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## **Disability and Social Segregation – How Inclusive is the Hungarian Labour Market?**

(Draft)

### **Introduction**

2007 has been declared the “European Year of Equal Opportunities for All”. This Paper focuses on a specific segment of equality namely social exclusion of disabled people and their chances on the labour market. The first part of the Paper defines social inclusion and presents five different models of disability. The second part studies the human rights documents addressing disability. The third part looks at the evolution of the European Union’s disability agenda. It traces how the Community has gained competences in the social field from the Treaty of Rome up till now and how the issue of disability has been perceived during this period. The fourth part examines to what extent EU objectives have been implemented in Hungary. First it gives a brief historical overview and examines how the transition from the socialist to the EU era influenced the concept of social inclusion and disability. Later on concerning acts and other regulations fighting discrimination on the ground of disability are studied, information and insight is provided into current policy measures. The final part offers concluding remarks. The Paper’s objective is to point out the measures available to equalize opportunities for people with disabilities at the workplace and to assess the effectiveness of current legal framework, the main question being: how inclusive is the Hungarian labour market.

### **I. Basic Concepts**

#### **1. Social Exclusion –Social Inclusion**

The concept of “social exclusion” was developed in the mid ‘60s - mid ‘70s. By then it became widely accepted that certain groups’ “drop out” was not an individual phenomenon, but a

**social trend** that could not be overlooked any longer.<sup>1</sup> Connected to the concept of social exclusion at least two important questions arise: (1) what does it exactly mean, and (2) who does it concern.

Let us start with the first question. Social exclusion is a very complex phenomenon. It can be described as a process by which someone becomes **disconnected from the community** and the wider society. “Social exclusion might occur when individuals or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown.”<sup>2</sup> We can see that social exclusion can be related to many aspects of life, including employment and labour conditions, education and training; consumption levels; housing conditions; family structure; health; social ties; etc.<sup>3</sup> This complexity also indicates that it is not enough to create policies for people with disabilities. According to the principle of **mainstreaming** “the needs of disadvantaged people need to be taken into account in the design of all policies and measures, and that action for disadvantaged people is not limited to those policies and measures which are specifically addressing their needs.”<sup>4</sup> The second question is: who does social exclusion concern? Several social groups might be jeopardised by social exclusion, women, youngsters, elderly people, under – educated people, the Roma, those living in disadvantaged areas, people with disabilities are typical examples.

We will focus on social exclusion of disabled people, more precisely the emphasis will be on finding out how the labour market disadvantages. **Work, disability and social exclusion** are strongly interrelated. Statistics show that the disabled people’s chances to access the labour market are worse than those of the non-disabled. People with disabilities represent at least 16% of the overall EU working age population<sup>5</sup> Disabled people are almost twice as likely to be inactive as non-disabled people.<sup>6</sup> We also know that the unemployed are more likely to be jeopardized by social exclusion.

The EU is determined to fight against this trend. Social inclusion is a crucial element of the modernised **European Social Model** (ESM). The ESM combines solidarity and competitiveness; aims at full employment but also at good quality jobs and a socially inclusive

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<sup>1</sup> Moncel / Ruivo / Fravega (2006), p. 61.

<sup>2</sup> Social Exclusion Unit (1998). Cited by Robert MacDonald/Jane Marsh. (2001), p. 374.

<sup>3</sup> Moncel / Ruivo / Fravega (2006), p. 62.

<sup>4</sup> Commission (2005), p. 3.

<sup>5</sup> EUROSTAT.

<sup>6</sup> Estimate of the EUROSTAT survey on "Employment of disabled people in Europe in 2002". As no uniform definition of disabled people exists there are no precise harmonised figures.

society.<sup>7</sup> The main characteristics of it are high level of social protection, central role of the social partners, emphasis on social cohesion and high level education.<sup>8</sup> The **European welfare states** intervene into the functioning of the economy to promote the security and equality of citizens in order to foster the social integration.<sup>9</sup>

## 2. Disability

The academic literature distinguishes between various models of disability.<sup>10</sup> The different assumptions of these models led to considerably different policy responses.<sup>11</sup>

- (1) the moral model
- (2) the medical model
- (3) the rehabilitation model, finally
- (4) the disability model.

The oldest, the **moral model** considered disability as the result of sin; therefore it mostly led to the complete exclusion of the individual from the society and the word of work. In the 19th century the moral model was replaced with the **medical model**. This later was mainly preoccupied with medical treatment. At that time it was believed that in most cases the individual could be cured therefore the society had no responsibility to make a "place" for persons with disabilities.<sup>12</sup> In 1980 the WHO published the first International Classification of Impairments, Disability and Handicap. Disability was defined as the impairment of some physical or mental capacity that others command to a standard degree. The WHO itself acknowledged in its 2001 definition that disability should be considered as an umbrella term, and that the medical definition needed to be complemented with the social one.

After World War II, when countless disabled veterans needed to be re-introduced into society and the labour market, the establishment of a new understanding of disability become

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<sup>7</sup> The Report of the High Level Group in May 2004 read: "Despite the diversity between national systems, there is a distinct European Social Model in that all national systems of EU countries are marked by the consistency between economic efficiency and social progress." Commission (2004b).

<sup>8</sup> European Council (2002), para 22. For details see: Rogowki / Kajtár (2005).

<sup>9</sup> Alber (1988), Continuities and Change in the Idea of the Welfare State. Politics & Society, Vol.16, (4), p. 451. Cited by: Arnold (1999), p. 7.

<sup>10</sup> Most academics refer to three or four different models.

<sup>11</sup> Based on Deborah Kaplan's system. <http://www.peoplewho.org/debate/htm> Accessed: 5/6/2007.

<sup>12</sup> <http://www.peoplewho.org/debate/kaplan.htm> Accessed: 5/6/2007.

necessary. The **rehabilitation model** complemented the medical model. It regarded the person with disability as someone in need of services (like training, therapy, counselling, etc.) from rehabilitation professional. The effect of the rehabilitation model is still visible in the philosophy behind the current vocational rehabilitation system. The latest model is the so-called “**social model**”, which regards disability as a normal aspect of life. The disability movements of the ‘70s in the UK played a significant role in the emergence of this model. “The problem is defined as a dominating attitude by professionals and others, inadequate support services when compared with society generally, as well as attitudinal, architectural, sensory, cognitive, and economic barriers, and the strong tendency for people to generalize about all persons with disabilities overlooking the large variations within the disability community.”<sup>13</sup> Finally, to make the picture more complex let us list here a fifth model. (5) According to the “**subjective definition**” a model mostly advocated by disability movements a people is disabled if he/she perceives him/herself as disabled.<sup>14</sup>

## **II. The International Framework - the Human Rights Aspect of Social Exclusion**

The EU’s human rights approach to disability issues means that the EU seeks the active inclusion and full participation of disabled people in society. There are various Human Rights instruments to promote social inclusion.

**Article 14 of the European Convention on Human Rights (ECHR)** regulates prohibition of discrimination. Though discrimination based on disability is not listed explicitly, Protocol 12 extends the prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law.

**Article 2 (1) of the International Covenant on Civil and Political Rights (ICCPR)** states that each state party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. We can see that distinction based on

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<sup>13</sup> <http://www.peoplewho.org/debate/kaplan.htm> Accessed: 5/6/2007.

<sup>14</sup> Grönvik distinguishes between five models: functional, relative, administrative, social and subjective definitions. Grönvik (2007), p. 16.

disability is again not listed, Article 2 (1) only refers to “other status”. The wording of Article 26 is similar: “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

**Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights ICESCR** lays down prohibition of discrimination too when it states: “each state party to the Covenant undertakes to ensure the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The expression “such as” indicates that although there is no concrete reference to disability, the list is open ended.

**ILO Convention No. 111** concerning Discrimination in Respect of Employment and Occupation and also the **ILO Convention No. 159** Concerning Vocational Rehabilitation and Employment aims at social inclusion.

European Community is a signatory to UN Convention on the Rights of People with Disabilities. **Standard Rules of Equalization of Opportunities for Persons with Disabilities** issued by the UN in 1993 also sets up – optional – guidelines to implement policies equalizing opportunities.

### **III. The European Framework: Evolution of the European Community’s Disability Policy**

#### **1. From Rome to Amsterdam: Social Dimension Swept under the Carpet**

The **Treaty of Rome** in 1957 ignored social and employment issues not strictly related to the overall economic goal and consequently to undistorted competition. The Treaty did not offer a helping hand to the disabled and was not sensitive towards other vulnerable groups, like women<sup>15</sup>, old and young workers or the unemployed either.<sup>16</sup> The neglect of the social dimension

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<sup>15</sup> With the exception of the “equal pay for equal work” provision.

was partly due to the belief that the economic growths would automatically lead to flourishing in both the social and employment fields.<sup>17</sup> Article 2 EEC Treaty stated that progress in the standard of living was to be achieved “by establishing a common market and approximating the economic policies of the Member States.” The presumption of this provision, however, proved to be false soon. Contradicting anticipations social progress did not automatically follow the economic growth.

The period between the mid ‘70s and mid ‘90s was not a productive one from the disability policy’s point of view. The Community’s main activity was limited to the promotion of exchange of information through establishment of European **networks and creation of multi-annual disability action programmes**<sup>18</sup>. In 1986 the **Single European Act** (SEA) was adopted. The SEA incorporated a Social Protocol, binding all the Member States except the United Kingdom. The wording of the Preamble indicated a sea-change; the promotion of social justice became a declared aim. The Member States were “determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice.” However it is one thing to be “determined to work together to promotion of social justice” and it is another to actually make steps.

**Council Recommendation 86/379/EEC** on the Employment of Disabled People in the Community illustrates well the mid’80s. It was a very weak, unmotivated document and also – being a recommendation – it could not impose any obligation on the Member States. It was for a good reason that the NGOs named their campaign fighting discrimination: “Invisible Citizens”.<sup>19</sup> The lack of regulation on disability discrimination meant that there was no possibility to introduce measures for disabled, in other words, they remained “invisible” in the Treaty.

The **Maastricht Treaty** did not mention disability, therefore it did not provide legal basis for binding actions in this field either. It is worth taking a look at the objectives the Union set for itself. “Promotion of balanced and sustainable economic and social progress” was first on the list

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<sup>16</sup> The Treaty failed to address other elements of “job quality”, like job security or the representation of workers too.

<sup>17</sup> Neither the Ohlin, nor the Spaak Report – two documents that strongly influenced the final wording of the Treaty – regarded social policy as a territory that needed to be harmonised. Gyulavári (1998), p. 19.

<sup>18</sup> Like Helios I between 1988 and 1992, Helios II between 1992 and 1996, etc.

<sup>19</sup> Waddington (2006), p. 11.

of Article B. The logic of this article was similar to the one that characterised the Treaty of Rome. Economic cohesion, this time complemented with the abolition of internal frontiers thus an even freer movement of people and goods, and also with economic and monetary integration, was expected to fuel economic and social progress.<sup>20</sup> The subsequent parts of the Treaty, however, did not reflect this dual objective. Maastricht was first and foremost a Treaty on economic and monetary union<sup>21</sup>, only little and cautious steps were taken towards the strengthening of the community dimension of the social policy.

**Delors' famous White Paper** on Growth Competitiveness and Employment in 1994 was mainly concerned with the burning problem of unemployment; however it did have minor reference to the disabled. It envisaged an “economy that is healthy, open, decentralised, competitive and based on solidarity.”<sup>22</sup>

**The Essen European Council** was again explicitly preoccupied with unemployment. The Essen Strategy identified five key objectives, the last of which was the promotion of specific disadvantaged groups such as school leavers, young people, long-term unemployed women and older workers.<sup>23</sup> Though disabled people were not mentioned explicitly, the term “specific disadvantaged groups” most likely included them as well.

## 2. The Amsterdam Treaty

**The mid '90s saw positive changes.** During the enlargement in 1995 three new Member States: Austria, Sweden and Finland, all with strong social democratic traditions, joined the EU and also in many Member States a political shift took place from the right to the left.<sup>24</sup> Even the United Kingdom, whose reluctance on social issues had been legendary, opted in the Maastricht Social Protocol thus the division between the United Kingdom and the rest of the Member States was finally brought to an end. At the same time high unemployment, social exclusion, spreading poverty and marginalisation turned the citizens against the EMU.<sup>25</sup> Measures were required to cure the massive “**Euro-sclerosis**” and re-discover the “human face” of the integration again.

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<sup>20</sup> This time social cohesion was also listed as a possible source of progress.

<sup>21</sup> Goetschy (1999), p. 119.

<sup>22</sup> Commission (1994), p. 11.

<sup>23</sup> European Council (1994), pp. 1–2.

<sup>24</sup> Trubek / Mosher (2003), p. 37.

<sup>25</sup> Abraham (1999), p. 354.

In 1996 a fundamental **philosophical shift** occurred. The Commission and the Council finally adopted the **social model of disability** and started to support the mainstreaming disability issues into other policy areas. The Commission's **Communication on Equality of Opportunity for People with Disabilities**, the first comprehensive strategy for disabled, and **Resolution on Equality of Opportunity People with Disabilities** serve as good examples.<sup>26</sup> The inspiration for these documents came from the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.<sup>27</sup> At the same time organisation such as the European Disability Forum became actively involved in the policy formulation. Social policy oriented Community actors and organisations like ETUC or UNICE drew the agenda to a more activist direction as well.

Amsterdam signalled a watershed in many respects. In 1998 prohibition of discrimination based on **disability appeared** in the Treaty **for the first time**. Article 13 reads as follows: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, **may take appropriate action to combat discrimination based on** sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation." Finally discrimination based on disability was included amongst the fields in which the Council may take appropriate actions. Yet there were shortcomings. The Council's decision required unanimity, meaning that it was very difficult to reach agreement. Secondly, Article 13 covered only those areas where the Community had competence, such as employment but certain other areas related to disability discrimination were still excluded.

Another step forward was Article 136. The objectives of the Community include: "the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources **with a view to** lasting high employment and the **combating of exclusion**".

Article 118 reads as follows: "The Council, acting in accordance with the same procedure, **may adopt measures designed to encourage cooperation** between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best

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<sup>26</sup> Waddington (2006), pp. 14-15.

<sup>27</sup> United Nations General Assembly Resolution 48/46 of 20 December 1993.

practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.” The most important objective from our point of view is the last one, namely "the combating of exclusion", since disabled people are more likely to be excluded from the labour market.

Article 137 contains “softer” tasks of the Community. The Community shall **support and complement the activities** of Member States in the following fields: improvement in particular of the working environment to protect workers’ health and safety; working conditions; the information and consultation of workers; the integration of persons excluded from the labour market; equality between men and women with regard to labour market; opportunities and treatment at work.

According to Article 140 the Commission must **encourage cooperation** between the Member States and facilitate coordination of their action in all social policy fields specified in the Treaty, particularly in matters relating to: employment; labour law and working conditions; basic and advanced vocational training; social security; prevention of occupational accidents and diseases and so on.

The Commission also must act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to national organisations.

Although it is not a binding document **Declaration 22 to the Treaty** needs to be mentioned here too as it contains reference to mainstreaming of disability policy when adopting internal market legislation under Article 95.

### **3. The Lisbon European Council**

The Lisbon European Council meeting on 23 and 24 March 2000 created high expectations for the development of the EU’s economy, proposing it to become “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.” The Commission described **social exclusion** as an **unacceptable burden on European society**. The Conclusions of the Lisbon Council recognized that to achieve even more active and dynamic welfare states in Europe an increased cooperation between Member States and the exchange of experiences and

best practices via information networks were required. The strategic objectives for 2000–2005 were full employment and lowered average unemployment rate within the EU.<sup>28</sup> With Lisbon four horizontal objectives were introduced: (1) full employment, (2) an improved quality of work; (3) lifelong learning; and (4) involvement of social partners. Modernised pension and health care and fight against poverty were also declared aims.

Lisbon's core was that **social cohesion could be a productive factor**, furthermore, social protection and economic development did not exclude one another.<sup>29</sup> A **positive link** was created between social, employment and economic fields.<sup>30</sup>

#### 4. The Framework Employment Directive

Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation is the first Directive that explicitly prohibits discrimination based on disability. According to the Directive a breach of the principle of equal treatment means both direct and indirect negative discrimination, harassment and instruction to discriminate. The Directive contains three expressions of utmost importance: (1) reasonable accommodation, (2) appropriate measures and finally (3) disproportionate burden. Article 5 goes as follows: “In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take **appropriate measures**, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This **burden shall not be disproportionate** when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.”

The term “**reasonable accommodation**” was greatly influenced by the Americans with Disabilities Act.<sup>31</sup> It includes measures to adapt the workplace to people with disabilities, i.e. adapting premises and equipment, patterns of working time and so on. Article 5 is relatively brief and unelaborated. It would be undoubtedly beneficial to follow the example of the

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<sup>28</sup> Commission (2000b).

<sup>29</sup> Vandenbroucke (2004), p. 2.

<sup>30</sup> Ashiagbor (2001), p. 330.

<sup>31</sup> Waddington (2006), p. 24.

Americans with Disabilities Act and attach some kind of an annex with examples and guiding principles to the Directive.

## 5. The EU's Disability Strategy

The EU's **strategy on disability** is built on three pillars: (1) EU anti-discrimination legislation and measures, which provide access to individual rights; (2) eliminating barriers in the environment that prevent disabled people from exercising their abilities, and (3) mainstreaming disability issues which facilitate the inclusion of people with disabilities.<sup>32</sup>

The **EU Disability Action Plan** (DAP) which is updated biannually serves as a framework to develop the EU disability strategy. DAP 2004-2010 is based on three objectives: (1) full implementation of the Employment Equality Directive; (2) successful mainstreaming of disability issues in relevant Community policies; and (3) improving accessibility for all. The first phase of the DAP focused on disabled people's access to the labour market and to employability-related measures such as lifelong learning, information technology and access to the built environment.<sup>33</sup> The current phase (**2006-2007**) focuses on the active inclusion of people with disabilities and it is based on the "**equal citizens**" concept of disability as reflected in the EU Charter of Fundamental Rights. Increased **mainstreaming** of disability under the EU Action Plan with support from the European Social Fund contributes to equal opportunities in Europe. Emphasis is put on positive **dialogue** between the Commission and Member States as well as with disabled people and main stakeholders.<sup>34</sup>

## 6. Hard and Soft Ways of Regulation of Disability within the European Union

### 6.1 Hard Law

The complexity and **diversity** of the social welfare systems and the Member States' reluctance to transfer additional decision making power to EU level make the creation of a

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<sup>32</sup> COM(2005) 604 final. p. 3.

<sup>33</sup> Ibid p. 6.

<sup>34</sup> Ibid p.11.

uniform disability policy very difficult; there is no harmonisation **only coordination** in this field. The principle of **subsidiarity** restricts the Commission, as three elements has to be proven before the it can act: (1) it has to show its competence in the matter, (2) it has to show that its action is preferable compared to national intervention and finally (3) it has to ensure the proportionality of the action concerned. Hopefully we will move towards a more positive approach of subsidiary,<sup>35</sup> one that presupposes the stimulating role of Europe in creating minimal norms and a general framework within which Member States have the room to differentiate.

The issue of disability is regulated at **three levels** within the European Union: (1) primary legislation, (2) secondary legislation and (3) the case law of the European Court of Justice. We have already discussed the evolution of **primary legislation**, (see Treaty of Rome, Maastricht Treaty and particularly Treaty of Amsterdam above). The Community is empowered to support and complement the activities of the Member States. This can include the adoption of **secondary legislation** (directives, regulations, recommendations). It is important to emphasise that the Community is not obliged to enact legislation in the field of social policy it is only empowered to do so. We have already discussed framework Employment Directive (see above). Regulation 1408/71 and its successor Regulation 883/2004/EC contain rules on the application of social security schemes to employed persons and their families moving within the Community and also contain provisions on disability benefits.

The Treaty cannot provide solution for every possible situation in life; certain “holes” inevitably appear on the texture of the legal provisions. The **European Court of Justice** (hereinafter ECJ) has often filled in these holes left by the regulator by applying **general principles**. General principles are constitutional principles shared by the Member States and are derived from the nature, structure and objectives of the Community. The ECJ is renowned for its **activist approach**, as the interpreter of Community it law has developed numerous general principles, like respect for fundamental rights, proportionality, legal certainty, and non-retroactivity.<sup>36</sup> Before the prohibition of discrimination based on disability was explicitly included in the Treaty the principle of non-discrimination as a general principle was often called upon. As the Court acts in accordance with the values of the European Community it is capable

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<sup>35</sup> Muffels / Fourage (2002), p. 60.

<sup>36</sup> <http://www.mifsudbonnici.com/lexnet/articles/artgenprinc.html> Accessed: 04/07/2007.

to avoid miscarriage of justice. Finally the decisions of the Court often **stimulate further social regulation**. This can be expected in the field of discrimination based on disability too.

## 6.2 The Open Method of Coordination

The emergence of the open method of coordination (hereinafter OMC) was a response to the failure to match the market integration with social policy through solely the traditional (hard law) approach.<sup>37</sup> OMC is neither supranational nor intergovernmental, but an **interplay between different levels of governance**.<sup>38</sup> It OMC has been applied to several areas: employment, education and training, social inclusion, health and pension. In other words OMC enables disability issues to be taken into consideration in these areas.

It can be argued that soft law is capable of challenging areas where hard law regulations fail.<sup>39</sup> OMC sets the agenda and helps Member States in developing their national policies within a common framework. It is non-binding method; the Member States can choose the means for the goals set at Community level. Also no harsh enforcement method exists if a State fails to comply with the guidelines. Peer pressure and a practice called “naming and shaming” try to keep the Member State in the “right path”. The Commission and the Council have a prominent role in the process via guidelines, Joint Reports and recommendations. The three core objectives of the current employment guidelines are: (1) full employment, (2) quality and productivity at work and (3) social and territorial cohesion. Almost all employment measures can be linked with the situation of people with disabilities.

## 7. Institutional Framework Promoting Equal Opportunities

The **European Commission** coordinates and supports activities and helps the cooperation between the Member States. It promotes the collection, exchange and development of comparable data, statistics and good practices. At the Commission **DG Employment, Social Affairs and Equal Opportunities** are responsible for disability issues. One of the main actors at Community level is the High Level Group on Disability which consists of Member States and

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<sup>37</sup> Wincott (2003), p. 533.

<sup>38</sup> Jacobsson / Schmid (2002), p. 2.

<sup>39</sup> Beveridge / Nott (1998), p. 294.

NGO representatives. The Disability Unit is responsible for the mainstreaming of the disability issue and raising awareness of the situation of the disabled.<sup>40</sup> It is in continuous dialogue with the main stakeholders, it works in close cooperation with the Anti-discrimination Unit and the Gender Equality Unit in DG Employment, Social Affairs and Equal Opportunities, as well as the eInclusion Unit in DG Information Society and Media DGs responsible for Competition, Enterprise, Transport, Research, Education and Culture, Administration, Health and Regional Policy.<sup>41</sup>

## 8. What Do “Everyday People” Think?

What do European Union citizens, in other words the “everyday people” of the EU think about social exclusion of people with disabilities? What are the main perceptions and attitudes about inequality in the field of employment? In fact it is very easy to find the answers to these questions. To map the situation in the EU the European Commission DG Employment, Social Affairs and Equal Opportunities requested a **survey in 2006**.<sup>42</sup> It is worth taking a look at some of the numbers:

- 51 % the European public is aware that discrimination based on disability when hiring employees is prohibited by law.<sup>43</sup>
- 79 % of the respondents feel that with equivalent qualifications, a disabled person compared with an able-bodied person have less chance to be employed, to participate in training or get promoted.<sup>44</sup>
- Only 29% of all EU citizens feel that discrimination on the grounds of disability is now more widespread than it was five years ago. (Hungary with Portugal is amongst the two most pessimistic states, according to 44% of the respondents the situation was better in the past)<sup>45</sup>

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<sup>40</sup> The year 2003 was named: The [European Year of People with Disabilities](http://ec.europa.eu/employment_social/disability/intro_en.html).

<sup>41</sup> [http://ec.europa.eu/employment\\_social/disability/intro\\_en.html](http://ec.europa.eu/employment_social/disability/intro_en.html) Accessed: 5/7/2007.

<sup>42</sup> European Commission (2007) Special Eurobarometer 263: “Discrimination in the European Union”. The survey covered the twenty-five Member States plus Bulgaria and Romania. During the interviews questions were asked related to discrimination on the basis of gender, ethnic origin, religion or beliefs, age, disability and sexual orientation.

<sup>43</sup> European Commission (2007), p. 30.

<sup>44</sup> Ibid p. 18.

<sup>45</sup> Ibid p. 50.

- 51 % of the European thinks that not enough effort is made in their country to fight all forms of discrimination.<sup>46</sup>
- 87% of the EU citizens support the adoption of measures that provide equal opportunities for disabled people in the field of employment.<sup>47</sup>
- 91% of all EU citizens agree that more money should be spent on eliminating physical obstacles which make the lives of those who have a disability difficult.<sup>48</sup>

The outcome of the survey shows that the European public is aware of the problem. Every second European is not satisfied with the efforts made to combat discrimination. What is more important, almost nine out of ten citizens is willing to give its consensus to take further actions necessary to change the discriminatory practice to one that is inclusive, and more than nine out of ten citizens agrees on spending money on this. A very important conclusion can be drawn from this. The most important prerequisite for a successful policy is the **consent of the citizens**. This survey shows that the consent is present.

### III. Hungary

#### 1. Historical Overview

The way in which disability is understood underwent considerable changes through history. The Hungarian disability policy has followed the same path as the other European countries, it has evolved from the moral approach in which disability was considered a shame through a medical approach in which the disabled person's impairment paid a central role, to a social and rights based approach.

**Before '90's** the Hungarian disability policy was based on the medical definition of disability, meaning that disability was considered principally as a **medical problem**. This of course influenced the way in which the policy makers responded to it. Providing care in a separated institution was a preferred instrument at the time. This era was also characterised by a

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<sup>46</sup> Ibid p. 22.

<sup>47</sup> Ibid p. 20.

<sup>48</sup> Ibid p. 13.

**paternalistic** approach, the state provided not help but charity.<sup>49</sup> The medical model also had its mark on the Hungarian social security system. The individual with a disability was labelled as sick. The assumption being: when people are sick, they are excused from the normal obligations of society, like working, and are generally treated in separate institutions.<sup>50</sup> Disability was defined as the inability to work, consequently someone who wished to work jeopardized his disability status and the benefits attached to that status.

The EU accession did not go along with drastic changes in the legal regulations; major modifications had been already made during the years following the collapse of communism.<sup>51</sup> Anti-discrimination directives too had been transplanted into the Hungarian legal system even **before the accession**. The first Act to list protection on the ground of disability was the **Labour Code** of 1992.<sup>52</sup> The year **1998** saw fundamental changes similar to that occurring at EU level. Act XXVI of 1998 on the Rights and Ensuring the Equal Opportunities of People with Disabilities (hereafter, **Disabled Persons Act**) broke up with the paternalistic traditions. The starting point was that the Hungarian society was **inaccessible** for the disabled people and that the medical view had to be complemented with the rights approach and by the assumption that disabled are capable of self-determination.<sup>53</sup> The Disabled Persons Act used the following definition: „a person is disabled if he/she “has a fully or greatly restricted command of organoleptic, locomotor or mental abilities, or is greatly restricted in his/her communication, and this constitutes an enduring obstacle with regard to his/her active participation in social life”. The act was the result of long years of work of many persons and organisations. The legislator requested for studies of those concerned and it took the result of these studies into account when it created the act.<sup>54</sup>

The Disabled Persons Act described the responsibility of the state in respect to various areas of life, amongst others, employment. A public foundation for rehabilitation was created. The term “**independent living**” and the “**cost of disability payment**” were introduced; the later

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<sup>49</sup> Kőnczei (1998).

<sup>50</sup> <http://www.peoplewho.org/debate/kaplan.htm> Accessed: 5/6/2007.

<sup>51</sup> Lehoczkyné Kollonay (2004).

<sup>52</sup> “in connection with an employment relationship, no employee shall be discriminated against on the basis of sex, age, family status, disability, nationality, race, origin, religion, political conviction or membership in organizations representing employees or activities connected therewith, as well as any other circumstances that have no relation to employment.” (Article 5).

<sup>53</sup> Kőnczei (1998).

<sup>54</sup> Kőnczei / Bíró / Kogon (1998), pp. 77-80.

meaning that disabled people have additional costs and these must be reimbursed by the society. It is visible that even before the accession in 1998 - at the level of legal regulations - Hungary moved towards a new understanding of what it means to be disabled.

To harmonise the Hungarian legislation with EU and UN standards the **National Disability Programme** was adopted in 1999.<sup>55</sup> The Programme's basic principles were corresponding to those of the EU: prevention, normalisation, integration, self-determination, non-discrimination, affirmative action and rehabilitation. Employment as well as other areas of life were covered.

At EU level **2003** was declared **the European Year of People with Disabilities**. At the same time in Hungary the provisions of the Employment Directive were addressed by **a uniform anti-discrimination act**, the Equal Treatment Act (see more details below) and 26 sectorial laws were modified or amended to fit the requirement of equal treatment.

## **2. The Legal Background**

The main acts promoting social inclusion of people with disabilities are:

- The Constitution of the Republic of Hungary (Constitution)
- Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (Equal Treatment Act);
- Act XXVI of 1998 on the Rights and Ensuring the Equal Opportunities of People with Disabilities (Disabled Persons Act);
- Act CLIV of 1997 on Health Care (Act on Health Care).<sup>56</sup>
- Act XCIII of 1993 on Work Safety (Work Safety Act)
- Act IV of 1991 on Job Assistance and Unemployment Benefits

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<sup>55</sup> National Programme of Disability Affairs 1999.

<sup>56</sup> The Act on Health Care defines the terms "habilitation" and "rehabilitation". Rehabilitation is described as "organised assistance provided by society to persons with disabilities ... to promote their reintegration into the community by making use of their restored or remaining abilities" It includes health care, psychological, educational, occupational and welfare measures.

Hungary also ratified the **ILO Convention** No. 111 concerning Discrimination in Respect of Employment and Occupation and the ILO Convention No. 159 Concerning Vocational Rehabilitation and Employment. **Human Rights documents** like the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights have become part of the domestic legal system therefore their regulations are also directly applicable. Protocol 12 to the ECHR is an exception as Hungary has not it ratified yet.

## **2.1 The Constitution of the Republic of Hungary**

The following regulations serve as the **Constitutional basis** for people with disabilities in Hungary. The **general prohibition** of discrimination can be found in Article 70/A (1). This Article states that “the Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.” Surprisingly, there is no special reference to people with disabilities; this article only refers to “any other grounds”. In this respect it is similar to the human rights documents already discussed.

The Constitution declares the possibility of **positive discrimination**, when it states that “the Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all”.

Article 70/B (1) - (3) are connected to the word of work, it declares the **freedom to choose a job or profession**, and the right to receive **equal pay for equal work**. “In the Republic of Hungary everyone has the right to work and to freely choose his job and profession. Everyone has the right to equal compensation for equal work, without any discrimination whatsoever. All persons who work have the right to an income that corresponds to the amount and quality of work they carry out.”

Article 70/E (1),(2) of the Constitution serves as the basis for **social security benefits** and institutional help for the disabled people. It states: “Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required in the case of disability. The

Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions.”

Last but not least Article 54 (1) contains the right to **human dignity**, a right that has to be protected in all aspects of life, consequently in employment as well. This Article states: “In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights.”

## 2.2 The Equal Treatment Act

Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter ETA) came to effect on January 2004. Before this time prohibition of discrimination was fostered by separate sectoral acts (e.g. Labour Code, Civil Code, Penal Code, Act on Public Education, Minority Act, different acts in the field of social law and sport law). The need for a uniform act was present even before 2003. The Martin Luther King Association, the Legal Defence Bureau for National and Ethnic Minorities and the Otherness Foundation handed in a petition to the Constitutional Court asking whether or not the regulation of discrimination in different branches of law is against the Constitution. The Constitutional Court pointed out that legal system as a complex system had to eliminate discrimination and that it was up to the legislator to decide if it wanted to adopt a comprehensive anti-discrimination bill to prevent negative discrimination or not.<sup>57</sup> The result of the argument is well-known; to provide uniform interpretation and more successful implementation of the separate acts the legislator created a framework act.

The Preamble of the ETA refers to every person’s right to live as a person of equal dignity and declares that the promotion of equal opportunities is principally the duty of the State. The Preamble also states that the goal is to provide effective legal aid to those suffering from negative discrimination. Based on the ETA plaintiffs whose rights have been infringed enjoy appropriate legal remedies provided by municipal law against those violating their rights. The ETA as a general anti-discrimination act forbids the violation of equal treatment based on various **grounds**. The list of more than 25 items (protected characteristics, circumstances and situations) includes

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<sup>57</sup> CCD 45/2000 (XII 8) on the Anti Discrimination Act.

discrimination based on disability as well.<sup>58</sup> The ETA deals with discrimination in **fields** of employment, social security and health care, education, housing as well as sale of goods and use of services (Article 21-30 ETA). The Act describes the **personal scope**, in other words those who have to observe the principle of equal treatment: institutions which provide public tasks in a broad sense, like the Hungarian State, local and minority governments, armed forces, public foundations, elementary educational institutions, private pension funds, etc. (ETA Article 4). The scope of the Act does not extend to family law relationships, and in certain cases to the inner relationships of institutions, as in these relationships the interest of the private sphere is given priority (ETA Arts. 5-6).

**A breach of the principle of equal treatment means:**

- (1) direct negative discrimination,
- (2) indirect negative discrimination,
- (3) harassment,
- (4) unlawful segregation,
- (5) retribution and
- (6) instruction to discriminate.

In the **word of work** discrimination is especially typical. According to Article 21 of the ETA it is considered a **particular violation of the principle of equal treatment** if the employer imposes direct or indirect negative discrimination upon an employee, especially when the following provisions are made or applied in:

- (1) access to employment, especially in public job advertisements, hiring, and in the conditions of employment;
- (2) a provision made before the establishment of the employment relationship or other relationship related to
- (3) employment, related to the procedure facilitating the establishment of such a relationship;
- (4) establishing and terminating the employment relationship or other relationship related to employment;

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<sup>58</sup> Article 8 states that „Provisions that result in a person or a group is treated less favourably than another person or group in a comparable situation because of his/her sex, racial origin, color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, the part-time nature or definite term of the employment relationship or other relationship related to employment, the membership of an organisation representing employees’ interests, other status, attribute or characteristic (hereinafter collectively: characteristics) are considered direct discrimination.”

- (5) relation to any training before or during the work;
- (6) determining and providing working conditions;
- (7) establishing and providing benefits due on the basis of the employment relationship or other relationship
- (8) related to work, especially in establishing and providing wages;
- (9) relation to membership or participation in employees' organisations;
- (10) the promotion system;
- (11) The enforcement of liability for damages or disciplinary liability.<sup>59</sup>

Article 22 lists those cases which **do not constitute unlawful discrimination**. The principle of equal treatment is not violated if:

- (1) the discrimination is proportional, justified by the characteristic or nature of the work and is based on all relevant and legitimate terms and conditions, or
- (2) The discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.

Based on Article 23 an act, a government decree based on an act or collective agreement may order an obligation for positive discrimination for a specified group of employees in respect of the employment relationship or other relationship aimed at employment. Despite the possibility described in this Article affirmative actions are not common in reality.

### **3. Institutional Framework Promoting Equal Opportunities for People with Disabilities**

The main body with overall responsibility to ensure the compliance with the principle of equal treatment is the **Equal Treatment Authority**. The Authority is directed by the Government and supervised by the minister responsible for issues of equal opportunity. It investigates whether the principle of equal treatment has been violated, participates in the forming of the governmental activity in providing information to the public and preparing reports about the situation concerning the enforcement of equal treatment in Hungary.<sup>60</sup> The following

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<sup>59</sup> The list is not exhaustive.

<sup>60</sup> Equal Treatment Authority (2006).

case from 2006 illustrates well the activity of the Authority. A **client of bad sight** was selected for a job interview based on his CV. Before the interview he realized that he had not mentioned that he had bad sight and called the company to tell them this fact. Although he was discouraged to take the job he could not be persuaded to cancel the interview. The day before the interview however he was sent an e-mail stating his application was denied based on his bad sight. The investigation of the Equal Treatment Authority concluded that the company had violated the principle of equal treatment. The company had to pay a fine of HUF 800 000. This was not the only punishment. The decision was also made public on the website of the company for 30 days.<sup>61</sup>

Discrimination based on disability is well represented in the governmental structure. In 2004 the government established the **National Equal Opportunities Network**. The Network assists the prevention of all forms of discrimination and cooperates with all local institutions and organisations to eliminate stereotypes. People with disabilities are among its key target groups. The **Equal Opportunity Forum** constitutes of representatives of local governments, institutions and civil organisations. Although the institutional framework promoting equal opportunities operates primarily at central governmental level based on the ETA **municipalities** can adopt local equality programs too. However, so far only a few local governments have taken advantage of this opportunity. Since May 2006 the **Equal Opportunity Secretariat** has been operating in the Ministry of Social and Labour Affairs dealing with amongst other areas promotion of equal opportunities of people with disabilities and vocational rehabilitation. The **Public Foundation** for Equal Opportunities of Disabled Persons, the **Committee against Social Exclusion** and the **National Disability Affairs Council** deal with disability issues, the later is also responsible for cooperation between the government and civil societies.<sup>62</sup> The **Parliamentary Ombudsman** for Civil Rights is also a safeguard of the rights of people with disabilities.

#### **4. Programmes and Measures to Combat Discrimination**

People with disabilities are unfortunately among the most disadvantaged groups in the Hungarian labour market. According to the census in 2001 the rate of employment among people

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<sup>61</sup> Equal Treatment Authority. Case 295/2006.

<sup>62</sup> National Strategy and Priorities for 2007 - European Year of Equal Opportunities for All. Hungary.

that classified themselves as having disabilities was as little as 9%.The risk of poverty among people with disabilities is exceptionally high. Social exclusion goes along with cultural exclusion, this works against successful social integration.<sup>63</sup> Partly the old-fashioned social security benefit system that focuses on the state of health of the individual not the available work competences can be blamed for this phenomenon. The system does not encourage return to the labour market.

#### **4.1 Social Renewal Operational Programme and the National Disability Programme**

The main Government policy on the employment of people with disabilities is incorporated in the **Social Renewal Operational Programme and the National Disability Programme**. The objective of the former is to prevent discrimination and to promote the equal opportunities of certain specific disadvantaged social groups in all aspects of life. The Parliament approves the Programme every two years at the recommendation of the Government, after it has been discussed with the relevant social and interest representation organisations.<sup>64</sup> The programme's **main principles** are: “nothing about us without us”, equal opportunity of access, universal design, integration, mainstreaming, equal treatment, the obligation of preferential treatment and subsidiarity.<sup>65</sup> **The National Disability Programme** contains the specific plans necessary to reach the aim of social integration of people with disabilities. The main aims are: (1) to restructure the sheltered employment system, including its legislative framework and system of financing and to improve employment services for people with disabilities. The measures prescribed by the two programs will be examined in more details below.

#### **4.2 Open Labour Market, Sheltered Workplaces or Protected Markets?**

The Government promotes the employment of people with disabilities both on the open labour market and in sheltered workplaces. People with disabilities mostly find work in so called “**sheltered workplaces**”. Although the importance of these protected workplaces is indisputable, due to the lack of funding they often struggle for survival. In this respect projects in the framework of the EQUAL programme are significant, the financial contribution they provide

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<sup>63</sup> Social Renewal Operational Programme 2007-2013. pp. 19 and 27.

<sup>64</sup> Article 35-36.

<sup>65</sup> Social Renewal Operational Programme 2007-2013. p. 54.

help sheltered workplaces to carry on.<sup>66</sup> The proportion of “**integrated employment**” (where people with disabilities work together with their non-disabled co-workers in “normal” workplaces) is very low.<sup>67</sup> This tendency is truly unfortunate since integrated employment could boost genuine social integration. Special subsidies are available for people with disabilities who take up **self-employment**.

The priority is now to integrate/reintegrate more people with disabilities in/into the open labour market. Employers are obliged to **adapt the workplace** and to make it **accessible** for people with disabilities. In work places where employees with physical disabilities are employed, the physical environment has to suit the changes in the character of the human body.<sup>68</sup> Article 15 (1) of the Disabled Persons Act also lists the right to a protected employment. Under Paragraph 2 the employer is obliged to provide accommodation at the work place necessary for the performance of the work (e.g. to purchase special tools and machines or to update the old ones). Support from the central budget is available to cover the expenses.

**If someone becomes disabled while in employment** it is primarily the duty of the employer to provide further employment. The first stage is to modify working conditions in order to enable employment in the original position. If this is not possible the employer has to reinstate worker in an adequate job, taking into account his state of health and skills, also if it is necessary further training have to be provided. If this is also not a feasible option, the worker has to be employed in a department specifically established to this aim. Part time work or telework is also a solution.<sup>69</sup>

Under the **quota system**, five percent of the staff in all companies employing more than 20 people must be employees with altered working capacity. If the number of these workers is below the mandatory employment ratio the employer shall pay rehabilitation contributions.<sup>70</sup> The penalties enrich the budget of the Rehabilitation Fund, from which funding is made available to NGOs providing employment services and sheltered workplaces. Unfortunately because of the low penalties and the lack of proper monitoring employees often select to pay the penalty than to comply with the quota requirement. The experiences with the quota system are similar to those in

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<sup>66</sup> Ibid p. 109.

<sup>67</sup> Ibid pp. 19-20.

<sup>68</sup> Work Safety Act, Article 19 (4).

<sup>69</sup> Joint Decree 8/1983 of the Ministers of Health and Finances.

<sup>70</sup> Act IV of 1991 on Job Assistance and Unemployment Benefits Article 41/A.

other EU countries, setting up quota on its own does not integrate disabled people into the labour market.

Companies fulfilling the quota requirement are eligible to receive **State Support for Increased Rehabilitational Employment** which covers salary and other costs associated with employing people with disabilities over an 18-month period. Employment of people with disabilities is honoured with **tax reduction** as well. Yet again, the **tax incentives** are not very attractive therefore they do not have a noteworthy impact.

The amount of **funds** available for the support of the employment of people with disabilities has increased. In many communities these programmes mean the only chance of employment; nonetheless, in their current form they do not present a realistic way to social inclusion.<sup>71</sup>

According to the ETA budgetary organs and legal entities in state majority ownership **employing more than fifty employees** are obliged to accept an **equal opportunities plan**. The equal opportunities plan contains (1) the analysis of the employment situation of disadvantaged groups of employees, (2) the objectives of the employer in relation to these employees and also (3) the tools with which the desired outcome is hoped to be reached. The act does not provide an exhaustive list, but it does give examples of disadvantageous groups and disabled people are included in this list. Other categories are: women, employees over forty years old, Romas, and single parent employees raising two or more children under ten. Unfortunately so far a lot of employers that are obliged to do so have not prepared equal opportunities plan. To change this supposedly from 2007 the ETA will be able to impose a fine for failing to fulfil the obligation. Equal opportunities plan is not a well known instrument so far, therefore it would be definitely beneficial to inform the social partners, NGOs or even the individual employees.

The Hungarian **pension system** is undergoing a reform too. In 2005 approximately one-third of the working age inactive population (15- 61-year-old men and 15-59-year-old women) was on pension, the majority of them on disability pension.<sup>72</sup> The problem is that disability pension is often used as an escape route from unemployment. Misuse of the system was especially widespread in 1993 when the unemployment level was extremely high in Hungary. The main aim of the reform is to motivate return to the labour market. The benefit paid to people

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<sup>71</sup> Social Renewal Operational Programme 2007-2013. p. 27.

<sup>72</sup> Ibid p. 15.

who have suffered partial loss of their working capacity will be replaced by a temporary allowance.

**The employment rehabilitation system** changed considerably in January 2007. The new system is influenced by the 2001 WHO classification as it focuses on **existing capabilities** and tries to stimulate reintegration into the labour market. The main problem in the past was that the employers did not have the necessary expertise therefore under the new system the employment rehabilitation knowledge of employers is extended.<sup>73</sup> Unfortunately the rehabilitation capacity of the PES is very low, only satisfies maximum 10% of the existing demand.<sup>74</sup> The establishment of **Rehabilitational Information Centres (RICs)** is a great step forward. These centres are located at county labour offices and provide comprehensive support services for people with disabilities seeking employment.

Another “transplant” from the old Member States is the so-called **protected markets**. Institutes of the state are obliged to buy specific goods and services from companies employing people with altered working capacity. This way those workplaces that participate in rehabilitation do not have to compete in the open market. To comply with the requirements of the EU from 2005 Hungary as well promotes the protected markets.

Finally, some words on the **benefit system** for people with disabilities. The biggest problem is that those who really need it do not get sufficient financial help. Although it faces significant problems the benefit system has not been reformed significantly. The right to social security in the event of disability as a social right is not without limits; it is inseparably connected to the general situation of the economy and the labour market. Without denying this, we should be fully aware, that the people with disabilities unlike for instance short term unemployed are not in the position to rely extensively on private insurance. The responsibility of the family, friends and NGOs was always enormous in this field nevertheless **the state cannot** place every burden on them and completely **withdraw from social responsibility**.

## **5. The Public Employment Service and People with Disabilities**

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<sup>73</sup> Ibid pp. 82-83

<sup>74</sup> Ibid p. 29.

At national level the Public Employment Service (hereinafter PES) is one of the main **delivery of employment policy**. Below the most significant European trends in the operation of PES are examined. Afterwards it is studied how the Hungarian PES implements these elements in relation to disabled job seekers.

## 5.1 European Trends

Based on the European Employment Strategy a new PES model has emerged. The main elements of this are: (1) service provider labour offices, (2) individualised services, (3) activation, and (4) application of the “right and duty” principle.<sup>75</sup>

The PES has to become **service provider**, which treats job seekers as clients. The Joint Mission Statement of Public Employment Services in Europe (EU/EEA) identified “customer orientation” and “quality development” as key concepts in the PES’s modernisation.<sup>76</sup> Secondly, the PES has to provide individualised, **tailor made services**. Thirdly, the PES has followed the **activation** trend of the European employment policy and has shifted from ‘passive’ to ‘active’ measures. These active measures try to activate people, by fostering their integration into the labour force. Although there is evidently a trend towards activation, passive measures do not disappear either. Lisa Waddington goes as far as stating “it is perhaps the recognition of the need for social welfare which serves to distinguish the European approach from its American counterpart.”<sup>77</sup> Indeed, the American approach is famous for anti-discrimination legislation while the European model is characterized by equal opportunity policy.<sup>78</sup>

Finally, the EES has also emphasised the individual responsibility of the jobseekers. The **“right and duty”** principle means that clients have rights but also duties; their active participation is required. This is not new at all. The right to social security was always subject to limitations. Social rights in general are not absolute, as the claimant always needs to justify his or her claim and might be required to make a contribution to the community if possible.<sup>79</sup> This is in line with the general tendency of the last decade. The welfare states have been transformed into **“workfare” states**. Economic and political pressures have forced the welfare states to redesign

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<sup>75</sup> See: Kajtár / Rogowski (2005).

<sup>76</sup> Public Employment Services in Europe (1998).

<sup>77</sup> Waddington (2006), p. 17.

<sup>78</sup> Könczei (1998).

<sup>79</sup> Osiatynski (2006), p. 15.

their responsibilities and to decrease the role of public sources. The “individualisation of the social”<sup>80</sup> is the core of the welfare paradigm shift to the neo-liberal paradigm.

## 5.2 Hungarian Trends

The **modernisation** of the PES has been in progress since 2002 using European Union funds. It is now realised that the PES should **treat** the disabled jobseekers (along with the non-disabled ones) **as clients**. There is a general requirement to establish **action plans** with the clients and to follow the clients till satisfactory result is reached. However the situation of people with disabilities is particularly bad. Especially people with intellectual disabilities **seldom register** for employment services and also rarely participate in vocational training (if and when they register, they get listed as people with altered working capacity). The main reason for this is the **insufficient flow of information** about their rights and entitlements. This phenomenon explains why they do not appear in the system and are considered as “inactive” rather than unemployed.<sup>81</sup> The focus is on **exploiting the potential** of the disabled person by means of practical help like counselling, assisted job search rather than financial help. It is to be welcomed that the Hungarian PES provides various options of services from self-service facilities to - staff-intensive interventions according to the clients needs.

Despite these encouraging trends the majority of labour offices still operate mainly on the basis of the **administrative definition of disability**. Disabled people are seen as beneficiaries (or potential beneficiaries) of the support system. This is understandable, because as institutions of the welfare state it is their task to decide who is eligible for a certain benefit. On the other hand they should also take into account the subjective side of disability. According to “subjective definition”: a people is disabled if he/she perceives him/herself as disabled. Unfortunately the staff at the labour offices is still **not trained** to deal with the special needs of people with disabilities, who are typically “hard to-place” customers.<sup>82</sup>

**Active measures** are privileged over the classic passive ones that provide some kind of income replacement (e.g. disability benefit or special pension). To promote the employment of

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<sup>80</sup> Ferge (1997), pp. 21–24.

<sup>81</sup> Rights of People with Intellectual Disabilities Access to Education and Employment. Hungary. Monitoring Report. 2005. p. 103.

<sup>82</sup> Ibid. p. 21.

people with disabilities and other disadvantaged groups labour centres may decide to launch so-called **integrated labour market programmes**. These programmes are more responsive to local needs; they combine different active measures from training to subsidised employment and psycho-social support services. This is a positive trend however the **benefit system** should be reformed too. (Such a reform of course is not the competence of the PES.)

We also have to add that in Hungary not the PES but the NGOs have the lion's share of the work. The role of the **non-profit sector** is intensified. This is a good tendency as they are capable of treating a few selected segments of the rehabilitation process and other measures.<sup>83</sup>

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Social Renewal Operational Programme 2007-2013. p. 29.

## **V. Conclusion**

The concept of disability has changed significantly since the beginning of the European integration. The EU's disability policy evolved from the medical approach in which the disabled person's impairment played a central role, through the rehabilitation approach which regarded the person with disability as someone in need of services to a rights based approach. Since the Treaty of Amsterdam people with disabilities have finally become "visible" and the focus moved to the barriers society creates. Social inclusion of people with disabilities has become one of the EU's flagships and a crucial element of the modernised European Social Model. Several programmes target people with disabilities, their needs have to be taken into account in every EU policies and measures.

However, despite all these changes discrimination is still an everyday reality. Existing general prohibitions and hard law measures are essential but they cannot reach the desired outcome alone. Anti-discrimination legislation and equal opportunity policy has to be complemented with affirmative actions. The complexity and diversity of the social welfare systems and the Member States' reluctance to transfer additional decision making power to EU level make the creation of a uniform "disability policy" very difficult. Member States remain the main actors of social policy, responsible for the well-being of the disabled citizens. There is no harmonisation only coordination in this field. On the other hand slowly the EU has gained more competences; especially through the OMC the Commission is in the position to influence the policy formulation of the Member States.

The Hungarian disability policy followed the same path as the other European countries. The EU accession did not go along with drastic legal changes; major modifications had been already made during the years following the collapse of communism. From 1998 onwards the policy moved towards no longer considering people with disabilities as welfare cases, but rather as individuals with equal rights. A major step was taken with the introduction of the Equal Treatment Act but this did not solve all the problems. In line with the European principle of mainstreaming labour market measures have to be seen as part of a complex system, one that contains reformed health care, education, rehabilitation services and social security measures. Efforts are being made to make integration on the open labour market and in sheltered

employment more attractive to both employers and employees. The modernisation of the PES is based on general European trends. It is realised that an individually tailored package of support is needed that helps people with disabilities to enter or remain in the labour market.

In the world of work the economic and human rights perspectives are in constant conflict. Welfare states have been transformed into “workfare” states. There is always the temptation to be more competitive. Especially in the last decade Member States are redesigning their responsibilities and decreasing the role of public sources. This general trend influences the situation of people with disabilities too. However one always has to keep in mind that the right not to be discriminated against is universal and not subject to limitation.

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