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# Inequalities in the Employment of Municipality Law Enforcement Staff

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*In meeting their law enforcement tasks, municipalities may engage persons in assistant community support officer positions as employees either employed directly by themselves or, in special cases, in the framework of temporary agency work. However, as far as the requirements of equal treatment are concerned, the joint application of the two types of employment highlights problematic situations which may also occur in other fields of temporary agency work. The purpose of this study is to reveal such problems, inequalities, and to provide suggestions regarding the elimination thereof, with due consideration of EU directives.*

***Keywords:*** *municipal law enforcement work, assistant community support officer, temporary work, equal treatment, derogations from equal treatment*

In the course of my work, I have recently come across situations in the employment of municipality law enforcement staff where various inequalities were highlighted in employment relationships classified under the legal relationship of engagement in work. According to the above it can be concluded that in the public sector, employment relationships also occur through companies established for such purposes. In the cases examined by myself, situations occurred at municipality level e.g. where at the same workplace and under identical working conditions, there were full-time assistant community support officers engaged through a temporary-work agency and also assistant community support officers with contracts of employment recruited directly by the local government's city management company. Although such a situation was created – and may be created – in special cases in connection with tackling periodical problems (such as investigations of illegal dumpings of wastes in large volumes and finding the perpetrators), also highlights some problematic areas.

## The background of the employment of assistant community support officers

Based on the regulation provided by Act CXX of 2012 on the activities of persons performing certain law enforcement tasks and the amendments to certain Acts to fight

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truancy, the work of public area officers (too) employed as members of municipality law enforcement staff may be assisted by assistant officers.[2] An assistant officer does not have the right to take measures independently, and may exclusively perform his/her work, both on public area and on the outskirts of the city, in the presence and according to the instructions of a community support officer.

As already mentioned in the introduction, several forms of employment relationship occur in the public sector, through companies established for such purposes. The basis for this study is provided by assistant community support officers recruited in two types of employment at the municipality concerned, namely through temporary-work agency and "directly" with contracts of employment. As far as temporary agency work is concerned, the temporary-work agency employer is a Kft. (Limited Liability Company) independent of the municipality and specialising in temporary-work agency activities, and the user undertaking is the already mentioned city management non-profit association which employs the permanent staff of 5 directly employed assistant community support officer too. To solve periodical tasks, the association takes usually 8 to 10 people on assignment.

The employment relationships of assistant officers are regulated by the provisions of the Labour Code Act I of 2012 (hereinafter referred to as "Mt.").

The primary purpose of Act CXXV of 2003 on equal treatment and the promotion of equal chances (hereinafter referred to as "Ebktv.") is to ensure – in accordance with its title – equal treatment, *inter alia*, on the occasions of creating legal relationships by the Hungarian state, local and minority governments and their organs, in their legal relationships, in the course of their procedures and in taking measures by them.[3] This also includes employment relationships classified by law under legal relationship of engagement in work. However, in recent years and in the course of my current working activities, I have experienced situations in the employment of assistant officers where the requirement of equal treatment – also emphasized in the directives of the European Union[4] – is not met.

## Remunerations and services in practice

As far as the requirements of equal treatment are concerned, the general rule is that during the time of temporary work, the same basic working and employment conditions should be ensured for a temporary agency worker as valid for an employee maintaining permanent employment relationship with the user undertaking. According to Mt., such basic working and employment conditions include, *inter alia*, regulations regarding the amount and protection of pay, other benefits, and the requirement of equal treatment.[5]

2 Act CXX of 2012, sections 3 (2) and 4 (1)
3 Obligation is based on Ebktv. sections 4–5
4 In this regard Directive 2000/78/EC and section 5 of Directive 2008/104/EC may be mentioned, among others.
5 Mt. sections 219 (1)–(2)

Regarding wages, it gives practical significance to the regulation of equal treatment that according to my statistics, although the wages paid to assistant officers performing temporary agency work are the same as those received by assistant officers directly employed by the user undertaking, in recent years they have considerably lagged behind e.g. the gross average wages in the national economy. Nevertheless, it should be mentioned that they still were nearly 1.5 times higher than the minimum wages as varied from time to time. Wage data of recent years are summarised in the table below.

*Table 1 Wage data of recent years*

| **Year** | **Monthly minimum wage**[6] | **Monthly average wage of assistant officers performing temporary work**[7] | **Monthly average wage in the national economy**[8] |
|---|---|---|---|
| 2013 | HUF 98.000 | HUF 145.568 | HUF 230.714 |
| 2014 | HUF 101.500 | HUF 150.122 | HUF 237.695 |
| 2015 | HUF 105.000 | HUF 158.726 | HUF 247.924 |

As it is shown above, the temporary agency workers have received (and continue to receive) considerably lower wages in comparison with the wage level applied in the national economy, so the requirement of equal treatment related to the amount of wages is not yet fully met at every level in practice. According to judicial practice, however, if there is a violation it should be remedied, which may not bring about the violation of or prejudice against other employees' rights. It does not create a violation of the rules related to equal treatment if in a general wage increase situation the employer does not raise an employee's wage with regard to the forthcoming termination of his/her employment.[9]

In my opinion, however, concerns arise in connection with this practice. In cases, *inter alia*, e.g. where this wage amount represents the wage of an employee received in his/her last employment, he/she may be affected disadvantageously when the amount of his/her pension is determined.

The remuneration of a temporary agency worker consists not only of wage, but cafeteria and fringe benefits also represent a considerable part. This may cause disturbance between the temporary-work agency and the user undertaking. The question will arise how the user undertaking is going to settle the difference to the temporary-work agency? Equal treatment and equal remuneration should mean the same compensation elements provided to its own assistant officers filling the same posts. In practice, this will assume extensive exchange of information between the user undertaking and the temporary-work agency,

6 www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qli041.html (09.12.2016)
7 On the basis of wage calculations presented by temporary agency worker assistant officers
8 www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qli012b.html (09.12.2016)
9 Radnay et al. (2012) 324.

also on the basis of previous practice,[10] which is expressly required by the current Mt.[11] In practice, however, it may be a delicate question that an association – engaged in the public sector in our case – should share detailed data related to its own remuneration system with a temporary-work agency it is in contract with. Therefore, in my opinion, statutory provisions regarding information transfer would absolutely be necessary.

The current Hungarian regulation does not require the user undertaking to guarantee the availability of its services (first of all welfare and travel services), but it follows from Ebktv. that, in the absence of objective reasons, a temporary agency worker may not be excluded from such services of the user undertaking. An interpretation[12] of the Mt. includes these services in remuneration construed in a wider sense, but, in my opinion, they are "merely" services and cannot be interpreted as benefits. Considering the domestic attitude, I should deem it necessary to list in the statutory provision the objective circumstances mentioned in the European Parliament and Council Directive 2008/104/EC on temporary agency work (hereinafter referred to as Directive),[13] which is deemed governing at Community level regarding temporary agency work, in order to avoid situations where judicial practice provides guidance for the operation of law.

## Derogations from equal treatment and the associated regulatory problems

In addition to discussing services and wages in detail, there are further particular regulations concerning the application of the above mentioned general rule related to basic working and employment conditions as per Mt. sections 219 (1)–(2), which are worrisome from the viewpoint of the implementation of the Directive in practice.

According to the general rule, as from the first day of assignment and regarding every remuneration element, a temporary agency worker is entitled to the same compensation as his/her peer directly employed by the user undertaking and performing work of equal value. This, however, cannot always be achieved in practice, although equal treatment should be ensured in each individual case in compliance with the regulation.

Regarding our case, Mt. mentions two exceptional points which only require the application of the principle of equal wages as from the 184th day (after the first six months) of the assignment:

1. In the case of permanent employment (employment of indefinite duration for the purposes of temporary agency work assignments and remuneration which is also ensured in the absence of engagement at the user undertaking);
2. In the case of derogations related to the employee or the user undertaking.[14]

10 Berke et al. (2008) 264.
11 Mt. sections 217 (3) and (5)
12 Kozma et al. (2012) 400.
13 Directive section 6 (4)
14 Mt. sections 219 (3)–(4)

To 1. The derogation of permanent employment[15]

The conditions of employment of indefinite duration for the purposes of temporary agency work assignments and remuneration which is also ensured in the absence of engagement at a user undertaking (downtime) must exist. The Directive considers the joint existence of these conditions to be such an advantage which compensates the temporary agency worker for not being entitled to equal wage.[16] But for the durations in between assignments, the employee is not entitled to remuneration in the absence of a separate agreement. According to Mt., such durations are not considered downtime as there is no working time associated with a position.[17] Regarding the rates that may be paid for intervals, no statutory minimum is determined.

It should be mentioned that the comparative advantages of permanent employment and remuneration for the time between assignments may easily be lost. Such cases include if in spite of a permanent contract, the employee is dismissed after a short time or if in between assignments he/she is only given symbolic remuneration, or during the term of his/her employment there are no "idle times" as assignments follow each other without interruption. Unfortunately, Mt. does not provide some kind of subsequent compensation for the employee in such cases. This would expressly be required by the Directive itself as it states that EU member states applying the derogations should take appropriate measures to prevent abuses.[18] It should be added that the situation of temporary agency workers excluded from equal remuneration without compensation also raises the constitutional problem of arbitrary discrimination.

It should be pointed out that it is also objectionable on the basis of the prohibition of misfeasance[19] if the employee is given less wage than his/her peer employed directly and performing work of the same value, merely based on a promise of permanent employment or remuneration in between assignments which never comes true or is paid at low rates. With regard to the concerns listed above, it creates an uncertain legal situation, to say the least, if the temporary-work agency applies this derogation in particular cases.

Finally, it should also be mentioned that due to a mistranslation in section 5 (2) of the Directive, the principle of equal treatment is more stringent in the Hungarian regulation than required by the EU, which, in my opinion, may considerably lessen the efficiency of temporary agency work in every field of employment.

The original English wording of the Directive provides exemption from equal treatment regarding payment to employees with permanent contracts if they continue to be paid in the time between assignments.

On the other hand, the Hungarian translation of the Directive mentions temporary agency workers with continued contracts, which is difficult to construe in legal terms.

15 Kártyás (2013) 40–45.
16 Directive section 5 (2)
17 Mt. section 146 (1)
18 Directive section 5 (5)
19 Mt. section 7

Because of the unknown term of continued contract in Hungarian law, Mt. does not contain the allowance permitted here.

To 2. Derogations related to employee or user undertaking

According to the derogation related to employee, during the first 183 days of the assignment, the temporary-work agency is exempted from the observance of the principle of equal wage if the employee is deemed an employee being steadily away from the labour market.[20]

In my opinion, the derogation provided to these groups is positive from the viewpoint of encouraging employment as it tries to provide allowances to the employer hiring such employees. However, from the viewpoint of employees, I think, it may have a negative influence on the employment of these groups in temporary work, since they experience difficulties in returning to the labour market even in normal cases and if they do succeed and are engaged in temporary agency work, they will receive less wages for six months due to the derogation rule. For an employee, this may result in the decrease of motivation or a low level of enthusiasm.

The employment of these persons is also associated with various contribution allowances, thus, in their case we can also speak about integration programs supported by the state with regard to which the application of the rules of the Directive may be disregarded.[21]

A derogation related to the user undertaking will be a situation where the user undertaking employer is a business association, non-profit organisation, or registered non-profit organisation with majority participation of a municipality, like in our case.

The legislator might have the intention to provide allowances to non-profit user undertakings, but the Directive states that its effect covers all undertakings using temporary agency work irrespective of whether or not they are profit oriented.[22]

## Summary of experience

In addition to the wide scope of derogations detailed above, certain temporary agency workers can be excluded from the effect of the principle of equal wages both currently and in the future. This may frequently occur especially among employees performing short-term assignments not exceeding six months. Unfortunately, exactly this type of assignments lasting for several months have been and is experienced most frequently in the case of the assistant officers studied, in line with domestic practice of temporary agency work. And the wages achievable through temporary agency work are currently lagging behind the amount of average wages. On the other hand, because of the

20 Classification is determined by section 1 (2) 1 of Act CXXIII of 2004 on the promotion of the employment of career-starting young people, unemployed aged over fifty and jobseekers following child care or care of a family member, as well as on employment with scholarship.

21 Directive section 1 (3)

22 Directive section 1 (2)

inaccurate definition of derogations, which is objectionable on the basis of both the approximation of laws and the constitutional prohibition of arbitrary discrimination, their application involves legal risks for – mainly temporary-work agency – employers, therefore amendments would be desirable to the relevant statutory provisions.

Also, it should be mentioned that nowadays, in the labour law science, an ever increasing number of experts maintain the attitude that the "enjoyment" of employee basic rights is less and less associated in practice with the particular type of employment, but instead more and more with the fact of working itself. In accordance with this, too, equal treatment should be ensured for everyone. So a temporary agency worker is seen not only as a "resource" but also entitled to equal employee rights in the same manner.[23]

Many tend to think that because of the principle of equal treatment, the advantages of temporary agency work may disappear, whichever of its fields of application is considered. In practice, however, other advantages such as the decrease of administration burdens or "quick substitution" to solve periodical problems as in the case studied, or flexible headcount management are all such elements which provide compensation.

## Further suggestions

As far as the regulatory environment is concerned, from the viewpoint of editing a legal norm text, the provision calling upon the member states to avoid abuses in connection with the application of section 5 of the Directive and especially to prevent successive assignments designed to circumvent the provisions of this Directive, was, in my opinion, included by mistake in section 5 of the Directive governing the requirement of equal treatment. The effect of this regulation is broader than the enforcement of the basic principle of equal treatment. The "prevention of successive assignments" according to the text of section 5 (5) implies the temporary nature defined as an indispensable element of the notion of temporary agency work, and requires the member states to prevent the circumvention of this provision.[24]

It would be desirable to suggest the removal of this calling upon provision, at Community level, too.

In my judgement, regarding the above-mentioned derogations of Mt. from equal treatment related to employees, it would be necessary to determine, as a statutory minimum, the rate of remuneration which may be paid for the time between assignments. If during the term of employment assignments follow each other without interruptions, subsequent remunerations at rates specified by statutory provision should be ensured for the employees.

In the case of derogations related to the user undertaking, the wording non-profit organisation should be removed from the text of Mt., based on the reason to comply with the provisions of the Directive.

23 Kun (2013) www.ado.hu/rovatok/munkaugyek/munkaero-kolcsonzes-taktikak-tulelesre (09.12.2016)
24 Horváth (2014) 161.

Apart from the amendments made to the regulatory environment, I believe, it would also be necessary to utilize in Hungary the so-called bilateral funds created in the European Union on welfare grounds in the temporary agency work sector. These funds would provide a better access to trainings, supporting thereby a wider professional development of temporary agency workers and, at the same time, that of temporary agency work activities.

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Act CXX of 2012 on the activities of persons performing certain law enforcement tasks and on the amendments to certain Acts to fight truancy

## ABSZTRAKT

***Egyenlőtlenségek az önkormányzati rendészeti foglalkoztatás területén***

*BÉKÉSI László*

*Az önkormányzatok rendészeti feladatellátásuk területén foglalkoztathatnak saját alkalmazásukban, illetve speciális esetekben munkaerő-kölcsönzés keretében is önkormányzati segédfelügyelő munkakörben munkavállalókat. A két foglalkoztatási forma együttes alkalmazása azonban az egyenlő bánásmód követelményeit illetően rávilágít olyan problémás helyzetekre, melyek a munkaerő-kölcsönzés egyéb területein is előfordulhatnak. A tanulmány célja ezen problémák, egyenlőtlenségek feltárása, illetve javaslattétel a megszüntetésükre vonatkozóan, az uniós irányelvek figyelembevételével.*

***Kulcsszavak:*** *önkormányzati rendészeti foglalkoztatás, önkormányzati segédfelügyelő, munkaerő-kölcsönzés, egyenlő bánásmód, egyenlő bánásmód alóli kivételek*