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Kaleidoscope of the Hungarian employment law and policies after the new Fundamental Law

I. The labour market policy of the ruling government

The Hungarian society and economy changed profoundly during the nineties, which affected the regulation of the working environment. The state-owned company sector has practically ceased to exist, with the exception of large public utility companies. This newly created economy has developed into a dual economy, comprising two very different segments. One segment consists of medium-sized and large companies, mostly foreign-owned, integrated into the worldwide supply networks. Within this segment, the major concern of companies is flexibility, to be able to respond quickly to changes in market demands. The second large segment of the new private economy comprises micro and small enterprises, mostly domestically owned. The accession of Hungary to the European Union (2004) brought about a further wave of fundamental changes[1] in the concept and regulation of the Labour Code (hereinafter: LC).[2]

The socio-economic concept of the recent government (since 2010) based on the principle of the so-called "work-based society" or workfare. Correspondingly, the so-called "passive" labour market policy measures (job-seeker's benefits) have been pushed back (2012) and the structure of the so-called "active" measures – aiming at employability and job creation – has been changed, with a slashing of the training budget for unemployed people.

The maximum amount of unemployment benefit was cut from 120 per cent of the minimum wage to 100 per cent. The time span wherein unemployment benefits can be received has been reduced by two-thirds, from 270 to 90 days.[3] The number of jobseekers is much higher than the number of unemployed.[4]

The draconian workfare regime forces all claimants to participate in public work after 90 days of receiving unemployment benefits. The result is that fewer people get less

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1 Namely, accepting and implementing many EU legislations.

2 TÓTH, ANDRÁS: *The New Hungarian Labour Code – Background, Conflicts, Compromises* – Working Paper – Friedrich Ebert Foundation Budapest, June 2012. p. 2.

3 This is the shortest unemployment benefit period in the EU.

4 In January 2016 there were 269,000 unemployed, according to the ILO definition, while there were 359,000 jobseekers according to the National Employment Service.

unemployment benefit for a shorter period of time,[5] whilst the share and number of the unemployed getting no unemployment or social benefit has increased – and those on workfare have risen. The wider effects of the workfare system are dramatic: the Hungarian unemployment insurance system, which was introduced in 1990, is gradually being demolished. The implied threat of the punitive workfare regime is effectively sweeping the unemployed under the carpet.[6]

In the government's slogan of a "work-based society" the word "work" is used as a substitute for "cheap wage-labour". This is also reflected in the decreasing real wages of the public sector and the increasing wage differentials within the labour market. Government departments are increasingly likely to rely upon workfare to fill vacant positions, spreading a deep sense of insecurity amongst those working in the public sector.[7]

Besides the reduction of the unemployment rate by using public work measures, the rising employment rate is also a result of the increasing number of Hungarians working abroad.[8] In the longer run this has a negative impact on tax and pension fund revenue, which will maintain or even increase future poverty. Finally, the increasing brain drain of educated and skilled people is already creating shortages in the qualified work force in many sectors (IT specialists, chemical workers, physicians, nurses, and others). This turned out to be a major obstacle to economic development in 2015 and beyond.[9]

According to government sources, 700,000 jobs have been created in Hungary since 2010.[10] Furthermore, the Central Statistical Office (KSH) published the latest employment figures, which show that the number of those employed or actively seeking employment increased to 4.4 million, while the unemployment rate fell to 4.4 percent.[11]

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[5] In February 2016, 175,000 jobseekers – 48 per cent of all jobseekers – did not get any unemployment or social benefit.

[6] https://www.socialeurope.eu/2016/04/inside-hungarys-work-based-society (13.12.2017)

[7] https://www.socialeurope.eu/2016/04/inside-hungarys-work-based-society (13.02.2017)

[8] A study published by the Central Statistical Office (KSH) showed that the majority of those exiting are young, single men with above average education. Researchers also found that emigrés are following different migration strategies depending on education. Whereas university-educated men are moving abroad with their families for long periods, more and more skilled workers are going abroad for shorter periods to work, leaving their families behind in Hungary. According to the report, as of the beginning of 2014 some 330,000 (in 2016 appr. 500,000) Hungarians were living in other EU countries, primarily Germany, the UK and Austria. In contrast, the KSH official records suggest 116,000 Hungarians are currently working abroad. It is difficult to measure the ratio of Hungarians working in abroad because they are much more difficult to reach, for even if they officially reside in Hungary, they spend most of their time abroad.

[9] https://www.socialeurope.eu/2016/04/inside-hungarys-work-based-society (10.01.2017)

[10] Using 2010 as a benchmark year for calculating job creation is disingenuous and misleading. The reason for this is that the effect of the economic crisis reached its greatest depth in 2010 in terms of employment data, however, this was merely the result of a temporary contraction. Companies reacted with layoffs to the financial crisis or to the temporary fall in demand for the products they manufacture or services they provide. As the crisis passed, jobs previously eliminated were brought back, which is to say that the government is using transitional year 2010 data as the basis for calculating the creation of 700,000 jobs. However, in 2009, the year after the global financial crisis, employment stood at 3.78 million people, or 70,000 more than in 2010.

[11] https://www.socialeurope.eu/2016/04/inside-hungarys-work-based-society/# (12.02.2017)

However, according to the latest KSH data, the number of people engaged in public work has increased five-fold over the past six years, up to 218,000 at the end of 2016.[12] If this figure is added to those who are officially unemployed, then the rate of unemployment in January 2017 is 4.3 percent. However, in fact, public workers are essentially unemployed[13] who receive wages for performing communal work designated by the local government or the state bodies, which do not count as real, market-based workplaces. Between 2010 and 2016 the government spent more than HUF 1.3 trillion (€ 4.2 billion) on public work schemes, to which it has budgeted HUF 325 billion (€ 1.05 billion) for 2017.[14]

In the case of public works programs, it is not possible to talk about market-based workplaces because they earn on average only gross HUF 81,530 (€ 263) a month for unskilled work, and HUF 106,555 (€ 344) a month for skilled work (January, 2017), substantially less than the official minimum wage,[15] and are paid by the government.

Most of the participants in workfare are long-term unemployed people, often from disadvantaged regions and often members of the ethnic Roma minority who are no longer prepared for re-integration into the primary labour market. However, the public works program offers cheap labour to the government and to private employers taking part in it. The unemployed, especially in the disadvantaged regions where regular employment is virtually impossible to find, are usually thankful for the possibility of safe employment it offers long-term.[16]

In sum, the public works program seems to be the centrepiece of the Hungarian labour-market policy under the recent Orbán government. It should provide some prospect of employment by giving work to thousands of unemployed people. However, participants have to do unskilled work under precarious conditions and for modest money.

II. Development of the labour legislation

The Hungarian society and the economy changed profoundly during the nineties, which affected the regulation of the working environment. The state-owned company sector has practically ceased to exist, with the exception of large public utility companies, and a vibrant privately owned economy has sprung up. This newly created economy, however, has developed into a dual economy, comprising two very different segments. One segment consists of medium-sized and large companies, mostly foreign-owned, integrated into the worldwide supply networks. Within this segment, the major concern of companies is flexibility to be able to respond quickly to changes in market demands and a legal

[12] Prior to the labour market reforms of 2011, on average 30–50,000 people were engaged in public work annually, mostly in the form of seasonal summer work.

[13] However, the cabinet "'nationalized' public work employment" so that essentially those engaged in public work no longer count as being unemployed.

[14] As for the future, the government plans to reduce the number of public workers (minimum 10,000 persons) by the end of 2018. Basically, the public work will be terminated for persons under age 25 and for unemployed who can find themselves an employment in the labour market.

[15] Minimum wage is for unskilled workers HUF 127,500 (EUR 411), and for skilled workers HUF 161,000 (EUR 519) in 2017.

[16] http://library.fes.de/pdf-files/bueros/bratislava/12444.pdf (22.12.2016)

environment which enables the adaptation of best manufacturing practices. The second large segment of the new private economy comprises micro and small enterprises, mostly domestically owned, where formal employment intertwines with undeclared employment. The screening procedures which escorted the harmonisation of the EU law with the Hungarian national legislation between 1999-2004 introduced many fundamental changes in labour law.

In 2010, the elected right-wing government placed the re-legislation of the Labour Code. The government aimed for a new labour code which 1) makes the regulation of the working environment flexible in order to convert Hungary into one of the most competitive economies in Europe, and 2) cuts the traditional rights of unions to a minimal level, which would allow little more than their mere existence in workplaces.[17]

It is important to underline that the draft of the previous Labour Code (1992) was negotiated with a view to reaching a compromise with social partners in the standing tripartite body. The re-legislation of 2012, however, was marked by selective and half-hearted negotiations on the part of the government. The draft shocked unions as it eliminated almost all entitlements and minimum standards stipulated by the Labour Code 1992 and also envisioned eliminating all traditional union rights.[18]

There was a conceptual shift in the idea of the new (2012) Labour Code. The core objectives of the LC were the following: 1. to achieve increase in employment rates via the promotion of employers'competitiveness by flexibilization of employment protection, and to convert Hungary into one of the most competitive economies in Europe, 2. to support enterprise adaptability and innovation, 3. to introduce clearer, simplified regulations, 4. to improve labour market flexibility, and 5. to align labour law with civil law. In addition, the recent ruling right-wing government aimed quietly to cut the traditional rights of unions to a minimal level,[19] which would allow little more than their mere existence in workplaces.

The new LC[20] is the main source of employment and labour relations in private sector.[21] There are additional regulations related to traditional labour law, such as equal treatment, work safety, strike; and data protection, etc. The Civil Code is also applicable to some employment-related points; furthermore, decisions of the Curia (Supreme Court) also refine daily practice. In Hungary employment relations are governed by collective agreements (works agreement) and individual employment contracts. Owing to the EU legislations and policies, the LC's provisions are very similar to the labour laws of other European countries.

The Hungarian employment regulation has traditionally been divided into two clusters: 1. employment relationships (under the scope of the Labour Code), and 2. civil law relationships

[17] TÓTH 2012, 2.p.
[18] TÓTH 2012, 3.p.
[19] The legislation weakened the position of unions, it elevated the rights of works councils. The most important change is that in case of a lack of unions at the workplace, a works agreement can be concluded with the works council. Works agreements could regulate all issues which a collective agreement could – even to the benefit of employers – with the exception of remuneration. The shift of the rights to be informed and consulted from unions to works councils is a clear „signal" that unions will suffer a substantial loss of entitlements and prestige.
[20] This is the second Labour Code (LC) after the change of the political regime in 1989. The first LC was Act XXII of 1992.
[21] NB: for the public sector other acts are applicable.

(covered by the Civil Code).[22] Theoretically, the parties in Hungary may freely choose between employment contracts, civil law contracts (e.g. mandate, supply contracts etc.), and other types of work contracts (e.g. contract of independent commercial agent). If the nature of the work allows the parties to perform it equally in an employment relationship and a civil law (self-employed) relationship, then the declared will of the parties is going to be the desicive factor in relation to the assessment of the legal nature of the parties' relationship. In this case, they have the freedom to choose the type of contractual relationship. Basically, there is one serious limitation of this freedom: it cannot be a bogus contract.

According to the Labour Code, an employment relationship is established by entering into an employment contract, whereby the employee is required to work as instructed by the employer and the employer is required to provide work for the employee and to pay wages.[23]

Employer means any person having the capacity to perform legal acts who is party to employment contracts with employees[24]and the employee is any natural person who works under an employment contract.

The conditions of employment relationship may be undermined or at least weakened by the new legal hierarchy of Hungarian labour law norms. Article 277 of the LC allows collective agreements[25] to derogate from the LC to both directions (in peius and in melius), if there is no altering provision of the Labour Code.[26] For instance, collective agreements may erase personal performance of work from the obligations of the employee.[27]

III. The status of employee with full capacity and with reduced capacity

The LC does not specify the definition of 'employee'. It only says that an employee is who carries out work according to an employment contract and reached age 16,[28] accordingly, the legal capacity expressis verbis is not a condition of the employee status. However, the work performance has become the main characteristic of the employment relationship.

One of the most significant impetuses of the new approach to deal with disabled employees was continuous development, which finally and hopefully could lead from the medical model (WHO definition, 2001) to the human rights model of disability (UN

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[22] HAJDÚ, JÓZSEF: *Social security protection of the self-employed persons in Hungary*. In: Nagy Károly-emlékkönyv. Szeged, 2002. p. 175.

[23] Section 42 of the LC.

[24] Section 33 of the LC.

[25] Collective bargaining agreements are usually established at company level, however, some industrial collective bargaining agreements are also applicable. According to statistics, around 2,100 collective bargaining agreements are currently applicable at company level, and 5,000 collective bargaining agreements are applicable within Hungary (including the public sector). [http://www.iclg.co.uk/practice-areas/employment-and-labour-law/employment-and-labour-law-2016/hungary (22.12.2016)]

[26] http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/hungary/hungary-working-life-country-profile (22.12.2016)

[27] GYULAVÁRI, TAMÁS: *The bridge too far? The Hungarian regulation of economically dependent work*, Hungarian Labour Law E-Journal pp. 84–86 (http://hllj.hu (21.03.2017)

[28] Basically, a person may establish an employment relationship above 16 years of age; students receiving full-time school education between 15 and 16 years of age may enter into an employment relationship only during school holidays.

Convention: subsidized decision-making power, hereinafter: SDP) in one day.[29] The theory of full legal capacity[30] is laid down in Article 12 of the UN Convention. Accordingly, the Member States which ratified the Convention should supervise the regulations of their existing and deeply rooted guardianship model.[31] There are three developing stages of the disability policy: 1. compensation, 2. rehabilitation and 3. participation (SDP).[32] In Hungary there are two basic legal sources to regulate this issue: 1. the Civil Code and 2. tangentially the Labour Code.

According to the Civil Code,[33] there are different views on the connection of capacity to act and capacity to contract in the Hungarian law. The most favoured opinion is that the capacity to act is not a complex category. It equals with the capacity to contract.[34]

The new Labour Code[35] contains an obligation on providing reasonable accommodation, which has not, however, had any effect on practice. Moreover, there has not been funding for the provision of reasonable accommodation at workplaces.[36]

In addition, Hungary has undertaken a number of steps to promote the right to work of persons with disabilities, including through the inclusion of a provision of reasonable accommodation to persons with disabilities in the 2012 LC. However, the overall employment rate of persons with disabilities remains lower than for other population groups despite such efforts.

There is a new issue, which is discussed during the planning of the new LC: the employee status in the case of intellectually and psychosocially disabled people. As a result, Art. 212 of the new LC states: „people under plenary guardianship[37] are entitled to

[29] In the UN Convention there is a much greater focus on the impairment of the individual and on the individual and environmental factors affecting it.

[30] The theory of full legal capacity has been prepared gradually by psychologists, psychiatrists, lawyers, economists and social workers since the 1970s. The protagonists show the complexity of the capacity assessment of people living with intellectual and psychosocial disability.

[31] Plenary guardianship deprives the social integration of the target group even on the level of disability policy. Guardianship as a deeply rooted legal institution and the functioning of guardianship is part of the disability policy in Hungary.

[32] However, if the guardianship exists and it is used on a daily basis, there is no room for SDP, which is the case in Hungary.

[33] This regulation in the new Civil Code is based upon the principle of the least restrictive measures, subsidiary and gradation, and results in a regulation not affecting the capacity to act of people of full age.

[34] Additional information about Hungary's compliance with the UN Convention on the Elimination of Discrimination against Women in response to the questions of the List of Issues and concerning the Replies from the Government of Hungary to the List of Issues, 54th session, January 2013 (INT_CEDAW_NGO_HUN_13261_E.doc)

[35] http://www.ilo.org/dyn/travail/docs/2557/Labour%20Code.pdf. (05.02.2017)

[36] HALMOS, SZILVIA: *Requirement of reasonable accommodation under Hungarian employment law.* (in English) Hungarian Labour Law E-Journal, hllj.hu 1/2014: 15–38.

[37] Act V of 2013 on the new Civil Code changed the rules for establishing guardianship (unfortunately, the CC decided to sustain the traditional approach to legal capacity, which preferred plenary and partial guardianship, even though guardianship approach has been criticised by disabled persons' organisations worldwide because it restricts the right to self-determination of those living with disabilities); in addition to restricting the legal capacity of adult persons with limited capacity to make decisions, it also introduces the legal institution of supported decision-making (Supported decision-making presents an alternative to guardianship based on trust and reciprocity). For the introduction of supported decision-making as a new legal institution, a separate law had to be passed about its detailed rules in order to provide decision-making help to persons of limited judgement without limiting their legal capacity, in view of the principles of

conclude an employment contract." The work must be suitable for the incapacitated employee, and the work description must be inevitably detailed. The work of incapacitated employee must be continuously supervised so that the health and safety conditions could be maintained. The new LC tried to solve the issue of employment of mentally disabled people in compliance with the resolution of the Constitutional Court Nr. 39/2011 (31 May, 2011).[38]

IV. Data protection and employee privacy

Besides the Civil Code and Data Protection and Infocommunication Act, the new LC introduced special provisions on privacy and data protection issues. It will be examined here briefly how the employee data protection rights affect the employment relationship from both – employer's and employee's – sides.

Employers may process the employees' personal data to the extent necessary for the fulfilment of the purposes of the employment. The employees must be duly informed regarding the processing of their personal data. If the employer wants to process any employee data – which is absolutely necessary –, the consent of the affected employees must be obtained. Employers are permitted to disclose facts, data and opinions concerning a worker to third persons in the cases specified by law or upon the workers consent.

Accordingly, employers can conduct background screening, including criminal record checks, but limitations apply. Screenings are permitted to the extent necessary and proportional with respect to the position of the given employee, provided that the screening does not violate the employee's personal rights.[39] The employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary for exercising rights and fulfilling obligations in accordance with employment regulations.[40]

Employers, in general, are allowed to monitor the behaviour of workers only to the extent pertaining to the employment relationship. The employer's actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of workers may not be violated. Employers must inform their workers in advance concerning the technical means used for the surveillance of workers. Outgoing e-mails can be checked (opened) only when the e-mail box cannot be used for private purposes. Screening incoming mails is limited even in this case. Employers are free to regulate the use of corporate IT tools.

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necessity and proportionality (Act CLV of 2013 on Limited Decision-Making). The rules of implementation concerning the guardian authority have been incorporated into the provisions of Government Decree No. 149/1997 (IX.10.).

[38] This resolution laid down that the Hungarian State was in breach of the international obligations when it did not guarantee the right for work of mentally disabled people.

[39] However, the interview questions need to be examined case by case as there is no explicit list about the suitable questions. It is not allowed to ask about the employee's family life, religion, sexual orientation, private life, political beliefs.

[40] Employment law overview, Hungary p. 2. http://knowledge.leglobal.org/wp-content/uploads/LEGlobal_Memo_Hungary.pdf (02.03.2017)

One of the newest problems is the control of the employee's use of social media in or outside the workplace. During the life of the employment relationship, workers must not engage in any conduct which jeopardises the legitimate economic interests of the employer, unless so authorised by the relevant legislation. In addition to the above, workers may not engage in any conduct during or outside their paid working hours that directly and factually has the potential to damage the employer's reputation, legitimate economic interest or the intended purpose of the employment relationship.

The actions of workers may be controlled in compliance with the LC. It is important to note that the LC prohibits control over the workers' private life. Employees must also be informed about the technical tools which will be applied to control them (e.g. software checking the activities of the employees on the Internet) in advance.

Employers are free to regulate the use of social media during working hours or on corporate IT tools. It is important for employees to issue by-laws regarding the use of social media. It is also possible to regulate the use of social media in the employment contract but, in such cases, amendments require the consent of the employee.[41]

1. Termination of employment and breach of privacy

According to the practice of termination of employment in Hungary, it is also worth examining how Hungarian labour courts handle breach of privacy: on the one hand, how can such a breach be evaluated if the reason for the termination is based on some kind of breach of privacy (such as unlawful gathering of evidence serving as the ground for termination of employment); and, on the other hand, how law and employment courts' practice can handle the scenario if an employee's privacy has been violated at the time of the delivery of the termination letter.

In line with the practice, it can be established that the Hungarian labour courts handle the reasons for the termination of employment and the potential breach of privacy as the reason for the termination separately. For instance, if the employee commits bribery and this action has been recorded by a hidden camera not known of by the employee, the labour court would probably accept the recording as unambiguous evidence without examining the breach of privacy. In such situation, the employee may claim the legal consequences of the breach of his/her privacy (hidden camera footage), so the employee may ask for the so-called restitution. However, such claim of the employee would not affect the validity of the termination of employment.

The above-detailed approach of the Hungarian labour courts was confirmed in some important decisions of the Curia (Hungarian Supreme Court). In one decision, the Curia declared that a breach of law by an employee (fraud; which is also a criminal act) serves as an acceptable ground for the termination of employment. However, the polygraph tests executed by the employer while investigating the case, even if it happened with the

[41] http://www.szecskay.hu/dynamic/emp15_chapter_16_hungary_final.pdf (15.02.2017)

consent of the employee, definitely violated the right to privacy and the employee could claim compensation for non-pecuniary damages.[42]

In another case, the employee was entitled to a laptop with restricted private use. During an internal investigation, the employer discovered that the employee stored a considerable amount of pornographic content on his laptop and the employment was terminated with immediate effect by the company. The employee referred to his right to privacy and, according to the Commissioner for Data Protection's standard practice, the content stored on company devices is not the property of the employer. The Curia established in its decision that in this case all courts in charge must focus definitely and solely on the breach of employment obligations. If the employee finds that his/her privacy rights were violated, he/she may enforce his/her claims under this legal title, but such claims definitely do not affect the validity of the termination of employment.

The Curia also established that a secret voice recording made in a superior's office room by an employee in a position of trust (she was a personal assistant) serves as a ground of termination of employment with immediate effect. The right to privacy of the superior/employer was not examined, as the company had filed no action/claim in this regard.

There is a question whether unlawfully gathered evidence (such as hidden camera footage or secret voice recordings) can be accepted as evidence during a litigation procedure, and, if so, how it can be evaluated. According to current court practice, if a fact can only be proven by the unlawfully gathered evidence, such evidence will be accepted (note: in criminal cases, unlawfully gathered evidence may not be used). For example, if a party makes a secret voice recording via smartphone, such recording can be used as evidence provided that no other evidence is available (usually employees use secret voice recordings: for instance, the employee records the negotiations about the termination of employment by mutual agreement when the company makes unlawful threats against the employee – in such case the mutual agreement would not reflect the real consent of the employee, hence the termination of employment would be considered unlawful). According to court practice, in case unlawfully gathered evidence is used in labour law litigation, the parties may claim the so-called restitution with regard to the breach of privacy rights.[43] The restitution is a legal consequence of civil law, which is also applicable in employment law. For the purposes of the restitution, only the fact of breach of law must be proven (the incurred disadvantage is not required to be proven). The amount of the restutition is upon the sole discretion of the court.

It is worth mentioning how courts evaluate if an employee's privacy has been violated at the time of the delivery of the termination notice. According to the recent practice of the Curia, solely the unlawful termination of employment does not grant any entitlement to a restitution. However, if any violation of privacy occurred at the time of the termination of employment, the employee may claim a restitution for that breach of law. As an example, a violation of human dignity occurs if the reasons given in a termination letter are of a humiliating, degrading nature.[44]

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[42] NB: thanks to the new Civil Code, the compensation for non-pecuniary damages (nem vagyoni kár) ceased to have effect as of 15 March 2014; currently, the restitution (sérelemdíj) is applicable.

[43] According to Act V of 2013 on Civil Code.

[44] https://www.globallegalinsights.com/practice-areas/employment-and-labour-law/global-legal-insights---employment-and-labour-law-2017-5th-ed./hungary (16.02.2017)

V. Typical and atypical employment relationship

The most common employment form all business sectors in Hungary is the so called 'typical' employment, that is for an indefinite period and full time. Legislators have recognised the effectiveness and flexibility of other 'atypical' forms of employment and have collected these into a single chapter in the new Labour Code (they had been in separate chapters previously) and also created new atypical forms.

In the new LC, the number of atypical employment relationships remarkably increased. The new atypical employment relationships derive from three different sources. Firstly, there are three brand new forms of atypical employment: e.g. on-call work, job sharing and employee sharing.[45] Secondly, simplified (casual) employment is now regulated by the LC, which was considered as an employment relationship previously.[46] Thirdly, outworkers are now formally regulated by the LC[47] as an employment relationship, however, it is rather a legal relationship between employment relationship and civil law relationship belonging to the grey zone (economically dependent work).[48] The LC enlists exhaustively the 'atypical' forms, such as fixed-term employees, part-time employees, teleworkers, outworkers, job-sharing employees, employee-sharing, executives, temporary agency workers and school cooperatives' employees. In the latter cases the distinguishing factor is mainly based on the type of the employment contract. This article deals with mainly a quite unique types of atypical work.

1. Simplified work

First step. In August 2005, the so-called „blue-book for casual workers" was introduced, which later on was renamed as Booklet for Casual Workers (*Alkalmi Munkavállalói Könyv, AMK*). This was initially envisaged as a simplified method to turn private households into lawful employers, following the German model of „mini-jobs", however it became more common in agricultural, construction and other industries employing casual/seasonal workers. Casual workers can apply for the Booklet in the state-run employment offices free of charge. It allows taking up casual jobs for up to a duration of 5 days at maximum for 15 days in a month and 120 days in a year. (The regulations slightly vary for different forms of AMK depending on the nationality of workers and the sector as well as the legal status of the employer.) Taxes and social insurance contributions are to be paid by the employers in the form of a stamp which needs to be stuck into the Booklet on the days of work. The 'price' of the stamps is legally regulated depending on the day's pay. Not only is the employers' administration burden eased, but taxes and contributions are also lower than those for 'regular' employment. Casual employment with the use of the booklet qualifies as employment contract implying appropriate insurance and pension base.

[45] Sections 193–195 of the LC.
[46] Sections 201–203 of the LC. Furthermore, provisions of Act LXXV of 2010.
[47] Outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the work done (Sections 198-200 of the LC.)
[48] GYULAVÁRI, TAMÁS2014, pp. 91–92. (http://hllj.hu/letolt/2014_1_a/01.pdf)

Second step. In 2010, the Hungarian government introduced the Simplified Employment Act (2010/LXXV) to facilitate seasonal and casual employment notifications, reports and payments. The regulations of the Act was an anticipatory measure to tackle undeclared work. The Simplified Employment Act was enacted to simplify the complicated, slow and dysfunctional administrative burdens for seasonal employment. Results from the National Labour Inspectorate's inspections had shown that there was a high rate of incorrectly filled forms, and failures of meeting deadlines among employers' and employees' contracts and registrations at labour authorities. For example it was necessary for every single seasonal worker to fill in two copies of an official attendance sheet every day with 18 categories on it.

It freed both employee and employer of the administrative burdens, as employment status had to be stated in a mutually agreed simplified work contract (enclosed to the Act) and could be declared by a simple text message (SMS) or electronically via the so called client gate system (Ügyfélkapu Magyarország) after being registered once in the system. It distinguished only two categories of simplified employment: seasonal agricultural work, including seasonal tourism services and other casual/temporary work (i.e. domestic work).

In the first case the employer had to pay taxes of HUF 500 (€1.75), in the second case HUF 1,000 (€3.5) on a daily basis. By entering two codes into the text message or into the client gate system all obligations could be fulfilled at once, namely notification, reporting and payment.

The Act regulated the maximum working hours per year and in effect highlights discrepancies to the Labour Code.

A controversial paragraph concerned entitlements to social benefits. During simplified employment the employees did not have overall and regular social security; they were only entitled to accident health care services and job seeking allowances, but had no health insurance and only a restricted later pension claim for the period of this kind of employment.[49]

Third step. The new Labour Code kept the basic concept, but incorporated the casual (occasional) work relationship into the LC under the title: simplified work. According to the Sections 201-203 of the LC, employers and employees covered may enter into simplified employment or occasional work relationships. However, any employment contract for simplified employment or occasional work is considered null and void if the parties are engaged under an employment relationship at the time it was concluded. An existing employment contract may not be modified by the parties to conclude a simplified employment or occasional work relationship.

In the practice, employment may be established in a simplified manner for seasonal work in agriculture and tourism or for casual work. In this case, simplification means that only the most important rules of labour law (e.g. minimum wage) need to be applied to employment. Administration of the start and end of employment is also less. Simplified employment will still be a good opportunity for small and medium sized employers.[50]

[49] http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/simplified-employment-act-hungary (14.03.2017)

[50] http://www.hg.org/article.asp?id=25222 (21.04.2017)

2. Incapacitated workers

According to the UN Convention on the Rights of Persons with Disabilities disability is an evolving concept and disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Hungarian disability concept is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he/she lives. In that sense the Hungarian concept is in compliance with the UN Convention. However, the definition does not involve people with psychiatric disability.[51]

The incapacitated workers is a new provision in the LC. Earlier the labour regulations in force 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) the actual situation.[52]

There are two fundamental factors underlying this change in labour law regulations:

(a) 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;[53]

(b) in its Decision No. 39/2011 (V.31.) 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 LC, 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. 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.[54]

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[51] JAKAB, NÓRA: *Employment policy of employees in special legal status in Hungary – Is it in Compliance with the EU standard?* European Integration Studies, Volume 10, Number1 (2013), 62.p.

[52] http://www.profession.hu/cikk_rovid_hirek/20121119/a-gondoksag-alatt-allok-is-dolgozhatnak/1755 (13.03. 2015).

[53] http://www.e-epites.hu/jogszabalyok/2007-evi-xcii-torveny-a-fogyatekossaggal-elo-szemelyek-jogairol-szolo-egyezmeny (17 July 2013).

[54] Pál *et al*., *op. cit*., pp. 363–367.

3. School co-operatives, as a special Hungarian type atypical work

Between 2012-2016 the school cooperative[55] was one type of the atypical employment relationships in the LC.[56] A school cooperative[57] (employer) and its full time student or pupil (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. Previously Articles 223-226 of the LC dealt with school cooperatives.[58] During the period of work performed by the employee, the customer would exercise and discharge the employer's rights and obligations (e.g. OSH, the employment of women, young workers and persons with reduced ability, and working time, rest period and the records of these.[59]

The main aim to establish student co-operatives was by the state to bridge over the difficulties of studying and working together. By the effect of the state's role-taking the application of student cooperative is significantly cheaper (with 30-50%) than the „normal" adult TWA employment. In this way where the co-operative role-taking can be conceivable, remarkable cost saving can be achieved.

As a result of the Hungarian economic system, the households' poor savings and the social situation, it is crucial for 75-80% of the families that university or college students undertake work besides their studies. The income earned here provides a social net for several regular students and it also gives the opportunity for continuing studies.

Owing to the school co-operative system, youngsters are able to build their career earlier, which can provide experience and a reference for their future full-time employment, and at the same time they can form their needs and ability of being responsible for themselves.

Providing work through school co-operatives has several advantages from the employer's, the student's and the society's point of view: it is a legal way of employment, safe and offers numerous rewards for all participants. The temporary, seasonal need for the number of workforce is supplied fast with low costs.

In Hungary 150-180 thousand students take on casual work a year in general and three-quarters of them are employed by school co-operatives. Full time students are employed by work contract, guaranteed harmless, healthy work environment and work safety.

As a drastic change, all of the provisons relating to school co-operatives were repealed on 1 September 2016, as a result of which the legislation was incorporated in the text of the Act on Cooperatives.[60] With this, the legislator intended to prevent the unfavourable outcome of infringement procedure of the EU started on the grounds that vacation is not provided to employed students according to the regulation in force.[61] At the same time, the

[55] The first Hungarian Student Co-operative was founded in 1911.
[56] http://ado.hu/rovatok/tb-nyugdij/az-iskolaszovetkezeti-munka-tb-vonatkozasai (25.03.2017)
[57] In short, the school cooperative is a hidden TWA which has a competitive advantage compared with an ordinary TWA agency. The significant advantage is that they are exempt from paying social security contribution and social tax.
[58] http://hvg.hu/itthon/20160708_diakmunka_szovetkezet_veszelyek_tanacsok (12.03.2017)
[59] https://www.eurofound.europa.eu/observatories/emcc/comparative-information/national-contributions/hungary/hungary-young-people-and-temporary-employment-in-europe (14. 03. 2017)
[60] http://www.hrportal.hu/hr/fizethetunk-e-mint-a-katonatiszt---avagy-sikerult-e-orvosolni-az-iskolaszovetkezeti-szabalyozas-fogyatekossagait-20160513.html (21.03.2017)
[61] http://adozona.hu/munkajog/Igy_dolgozhatnak_a_diakok_szeptembertol_mut_D5MIKK (21.03.2017)

legislator inserted the basic provisions (leave, minimum wage, break, resting period etc.) of the LC into the Act on Cooperatives.[62]

4. Outworkers

Basically outworkers are persons who work outside the factory either at their own homes or at the site of the client are termed as outworkers. They may be put in the following two categories: a) workers who are not on the pay-roll of the factory, or b) workers who are on the pay-roll of the factory.

a) *Workers who are not on the pay-roll*: these workers are not in the regular employment of the business. They are supplied materials by the concern but use their own tools, premises etc. Strict supervision and control is required in such cases in respect of materials issued to the workers for carrying to their homes, delivery of manufactured products after the allotted time, and the quality of work according to the direction given to them. (The LC's provisions on outworkers are relating to this category.)

b) Workers who are on the pay roll: These workers are in the regular employment of the business house. They are sent to perform some specific duties such as sanitary work, plumber's work or electricity work etc. at customer's premises or at any other place according to his/her directions. Time records of such employee must be kept by the employer to note the time when they come in and go out. The employee may be given job cards in which the actual time taken by them in respect of jobs performed at various places should be recorded. For better control it will be appropriate if a 'Out Work Time Sheet', in the Performa maintained for each worker.

According to the Section 198 of the LC, outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the performance-based wages.

The employment contract between outworker and employer defines the work performed by the employee, the place where work[63] is carried out and the method and extent of covering expenses.

According to the Section 199 of the LC, 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 will carry out the work using his/her own means. Furthermore, in the absence of an agreement to the contrary, the employer determines 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. In the absence of an agreement to the contrary, the employee's working arrangements is flexible.

The employee must reimburse for the expenses actually incurred in connection with the work, or – if the expenses actually incurred cannot be determined – a fixed flat-rate

[62] http://www.krs.hu/sites/default/files/tudastar/krs_labour_law_newsletter_august_eng.pdf (04.03.2017)
[63] The employee's home or another place designated by the parties shall be construed as the place of work.

sum will be paid to the employee. However, the payment of remuneration and expenses will be withheld if the work done is deemed insufficient due to reasons within the employee's control. Payment of remuneration and expenses is reduced if the employer is able to use the product the employee makes in part or in whole.

VI. Summary

The legislation of the new Hungarian LC clearly changes the balance of regulation between employers and employees. Altogether, the lowering and diluting of minimum standards, flexibilisation and shifting of some of the risks of employment to the employee make the regulation more beneficial for employers. It ensures flexibility for employers and, at the same time, lowers the security net for employees.

The stated aim of the government was to carry out revolutionary changes in Hungary. 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.[64]

The labour code drastically cut the traditional rights and entitlements of unions. While the legislation weakens the position of unions, it elevates the rights of works councils. One of the most important changes is that in case of a lack of unions at the workplace, a works agreement can be concluded with the works council. The shift of the rights to be informed and consulted from unions to works councils is a clear „signal" that unions will suffer a substantial loss of entitlements and prestige.

The employers' associations and representatives of big business companies have expressly welcomed the new labour code.

HAJDÚ JÓZSEF

MAGYAR MUNKAJOGI ÉS FOGLALKOZTATÁSPOLITIKAI KALEIDOSZKÓP AZ ALAPTÖRVÉNY ELFOGADÁSA UTÁNI IDŐSZAKBÓL

(Összefoglaló)

Az Alaptörvény megjelenése után az új Mt elfogadásával (2012) és hatályba lépésével megváltozott a munkavállalók és munkáltatók között korábban kialakult szabályozási „egyensúly". A legutóbbi pénzügyi/gazdasági válság munkaerőpiacra gyakorolt negatív következményeire adott individuális és kollektív munkajogi reflexiók, valamint az EU 2006-ban kiadott Zöld Könyvében foglaltak megtermékenyítő hatására a munkavégzés rugalmasítása (flexibilizácó) és az ezzel szükségszerűen együtt járó, elsősorban a

[64] TÓTH 2012, pp. 9–10.

munkavállalók jogvédelmét szolgáló minimum standardok Mt-beli erodálódása – számos esetben – a munkáltatók gazdasági érdekeinek erősítését szolgálta. Az állam eltökélt célja volt, hogy a fentiekben vázolt megváltozott gazdasági, jogi és munkaerőpiaci környezetben egy teljesen új Mt-t hoz létre. Kardinális változás, hogy a korábban konszolidált és kijegecesedett Mt-Ptk szabályozási szubszidiaritás teljesen más kontextusba került – az ILO Philadelphiai Nyilatkozatában foglalt „a munkaerő nem árú" elv érvényesülésének legalább részleges eliminálásával – és a dogmatikai hangsúly számos esetben áttevődött a polgári jogi szabályozás primátusára. Jelen tanulmányban ennek a változásnak néhány emblematikus fejlődési pontját mutattuk be.