizens with disabilities in Slovakia. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 93–109.

52 Barakonyi Eszter: The quota system and the procedural determination of rehabilitation contribution in Hungary. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 159–168.

53 Mario Vinković: Employment of people with mental disability in Croatia – a clash between the practice and legislation. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 111–124.

54 Teresa Coelho Moreira: The protection of employees with disabilities and changed working abilities in Portuguese Labour Law. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 125–144.

55 Nóra Jakab: Employment of people with changed working abilities in Hungary – An economic or social issue? Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 77–92.; Nóra Jakab: On the margin and beyond: About the capacity of act of people with intellectual and psycho-social disabilities. (*A margón és azon túl: Az intellektuális és pszichoszociális fogyatékosokkal élő emberek cselekvőképességéről.*) Miskolc, Novotni Kiadó, 2013. ; György Kiss: How rights to equal chances prevail in labour law (*Az egyenlőségi jogok érvényesülése a munkajogban.*) Jura, 2002/1, pp. 48–61.

Although generally we can speak about a move from the medical to the social approach, a paradigm change, still most people handle disabilities as a medical question and not one that is formed to a great extent by social attitude.<sup>56</sup> An important goal for the future is to achieve that science and practice take into account the individual traits of the nature and perception of disability, but true change would only be brought if the rights and interests of people with disabilities appeared in the society not only as campaigns but would be part of everyday life.<sup>57</sup> One tool to achieve this is integration on the labour market.

Inclusion of people with disabilities to the labour market happens on several levels; obviously different disabilities require different solutions. One method used in Hungary is subsidised employment. People who got a job by these means are helped in several areas: the working place provides activity and income that creates material stability and a possibility to break out of poverty. An example for Hungary (Pécs): the *Special Pécs Foundation* serves multiple purposes besides introducing or re-introducing people to work. On one hand it provides professional mental hygienic treatment for those requiring it, and on the other hand it enables people coming here to create social connections. In some places prejudices and the lack of interest on the part of employers still pose great difficulties.<sup>58</sup> Another problem for people with disabilities is that besides their mental disability, they often have a bad health status, and basic services are unavailable to them. *Fogd a Kezem Foundation from Pécs* provides 40 adults with daytime accommodation and creative occupation. An integral part of their activities is providing know-how of household duties and healthy life style, and capacity building in legal issues and the ability to enforce one's interests, that is to prepare their clients to lead an independent life.<sup>59</sup>

Project questionnaires, country reports and conference lectures give us a picture on the main traits of the employment of people with disabilities. The bio-psycho-social disability model accepted in Hungary insists on a complex rehabilitation, with vocational training and social elements along with medical support. This is realised in most of the countries examined. Supported decision-making, which is one basic pillar of participating in the life of the society, on the contrary, is not available in any of them, and instead of this still the institution of custody is in use. Employment of people with disabilities is everywhere on the agenda, legislators use a variety of tools to promote it: subsidizing employers, exempting them from certain rates and taxes, quota systems or help for reasonable adjustments. In spite of all these tools, nevertheless, it is not clear if states are really committed to supporting the employment of people with disabilities. Usually they envision employment in protected workplaces and not on the open labour market, and in most countries the "subsidy trap" still exists, that is in many cases it is more profitable to choose social services than to get a job. All researchers pointed out that a prerequisite of getting employment on the open labour market is that persons with disabilities

56 Kajtár Edit: Disability and social segregation: How inclusive is the Hungarian labour market? In: Law and Society in the 21st Century: Transformations, Resistances, Futures: Joint Annual Meeting of the Law and Society Association (LSA) and the Research Committee on Sociology of Law (RCSL of ISA) Humboldt University, Berlin, 07. 25. –28. 07. 2007. p. 1.

57 Zeller Judit: Take it personally! Disability from a psychological perspective. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 145–158.

58 Roland Keszi – Róbert Komáromi – György Könczei: Employees with disabilities and a reduced ability to work at the 200 greatest Hungarian companies. (*Fogyatékos és megváltozott munkaképességű munkavállalók a 200 legnagyobb hazai vállalatnál.*) Labour Review (*Munkaügyi Szemle*), 2002/10. pp. 21–23.

59 Judit Futár et al.: The employment of people with disability and people with changed working abilities in the light of the practice of the Hold my Hand Foundation. Pécsi Munkajogi Közlemények (*Pécs Labour Law Communications*), 2013 Special edition. pp. 169–174.

be able to access education and vocational training without difficulties, and in many countries this is not the case yet.<sup>60</sup>

## 7. SUMMARY AND CONCLUSIONS

The labour market situation and opportunities of the “scarred generation” are alarming. The problem is even more serious if we focus on certain especially sensitive young employee groups. It is practical to examine “sensitizing factors” and special difficulties, needs and opportunities(!) relating to these. Also we have to keep in mind that the crisis does not only affect employees, but also unemployed and inactive people, and participants of the education system (including in the latter not only young people in the statistical sense but also those that leave the system later than average). The transfer is by far not smooth for young employees, and here I do not only think of the transfer between education and the world of employment but also the difficulties of balancing between child care and work, and the inescapable paths of the social security and social services systems.

The individual licences mutually strengthen each other. Education, labour market and the social services system form a tightly knit unity, and depending on the quality of regulation forms a “Holy Trinity” enhancing due process, or on the contrary, a Bermuda Triangle in which rights mysteriously disappear. We have to closely examine all three elements of the Holy Trinity/Bermuda Triangle. Education and continuous dialogue between educational institutions and the labour market have a significant role in handling the problem. Sensitizing towards people in a disadvantageous situation can be part of the curriculum. It is possible in all professions and fields to combine career planning, acquiring practice and strengthening social solidarity. Practice acquired as volunteers, for example in a law clinic, is multiply repaid, a well chosen apprenticeship can even function as a “preliminary probationary period”.

Examining the world of labour we can see that several classical protecting rules apply to sensitive groups. Behind these rules are international and EU standards, but it seems even these are not immune to negative changes. This paper describes one special case, namely tying protection against termination by notice to informing the employer about pregnancy/participation in a test tube baby programme prior to the notice. This issue is especially hot because the relevant section of the Hungarian Labour Code has been declared unconstitutional just recently by the Constitutional Court. Within the world of labour we also have to examine the measures taken on the basis of the idea of flexicurity. Sensitive groups seem to be on the downside of this approach in many respects. Young employees are over-represented in unstable positions, and although the concept of flexicurity presents atypical forms as an entry point to permanent employment, in reality it is very rare that someone enters into permanent employment from these. Defining a lower level of protection by differentiating the rules can only serve as a temporary solution. Providing proper jobs and protected mobility, restricting unstable jobs, providing wages that can ensure a livelihood instead of low minimum wages, providing proper working conditions, and strict observation of health protection and security standards are much more important than flexibility. Nevertheless, atypical forms are not necessarily evil even in the case of sensitive employees; if sufficient guarantees are provided, they can react to special needs of this group (for

example job sharing in the case of employees with small children). On the local level, positive measures of the equal treatment plan can be adjusted to special needs of certain sensitive employee groups. And finally, the last element of the Holy Trinity/Bermuda Triangle is the social security systems. Although the reform of these promotes the return to the world of employment, and early re-activation, at the same time it is a source of danger for certain especially sensitive groups, since it does not take into account that not everybody is equally capable of the self-care, or fast and flexible switch that they target.

The paper started with dark images, a scarred generation, crisis, and unequal chances. Besides the problems, however, I could also describe many good initiatives (international cooperation in the framework of the Empower Project, and seminars sensitizing the students afterwards, the so called “integrated, open university”, law clinics, workplaces reacting to the special needs of sensitive employees, etc.) The final conclusions of the paper, if not positive, perhaps can be regarded as optimistic. While pure economical approach can result in even greater lagging behind of vulnerable individuals and groups, a social approach can integrate the “lost generation”. With the words of John Gardner: “We are continually faced with a series of great opportunities brilliantly disguised as insoluble problems.”

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## **MOLIM TE, PENJI SE NA DRVO! NEKA RAZMIŠLJANJA O PREPREKAMA KOJA SPREČAVAJU ČLANOVIMA „UGROŽENIH SKUPINA“ ULAZAK NA TRŽIŠTE RADA**

### **Sažetak:**

„Izgubljena“ ili „obilježena generacija“, „ekonomska i socijalna hitnost“ – ovo su pojmovi koje nalazimo u nekoliko ILO dokumenta i dokumenata Europske komisije vezano uz prilike za zapošljavanje mladih ljudi. Nažalost, uporaba ovih izraza više je nego pretjerana retorika, stopa nezaposlenosti mladih je svakako trajno i značajno visoka, njihov položaj na tržištu rada je nestabilan. Višak radne snage potaknut ekonomskom krizom, i širenje nesigurnih oblika zapošljavanja pogađa najviše mladu populaciju. Rad istražuje (dodatne) prepreke koje sprečavaju zapošljavanje mladih osoba a koji također pripadaju jednoj (ili više) tzv. „ugroženih skupina“ te nudi tumačenja različitih mjera u svrhu uklanjanja navedenih prepreka. U radu se raspravlja o značenju „ugroženih skupina“ s posebnim osvrtom na osobe s posebnim potrebama. Rad daje prikaz obrazovne politike, radnog prava dok se mjere na tržištu rada kao i mjere socijalne zaštite pojačavaju i zasigurno je presudno da njihova interakcija rezultira u pravu koje štiti Sveto Trojstvo a ne Bermudski trokut gdje prava misterija nestaju. Primjer Mađarske se navodi kao tipičan slučaj prikaza uloga mjera u okviru „soft“ i „hard law“, aktivnih i pasivnih politika na tržištu rada u borbi protiv nejednakosti kao i njihovi potencijali i ograničenja. Rad sadrži komentare na poteškoće na koje nailazimo na radnom putu kao i prilikom zapošljavanja. U radu se naglašava važnost mjera koje odgovaraju zahtjevima tržištu rada a istovremeno su prilagođeni posebnim potrebama „ugroženih skupina“.

*Ključne riječi:* „ugrožene skupine“, mladi, fizički nedostatak, trudnoća, socijalna uključenost, obrazovanje, zapošljavanje, Mađarska, projekt osposobljavanja

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## BITTE, KLETTERE AUF DIESEN BAUM! EINIGE ÜBERLEGUNGEN ZU HINDERNISSEN, DIE DIE ANGEHÖRIGEN GEFÄHRDETER GRUPPEN VOM TRETEN AUF DEN ARBEITSMARKT VERHINDERN

### Zusammenfassung:

„Die verlorene Generation“, „die vernarbte Generation“, „wirtschaftliche und soziale Not“ – diese Ausdrücke kennzeichnen einige Dokumenten der Internationalen Arbeitsorganisation und der Europäischen Kommission, die sich mit den Fragen der Beschäftigung Jugendlicher befassen. Diese trostlosen Ausdrücke sind leider nicht nur eine übertriebene Rhetorik, weil die Arbeitslosenquote unter Jugendlichen dauernd und beträchtlich hoch und deren Lage auf dem Arbeitsmarkt instabil sind. Die durch die Wirtschaftskrise verursachten Entlassungen und Vermehrung von unsicheren Beschäftigungsformen treffen die Jugendlichen am meisten. Dieser Beitrag untersucht (auch andere) Hindernisse der Beschäftigung auch jener Jugendlichen, die einer oder mehreren sog. „gefährdeten Gruppen“ gehören und bietet Kommentare über verschiedene Maßnahmen, die zum Entfernen dieser Hindernisse unternommen sind. Der Begriff „gefährdete Gruppe“ wird auch erörtert, mit besonderer Rücksicht auf die behinderten Personen. Die Autorin vertritt die Auffassung, dass die Ausbildungspolitik, Arbeitsrecht und Arbeitsmarkt zusammen mit sozialen Schutzmaßnahmen sich gegenseitig ständig verstärken sollen, und deren Interaktion mit einer rechtsschützenden Heiligen Dreifaltigkeit und nicht mit einem Bermuda Dreieck resultieren sollte, in welchem die Rechte mysteriös verschwinden. Ungarn dient in dieser Arbeit als Fallstudie, welche auf die Rolle der Hard Law- und Soft-Law-Maßnahmen, der aktiven und passiven Arbeitsmarktpolitik zum Zweck der Überwindung von Ungleichheiten, aber auch auf ihre Potentialen und Begrenzungen hinweisen sollte. Darüber hinaus bietet die Autorin Kommentare hinsichtlich der Schwierigkeiten, die auf der Suche nach der Arbeit erscheinen, wie auch nach der Beschäftigung. Im Beitrag wird auch die Wichtigkeit der Maßnahmen zum Ausdruck gebracht, die den Forderungen des Arbeitsmarktes entgegenkommen und gleichzeitig besondere Bedürfnisse der gefährdeten Gruppen in Betracht nehmen.

*Schlagwörter:* gefährdete Gruppen, Jugendlichen, Behinderung, Schwangerschaft, soziale Inklusion, Ausbildung, Beschäftigung, Ungarn, Empower Project.

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Original scientific paper  
UDK: 349.2:331.533(439)  
331.5

## TEMPORARY AGENCY WORK IN THE EUROPEAN UNION – THE EXPERIENCES OF THE IMPLEMENTATION OF DIRECTIVE 104/2008/EC IN HUNGARY

*Abstract:* Temporary agency work is a type of non-traditional form of employment; its regulation raises wide-ranging problems concerning legal policy, legal dogmatics and legislation at the level of both the European Union and the individual Member States. This study introduces the development of the regulation pertaining to temporary agency work in the European Union and in Hungary so that it could be compared to the regulation of temporary agency work of other Member States.

Directive 104/2008/EC of the European Union lays down the basic rules pertaining to temporary agency work which Member States have to transpose into their own legal order. This study describes and analyses these provisions by placing the steps of law harmonization and issues concerning the legislation on temporary agency work in Hungary and EU requirements side by side.

*Key words:* temporary work, Hungarian Labour Code, discrimination, EU directive on temporary work