JÓZSEF HAJDÚ

Flexibilization of Employment Relationship in the New Hungarian Labour Code

1. The background of the new Hungarian Labour Code

The details of the 1992 (previous) Labour Code established a combination of fairly flexible regulations with some strict minimum standards. It was envisaged that sectoral and workplace-level collective bargaining by sectoral unions and workplace-level unions would ensure better terms and conditions for workers than those stipulated by the minimum standards of the labour code.

The accession of Hungary to the European Union in May 2004 brought fundamental changes in the concept and regulation of the labour code. The EU accession necessitated a partial "re-legislation" of the labour code. In 2004, the left-liberal coalition government had initiated a complete re-drafting of the labour code. A new concept of regulation was hoped for, which would align the legislation of the working environment with that of contractual law, which enables a less rigid, more flexible system of regulation. According to the reasoning, a more flexible legislation would allow for a reduction of the amount of undeclared work and would also help companies to be more competitive. The preparations for the new code, however, were abandoned by the government because unions vehemently rejected the concept of the re-legislation, arguing that it aimed to weaken workers' rights.[1]

In 2010 the elected right-wing government placed the re-legislation, or even replacement, of the previous labour code (1992) back on the agenda. The government aimed for a new labour code which makes the regulation of the working environment *flexible* in order to convert Hungary into one of the most competitive economies in Europe, and cuts the traditional rights of unions to a minimal level, which would allow little more than their mere existence in workplaces.[2]

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[1] http://mno.hu/belfold/teljes-egeszeben-hatalyba-lep-az-uj-munka-torvenykonyve-1127381 (14.12.2012).

[2] TÓTH ANDRÁS: *The New Hungarian Labour Code – Background, Conflicts, Compromises*, Budapest, 2012. 2. p. http://www.fesbp.hu/common/pdf/Nachrichten_aus_Ungarn_june_2012.pdf (21.12.2012.).

The key feature of the new labour code (2012) is that it intends to align the regulation of the working environment with that of contractual law enshrined in the Civil Code. Therefore, the new labour code, as a principle, allows collective agreements – or a works agreement[3] in cases where there are no unions – and individual labour contracts to regulate the content of work differently to what is stipulated by the law. Accordingly, the new labour code allows collective agreements to deviate to the benefit of the employer, and not only to that of the employee.[4] This shift towards flexibility may result in a considerable deterioration of previous minimum standards set by the labour code.[5]

The new Hungarian Labour Code (hereinafter: HLC) is in line with the general trend of many recent labour law reforms across Europe[6] in that it aims to allow more flexible regulation of work to help firms to regain competitiveness, while at the same time opening up the possibilities for cost cutting.[7]

The Hungarian regulations, however, are likely to stand out of the crowd of recent labour law amendments by constituting a comprehensive re-regulation of labour law. The stated aim of the government was to carry out revolutionary changes in Hungary. It is thus no wonder that the government wanted a wholesale turnaround in the regulation of the working environment as well. Consequently, it was conceived as a comprehensive regulation which aligns labour law with that of civil law and shifts many risks of employment to the shoulders of employees.[8]

2. General principles concerning employment in Fundamental Law

According to the Hungarian Fundamental Law (this is the new Hungarian Constitution) every citizen has the right to work, and it was also urged that this right is not solely assured by legal means. At the same time, the role of labour law cannot be neglected either. First a legal framework must be developed within which every citizen can utilize his/her potential. That is why many different measures are necessary:

a) First of all, the possibility of employment must be ensured. Practically, this is a prerequisite for the fulfilment of the ideas of the Fundamental Law. Positive measures are needed in order to assure the success of the citizen's decision, i.e. regulation con-

[3] Works agreement is a quasi collective agreement between the employer and works council. It can be concluded in cases where there is no collective agreement in force and no union organisation present at the workplace which is entitled to negotiate a collective agreement. The works agreement may regulate terms and conditions of employment as a collective agreement, with one important exception: it cannot regulate wages and remuneration.

[4] For example, Labour Code 2012 stipulates that the basic holiday allowance is 20 days, and also states that employees are to receive additional holidays based on their age. But at the same time, it also allows for a collective agreement (works agreement) to reduce or even cut all additional holidays based on age. In practice, this means that the Labour Code 2012 only stipulates 20 days basic holiday as a minimum standard and all additional holiday may be subject to agreement.

[5] LŐRINCZ GYÖRGY: *Az új Mt. hatálybalépése, az átmeneti rendelkezések*, Budapest, 2012. 6–8. pp.

[6] See Green Paper on Modernising Labour Law, http://europa.eu/legislation_summaries/employment_and_social_policy/eu2020/growth_and_jobs/c10312_en.htm.

[7] http://www.liganet.hu/page/198/art/6765/akt/1/html/az-uj-mt-2013-januar-1-tol-hatalyos-szovege.html (04.02.2013).

[8] TÓTH 2012, 9–10. pp.

cerning the freedom to accept a job. On the other hand, this kind of regulation must contain prohibitions as well, in order to eliminate groundless differentiation among workers, employees etc.

b) Creating jobs and making choice possible does not automatically mean that everyone is able to take the job he/she wants. For personal, family, or other reasons certain people or groups cannot easily find suitable employment (e.g. mothers with small children, persons with reduced capacity to work, people living far from large settlements). They can use their ability fully only if they receive assistance. This is realized by setting up institutions to this end (e.g. job centres) or when an employer is forced to give a candidate certain advantages.

c) To assure the right to work, further regulations are needed which realize the intentions of the parties – especially those of the workers – in regard to employment. At the same time these should set out unambiguously the conditions ensuring the security of the worker's position. Within this category fall the rules concerning the legal capacity, as well as the rules referring to the contract of employment.

d) In addition, such security must be provided to eliminate the possibility of groundless dismissal. Consequently, labour law must provide guarantees to assure job security. This is done partly by those regulations which prescribe the circumstances and means of termination of employment. On the other hand, it defines those cases where employment cannot be terminated or where termination depends on certain conditions.[9]

However, the new Fundamental Law does not mention the word of flexible or atypical work.

3. Atypical or flexiwork in the Hungarian Labour Code

The previous Labour Code (1992) regulated five atypical employment relationships: part time employment, open-ended employment relationship, telework, temporary agency work and the employment relationship of executive employees. Besides, many other laws determined other forms of atypical employment (e.g. home workers, simplified employment). The new Labour Code – in compliance with the practical need for more various ways of employment – expanded the list of atypical employment relationships.

Distinguishing between typical and atypical employment relationships is always of relative nature and depends on what we consider to be so different from typical that it has to be treated as an independent category. According to the point of view of Gyulavári and Kártyás, the expanded interpretation of the conception of atypical employment is not favoured. Generally also employees in typical employment perform their duties differently (e.g. due to their personal attributes, or by the special type of their work), but by separating all of these groups the conception of atypical employment

[9] HAJDÚ JÓZSEF: *Labour Law in Hungary*, Alphen aan den Rijn, 2011. 109. p.

would lose its meaning. As a result, an employment relationship can be considered as atypical if it differs from the typical by at least one significant attribute.[10]

According to my opinion, atypical work – under labour law – is when at least one of the significant and fundamental personal or material elements of employment relationship differs from the traditional employment relationship[11] and this bias is lawful (no discrimination) and in many cases proportional.[12]

Special (atypical) employment forms had been under special regulation before, but they have been incorporated to the new Labour Code and now these are regulated under a single chapter (Chapter XV.) in the Code. Besides the three new atypical employment forms, the Labour Code also regulates previously existing types of employment, such as fixed term employment, teleworking, outworkers, simplified employment and occasional work relationships, employment relationship with public employers, agency work and incapacitated workers.

According to the HLC, contracts of atypical employment are established for: 1. definite periods of time (fixed-term contract); 2. part-time contract; 3. on-call contract (call for work); 4. job-sharing; 5. employee sharing; 6. telework; 7. home-based work; 8. casual work; 9. employee under employment relationship with public employer; 10. incapacitated employee; 11. study contract; 12. agency work ; 13. employment relationships between school cooperatives and their members.

Hereinafter, we shall introduce briefly each of the above mentioned atypical forms of employment.

3.1. Definite periods of time (fixed-term contract)

According to the HLC, the employment contract established for an indefinite period of time is considered as typical. Thus employment contracts without a definite specification of time should be considered as having been established for an indefinite period.[13]

The period of fixed-term employment shall be determined according to the calendar or by other appropriate means. If the duration of an employment relation is not determined by the calendar, the employer is obliged to inform the employee of the expected duration of employment. Where an employment relation is subject to official approval, it may only be for the duration specified in the authorization.

The duration of a fixed-term employment relation may not exceed five years, including the duration of an extended relation and that of another fixed-term employment relation created within six months from the termination of the previous fixed-term employment relation. By way of derogation from the above, if the particular authorization is

[10] GYULAVÁRI TAMÁS – KÁRTYÁS GÁBOR: *The Hungarian Labour Law Reform. The Great Leap Towards Full Employment?* Dereito (2) 2012, 167–188. pp.

[11] In Hungary the typical employment relationship is: full-time, unlimited contract, fully capacitated worker, in the premises of the employer, with the tools and materials of the employer,

[12] For example, contractual relationship: agency work, place of work: telework or home-based work, unlimited term of employment: fixed-term contract, duration of work: part time work, personal obligation of work: job-sharing, legal capacity of worker: incapacitated worker, etc.

[13] It is important to underline that a probationary agreement (probation period) is not considered as a separate kind of definite period contract; it is merely a condition of the above-mentioned contracts. HAJDÚ JÓZSEF: *Hungary*, in: BLANPAIN, ROGER – GRANT, CLAIRE (eds.): Fixed-term employment contracts: A comparative study, Brugge, 2009. 199–208. pp.

extended, the duration of the new fixed-term employment relation may exceed five years together with the duration of the previous employment relation.

The type of contract underlying an employment relationship may not be chosen with a view to restricting or violating the provisions that provide for the protection of the employee's rightful interests. The type of contract, irrespective of the name, shall be chosen so as to best accommodate all applicable circumstances, such as the parties' prior negotiations and their statements made at the time of contracting or during the performance of work, the nature of the work to be performed, and the rights and obligations.

According to the proportionality principle, all payment – under fixed-term contract – made to the employee in exchange for work, whether in money or in kind and whether directly or indirectly, must be provided in accordance with the length of time of work performed if remuneration is contingent upon the amount of working time.[14]

3.2. Part-time contract

According to the HLC, a full-time job encompasses 40 hours of work per week, 8 hours per day. The employer and the employee can individually agree on shorter or longer working hours. If no working time is indicated in the contract, a full-time employment is established. Part-time employment has to be indicated in the contract. Part-time employees are entitled to reimbursement of costs and paid vacation equally to full-time employees. Third-country nationals who need a work permit can only conclude contracts for the period of the work permit.[15] As for part-time work, the HLC is in conformity with the legislation of the EU Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

3.3. On-call contract (call for work)

According to Section 193 of the HLC, part-time workers employed under employment contract in jobs for up to six hours a day can work at times deemed necessary to best accommodate the function of their jobs. In this case the duration of working time banking may not exceed four months. The employer will inform the employee of the time of working at least three days in advance.[16]

3.4. Job-sharing

According to Section 194 of the HLC, the employer may conclude an employment contract with several workers for carrying out the functions of a job jointly. Where any one of the employees to the contract is unavailable, another worker to the contract shall fill in and perform the functions of the job as ordered. The scheduling of work is governed by the provisions on flexible working arrangements. Wages are distributed among the employees equally, unless there is an agreement to provide otherwise.

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[14] DUDÁS KATALIN et al.: *Munkajog*, Budapest, 2012. 412–416. pp.

[15] CSÉFFÁN JÓZSEF: *A munka törvénykönyve és magyarázata*, Szeged, 2012. 375. p.

[16] BODNÁR LILLA: *Az új Munka törvénykönyve munkavállalóknak*, Budapest, 2012. 105. p.

The employment relationship will cease to exist when the number of employees is reduced to one. In this case, the employer is liable to pay the worker affected absentee pay covering a period that would otherwise be due in the event of dismissal by the employer; furthermore, the rules on severance pay shall also apply.[17]

3.5. Employee sharing

According to Section 195 of the HLC, several employers may conclude an employment contract with one worker for carrying out the functions of a job. The employment contract will clearly indicate the employer designated to pay the employee's wages. The liability of employers in respect of the employee's labour-related claims will be joint and several.

Unless otherwise agreed, the employment relationship may be terminated by either of the employers or by the employee. The employment relationship shall cease to exist when the number of employers is reduced to one.[18]

3.6. Telework

According to the HLC, 'teleworking' means activities performed on a regular basis at a place other than the employer's facilities, using computers and other means of information technology, where the end product is delivered by way of electronic means.

In case of teleworking the employer, in addition to the normal information issues under Section 46 of the HLC, must inform the employee: 1. concerning inspections conducted by the employer; 2. concerning any restrictions as to the use of computing equipment or electronic devices; and 3. concerning the department to which the employee's work is in fact connected.

The employer must provide all information to persons employed in teleworking as is provided to other employees. The employer must provide access to the employee for entering its premises and to communicate with other workers.[19]

Unless otherwise agreed, the employer's right of instruction is limited solely to the definition of duties to be discharged by the employee. The employer may restrict the use of computing equipment or electronic devices, it supplies solely to the work the employee performs on its behalf. An inspection concerning the completion of the work assignment will not constitute any right for the employer to inspect any information stored on the computing equipment of the employee used for discharging his/her duties, which are unrelated to the employment relationship. As regards the employer's right of access, the data necessary for control of the prohibition or restriction is considered to be related to obligations originating from the employment relationship.

Basically, the employer can determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

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[17] BERKE GYULA – KISS GYÖRGY (eds.): *Kommentár a munka törvénykönyvéhez*, Budapest, 2012. 490. p.

[18] BODNÁR 2012, 105. p.

[19] KOZMA ANNA et al.: *Az új Munka Törvénykönyvének magyarázata*, Budapest, 2012. 322–326. pp.

In the absence of an agreement to the contrary, the employee's working arrangements will be flexible.[20]

3.7. Outwork (home-based work)

Outworker is a person who works at home[21] for a business firm and he/she cannot be categorised as a teleworker. According to Section 198 of the HLC, outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the work done.[22]

According to the HLC, the employment contract for outworkers must define: 1. the work performed by the employee, 2. the place where work is carried out and 3. the method and extent of covering expenses. Basically, the outworker's working arrangements shall be flexible.[23]

Within the outwork relationship, unless otherwise agreed, the employer's right of instruction is limited to the specifying of the technique and work processes to be used by the employee. In the absence of an agreement to the contrary, the employee carries out the work using his/her own means.[24]

Basically, the employer should determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

According to Section 200 of the HLC, the employee is reimbursed for the expenses actually incurred in connection with the work, or – if the expenses actually incurred cannot be determined – a fixed flat-rate sum shall be paid to the employee. However, payment of remuneration and expenses shall be withheld if the work done is deemed insufficient due to reasons within the employee's control. Furthermore, payment of remuneration and expenses can be reduced if the employer is able to use the product the employee makes in part or in whole.[25]

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[20] HAJDÚ JÓZSEF – KUN ATTILA (eds.): *Munkajog I*, Budapest, 2012. 228–236. pp.

[21] The employee's home or another place designated by the parties shall be construed as the place of work.

[22] Subsection (3) of Section 137 of the HLC. The basic difference between telework and outwork (home-based work) is the nature of the work and the method of submission of the result of the work. As for the nature, outwork is usually simple (usually) blue collar type work (e.g. sewing, fitting up, disassembling something, etc.), while telework is more complex (usually) white collar work (e.g. journalist, translator, freelance expert, etc.). As for the submission of the work, the employer brings the material of the work to the outworker, while in case of telework the work comes, is done and is sent back by IT equipment (computer, telephone, Internet, etc.).

[23] FERENCZ JÁCINT et al.: *Munkajogi alapismeretek*, Budapest, 2013. 174. p.

[24] N.B. It seems to be an exception from employment relationship because usually the employer provides the means and equipment necessary to work.

[25] KOZMA et al. 2012, 327–330. pp.

3.8. Casual work

Casual work (simplified employment) is under twofold legal provisions; first, under Sections 201-203 of the HLC and second, under Act LXXV of 2010 on Simplified Employment. Here we shall deal only with the provisions of the HLC.

In practice, casual work usually lasts only for a few days. That is the reason why special provisions are required besides the labour law in force.

According to the new HLC, casual work is called simplified employment and occasional work relationships. Section 201 of the HLC states that employers and employees who are covered by the HLC may enter into simplified employment or occasional work relationships. However, any employment contract for simplified employment or occasional work shall be considered null and void if the parties are engaged under an employment relationship at the time it was concluded.

It is an important guarantee that an existing employment contract may not be modified by the parties to conclude a simplified employment or occasional work relationship.

The most important specialities of casual work are as follows: a) Unlike a regular employment contract, the parties of a simplified employment relationship can set up a legal relationship by oral agreement. However, when concluding the employment contract, the parties may use the model employment contract specified by law. And the employment relationship shall be considered concluded upon fulfilment of the notification requirement specified by law. The date of the notification will be the starting date of the employment relationship; b) the commencement of the employment relationship is not applicable;[26] c) the casual worker cannot be ordered to temporarily fulfil other work assignment;[27] d) the legal consequences for the employee's wrongful breach of duty does not apply to the casual worker;[28] e) there is no need to provide a written assessment of the employee's work if the employment relationship lasted for at least one year;[29] f) the provisions relating to scheduled working time on Sundays or public holidays are not applicable;[30] g) the allocation of vacation time is not applicable;[31] h) the provisions of maternity leave, leave of absence without pay are not appli-cable;[32] i) the provisions of fixed-term employment relationships are not applicable;[33] j) the provisions relating to executive employees are not applicable to casual workers;[34] k) the certificates referred to in Section 80 of the HLC need not be provided upon termination of the employment relationship, and l) the daily working time may be arranged based on an irregular work schedule regardless of any working time banking arrangement or payroll period arrangement.[35]

[26] Para (2) of Section 49 of the HLC.
[27] Section 53 of the HLC.
[28] Section 56 of the HLC.
[29] Section 81 of the HLC.
[30] Section 101 of the HLC.
[31] Sections 122-124 of the HLC.
[32] Sections 126-133 of the HLC.
[33] Para (4) of Section 192 of the HLC.
[34] Sections 208-211 of the HLC.
[35] BODNÁR 2012, 108. p.

3.9. Employee under employment relationship with public employer

Since 2009, separate regulations have been applicable to public employers. This is Act CXXII of 2009 on the Economical Operation of Public Business Organisations. The aim of the special provisions is mainly to protect public property. This is shown by the fact that in the new Labour Code disposivity is typical in general, in the case of public employers regulations which do not allow derogations (cogency) are dominant.

Public employer means a public foundation, or a business association in which the State, a municipal government, an association of municipal governments vested with legal personality, a multi-purpose micro-region association, a development council, a minority self-government body, an association of minority self-government bodies vested with legal personality, a budgetary agency or a public foundation has majority control[36] either by itself or collectively.

There are some special protecting provisions, which state that in the collective agreement or in the agreement of the parties: 1. no derogation is allowed from the duration of the notice period, and 2. also no derogation is allowed from provisions of severance payment.

In employment relationships with public employers the full daily working time may not be reduced below the regular daily working time, unless it is deemed necessary in order to prevent any health impairment or harmful effects. In addition, working time shall not cover: 1. break-time, with the exception of stand-by jobs; and 2. travel time from the employee's home or place of residence to the place where work is in fact carried out and from the place of work to the employee's home or place of residence.

Basically the HLC's chapters on industrial relations (particularly Chapter XIX on General Provisions on Industrial Relations, Chapter XX on Works Councils and Chapter XXI on Trade Unions) are applicable.

The entity exercising ownership rights shall have powers to establish performance requirements for the executive employees, including the related performance-based wage and other benefits.[37]

3.10. Incapacitated employee

This is a brand new section in the HLC. The previous labour regulations in force, with a very few exception based on age, did not allow the employment of incapacitated persons in an employment relationship. The concept of incapacity is defined in the Civil Code. Incapacity may be based on: a) age, b) being under conservatorship, and c) actual situation.[38]

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[36] 'Majority control' means a relationship where a person controls over fifty per cent of the voting rights in a legal person that has dominant influence, directly, or indirectly through another legal person that has voting rights in that legal person (intermediary company). Indirect control shall be determined by multiplying the number of votes held by another legal person in that legal person (intermediary company) by the number of votes held by the holder of a participating interest in the intermediary company or companies. If the ratio of votes controlled by the holder of a participating interest in the intermediary company is greater than fifty per cent, it shall be treated as a whole.

[37] BERKE – KISS 2012, 502–505. pp.

[38] http://www.profession.hu/cikk_rovid_hirek/20121119/a-gondoksag-alatt-allok-is-dolgozhatnak/1755 (13. 05.2013).

There are two fundamental factors underlying this change in labour law regulations. The Convention on the Rights of Persons with Disabilities adopted by the UN on 13 December 2006 and the respective Optional Protocol, which Hungary was the first state in the world to ratify and to promulgate in Act XCII of 2007.[39] In its Decision No. 39/2011 (31/V) the Constitutional Court stated the breach of the constitution by failing to establish the statutory regulations of the employment relationship of incapacitated persons in the effective law.

According to Section 212 of the HLC, the incapacitated workers may conclude employment relationships only for jobs which they are capable to handle on a stable and continuous basis in the light of their medical condition. The functions of the employee's job will be determined by definition of the related responsibilities in detail. The employee's medical examination will cover the employee's ability to handle the functions of the job.

The employee's work will be supervised continuously so as to ensure that the requirements of occupational safety and health are satisfied.[40]

The provisions of Chapter XIV on Employees' Liability for Damages will not apply to such employees. Furthermore, the provisions pertaining to young workers shall apply.

3.11. Study contract

In connection with help in finding or keeping employment, study contracts should be mentioned (Section 229 of the HLC). The main aim of this system is to meet the employers' demands for specialists, but it also could help graduates to find employment. There is an obvious change in the new provisions. According to the HLC in force, a study contract can be concluded between an employer and an employee. However, under the Civil Code, the employer can commit him/herself to assist a student during his/her studies and the student undertakes to pursue studies as agreed and to work for the enterprise for a defined period of time after having acquired his/her qualifications.

In a study contract the employer undertakes to provide support for the duration of studies while the employee undertakes to complete the studies as agreed and to refrain from terminating his/her employment by way of notice following graduation for a period of time commensurate for the amount of support. The study contract cannot exceed five years.[41] Study contracts may only be concluded in writing. In the event the employer severely breaches the study contract, the employee can be relieved of his/her obligations set out in the study contract.[42]

No study contract may be concluded: 1. for providing any benefits which are due on the basis of employment regulations, and 2. if the employer ordered the employee to complete the studies.[43]

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[39] http://www.e-epites.hu/jogszabalyok/2007-evi-xcii-torveny-a-fogyatekossaggal-elo-szemelyek-jogairol-szolo-egyezmeny (17.07.2013).

[40] KOZMA et al. 2012, 363–367. pp.

[41] The length of time spent in employment shall be calculated according to Subsection (2) of Section 115.

[42] FERENCZ et al. 2013, 59. p.

[43] NB.: In the case of transfer of employment upon the transfer of enterprise, the rights and obligations arising from the study contract shall be transferred to the receiving employer.

The employer has the right to withdraw from the study contract and may demand repayment of the support provided if the employee breaches the study contract. Breach of contract shall also cover where the employment relationship is terminated for reasons in connection with the employee's conduct in connection to the employment relationship. The obligation of repayment shall apply in proportion to the length of time that has elapsed from the term of the contract.

The study contract may be terminated by either of the parties effective immediately in the event of subsequent major changes in the party's circumstances whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship. In the event of termination by the employee the employer may demand repayment of the support provided. The employer's right to demand repayment of the support will apply in proportion to the length of time that has elapsed from the term of the contract. Where employment is terminated by the employer, repayment of the support may not be demanded.[44]

3.12. Agency work

The HLC contains the basic definition of temporary agency work (hereinafter referred to as TWA): 'temporary agency work' means when an employee is hired out by a temporary-work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the worker and the temporary-work agency (placement).

As for the temporary employment relationships, the employment contract will contain a clause indicating that it was concluded for the purpose of temporary work, and will contain a description of the work and the basic wage. Furthermore, the basic working and employment conditions of temporary agency workers will be, for the duration of their assignment, at least those available to the workers employed by the user enterprise under employment relationship.[45]

The duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary-work agency.

According to Section 216 of the HLC, the assignment of workers is not allowed: 1. in the cases specified by the relevant employment regulations, 2. with a view to replacing workers on strike, and 3. beyond the five years duration. Furthermore, the user enterprise shall not have the right to order a temporary agency worker to work at another employer.

A TWA agreement is considered invalid if: a) it contains a clause to ban or restrict any relationship with the user enterprise following termination of the employment relationship on any grounds and b) it contains a clause to stipulate the payment of a fee by the employee to the temporary-work agency for the assignment, or for entering into a relationship with the user enterprise.

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[44] KOZMA et al. 2012, 424–429. pp.

[45] KÁRTYÁS GÁBOR: *Munkaerő-kölcsönzés: mi változott?* (Part I–II), http://ado.hu/rovatok/munkaugyek/munkaero-kolcsonzes-mi-valtozott-ii-resz (17.07.2013).

The user enterprise must inform the local works' council: 1. of the number of temporary agency workers employed and of the employment conditions, 2. on vacant positions, and 3. at least once in a six-month period, and should keep the temporary agency workers it employs informed on a regular basis.

The relationship between the temporary-work agency and user enterprise is regulated under Section 217 of the HLC. The agreement between the placement agency and the user enterprise will specify the material conditions of placement, and the sharing of employer's rights. Employment may only be terminated by the placement agency. The agreement must be made in writing. An agreement between the temporary-work agency and the user enterprise will be null and void if: 1. the temporary-work agency and the user enterprise are affiliated by way of ownership in part or in whole, 2. at least one of the two employers holds some percentage of ownership in the other employer, or 3. the two employers are connected through their ownership in a third organization.

Unless otherwise agreed, the temporary-work agency must be required to cover all employment-related expenses, such as the employee's costs of travel and the costs of a medical examination if one is required for employment.

Before the assignment the temporary-work agency must provide to the employee the following information in writing: a) the identification data of the user enterprise, b) the beginning date of the assignment, c) the place of work, d) the normal course of work at the user enterprise, e) the person exercising employer's rights on the user enterprise's behalf, f) the particulars on travel to work, room and board.

The principle of equal treatment. As regards the payment of wages and other benefits, the provisions on equal treatment will apply as of the one hundred and eighty-fourth day of employment at the user enterprise with respect to any worker: a) who is engaged with a temporary-work agency in an employment relationship established for an indefinite duration, and who is receiving pay in the absence of any assignment to a user enterprise, b) who is recognized as a long-term absentee from the labour market as defined in Point 1 of Subsection (2) of Section 1 of Act CXXIII of 2004[46] and c) who is working within the framework of temporary agency work at a business association under the majority control of a municipal government or public benefit organization, and a registered public benefit organization.[47]

The termination of employment of TWA assignment. The termination of the assignment will be construed as a reason in connection with the temporary-work agency's operation.[48] The notice period is fifteen days. If termination is effected by the temporary-work agency, the employee will be exempted from work during the notice period, unless otherwise agreed.

[46] Act CXXIII of 2004 on Job Assistance Provided to Unemployed Entrants to the Labour Market, Unemployed Workers over Fifty, and to Persons Seeking Employment After Caring for a Child or Nursing a Family Member and on Employment Under Scholarship Agreement.

[47] DUDÁS et al. 2012, 422–436. pp.

[48] The user enterprise will notify the temporary-work agency in writing concerning any infringement on the employee's part within five working days from the time of gaining knowledge. The time limit commences upon delivery of the information.

The employee may terminate the employment relationship without notice, if the infringement is committed by the user enterprise. The employee shall submit the notice for termination of the employment relationship to the temporary-work agency.

Liability for damages. In connection with any damage caused by the employee, the user enterprise may demand compensation from the employee in accordance with the relevant articles of the HLC. By agreement between the temporary-work agency and the user enterprise, the provisions of civil law on liability for damages caused by an employee will apply. In the application of the provisions of civil law on the employer's liability for damages caused by an employee, the user enterprise will be construed as the employer, unless there is an agreement between the temporary-work agency and the user enterprise to the contrary.

For any damages caused to the employee while on assignment, the user enterprise and the temporary-work agency will be subject to joint and several liability.[49]

3.13. Employment relationships between school cooperatives and their members

The new Labour Code was supplemented with a new Chapter XVII, which determines the special rules of work performance (e.g. definite term, elements of an employment contract, etc.) relating to the work performance of members of school cooperatives with third party employers. This is a special Hungarian type of agency work.

According to Section 223 of the HLC, a school cooperative (employer) and its full time student (employee) may enter into a fixed-term employment relationship so as to permit such student to perform work at a third party (customer) with a view to supplying services to such third party.

The employment contract shall specify: a) a description of the responsibilities undertaken by the employee, b) the threshold of the employee's basic wage for the duration of work performed at the customer and c) the agreed means of communication during the period when the employee is not required to work.

Work may be initiated upon the parties having reached an agreement in writing concerning: a) the person of the customer, b) the job to be performed, c) the basic wage, d) the place of work, e) the date when work is to commence, and f) the duration of work.

The employer must inform the employee in writing at the time of taking up work concerning: a) the regular work hours, b) the date of payment of wages, c) the functions of the job, and d) the person delegated to give instructions.

The customer is entitled to give instructions to the employee. The customer must cooperate with the employer, such as in particular, providing access for the employer's representative to the place of work, and in making available information for the employer in connection with issues concerning the work. During the period of work performed by the employee, the customer shall exercise and discharge the employer's rights and obligations relating to compliance with the provisions on: a) occupational safety and health, b) the employment of women, young workers and persons with reduced ability to work, and c) working time, rest period and the records of these.

[49] HAJDÚ – KUN 2012, 236–255. pp.

The basic working and employment conditions of the school cooperative's employee will be, for the duration of work assignment at the customer, at least those available to the workers employed by the customer under employment relationship.

The employment relationship can be terminated at the time membership ceases to exist.[50]

Basically, the employer and the customer will be jointly and severally liable. In connection with any damage caused by the employee, the customer may demand compensation from the employee in accordance with the HLC. In such case, by agreement between the employer and the customer, the provisions of civil law on the employer's liability for damages caused by an employee will apply. For any damages caused to the employee during work performed for the customer, the employer and the customer will be jointly and severally liable in accordance with the provisions on employer's liability for damages.[51]

Brief summary

Atypical employment seems to be a good opportunity for Hungarian labour market participants to improve and adjust the employment situation. In the meantime, however, these are also the problems of the labour market for which solutions are the most difficult to find. The economic crisis has affected atypical forms of employment significantly, as well, even if these would be a means of escape for people crowded out of the labour market. It requires a change of approach on the part of both employers and employees. In this new environment employees today are forced to bear many new risks in the labour market: risks of job loss, wage variability, benefit gaps, skill obsolescence, and intermittent prolonged periods of unemployment.[52] Even though, the Hungarian Labour Code regulates many types of atypical employment relationship, these forms of employment cannot be considered a typical and widely used practice in Hungary. Furthermore, one of the main problem of HLC is that it does not address the above mentioned problems either for regular or for atypical workers. The legislators and actors of labour market must keep in mind, that the changing nature of work creates new opportunities for workers, but also new types of vulnerabilities.

[50] BERKE – KISS 2012, 539–543. pp.

[51] KUN, ATTILA – ROSSU, BALÁZS: *Youth Employment and Relevant Labour Market Programmes in Hungary*, in: FASHOYIN, TAYO et al. (eds.): Productivity, Investment in Human Capital and the Challenge of Youth Employment, Newcastle upon Tyne, 2011. 241–271. pp.

[52] LIPTÁK KATALIN: *Is atypical typical? – atypical employment in Central Eastern European countries.* Employment and economy in Central and Eastern Europe 2011/1; http://www.emecon.eu/fileadmin/articles/1_2011/emecon%201_2011%20Liptak.pdf.