JÓZSEF HAJDÚ[1]

Fixed-term employment contract in Hungary

1. The Character of Regulation and Sources of Labour Law

1.1. Character of Regulation by Labour Law

A. Fundamental Uniformity of Regulation

The Hungarian Labour Law is uniform. From the point of view of content the uniform character is manifest in the fact that identical basic rules pertain to the different categories of workers. Thus, identical rules apply to workers employed in industry, state administration, the judiciary, agriculture, and trade. From a formal point of view, the uniform character is revealed in the fact that the fundamental provisions of Labour Law are determined by the same code, i.e. the Labour Code.[2]

B. The Differentiated Character of Regulation

Despite the above uniformity, there is an extreme diversity and complexity in detail. This can be traced to three factors. The first is the divergent nature and circumstances of labour relations. The second is the rapid changing of the factors affecting labour relations. Lastly, the third factor consists of the participation of the trade unions and workers' collectives in labour regulation.

Differences in the organization of work and relations between the parties may arise as a result of the character of the work performed, i.e. whether performed in an industrial sphere, agriculture, navigation, and so forth. Differences may also occur as a result of the character of the circumstances pertaining to competence (managerial, subordinate) or the type of work (detrimental to health, heavy, etc.). These circumstances may make themselves

---

[1] The author is a professor at the Faculty of Law of Szeged University, Szeged and Károli Gáspár Protestant University, Budapest Hungary.

[2] KISS GYÖRGY: Munkajog. 2. átdolgozott kiadás. Osiris kiadó. Budapest, 2006. 2–4. pp.

felt even in judicial regulation, and alongside a fundamental uniformity there may arise the necessity of divergent decrees to provide for them.

Secondly, the social and economic factors affecting labour relations are very dynamic. Especially important from this point of view is the accelerating technological development, as well as the formation of big international political and economic entities. They exert influence on the formation of both the structure of society and the economy, the work methods and plant organization. All these changes also require modifications in the field of legal regulation. (It is not accidental that for several years there have been vivid disputes within the framework of the science of Labour Law regarding the issue to which extent the principle of deregulation and flexibility should be made valid in the sphere of the regulation of Labour Law.) Hence the need for new law is likely to emerge far more often in the field of Labour Law than in other fields of jurisprudence.

There are areas of legal science, such as Civil Law, whose regulations are relatively more permanent because legislation is primarily permissive and consequently it is left to the discretion of the parties concerned to adjust their behaviour. In the field of labour, legislation of this kind is possible but in a restricted sphere. This is essentially because labour legislation cannot but take into consideration the necessity of ensuring the workers' position and the effective protection of their rights. Therefore, in the field of labour legislation there is need for comprehensive and binding laws which remain flexible enough to meet the demands derived from the changes occurring in the sphere of production and the national economy. In view of these circumstances, different types of judicial regulation have emerged in the field of labour legislation from the very beginning. Hence, the formal differentiation of labour legislation which has emerged in consequence of the heterogeneity of content takes shape in:

- the divergent forms of regulation from statutory provision to collective agreement,
- different levels of regulation from Parliament to the individual enterprise,
- the divergent scope of competence of the provisions, from those encompassing all citizens to those whose province extends to a single employer.

The third factor of decisive influence upon labour legislation is the realization of participation of workers in the legislative process by means of the trade union or the works council.

1.2. The Sources of Labour Law

A) General overview of the sources

The sources regulating labour law in Hungary are the Hungarian Constitution and Act No. 22 of 4 May 1992 on the Labour Code. Of cardinal importance among the sources of Labour Law is the Constitution of the

Hungarian Republic. Its significance manifests itself in two ways. On the one hand, the Constitution lays the foundation of labour legislation. On the other hand, the Constitution outlines the legal sources of labour legislation.[3]

In accordance with the Constitution, para. 1 of Section 13 of the Labour Code provides that questions connected with employment are regulated by law or other rules of law where the law so provides. According to paras. 2–5 of Section 13 of the Labour Code the sources of Labour Law, however, are widened to a collective agreement which may provide for any question pertaining to employment provided it does not run contrary to the rule of law. However, a collective agreement or agreement between the parties, unless provided otherwise by the Code, may depart from the regulations laid down in the third section of the Labour Code provided more favourable terms for the employee are laid down.

The Labour Code also introduces a comprehensive concept "a provision pertaining to the labour relationship". The latter sums up the legal sources mentioned in para. 72 and the collective agreement together. The aim is practical rather than theoretical. It was intended first and foremost to overcome difficulties of wording. This is especially significant and practically expedient in cases when the law grants authority for lower level legislation. Hence, for instance, if it is enacted that remuneration is due in conformity with the provisions pertaining to the labour relationship, this means that remuneration can be determined by any form of regulation, for example by collective agreement.

B) The Statutory Sources of Labour Law

In 1992 the question of employment had to be reviewed and reorganised owing to the changes in social structure and adaptation to the market economy. Prior to this reorganisation only the provisions of Labour Code had been applied in labour matters since 1967. The principle of the new differentiated legal regulation is to make differences among the employers according to the sphere they belong to.

In the *private sphere* state control has significantly decreased. Act 22 of 1992. (Mt.) on the *Labour Code* includes only the principal and guaranteed rules of employment. Other rules are included in the Collective Agreement or, in its absence, the employment contract between the parties. These rules may contain more favourable provisions for employees than the ones included in the Labour Code.

The Labour Code includes both provisions on individual and collective labour relations. However, there is separate legislation relating to labour

[3] http://www.ilo.org/public/english/dialogue/ifpdial/info/termination/countries/hungary.htm

administration, labour inspection, workers' compensation, unemployment, strike, etc.

The scope of Act 23 of 1992 (Ktv.) on the legal status of *public servants* covers administrative organisations, the offices of the representative bodies of local governments and county- and capital-level public administrative offices, as well as those in legal relationship with them. The Act establishes strict employment conditions. Only Hungarian citizens with a clean record and an unlimited capacity of action can become public servants.

Act 33 of 1992 (Kjt.) on the legal status of *civil servants* includes the third element of the differentiated regulation, which affects the legal status of the employees of budgetary institutions. In the case of civil servants the regulations of the Labour Code shall also be applied with the modifications in the Act relating to them. The minister may determine the conditions of employment for civil servants in the given sector. Thus, for example, the conditions of Hungarian citizenship, clean record, or the completion of 18 years of age.

In addition to the above three legal statuses, Hungarian legislation recognises other atypical employment types, as well. These are, e.g., employment with a temporary employment book, part-time work, distant employment, home-working and hiring-out of workers.[4]

2. Employment Contract in Hungary

2.1. General Principles Concerning Employment

A) Effectiveness of the Right to Work.

According to the 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 Hungarian Constitution. Positive measures are needed in order to assure the success of the citizen's decision, i.e. regulation concerning 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.

[4] JÓZSEF HAJDÚ: *Hungarian labour law.* 2006. pp.1–2 (manuscript)

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 accept a candidate or give him/her 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 employment contract.

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.

B) The Freedom to Enter into Employment

a. The Subjective Right to Enter into Employment

It was noted previously that to merely declare the right to work does not suffice; legal regulation is needed to realize this idea. Article 70/B of the Hungarian Constitution grants to every citizen the right to enter into employment.

b. The Prohibition of Discrimination

In addition to positive regulations, measures which eliminate groundless discrimination are also needed. In this respect Article 5 of the Labour Code states that in connection with employment relationships the principle of equal treatment must be strictly observed. Any consequences of the breach of the principle of equal treatment shall be properly remedied. The remedy shall not result in any violation of or harm to the rights of another worker.

It must be noted that formerly Article 5 of the Labour Code contained quite wide range of provisions relating to equal treatment, but the discrimination based on the longevity of the contract was not on the list.

However, the enactment of the new Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities took over the task of Article 5 of the Labour Code. The legislation consists of two parts: 1) regulations on equal treatment and 2) the promotion of equal opportunities. The latter is understood to mean the drawing up of equal opportunities plans for public and government institutions employing more than 50 people. According to the legislation, employers should be drawing up plans, based on surveys, about the adverse situation of the employees, particularly women, the over 40s, the Roma, the disabled and working parents with two or more children under the age of 10 and

single parents with children under the age of 10. The institutions and employers need to work out measures that rectify the situation and assure equal treatment for all their employees. These measures could be at different levels, such as increased income; professional promotion; better work environment or more advantageous maternity conditions.
Therefore in the meantime the main source of discrimination in the field of employment relationships is the above-mentioned Act. Equal treatment issues are emerging steadily.[5]

2.2. Commencement of Employment Relationship

The date of establishing an employment relationship and the date of its commencement do not necessarily coincide, they may be different from each other. Employment relationship is established upon concluding an employment contract, while the commencement of employment relationship is the first day of work. This is when the employee starts work. It is quite common that several (work)days or possibly an even longer time passes between concluding the employment contract and starting the work. In such cases the parties establishing the employment relationship have to specify the first day of work in the employment contract. The reason for this is that the Labour Code lays down that in case the date of the commencement of employment is not provided for in the employment contract by the parties, the employee shall commence work on the working day following the conclusion of the employment contract. During the period between the day the employment contract is concluded and the day of commencing work, unless regulations pertaining to the employment relationship or the employment contract stipulate otherwise, the parties shall be entitled only to the rights and subject to the obligations originating from employment which facilitate the commencement of work.[6]

2.3. The Concept of an Employment Contract

In the employment contract the employer undertakes to employ a person for defined duties and for a determined payment, while the employee undertakes to be employed in the enterprise. The employee shall only be requested to make a statement, fill out an information sheet, or take an aptitude test if it does not violate the employee's personal rights, and may provide substantive information from the viewpoint of the establishment of employment. Employees must not be compelled to take a pregnancy test or to produce a certificate thereof, unless it is

[5] KISS GYÖRGY: 2006. 89–93. pp.
[6] DR. CSÉFFÁN JÓZSEF: *A munka törvénykönyve és magyarázata.* Szegedi Rendezvényszervező Kft. Szeged, 2008. 125–127. pp.

prescribed by legal regulation so as to determine the employee's proficiency for the position in question.

There are special protective provisions for young workers who are engaged in employment relationship different from the legal relationship covered by the labour law. However, there is no any special provision of fixed-term contract relating to young workers.

The employment contract is the means of establishing employment unless the law stipulates otherwise. The exceptions are employment by way of appointment and election. These are special forms of contracts. The difference is in the manner of establishing employment. Consequently, appointment or election in itself has no legal binding force on the employee. The agreement and acceptance of the employee are needed. Employment by way of appointment or election is usually used for positions in the state's administration and judiciary.

2.4. Types of Employment Contract

According to the Hungarian Labour Law, employment contracts are established for either an indefinite period of time or for a fixed term. Basically the employer's and the employee's contractual freedom will determine whether the employment relationship between them is established for an indefinite period of time or for a fixed term.

At the same time, however, the establishment of a fixed-term employment relationship is conditional upon the employment contract specifying the fixed term of the employment relationship. Fixed-term contracts in Hungary are primarily used to replace people who are temporary missing or who are on away missions.

A probationary agreement is not considered as a separate kind of fixed-term contract; it is merely a condition of the above-mentioned contracts.

2.5. Relationship between Probation Period and Fixed-Term Contract

The similarity between a probation period and a fixed-term employment relationship is that the former one is also for a definite period of time, so the two should be distinguished from each other. Let us see the essential differences.

As the probation period is stipulated so that the parties can get to know each other better, its importance lies in the fact that during the probation period the employment relationship can be terminated by the parties much more easily than according to the general regulations, which means that either party can terminate it without justification, with immediate effect. The probation period establishes a looser relationship between the employee and the employer, it is essentially during this period that it turns out whether the employee is suitable

for carrying out the work, or from the employee's point of view whether the workplace satisfies his/her needs and expectations.

Employment relationship established for a fixed term has completely different reasons, and although it may function as a certain longer probation period, it cannot be terminated without justification with immediate effect, and the employer has the possibility to do so only if it pays the employee his/her average salary for the period remaining (if such period is less than one year).
As opposed to the maximum duration of 5 years of employment relationship stipulated for a fixed term, in order to protect the parties' interest the duration of the probation period shall be no more than 30 days, which can be increased up to 3 months in a collective bargaining agreement.
It is important to point out that a probation period may also be stipulated in the case of a fixed-term employment contract.[7]

3. Notion and scope of the rules concerning fixed-term contracts in private sector

According to the Hungarian labour legislation[8], the contract established for an indefinite period of time is considered as typical. Thus contracts without a definite specification of time should be considered as having been established for an indefinite period.

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.

Court Case No. 1

Nullity of the Stipulation of Fixed-Term Employment Relationship

The Supreme Court pointed out in its case decision that the contract shall become null and void if the worker's employment relationship for an indefinite period is changed by the employer into a fixed-term one for the purpose of avoiding its financial obligations entailed by the already decided dismissal, such as the payment of the worker's average salary for the period of exemption from work, severance pay, payment for paid holiday. Therefore the court affirmed the action filed by the employee who had been employed by his

[7] HAJDÚ JÓZSEF (szerk.): *Gyógyszerészi jogi ismeretek.* Szeged, 2003. 134–135. pp.

[8] In this context labour legislation includes at least Hungarian Labour Code, Act on Public Servants and Act on Civil Servants.

employer in an employment relationship for an indefinite period for seven years, and whose employment relationship was changed into a fixed-term employment relationship for 3 months with his consent after the employer had decided to terminate his job but failed to inform him of its plans concerning this. Therefore the court stated that the employer had stipulated a fixed term so that the employment relationship would cease automatically after its expiry, without the employer having to satisfy its financial obligations entailed by ordinary dismissal. Consequently, the employer did not exercise its right to modify the employment contract properly.[9]

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.

It can be seen from the above provision that employment relationship for an indefinite period of time is considered as typical in the Hungarian Labour Code, yet fixed-term employment contracts are becoming more and more common (although employees seldom favour fixed-term employment, and in the majority of the cases it serves the employers' interests).

Table 1.

Fixed-term contract in Hungary

[9] Court Decision No. 1996/399.

Table 1.

Total statistical substance 30 September 2007/ Statisztikai állományi létszám 2007. szeptember 30-án

Industry/Gazdasági ág	Number of answering companies Válaszoló cégek száma	Total statistical substance (person) Statisztikai állományi létszám összesen	Full time employers (person) Teljes munka-időben foglal-koztatott	Number of definite time employees Határozott idejű munka-viszonyban álló	Number of non full time and part time employees Nem teljes munkaidőben és részmunka-időben foglalkoztatott	Employed pensioners Foglalkoz-tatott nyugdíjas	Employed disabled persons Megváltozott munkaké-pességű foglalkoz-tatott	Maximum 60 hours working in a month at 30 September 2007 (person) Legfeljebb havi 60 órában foglalkoztatott 2007.09.30-án (fő)
Agriculture, silvculture/fishing/Mezőgazdaság, vad-, erdő-, halgazdálkodás	336	28 587	27 171	2 528	1 365	1 296	562	356
Mining/Bányászat	35	1 265	1 093	151	46	76	11	21
Processing industry/Feldolgozóipar	1 821	300 965	285 188	20 952	15 478	8 809	14 221	1 268
Water, gas and power supply/ Villamosenergia-, gáz-, gőz-, vízellátás	71	19 807	19 445	700	365	425	131	57
Constraction industry/ Építőipar	723	21 919	20 527	2 357	1 379	1 046	545	165
Trade, repairs/Kereskedelem , javítás	1 705	68 773	62 785	6 068	5 917	2 203	1 185	862
Hotel/tourism/Szálláshely -szolgáltatás, vendéglátás	513	17 923	16 152	2 692	1 632	840	180	366
Transport, storage, post, telecommunication/Szállítás , raktározás, posta, távközlés	278	51 224	49 269	1 417	1 787	1 218	275	171
Financial intermediation/Pénzügyi közvetítés	103	3 311	2 996	147	405	149	5	59
Real estate and economical service/Ingatlanügyletek, gazdasági szolgáltatás	1 069	28 083	24 941	4 325	3 002	1 492	1 091	587
Public administration, security, compulsory social insurance/Közigazgatás , védelem; Kötelező társadalombiztosítás	1	231	224	4	7	7	0	0
Education/Oktatás	35	692	390	31	296	27	24	243
Health and Social Care/Egészségügyi, szociális ellátás	40	3 261	2 134	143	1 127	714	1 078	35
Other public and personal service/Egyéb közösségi, személyi szolgáltatás	356	8 622	7 823	952	780	698	171	362
Unknown industry/Gazdasági ág ismeretlen	60	296	270	35	20	5	5	9
Total/Összesen	7 146	554 959	520 408	42 502	33 606	19 005	19 484	4 561

Forrás: KSH-évkönyv 2008.

According to the Hungarian labour law the employee cannot force unilaterally to change an employment contract for an indefinite period of time into a fixed-term one. The employer also cannot force unilaterally the employee to accept this kind of modification of employment contract. This can be done only by mutual consent.

However, there are also legislative exceptions to the fixed-term employment relationship being specified in a general manner. Thus, for example, the Sports Act (Act CXLV of 2000) specifies that only fixed-term employment contracts can be concluded for all the professional athletes' employment relationships related to sports activities.[10]

3.1. Justification of fixed-term contract

The establishment of a fixed-term employment relationship is usually justified on the one hand if the tasks to be performed are concrete, well-defined tasks or possibly need special expertise or are seasonal in character, and on the other hand if a temporary shortage of labour occurs at the employer for any reason (e.g. sickness, leave of absence, child home care allowance, etc.), or if some work of greater volume necessitates more manpower.

If it cannot be specified in advance how long the would-be employee's work is needed, the content of the employment relationship can also be determined by concretizing the work to be performed by the employee. For example, if an employee employed by the employer becomes incapable of working for a longer period, the employer can conclude a fixed-term employment contract with another employee for his/her substitution. In this case the content of the legal relationship can be determined properly by referring to the substitution of the other employee.

A frequent case of substitution is when an employee is employed for a fixed term for the period of another employee's childbirth and child-raising. The essence of the problem is that pursuant to the Hungarian regulations maternity leave and the leave and social benefit provided for child-raising thereafter can be up to 3 years long for a healthy child, but it is not compulsory to take these benefits. It frequently happens that the employee on child-raising leave returns to work before the maximum period expires. In this case the substituting employee's fixed-term employment ceases upon return although he/she was hoping that the fixed-term contract would be maintained for the entire period of child-raising. In such cases, in accordance with the authoritative judicial practice, the fact of return will be the end of the fixed-term employment relationship.[11]

---

[10] Fixed-term employment relationship A Munkaadó Lapja 2003/1 Year IX, Issue 1 (http://a-munkaado-lapja.cegnet.hu/2003/1/hatarozott-ideju-munkaviszony)

[11] RADNAY JÓZSEF: *Munkajog*. Szent István Társulat. Budapest, 2003. 83–85. pp.

3.2. Duration of fixed-term employment

The period of fixed-term employment shall be determined according to the calendar [year(s), month(s), week(s), day(s)] or by other appropriate means. The Labour Code does not contain any provisions as to what qualifies as "other appropriate means", but such can be, for example, if the period of fixed-term employment relationship is specified as lasting from the establishment of the employment relationship until the completion of the – exactly defined – task to be performed. However, for such specification it is invariably indispensable to know in advance, at least approximately, the period necessary for the completion of the work – based on the character of the work.

If the duration of an employment relationship is not determined by the calendar, the employer is obliged to inform the employee of the expected duration of employment.

If the parties make the duration of the employment relationship conditional upon the occurrence of an event which cannot be determined exactly by the calendar but the occurrence of which is independent of the parties' will, this stipulation itself shall not be regarded as one violating a legal regulation. If the event upon which the duration of employment is made conditional occurs on account of one of the parties' action, the party causing the event shall not refer to the termination of the legal relationship.

However, this communication of the date is of informative value only. The employment relationship shall not cease on the date set by the employer if the tasks specified in the contract have not been performed by the employee yet, or if further substitution of the employee is necessary.

At the time of the establishment of a fixed-term employment relationship the parties know when the employment relationship will cease. This kind of predictability serves both parties' interests, therefore only circumstances independent of the parties' will can be specified in the contract as circumstances resulting in the termination of the employment relationship. The duration of the legal relationship cannot be made dependent on a condition which may be caused by any of the parties.

As a main rule, the duration of a fixed-term employment relationship in Hungary may not exceed five years, including the duration of an extended relation and that of another fixed-term employment relationship created within six months of the termination of the previous fixed-term employment relationship.

However, the Hungarian labour law recognizes certain exceptions: no time limit is applied to employment contracts concluded with a) employees in *executive positions* and b) to employment relationships the establishment of which is subject to *official authorization.*

a) The prohibition shall not apply to executive employees, that is the duration of fixed-term employment relationship (or the joint duration of several

successive employment relationships) established with them may lawfully exceed 5 years.

b) By way of derogation from the above, if the particular authorization is extended, the duration of the new fixed-term employment relationship may exceed 5 years together with the duration of the previous employment relationship.

3.3. Renewal of a Fixed-Term Employment Contract

As a main rule, the fixed-term employment contract can be extended with mutual consent and rightful interest of the contracting parties. The extension is under control of the labour legislation and judicial decisions.

Where a fixed-term employment is renewed or extended between the same parties without any rightful interest attached on the part of the employer and the conclusion of the contract is aimed at compromising the rightful interests of the employee, the employment shall be deemed to be established for an indefinite duration.

A rightful interest attached on the part of the employer shall exclusively be such a circumstance which justifies the fixed term of the employment. Such a cause may be, for example, when the employer receives an unexpected order for the production of a greater quantity of product, for the fulfilment of which it does not have the sufficient number of employees. Or if the employer employs workers for seasonal work, for example for harvesting. The substitution of an employee employed by the employer may also justify the establishment of a fixed-term employment relationship.

In respect of fixed-term employment, judicial practice is also authoritative. Judicial Guideline No. 6 of the Supreme Court Civil Council Labour Branch considers successive fixed-term contracts invalid if they lead to compromising the rightful interests of the employee. In such a case the renewed fixed-term employment relationship shall be deemed to be established for an indefinite duration. As concerns the legal judgement of second or possibly successive fixed-term employment contracts the starting point for the guideline is that the provisions of the Labour Code regulating fixed-term employment relationship do not contain any rules prohibiting the establishment of successive fixed-term employment relationships or the renewal of the contract after the fixed-term employment relationship has ceased. Consequently, there is nothing to prevent the conclusion of a second or possibly successive fixed-term employment contracts.

The second and successive fixed-term employment contract shall come under a different legal judgement if the fixed term is stipulated by the employer in the absence of rightful interests and thereby leads to compromising the rightful interests of the employee (for example a pregnant woman would be deprived of termination protection). All this violates the requirements of the

proper execution of law or those of the procedure of good faith and fairness prescribed by the Labour Code, and the employee at whose expense the measure has been taken shall not suffer a disadvantage. In accordance with this, this part of the contract shall be invalid and the employment relationship shall be deemed to be established for an indefinite duration. The same applies even if otherwise the employment contract satisfies the requirements of law formally, thus it does not violate the maximum duration prescribed by law.[12]

Court Case No.2

The employer employed workers in its dressmaker's shop for short periods, with several successive fixed-term employment contracts, the joint duration of which, however, did not exceed the maximum period of 5 years specified in the Labour Code. The workers filed for court action against the dressmaker's shop claiming that the employer did not have a lawful reason for maintaining the workers' employment relationship with fixed-term employment contracts. In this manner the workers were not entitled to severance pay or to a period of notice in view of the fact that there is no possibility for ordinary notice in the case of fixed-term employment relationships. The workers claimed that with this procedure the employer violated the requirement of proper exercise of rights. In the workers' view the repeatedly renewed fixed-term employment contract actually qualified as an employment relationship for an indefinite period, therefore they requested the court to state the unlawfulness of the termination of their employment relationship and to order the employer to bear the legal consequences thereof accordingly.
In its counterclaim the employer claimed that it was not the case of the unlawfulness of the termination of the employment relationship as the employment relationship was established for a fixed term and it ceased after the last day of the fixed term, thus the lawfully specified term expired.
The court of first instance found the employer guilty. The court made a reference to Judicial Guideline No. 6 of the Supreme Court Civil Council Labour Branch, pursuant to which a successive fixed-term contract is invalid if it results in compromising the rightful interests of the employee, in such a case the successive fixed-term employment relationship shall be deemed to be established for an indefinite period.
The court expounded that in order to establish proper exercise of rights it does not suffice if the employer stays within the framework of legal possibilities and does not violate rules of law directly, the exercise of rights has to suit the legislators' objective, the purpose of the given entitlement.
The employer appealed against the decision. The appeal was dismissed by the court of second instance. The court of second instance agreed with the

[12] A Munkaadó Lapja. Year IX, Issue 1.

reasoning of the court of first instance stating that the renewal of the fixed-term employment contract of the employees 10-15 times violated the principle of proper exercise of rights because no rightful interest on the employer's part was attached to employing the workers with a fixed-term employment relationship.
In addition to the above described case, the Supreme Court maintained the view in several of its case decisions that the employer may not employ its workers with repeatedly renewed, successive fixed-term employment contracts for short periods of time, thereby avoiding its responsibilities ensuing from an employment relationship for an indefinite period.[13]

3.4. Automatic renewal of fixed-term contract

If a worker or employee, with the expiring of the fixed time, of at least a day and with the knowledge of his/her immediate superior, carries out work, the rule of law entails certain consequences which are independent of the will of the parties. There are two cases: A) an employment contract concluded for a period *shorter than 30 days*, while B) a contract concluded for *longer than 30 days.* However, this regulation shall not apply to employment established by way of election.

A) Employment relationship established for a duration of shorter than one month

Pursuant to law, an employment relationship established for one month or for a shorter duration shall be extended by the duration for which it was originally established if the employee carries out work one day more after the expiry of the fixed term with the knowledge of his/her immediate superior. Thus an employment contract concluded for 30 days shall automatically be extended by another 30 days if the employee works on the 31st day with the knowledge of his/her immediate superior.

B) Employment relationship established for a duration of longer than one month.

An employment relationship established for a fixed term longer than one month shall automatically become an employment relationship for an indefinite period if the employee carries out work one day longer after the expiry of the fixed term with the knowledge of his/her immediate superior.

The Supreme Court also pointed out in its case decision that the *second employment relationship* established for a duration of longer than one month

[13] http://www.cvonline.hu/content/index.php?id=199&gr=1

will also be transformed into an employment relationship for an indefinite period if the employee, after the expiry of the fixed term specified in the employment contract, carries out work for more than one day with the knowledge of the employee supervising his/her work. Consequently, the employment relationship can be terminated according to the rules applying to the termination (cancellation) of the employment relationship for an indefinite period.[14]

3.5. Change of Job for a Fixed Term

In practice problems may arise in cases when the worker is employed by the employer with an employment contract for an indefinite duration but is employed for a fixed term in a job other than his/her original job.

It suffices if the parties modify only the job with the simultaneous maintenance of the employment relationship for an indefinite period. In this case the rules applicable to the employment relationship for an indefinite period are governing for the termination of the employment relationship.

In the event that the employee is employed in a manner or job other than specified in the employment contract by mutual consent, the employee shall be continuously employed in a job corresponding to his/her original job upon the expiry thereof. In addition to the requirement of continued employment, his/her wages shall be modified according to the wage development effected in the meantime so that the employee will not be in a disadvantageous situation in this respect, either.

4. Special Legislation Relating to Fixed-Term Employment

4.1. Fixed-term contract for civil servants

Pursuant to the act on the legal status of civil servants, as a main rule the civil servant's legal relationship is established for an indefinite duration, on the basis of an application. The condition of its establishment is appointment and the acceptance thereof, which shall be laid down in writing.

By way of derogation from the main rule, a fixed-term civil servant's legal relationship may be established for the purpose of substitution or for the performance of some specific work.

A civil servant's legal relationship for an indefinite period may be transformed into a fixed-term one if the civil servant participates in the Premium Years Program (the Premium Years Program is going to be discussed later).

[14] Court Decision No. 1988/49.

In the framework of a civil servant's legal relationship for an indefinite period the civil servant may obtain a higher executive or executive position on the basis of an application, which may be specified for a fixed term. In this case the civil servant's legal relationship may be modified.

The position of a higher executive or executive usually entails a mandate for an indefinite duration, but a mandate for a fixed term may also be specified by the minister in charge. The withdrawal of the mandate – at the civil servant's request – has to be justified. The reason for withdrawal has to be clear from the justification. In the event of a dispute, the employer shall prove the authenticity and substantiality of the reason for withdrawal. The civil servant may ask for justification in writing within three days of receiving the withdrawal; the employer shall provide the civil servant with the justification in writing within three more days.

Civil Servant in an Executive Post

Pursuant to law, a civil servant may be mandated to hold an executive post for a fixed term in the cases specified by the minister. After the fixed term expires, the civil servant shall be continuously employed in his/her original job, or shall be offered a job corresponding to his/her qualifications. In the event that the civil servant's fixed-term mandate is withdrawn unlawfully and he/she does not request his/her reinstatement in the executive's post, he/she is entitled to the sum of executive bonus until the expiry of the fixed term.

Trainee Period for civil servants

In the case of appointment for an indefinite duration in wage categories E-H – including transfer with such content – the law makes the stipulation of a trainee period mandatory if the civil servant does not have professional practice exceeding three years (requiring qualifications and skills necessary for his/her job). This rule applies to a job related to carrying out the employer's basic activity.

The trainee period is two years in wage category E and three years in wage categories F-H. In the event that the civil servant has professional practice exceeding one year in wage category E and two years in wage categories F-H, the trainee period is only one year. The duration of the trainee period shall be specified at the time of appointment and at this time the employer shall also inform the trainee who his/her professional leader will be during the trainee period.

The legislation gives authorization to the minister to specify jobs in which a trainee period need not be stipulated (e.g. because of further education). In the event of the modification of the appointment or transfer, if the civil servant does not have the prescribed period of practice, the stipulation of the trainee period

has to be disregarded provided that the civil servant's time spent in civil servant's legal relationship (or in legal relationships specified in Paragraph (1) of Article 87/A of the Act on Civil Servants) exceeds 10 years. The civil servant has to be qualified when the trainee period is over. If the civil servant's qualification is "not satisfactory", his/her civil servant's legal relationship will cease in pursuance of the act.[15]

4.2. Fixed-term contract for public servants

Pursuant to the provisions of the Act on the Legal Status of Public Servants, a public servant's legal relationship is established for an indefinite duration by way of appointment and the acceptance thereof. A fixed-term public servant's legal relationship may also be established for the purpose of substitution or for the performance of some specific work. The duration of fixed-term public servant's legal relationship shall be specified by the calendar or in some other appropriate manner – particularly in relation to the performance of some specific task or the occurrence of some event.

Public servants shall be classified into the system of promotion according to the act in the case of a fixed-term public servant's legal relationship, too, but it is not necessary if the appointment is for a period shorter than one year.

A public servant's legal relationship for an indefinite duration can also be transformed into a fixed-term legal relationship if the public servant participates in the Premium Years Program.

Public Servant's Transfer

The statutory regulations on the legal status of public servants allow for the public servant's fixed-term transfer to another administrative authority if the administrative authority, the public servant and another administrative authority agree to this effect. After the expiry of the fixed term the public servant shall be reinstated in the former administrative authority in harmony with labour law regulations and with the consideration of the rules of promotion.

As concerns the positions of political chief advisor and political advisor it is laid down by law that, ensuing from the nature of these positions, the appointment is for the duration of the mandate of the government, minister, representative body and committee or the mayor.[16]

[15] DR. CSÉFFÁN JÓZSEF: *A közalkalmazottak jogállásáról szóló törvény és magyarázata.* Szegedi Rendezvényszervező Kft. Szeged, 2008. 116–131. pp.

[16] Dr. Cséffán József: A köztisztviselők jogállásáról szóló törvény és magyarázata. Szegedi Rendezvényszervező Kft. Szeged, 2008. 67–83. pp.

Premium Years Program

According to Act CXXII of 2004, a public employee facing redundancy may continue working part time, for a maximum of 12 hours a week, in a job that matches his/her educational attainment and work experience. The target group of the program is senior employees reaching retirement (or early retirement) age within five years (men aged 56 to 59 years, women 53 to 56 years of age), who are not pensioners and who have worked in the public sector for at least 25 years.

The Premium Years Program came into force on 1 January 2005. The Premium Years Program, originally limited to public administration and service institutions, was designed to guarantee a fair and gradual retirement for older civil servants and public employees who were made redundant due to the modernisation of the oversized public sector.

The person who has an appointment for an indefinite duration and participates in the program agrees to the transformation of his/her legal relationship aimed at employment for an indefinite period into a fixed-term legal relationship. In relation to participation in the premium years program, rules different from those laid down in the Act on Civil Servants, Act on Public Servants and the Labour Code have to be applied for the legal relationship, these rules are specified by the Premium Years Act.

The government will recompense them for lower earnings and also pay social security contributions and costs, so that they receive a full pension once they reach retirement age. Joining the program guarantees a maximum of three additional years in employment, however, participants are not entitled to receive severance payment from their employer. The law also established the procedure by which an employer may propose, and the employee may accept, joining the program.

The eligibility criteria are as follows: 1) they must be close to pension age and 2) employed for over 25 years. Nevertheless, there are major differences between the pre-pension programs of the public and private sector. According to the 2004 legislation on Premium Years Program, employees in the public sector have to work a maximum of 12 hours (instead of the regular 40 hours in full-time jobs) to receive 60% of their former salary; according to the new law, however, private sector employees in the program have to work at least 20 hours a week, and their remuneration is proportional to their actual working hours. Instead of full compensation, the government pays the social security contributions only to ensure that participants receive a full pension, in line with their previous full-time wage. Naturally, the employer in the private sector should also take the initiative to use this scheme.

The extended Premium Years Program (including private sector employees) was launched in early October 2005. Originally, the central budget was supposed to cover the costs, but the final legislation stipulates that the Labour

Market Fund, i.e. the source of passive and active labour market programs, will pay.[17]

This measure is designed to support private companies facing major structural reforms. However, it is not that easy to join the program: companies opting for the scheme, for example, have to prove that the structural reforms are relevant and will impact on the working conditions of at least 50 employees, or that they plan to take on at least five new employees.[18]

4.3. Fixed-term contract for teachers in the higher education system

In institutions of higher education (universities and colleges) the legal relationship of assistant lecturer, senior lecturer, associate professor and professor can be established as teaching posts. The teachers are generally employed in a civil servant's legal relationship. Employees in non-state institutions of higher education (e.g. Church-related universities) are exceptions, they fall within the scope of the Labour Code

With the exception of the post of assistant lecturer, an employment relationship and a civil servant's legal relationship can be established with the person who satisfies the requirements laid down by the legal regulation and in the internal rules and regulations of the given institution of higher education.

The fixed-term nature of the legal relationship is given by the fact that the teacher's legal relationship will cease if he/she does not satisfy the requirements. In accordance with this, a teacher who does not fulfil the conditions of the post of assistant lecturer within three years of starting work or the conditions of the post of senior lecturer within eight years of starting work cannot be employed further. Similarly, a teacher who does not obtain his/her academic degree (PhD) within twelve years of starting work cannot be employed either. It is obvious from the above that in higher education assistant lecturers and senior lecturers can be employed only for a fixed term at the beginning of their teaching career, and they can be employed for an indefinite duration only in possession of certain academic achievements, or in the absence thereof the teacher's employment relationship, civil servant's legal relationship will cease after 12 years by the force of law.[19]

4.4. Temporary employment booklet

Temporary employment has increased sharply in recent years in Hungary, due to lower taxes and red tape for both the employer and the worker. However, the system has its own unique set of rules and regulations.

[17] http://www.eurofound.europa.eu/eiro/2005/07/feature/hu0507102f.htm
[18] http://a-munkaado-lapja.cegnet.hu/2005/11/premiumevek-program
[19] http://www.okm.gov.hu/main.php?folderID=649

Taking up odd jobs in Hungary may only be done legally by obtaining a "temporary employment booklet" (alkalmi munkavállalói könyv), also known informally as a "blue book" (kék könyv), on account of its colour. This system was introduced back in 1997 with a view to seasonal jobs in agriculture and in particular to legalize casual jobs - mainly in the service industries - like housekeeping, day care and gardening, which Hungarians are typically reluctant to report to the authorities in order to avoid paying taxes and social security contributions. Booklets for temporary employment can be obtained by any Hungarian citizen from the age of 16, (or 15 for students), as well as non-citizens who are enrolled full-time as students at secondary schools, universities or elementary art schools. No restrictions (except age) apply to agricultural seasonal work for either Hungarians or non-Hungarians.

By law, temporary employment in a single job cannot last more than five days in a row, or exceed 15 days a month or 90 days in a calendar year. For two or more jobs, the maximum is 120 days a year, but if somebody is hired privately by an individual person (known in Hungarian law as a "natural person," or természetes személy) or by an "outstanding non-profit organization" (kiemelten közhasznú társaság) this can be up to 200 days.

This form of employment has become increasingly popular among both employers and employees because of the lower tax and social security obligations and no red tape for both sides. Employees are not liable to pay health care contributions for their wages (though in return they are entitled only to accident-related benefits), while employees can pay contributions easily by sticking duty stamps (közteherjegy) in the booklet depending on the wage rate. Duty stamps can be obtained at any postal office.

Wages for temporary work must be paid on a daily basis and can be no less than HUF 1,800 but not exceed HUF 4,800. In the case of temporary employees who are registered job seekers, this is HUF 1,000 and HUF 4,000 respectively. Contributions payable on wages range between HUF 400 and HUF 1,100, or in the case of a registered job seeker, HUF 200 and HUF 800.

Employees must always keep the booklet with them during work so that the employer can enter data concerning the details of their work every day, including the employee's personal and tax data, the type and date of employment, and wages paid for that day. The booklets are then signed by both the employer and employee.

Income from temporary employment is liable to annual income tax unless it amounts to less than the minimum wage, in which case it's tax-free. Individuals hiring temporary employees are entitled to write off up to 75% of their contribution liabilities.

Booklets are issued by regional labour offices free of charge, and are usually valid for a calendar year. They can be applied for as early as December 15 of the previous year.

The booklets must be returned to the issuing office by January 15 of the following year. Concurrently employees must notify the authority if they have taken out a private pension plan during the time of their temporary employment Temporary employment has increased sharply over the previous years with a total of 419,000 booklets issued in 2006 and over 500,000 in 2007, compared to some 20,000 in the year of its introduction in 1997. Its appeal rose sharply in 2002, when related tax obligations were reduced by half for job holders and by three-quarters for job seekers.

In 2006 nearly two-thirds of the booklets were taken out by registered job seekers, while the rate of applicants holding permanent jobs rose significantly over the past few years, accounting for 20% of the total in that year. In addition to that, over 10,000 booklets were issued to non-citizens.

Because of lower tax and social security liabilities, temporary employment is also becoming increasingly abused by businesses and the authorities are now planning to tighten the rules.

A growing number of companies in the building sector are getting into the habit of hiring temporary staff for permanent employment in order to pay lower taxes. Last year, over 5,500 cases of illegal employment were uncovered in western Hungary alone, 80% of which were related to temporary employee books.[20]

5. Employment of Foreigners, with the Exception of EU Citizens

Foreign citizens[21] may be employed in Hungary only under specific conditions. As a main rule, employment is subject to a permit, but there are exceptions that are partly connected to the activity and partly connected to the person concerned. Because the permit is issued for definite period, they are employed under fixed-term contract. At the same time, different rules are also relevant to the citizens of various EU countries.

5.1. Types of the Permits

The act of 1991 on the promotion of employment and on the provisions for unemployed people (in the following: Act) says that foreigners may perform work in Hungary only with a permit - subject to the exceptions set forth in the legal regulations. The permit may be:

a) Individual permit,
b) General group permit and
c) Individual permit based on general group permit.

[20] http://www.afsz.hu/engine.aspx?page=allaskeresoknek_alkalmi_munkavallalo_konyv
[21] Outside of the European Union and European Economic Area.

An application for a general group permit may be submitted if several foreigners need to be employed for the sake of performing the private law contract concluded by the employer with a foreign enterprise, but the foreigners may not be employed exclusively on the basis of the general permit. In the following we are going to cover the individual permit, being the most frequent type of permit.

5.2. The Validity of the Permit

The labour centre sends the permit to the employer. In most of the cases the individual permit may be granted at most for two years, and it may be extended by such a period. It means that foreigners can be hired on a fixed-term basis. The extension falls within the maximum five years time-limit provision of the Hungarian Labour Code.

5.3. Work Permit Issued to Seasonal Workers Employed in Agriculture

According to the Decree of 8/1999. (XI. 10.) SzCsM on the Authorization of the Employment of Foreigners in Hungary, the authorization of seasonal employment in agriculture, including crop production, animal husbandry and fishing (hereinafter referred to as "seasonal employment") shall be governed by the provisions of Decree of 8/1999. Work permit for seasonal employment may be granted for a maximum duration of one hundred and fifty days within a 12-month period. The 12-month period shall commence on the first day of employment of the seasonal worker as indicated in the first work permit. The duration of employment under a work permit may be defined in several instalments. These work permits may not be renewed.

The Bureau of Employment and Social Services shall keep records of the work permits issued by the employment centres for seasonal employment in agriculture.[22]

6. Termination of Fixed-Term Employment Relationship

6.1. Termination of Fixed-Term Employment Relationship under the Hungarian Labour Code

6.1.1. Cessation of fixed-term employment relationship

A fixed-term employment relationship may ceased in following cases:

a) Expiry of the fixed-term
b) Employee's death
c) Dissolution of the employer without a legal successor
d) Transfer of undertakings to public sector employer

[22] http://www.afsz.hu/engine.aspx?page=allaskeresoknek_alkalmi_munkavallalo_konyv

a) Expiry of the fixed term

As a main rule, fixed-term employment relationship shall cease upon the expiration of the fixed term without any further measures or previous notice. The parties do not have to make a legal declaration to this effect.
It must be emphasized that a fixed-term employment relationship shall cease upon the expiration of the fixed term even if the time of cessation is during the period of military service, earning incapacity or unpaid leave for the purpose of caring for a child, in other words the termination restrictions specified in the Labour Code do not apply to them.

b) Employee's death

A fixed-term employment relationship, similarly to an employment relationship for an indefinite period, shall cease at the time of the employee's death due to the personal nature of employment relationship. Contrary to this, the employment relationship shall not cease upon the death of a private individual employer as the deceased private individual's inheritor takes over.

c) Dissolution of the employer without a legal successor

The dissolution of the employer without a legal successor also results in the cessation of the employment relationship thus in this case neither dismissal nor any other employer's measures are necessary. The employee is entitled only to severance pay and not to any other emoluments due in the case of dismissal. However, the initiation of bankruptcy or liquidation proceedings does not automatically entail the cessation of the employment relationship until the dissolution of the employer without a legal successor takes place.

d) Transfer of undertakings to public sector employer

Where an employer falls within the scope of Labour Code (private sector) changes because the employer is transferred in whole or in part (strategic business unit, specific material or non-material assets, or specific duties and competencies) - by decision of the founder or the employer - to an employer that falls within the scope of the act on the legal status of public servants or the act on the legal status of civil servants, the strategic business unit that is transferred and the employment relation of the employees it employs shall terminate at the time of transfer.

In the above mentioned case the transferring and receiving employers shall, no later than thirty days prior to the date of transfer, inform the employees, the local trade union branch and the workers' council (shop steward) concerning: a) the date of transfer, b) the reasons, c) the legal, economic and social

consequences affecting the employees, and shall initiate talks with the trade union and the workers' council (shop steward) concerning other proposed actions that will affect the employees. The above-specified talks shall cover the principles of the actions, the ways and means of avoiding detrimental consequences, and also the means for mitigating such consequences.

Simultaneously with the information supplied, the transferring and receiving employers shall inform the employees affected as to whether their employment at the new employer will be continued in public service or civil service. The information supplied shall also contain a proposal pertaining to the content of appointments for further employment.

Within 15 days of receiving the information, the employee shall inform the transferring employer in writing of his/her decision as to whether he will continue the employment relation at the receiving employer. The employee's failure to convey such decision within the specified deadline shall be construed as meaning that the employee has not consented to further employment.

If the employee does not wish to continue the employment relation at the receiving employer, the transferring employer shall notify the employee by the date of transfer concerning the termination of his/her employment relation and shall pay the employee a severance pay or the average wage for the remaining period in connection with fixed-term employment.

If an employee affected by the transfer is not eligible to enter into a public service or civil service relation with the receiving employer by virtue of the act on the legal status of public servants or the act on the legal status of civil servants, his/her employment relation shall be terminated. In this case, the information that the transferring and receiving employers are required to supply to the employee shall concern the above circumstance.[23]

6.1.2. Termination of fixed-term employment relationship

A fixed-term employment relationship may be terminated in the case of employers under the scope of the Labour Code in the following manners:

a) by mutual consent,
b) by extraordinary dismissal,
c) with immediate effect during the probation period, and
d) the employer may terminate the employment relationship unilaterally, in such case however, the employee shall be paid his/her salary for the period remaining.

[23] In accordance with Judicial Guideline No. 13 of the Supreme Court Civil Council Labour Branch, the employment relationship, public servant's legal relationship or civil servant's legal relationship of a person prohibited to participate in public affairs shall automatically cease during prohibition on the day of the court's decision becoming final.

As the content of the fixed-term employment relationship is agreed on by the parties in advance at the time of its establishment, apart from the above cases, only limited possibilities are provided by the Labour Code for the unilateral termination of the employment relationship. Thus neither party can terminate a fixed-term employment relationship by ordinary dismissal or notice. Thus the termination restrictions do not apply to the termination of a fixed-term employment relationship, and pursuant to the act the employee is not entitled to either a period of notice or severance pay.

Because of the permissive nature of labour law regulation, the parties may agree on conditions more favourable for the employee concerning the termination of employment relationship in the employment contract. Thus the parties may stipulate that the employee is entitled to severance pay if his/her employment relationship is terminated by the employer before the fixed term expires.

a) Mutual consent

The employment relationship may be terminated by the mutual consent of the employer and the employee any time, but the law prescribes that their mutual consent shall be laid down in writing. The lack of the written form may result in the invalidity of the agreement. The cornerstone of this manner of termination is the parties' same will, in the absence of which no valid agreement on the termination of the employment relationship may be reached.

b) Extraordinary dismissal

Extraordinary dismissal assumes unpardonable, intolerable conduct on the other party's side. In connection with this the Supreme Court pointed out that if the legal ground for the notice given in by the employee employed for a fixed term is such employer's conduct which does not make it possible for the employee to spend the term fixed in the employment contract at the employer, the cause of the termination of the employment contract with immediate effect lies in the employer's conduct, therefore the employee may demand the payment of his/her average salary due for the period remaining or the application of other statutory legal consequences, according to his/her choice.

If the employee were not entitled to this choice, the employer could create such circumstances without financial consequences which would force the employee to terminate his/her employment relationship with extraordinary notice, and thereby the employer would be relieved of its statutory obligation to pay the employee his/her one year's average salary, or his/her average salary for

the period remaining if such period is less than one year in case the employment relationship is terminated unilaterally.[24]

c) Probation period

The common aim of the probation period for both the employer and the employee is to get to know each other better. Therefore during the probation period the employment relationship can be terminated by the parties much more easily, with immediate effect, than according to the general regulations.

d) Unilateral termination by employer

A special way of terminating a fixed-term employment relationship is unilateral termination by the employer with the payment of the period remaining. Pursuant to law, the employer may terminate the employee's fixed-term employment relationship any time on condition that the employee is paid one year's average salary or – if the period remaining is less than one year – his/her average salary for the period remaining. It must be pointed out that it is not the personal base wage which shall be paid by the employer statutorily but the average salary including bonuses, premiums, shares etc. as well. It is of historical interest that only the amendment of the Labour Code which came into force on 1 September, 1995 restricted the payment period to one year, previously the average salary for the entire period remaining had to be paid pursuant to the original text of law which came into force on 1 July, 1992. Accordingly, in the case of fixed-term employment relationships established prior to 1 September, 1995 average salary for the entire period remaining had to be paid even if the period remaining was longer than one year.[25]

6.1.3. Executive officers' removal

A special case in the regulation is represented by executive officers of business associations in employment relationship, who can be removed at any time. However, instead of the rules of the Labour Code, the rules of Economic Associations apply to their removal, as it was also pointed out in the case decision No. 1993/203 of the Supreme Court. Pursuant to these, the executive officer's mandate is terminated – among others – by the removal of the executive officer.

[24] Court Decision No.1996/452.
[25] HAJDÚ JÓZSEF : 2003. 138–142. pp.

Court case No. 3

The Supreme Court stated in its decision that the circumstance that the employee had been mandated to fulfil the position of assistant manager of production for a period did not mean that his employment relationship became fixed term thereby. For this the valid modification of the employment contract concluded for an indefinite period would have been necessary, which cannot be done by the unilateral statement of the employer even if it is made in writing. A fixed-term employment relationship for a period of more than 30 days may be established only by a written employment contract. Failure to do so in writing means that the employment relationship is established for an indefinite period. Therefore the unilateral written statement of the employer did not change the indefinite period of the employment contract into 5 years – that is into a fixed term. Consequently, the employee's employment relationship concerning his position was to be deemed for an indefinite period. Thus the employer acted lawfully when terminating the worker's employment relationship pursuant to the rules of ordinary dismissal, with reference to the circumstances of its economic management. Accordingly, the court dismissed the employee's action in which he claimed that he had been employed in a fixed-term employment relationship which cannot be terminated by ordinary dismissal. It was established by the court that in the given case only the worker's position was changed while his employment relationship remained fixed-term (Court Decision No. 1992/62).

6.1.4. Unlawful Termination of Fixed-Term Employment Relationship

A fixed-term employment relationship may be terminated prior to its expiry only by mutual consent, by extraordinary dismissal or by paying the average salary for the period remaining (for a maximum period of one year). According to the Hungarian Labour Code Article 100 all other manners of termination are unlawful.

It is an important issue what the employee can demand in the case of the unlawful termination of his/her fixed-term employment relationship (civil servant's, public servant's legal relationship). The employee may choose: he/she may demand the payment of his/her average salary due for the period remaining – for a maximum period of one year – or as a statutory legal consequence of the unlawful termination of his/her employment relationship he/she may demand his/her continued employment in his/her original position, or if the employee does not request or if upon the employer's request the court exonerates the reinstatement of the employee in his/her original position, he/she is entitled, upon weighing all applicable circumstances, to the payment of no less than two and no more than twelve months' average earnings, or he/she may request reimbursement for lost wages and compensation for any damage.

Pursuant to the practice accepted by the Supreme Court, the employee concerned may decide to request the court to apply one of the two legal consequences alternatively. Therefore the legal consequences of the unlawful termination of the employment relationship can be applied only if the employee does not request the payment of his/her average salary for the period remaining (for a maximum period of 1 year).[26]

Court Case No. 4

The court affirmed the employee's appeal in which he requested that the previous court decisions applying the legal consequences of the unlawful termination of the employment relationship be repealed, claiming that his legal harm could only be remedied by the employer paying his average salary for the period remaining of the fixed term. In its decision the court pointed out that in the event of the unlawful termination of a fixed-term employment relationship the detrimental legal consequences prescribed by law can be applied, but it shall also be considered that in the event of the lawful termination of a fixed-term employment relationship the employer shall pay the employee his/her average salary for the period remaining in advance. For this reason, in order to ensure that the employee does not suffer a disadvantage in the case of the unlawful termination of his/her employment relationship as compared to the lawful termination thereof, he/she can request the application of the two legal consequences alternatively.[27]

6.2. Termination of Fixed-Term Civil Servant's Legal Relationship

6.2.1. Legal basis of termination of civil servant's employment relationship

Pursuant to law, a fixed-term civil servant's legal relationship may be terminated by

a) mutual consent,
b) transfer,
c) extraordinary resignation,
d) exemption,
e) with immediate effect during the probation period with the reimbursement for the period remaining, and
f) dismissal.

[26] HAJDÚ JÓZSEF: 2003. 142–143. pp.
[27] Court Decision No. 1995/252.

Thus it must be emphasized that a fixed-term civil servant's legal relationship cannot be terminated by the civil servant by resignation.

a) Mutual consent

The civil servant's legal relationship may be terminated by the mutual consent of the employer and the employee (civil servants) any time, but the law prescribes that their mutual consent shall be laid down in writing. The lack of the written form may result in the invalidity of the agreement. The cornerstone of this manner of termination is the parties' same will, in the absence of which no valid agreement on the termination of the employment (civil servant) relationship may be reached.

b) Transfer

In the case of transfer the two employers and the civil servant shall mutually agree, the civil servant's new position, place of work, emolument and the date of the transfer shall be stipulated. The civil servant's legal relationship prior to transfer shall be regarded as if spent with the new employer.

c) Extraordinary Resignation

The civil servant may terminate his/her civil servant's legal relationship by extraordinary resignation in the event that the employer wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or otherwise engages in conduct rendering the further existence of the civil servant's legal relationship impossible. In the case of extraordinary resignation the employer shall pay the civil servant his/her average salary for the same period as in the case of exemption. The date of the termination of the civil servant' legal relationship shall be determined with the consideration of the period of exemption from work governing for the civil servant. The civil servant may also request the compensation of his/her damage.

d) Exemption

In addition to the above three reasons, the civil servant's legal relationship may be terminated by the employer by exemption if the civil servant has become permanently incapable of performing the tasks of his/her position or if he/she does not perform work adequately. The employer shall justify exemption. The reason for exemption shall be clear from the justification and the employer shall prove that the reason for exemption is substantial and lawful. The statutory regulations also contain rules of guarantee concerning civil servants. Pursuant to these, it can be realized in the case of the above three

reasons for exemption if there is no other job corresponding to the civil servant's qualifications at the employer or in the organization under its control or supervision, or if the civil servant does not assent to his/her transfer to such a job. Moreover, if the civil servant's incapability is due to reasons of health, he/she can be exempted only if there is no other job appropriate for his/her condition of health at the employer, or if the civil servant does not assent to his/her transfer to such a job. In the event of exemption the civil servant is entitled to a period of exemption from work and – apart from some statutory exceptions – to severance pay.

e) Termination with Immediate Effect

A fixed-term civil servant's employment relationship may be terminated by the employer with immediate effect if

- the employer's activity in which the civil servant was employed has ceased,
- due to the decision made by the Parliament, the government, the minister or the representative body of the local government concerning the employer – particularly in the event of reorganization necessitated by a change in tasks or the decrease of budgetary subsidy – there is no possibility for the continued employment of the civil servant,
- after the withdrawal of the position of higher executive or, in the case of a fixed-term mandate, after the expiry of the fixed term there is no possibility for the civil servant's continued employment in his/her original job, or in the absence thereof for offering him/her a job corresponding to his/her qualifications, or the civil servant does not accept the job corresponding to his/her qualifications,
- the civil servant acquires entitlement to old-age pension on the day of the communication of exemption or on the day of the beginning of the period of exemption from work at the latest, or receives pre-retirement pension, invalidity pension or service pension.

In all these cases, however, the employer shall pay the civil servant his/her one year's average salary, or his/her average salary for the period remaining if such period is less than one year.

If the civil servant's legal relationship is terminated by the employer with immediate effect for reasons of the civil servant's inadequate work or incapability (not for reasons of health), in contrast to the previous rules the civil servant is eligible only for one month's average salary.

f) Dismissal

Dismissal is taken place when the public servant commits professional misconduct if he/she violates any essential obligations that originate from the public servant's legal relation culpably, i.e. deliberately or through neglect. The disciplinary sanctions may be: a) reprimand, b) extending the waiting period in the advancement system by one year at the most (optionally suspended), c) withdrawal of any title conferred (optionally suspended), d) cancellation of a high-level senior's or a senior's position with disciplinary effect, and e) dismissal.

The most serious sanction is the dismissal. In one hand the civil servant's legal relationship will be terminated and on the other hand, the public servant shall not be employed as a public servant in a high-level senior's or a senior's position for one year of the date when the sanction of dismissal entered into legal effect.

Instituting the disciplinary action:

a) shall be ordained by the official who exercises the right of appointment (employer), or - for civil servants holding a high-level senior's or a senior's post - the official authorized to assign;
b) could be requested by the civil servant against him/herself (for instance to clear him/herself of an unjustified accusation).

Instituting an action is limited in time. The action shall not be instituted if

a) one month has lapsed since becoming aware of the justified suspicion of professional misconduct, or
b) one year has lapsed since the professional misconduct (2 years for seniors and 3 years for high-level seniors).

Holding a disciplinary action may be neglected if the breach of obligations is of minor importance and the matter of fact is clarified .

An investigation shall be held in the frames of the disciplinary action by an investigating officer who is in a higher position and category than (or equal with) the person subject to the proceedings and works at the same place within 15 days.

A three-member disciplinary board decides in the merits of the case when the investigating officer has presented the result of the investigation. The public servant may turn to court with his/her complaint against the order - in such a case the order shall not be final until the court proceedings are terminated.

The disciplinary action should be terminated if the public servant's legal relation is terminated in the meanwhile or the terms of instituting such were not observed. The disciplinary decision on dismissal shall not be executed during the maternity leave.

6.2.2. Withdrawal of Executive's Mandate of civil servants

Pursuant to law the executive's mandate may be withdrawn by the employer at any time, but at the request of the employee justification shall be given. This is reflected by the decision of the court by which it dismissed the action submitted by a theatre manager-director whose mandate was for three years but was withdrawn after one year by the employer with reference to the fact that he managed the theatre out of accordance with the theatre's rules of organisation and operation in effect, and that he became isolated in the theatre because of his disputable managerial style. The court pointed out that the proven reason for the withdrawal gave lawful grounds for the withdrawal of the employee's executive mandate, thus it considered there was no possibility for the restoration thereof.[28]

6.2.3. Severance Pay

Pursuant to law, if the same employer establishes successive fixed-term employment relationships with the civil servant, the minister or the collective bargaining agreement may prescribe entitlement to severance pay – even in the case of the expiry of the fixed term. However, the amount of severance pay may not exceed the amount, calculated on the basis of the joint periods of the fixed-term civil servant's legal relationships, to which the civil servant would be entitled in the event of the termination of the civil servant's legal relationship for an indefinite period.[29]

6.3. Termination of Fixed-Term Public Servant's Legal Relationship

6.3.1. Cessation of public servant's legal relationship

Cessation of the public servant's legal relation by law:

a) when the definite-term expires,
b) when the public servant deceases,
c) if the employer is terminated without a successor,
e) if the public servant is given an "inappropriate" ranking,
f) when transferred to an employer subject to the Civil Servant's Act or the Labour Code, upon participation in the premium years program, according to the provisions of the relevant special act.

[28] Court Decision No. 1997/373.

[29] DR. CSÉFFÁN JÓZSEF: A közalkalmazottak jogállásáról szóló törvény és magyarázata. 2008. 295–304. pp.

6.3.2. Termination of public servant's legal relationship

A fixed-term public servant's legal relationship may be terminated by:

a) mutual consent,
b) transfer to organs belonging to the scope of rules of law regulating public servant's or official service legal relationship,
c) resignation,
d) exemption,
e) with immediate effect during the probation period[30], or
f) Extraordinary recall during the trainee period

The rules regulating the termination of public servant's legal relationship are specific insomuch as there is no distinction between the termination of a fixed-term public servant's legal relationship and that of a public servant's legal relationship for an indefinite period of time, they are regulated in the same manner. Here only the termination will be discussed.

a) Mutual consent

The public servant's legal relationship may be terminated by the mutual consent of the employer and the employee (public servants) any time, but the law prescribes that their mutual consent shall be laid down in writing. The lack of the written form may result in the invalidity of the agreement. The cornerstone of this manner of termination is the parties' same will, in the absence of which no valid agreement on the termination of the employment (public servant) relationship may be reached.

b) Transfer to organs belonging to the scope of rules of law regulating public servant's or official service legal relationship,

If in the course of legal succession the employer is changed because following the founder's or employer's decision the whole or a part (e.g. a specific group in its competence) of the employer is delivered to an employer that is subject to the Labour Code or the Act on the Legal Status of Public Officials ("outsourcing"), the legal relation of the employed public servant is terminated on the date of delivery and the public servant may decide if he/she wishes to be transferred to the successor. When not, the legal relation is terminated on the date of delivery with a severance pay, or for definite-term legal relations the pay due for the rest of the definite term shall be payable .

[30] The legal issue of the probation period has already been introduced above, therefore here it is not discussed again.

If the public servant agrees to be employed thereafter by the transferee, an employment contract is executed or he/she is appointed a public official. This means that the public servant's legal relation is terminated but the wage or the public official's pay received from the transferee shall not be less than what the public servant earned before. No trial period shall be set at the transferee. If the legal relation was in effect for an indefinite period, it shall remain so, and if it was full-time employment, it should remain the same. Legal continuity remains in effect, which is another bonus, so when the legal relation is terminated later the period of legal relation with the delivering and receiving employer shall be added up to set the period of notice (discharge period) and calculate the volume of severance pay .

c) Resignation

The public servant may resign from his/her public servant's legal relationship at any time. The public servant's period of resignation is 2 months, but the parties may also stipulate a shorter period. However, in the case of a fixed-term public servant's legal relationship the period of resignation cannot be longer that the period specified in the appointment.

Extraordinary resignation is only permissible when the employer significantly violates its essential obligations that stem from the public servant's legal relation (e.g. non-payment of wage) deliberately or with weighty negligence or when it shows serious problems in attitude (objectionable instructions given in a humiliating tenor, vituperation, etc.). This may be exercised within fifteen days of receiving notice about the underlying reason but within one year of occurrence of the reason at the most, or – for criminal offence – during its period of limitation. In case of extraordinary resignation the employer is obliged to pay the public servant his/her average wage due for the same length of period as would apply to his/her recall, and additionally severance pay, and perhaps damages are also due.

d) Exemption

A public servant's legal relationship may be terminated by the employer by means of exemption if

a) due to the decision made by the Parliament, the government or the representative body of the local government a reduction of staff is necessary in the official organization of the administrative authority, as a consequence of which there is no possibility for the continues employment of the public servant,
b) the administrative authority's activity in which the public servant was employed has ceased,
c) the public servant's job has become unnecessary due to reorganization,

d) the administrative authority is dissolved without a legal successor
e) the public servant is incapable of carrying out his/her tasks, or if he/she is entitled to old-age pension or is receiving invalidity pension.

The employer shall justify exemption. The reason for exemption shall be clear from the justification and the employer shall prove that the reason for exemption is substantial and lawful. In the first 3 cases the public servant can be exempted if there is no other vacant job corresponding to the public servant's qualifications and ranking in the official organization or in the administrative authority under its control, or if the public servant does not assent to his/her transfer to such a job. If the incapability defined above is due to reasons of health, the public servant can be exempted if there is no other job appropriate for his/her condition of health in the official organization or in the administrative authority under its control, or if the public servant does not assent to his/her transfer to such a job. In the event that incapability is not due to reasons of health, the public servant may be exempted only if he/she was qualified incapable of performing his/her tasks by the employer in a qualifying procedure. The administrative authority shall exempt the public servant entitled to old-age pension or receiving invalidity pension at the request of the public servant under this title.

The period of exemption from work is 6 months, but in the case of the termination of a fixed-term public servant's legal relationship the period of exemption from work cannot be longer that the period in which the public servant's legal relationship would have ceased without exemption.
In the event of exemption the public servant is entitled - apart from some statutory exceptions - to severance pay.

e) Extraordinary recall during the trainee period

The employer may terminate the public servant's legal relation even during the trainee period through extraordinary recall if the public servant
fails to fulfil a material obligation related to his/her legal relation intentionally or through serious negligence, or shows a conduct making the maintenance of the above legal relation impossible.

Before the recall is communicated an opportunity is to be granted to the public servant to familiarize with the reasons for the planned recall and to defend himself/herself with the exception if the employer cannot be expected to do so because of the circumstances of the case. The right of extraordinary recall may be exercised within fifteen days from learning the reason grounding the

recall but within one year at the most or within the period of limitation open for criminal proceedings if a crime is committed.[31]

7. Compliance with the EU 1999 Directive

The main subject of the regulations concerning fixed-term employment is to create a balance between making the employers' employment possibilities as flexible as possible and ensuring interest protection for the employees.32
Directive 1999/70/EC on fixed-term work is restricted only to regulating questions of procedure and protocol (purpose of the Directive, promulgation, deadline for its introduction). The issues of merit are included in the agreement on fixed-term employment concluded by ETUC (European Trade Union Confederation), UNICE (Union of the Industries of the European Community) and CEEEP (European Centre for Public Enterprise), which became part of EU labour law as the Annex of the Directive.

The Directive contributes to creating a legal balance between the flexibility of working time and the employee's security. Fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers. The Directive sets out the general principles and minimum requirements relating to fixed-term work, thus establishing a general framework for ensuring equal treatment, the application of non-discrimination and the prevention of abuse arising from the use of successive fixed-term employment contracts or relationships.

Pursuant to Clause 3 of the Directive the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between the employer and a worker where the end of the employment contract or relationship is determined by objective conditions.
In addition, workers on fixed-term contracts will enjoy stronger workplace protections following a ruling by the European Court of Justice (ECJ) in the "IMPACT" case.[33] The judgement confirmed that an existing EU directive entitles fixed-term staff to the same pay and pension entitlements as comparable colleagues on permanent contracts. It also confirms their right to enjoy the same entitlements as permanent staff to sick leave, training, access to promotion and other conditions of employment. [34]

In accordance with the exemplary list given in the Directive, such may be reaching a specific date, completing a specific task or the occurrence of a specific event.

---

[31] Dr. Cséffán József: A köztisztviselők jogállásáról szóló törvény és magyarázata 2008. 124–138. pp.

[32] http://a-munkaado-lapja.cegnet.hu/2003/1/hatarozott-ideju-munkaviszony.

[33] C–268/06.

[34] http://www.impact.ie/iopen24/pub/newsdesk_info.php?newsdesk_id=116.

7.1. Main Points of New Regulations

Prohibition of discrimination. A high-priority purpose is the prohibition of discrimination, employees employed for a fixed term shall not be disfavoured compared to employees in similar categories (employed for an indefinite period) on the grounds of having a fixed-term employment contract. Similarly, negative discrimination is prohibited in the case of ranking based on the period of work experience in respect of fixed-term employment.
At the same time the Directive declares that where appropriate, the principle of pro rata temporis shall apply, according to which certain entitlements are due to the worker on the basis of the period spent in legal relationship.

Prevention of abuse. The Directive provides for the prevention of abuse relating to fixed-term employment. Member States shall introduce one or more of the following measures:

a) objective reasons justifying the renewal of fixed-term contracts,
b) the maximum total duration of successive fixed-term employment contracts or relationships aimed at performing work, or
c) the number of renewals of such contracts or relationships.

The use of the listed measures – particularly jointly – may be suitable to prevent abuse relating to fixed-term contracts. However, the choice of legal technique which leaves it to the Member States to choose at least one measure does not necessarily point to stricter regulation. Compared to other Directives, the rule under criticism provides quite wide-ranging possibilities for the Member States to depart, only for the renewal of fixed-term contracts is an objective reason required.

Obligation to inform. The Directive prescribes the obligation of information for the employers, pursuant to which employers shall inform fixed-term workers about vacancies to ensure that they have the same opportunity to secure permanent positions as other workers. The Union regulations concerning training opportunities and career development cannot be expected to have a pronounced role considering that employers are obliged to provide these only as far as possible for workers employed with a fixed-term contract. With respect to further education and career planning employers plan for the long run and rely mainly on workers in an employment relationship for an indefinite period.

Possibility for the introduction of more favourable provisions for workers. It must be said in the favour of the Directive – which has been qualified as too discretionary – that the provisions on implementation state that Member States can introduce more favourable provisions for workers. Neither can the rules of

the Directive be applied to reduce the general level of protection ensured earlier in the regulations of the Member States.[35]

7.2. The Hungarian implementation

In July 2003, new legislation regulating fixed-term and part-time employment came into force in Hungary. The new provisions of the Labour Code seek to transpose the EU Directives on these issues. This article highlights the main new regulations and outlines the social partners' involvement in drawing them up.

From 1 July 2003, the Labour Code of the Republic of Hungary was amended by Act XX of 2003. The modifications include the transposition of five European Union Directives on: working time (2000/34/EC); fixed-term work (1999/70/EC); part-time work (1997/81/EC); transfers of undertakings (2001/23/EC); and the working time of seafarers (1999/63/EC).

The phenomenon of fixed-term work has been well known in Hungarian employment practice for decades. According to the Central Statistical Office (Központi Statisztikai Hivatal, KSH) Labour Force Survey for the first quarter of 2003, 6.6% of employees had fixed-term contracts, which is lower than in the majority of the current EU Member States. Fixed-term work is usually used for the replacement of employees on parental leave.[36]

The new Labour Code provisions prohibit discrimination against fixed-term workers. To avoid misuses, the amended Labour Code states that any fixed-term contract shall be deemed as indefinite if the contract is repeatedly established or extended without the employer having a legitimate reason to do so and this violates the employee's legitimate interests. While this has been the practice in Hungarian case law for a long time, there have been a number of cases even recently where an employer has employed the same workers consecutively on fixed-term contracts without any good reason.

Under Hungarian law, the maximum duration of a fixed-term contract is five years. This rule is also to be applied for extended fixed-term contracts. This means that even when the extension of a contract is legal according to the above-mentioned rules, no fixed-term extension will be valid after the fifth year of employment. This rule is also to be applied if the employment is not continuous but there are no interruptions longer than six months in the continuity. These rules, however, are not applicable for employment involving an authorisation permit (for example, in the case of foreign employees).

In the event that an employee, after the end of the fixed term, works for at least one extra day with the knowledge of their immediate superior, the

[35] ROGER BLANPAIN: *European Labour Law.* Kluwer Law International. The Hague, 2006. pp. 224–225.

[36] http://www.eurofound.europa.eu/eiro/2003/08/feature/hu0308101f.htm

employment transforms into an indefinite term contract. An employment relationship established for a period of 30 days or shorter can be extended only by the amount of time for which it was originally established. These provisions do not apply to employment established by election (usually executives) and to those subject to authorisation permit.

According to the new rules, if the end of the fixed term is not defined by an exact date, the employer is obliged to inform the employee on the probable duration of the employment. This could be difficult if the employee replaces another employee, for example one on parental leave.

In accordance with the relevant EU Directives, employees may now request the modification of their employment contract with regard to the term of the employment. This means that fixed-term workers may ask to be employed for an indefinite period, full-timers may ask to work only part time, and part-timers may ask to work full time. The employer is required to inform the employee on the acceptance or refusal of such request within 15 days. The employer must also inform employees about those jobs for which it is possible to amend the contract duration or the length of the working time.

Finally, it should be noted that under Hungarian labour law fixed-term employment cannot be terminated regularly by either party giving ordinary notice. The employee may terminate such employment only by giving 'extraordinary' notice or during the probation period with immediate effect, while the employer, in addition to these two possibilities, may also terminate such employment by paying the employee one year's average pay or, if the time left until the expiry date of the fixed term employment is less than one year, the average pay due until the expiry date.

However, the termination of fixed-term contract by mutual consent or by extraordinary notice is possible.

With regard to fixed-term work contracts, Hungarian case law had elaborated practically the same rules as those in the relevant EU Directive, and therefore the formal transposition of the Directive has not brought too much novelty into the practice of Hungarian employment law.

7.3. Input of the Hungarian Social Partners

The amendments to the Labour Code related to fixed-term work were supported by both trade unions and employers' organisations. During the negotiations in the National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT), however, employers, trade unions and the government made proposals which were not agreed by the other parties. These included the following:

a) the government proposed that severance pay should be paid to fixed-term workers;
b) the trade unions proposed that a list of circumstances in which the conclusion of a fixed-term contract is lawful should be included in the

Labour Code (there is already such a list in the Acts on Civil Servants and on Public Service Employees, whereby fixed-term employment may be used only to replace an absent worker or fulfil a given task);

c) the unions proposed permitting ordinary termination of fixed-term contracts by the employee; and
d) the employers proposed giving less information to employees with respect to the possible amendment of fixed-term employment contracts.

Since no agreement was reached on these issues, any new legislation on them may be expected only during the general review of the Labour Code which is due in the coming years.[37]

8. Conclusion: Flexicurity and Fixed-Term Contracts

The concept of "flexicurity" has entered the debate on employment and social policy between social partners, but its influence on practice has not been significantly felt yet. Behind this situation are the following: parallel with economic and social transition, the majority of employees in Hungary have concentrated their efforts on keeping their jobs. This effort is not equivalent to loyalty to the enterprise however, but represents a survival technique only.

At the same time, many employees are not interested in building their careers and, with the exception of multi-nationals and the finance sector, employers are not interested in presenting their employees career possibilities.[38]

A general opinion among players of industrial relations is that, as a result of Hungarian legislation, the most secure type of employment is with a permanent full-time job contract. At the same time every player of the world of work is certain that this situation is to be changed, therefore the awareness of employers and employees needs to be changed to enhance economic development and competitiveness. Employers' attitude is to be changed by legislative support of "flexicurity", while employees should be encouraged to take into consideration the development and competitiveness of their own, those of the enterprise's.

As it was mentioned earlier neither employers nor employees are interested in employment with fixed-term work contracts with the exception of some sectors, e.g. agriculture or the construction industry, where seasonal employment is common. The employer's standpoint is that the costs of workforce are the same in every type of employment.

[37] http://www.eurofound.europa.eu/eiro/2003/08/feature/hu0308101f.htm

[38] http://www.eurofound.europa.eu/ewco/studies/tn0612036s/hu0612039q.htm

Bibliography

BANKÓ Z.: *Az atipikus foglalkoztatási formákra vonatkozó rendelkezések.* In Kiss Gy. (szerk.): Az Európai Unió munkajoga. Budapest, 2001. Osiris Kiadó.

BLANPAIN, ROGER: *European Labour Law, Kluwer Law International, The Hague,* 2006.

CZUGLERNÉ IVÁNYI J.: *Az atipikus munkaviszonyok jogi szabályozása a nemzetközi jogban.* In CZÚCZ O. – SZABÓ I. (szerk.): Munkaügyi igazgatás, munkaügyi bíráskodás. Ünnepi kiadvány Radnay József 75. születésnapja alkalmából. Miskolc, 2002. Bíbor Kiadó.

CSÉFFÁN JÓZSEF: *A munka törvénykönyve és magyarázata.* Szeged, 2008. Szegedi Rendezvényszervező Kft.

CSÉFFÁN JÓZSEF: *A közalkalmazottak jogállásáról szóló törvény és magyarázata.* Szeged, 2008. Szegedi Rendezvényszervező Kft.

CSÉFFÁN JÓZSEF: *A köztisztviselők jogállásáról szóló törvény és magyarázata.* Szeged, 2008. Szegedi Rendezvényszervező Kft.

BOERI, TITO – PULAY, GYULA.: *"Labor-Market Policy Reforms and the Fiscal Constraint"*, in BOKROS, LAJOS; DETHIER, JEAN-JACUES (eds.) Public Finance in Reform During the Transition. The Experience of Hungary. World Bank, 1998.

FELDMANN, HORST: *How Flexible are Labour Markets in the EU Accession Countries Poland, Hungary and the Czech Republic?* Comparative Economic Studies, June 2004, Volume 46, Number 2, Pages 272-310

GYULAVÁRI T. – KARDOS G. (szerk.): *A nők és férfiak közötti esélyegyenlőség az európai közösségi és a magyar jogban, Jogharmonizációs javaslat.* Budapest, 2000., INDOK.

HAJDÚ JÓZSEF (szerk.): *Gyógyszerészi jogi ismeretek.* Szeged, 2003

HAJDÚ, JÓZSEF: *Hungarian labour law* 2006. (manuscript)

HÉTHY, LAJOS: *Az érdekegyeztetés és a táguló világ.* Budapest, 2000. Struktúra Munkaügyi Kiadó.

HORVÁTH I.: *A határozott idejű foglalkoztatás és a részmunkaidő.* In CZÚCZ O. – SZABÓ I. (szerk.): *Munkaügyi igazgatás, munkaügyi bíráskodás.* Ünnepi kiadvány Radnay József 75. születésnapja alkalmából. Miskolc 2002. Bíbor Kiadó.

KISS GYÖRGY: *Munkajog 2.* átdolgozott kiadás Osiris Kiadó, Budapest 2006

KISS GY. – BERKE GY. – BANKÓ Z.: *A munkajogi jogalkotás eszközei és lehetőségei a foglakoztatás rugalmasságának alakításában.* Pécs, 2008. Justis

KOLTAY, JENŐ: *"The minimum wage in Hungary: subsistence minimum and/or bargaining tool?"*, in Halpern, László; Wyplosz, Charles (eds.) Hungary Towards a Market Economy, Cambridge University Press, 1998

LAKATOS, JUDIT: *Munkaidő, munkarend, szervezettség.* Manuscript. KSH, Budapest Laky, Teréz. 2000. "Labour Market in Hungary–1999", in Fazekas, Károly (ed.) Munkaerőpiaci Tükör, MTA KTK, 2001.

LAKY T.: *Az atipikus foglalkozások.* Struktúra Munkaügyi Kiadó, Budapest, 2001.

MAKÓ, CSABA- MOEREL, HANS – ILLÉSSY, MIKLÓS – CSIZMADIA, PÉTER eds.: *Working it out? The labour process and employment relations in the new economy*, Akadémiai Kiadó, Budapest, 2007

NAGY L.: *Atipikus foglalkoztatási formák az Európai Unió szabályainak tükrében.* Budapest, 1999. Kézirat.

NEUMANN, LÁSZLÓ: *"Circumventing Trade Unions in Hungary: Old and New Channels of Wage Bargaining"*, in European Journal of Industrial Relations, Vol. 3, No 2, pp. 181-200., 1997.

PRUGBERGER T.: *Európai és magyar összehasonlító munka- és közszolgálati jog.* Budapest, 2001, KJK.

Radnay J. (szerk.): *A magyar munkajog. Kommentár a gyakorlat számára.* HVG-Orac, Budapest, 2001

World Bank. Hungary. Long-Term Poverty, Social Protection, and the Labor Market.
Report No. 20645-HU Volume I-II, 2001

HAJDÚ JÓZSEF

A HATÁROZOTT IDEJŰ MUNKASZERZŐDÉS MAGYARORSZÁGON

(Összefoglalás)

A magyar Munka törvénykönyvének értelmezése szerint a munkaviszony határozott időre szól, ha a felek a határozott idő tartamát objektív feltételként meghatározott időpontban (naptárszerűen, pl.: munkaszerződés megkötésétől számított egy évi időtartamra, egy naptári hónapra, 50 munkanapra, stb.), meghatározott elvégzendő munkában (pl. programírás, szezonális munka, gyermeknevelés miatt távol lévő munkavállaló helyettesítése, stb.), meghatározott esemény bekövetkezése kikötésével vagy más alkalmas módon határozzák meg.

A határozott időre szóló szerződés minimum időtartamát a felek közös megállapodással határozzák meg. Az Mt.-ben erről szóló külön rendelkezés nincs. Ugyanakkor, a határozott időre szóló munkaszerződés maximális időtartamát az Mt. törvényileg szabályozza. Határozott időre szóló munkaviszony(ok) legfeljebb ötévi időtartamra létesíthető(k). A határozott időre létesített munkaviszony megszűnésével a felek megállapodhatnak újabb, hasonló jellegű munkaviszony létesítésében. Az ötévi időtartamba beleszámítandó, ha a felek között köttetett kettő vagy annál több, egymást követő határozott idejű munkaviszonyok közötti időtartam nem éri el a hat hónapot. Nem vonatkozik ez a tilalom a vezető állású munkavállalókra. Amennyiben a munkaviszony létesítéséhez hatósági engedély szükséges, legfeljebb az engedélyben meghatározott időtartamra létesíthető munkaviszony. Ha az engedélyt meghosszabbítják, az újabb határozott idejű munkaviszony időtartama - a korábbi munkaviszony tartamával együtt - meghaladhatja az 5 évet.

Amennyiben a felek nem naptárilag határozzák meg a munkaviszony tartamát, a munkáltató a munkaszerződésben köteles tájékoztatni a munkavállalót a munkaviszony várható időtartamáról.

A határozott idejű munkaviszony a munkaszerződésben meghatározott idő elteltével szűnik meg. Amennyiben a munkavállaló az időtartam lejártát követően a közvetlen vezetője tudtával legalább egy munkanapot tovább dolgozik, a határozott idejű munkaviszony automatikusan határozatlan idejűvé alakul át, kivéve a 30 napos vagy ennél rövidebb időre létesített munkaviszonyt, amely csak annyi idővel hosszabbodik meg, mint amilyen időtartamra eredetileg létrehozták.

A határozott idejű munkaviszony megszüntethető: a) próbaidő alatt, b) közös megegyezéssel, c) rendkívüli felmondással és d) munkáltatói rendes felmondással, de csak akkor, ha a munkáltató a határozott időből hátralévő időre járó – maximum azonban egyévi – átlagkeresetet előre kifizeti a munkavállalónak.

A határozott idejű munkaviszony (a fenti esetek kivételével) a szerződésben foglalt időpont, esemény bekövetkeztével automatikusan – a törvény erejénél fogva – megszűnik, amennyiben a munkáltató arról nyilatkozik, hogy a munkavállaló további foglalkoztatására igényt nem tart.

A tanulmányban először a határozott idejű munkaviszonyra vonatkozó dogmatikai és a versenyszférára vonatkozó munkajogi szabályokat ismertettük. Ezt követően tértünk át a versenyszférán kívüli speciális munkavégzési jogviszonyok – például közszféra – és munkavégzésre irányuló egyéb jogviszonyok – például alkalmi könyvvel történő foglalkoztatás - tárgyalására, amelyekben megjelenik a határozott idejű foglalkoztatás. Külön foglalkoztunk az 1999/70/EC Irányelvvel, amely a részmunkaidős alkalmazásra vonatkozó EU-s előírásokat rendezi. Munkánkban röviden érintjük az Irányelv implementálásával kapcsolatos tapasztalatokat. A dolgozatban röviden utalunk a flexicurity és az atipikus (részmunkaidős) alkalmazás kapcsolatára.