National report, discussion document – Hungary

ISLSSL XI European Regional Congress 2014 – Young Scholars Session

Dublin 17 September, 2014

Attila Kun[1], National Representative - ISLSSL Young Scholars Session

The paper is prepared for discussion for the ISLSSL XI European Regional Congress 2014 – Young Scholars Session as the national report of Hungary. The paper follows the structure of the Youth Section's preliminary 'Discussion Document' (5th February 2014).

The global economic crisis and national labour laws

1. Introduction

Hungary was initially the front-runner of market reforms in Central and Eastern Europe (CEE), but at the end of the 2000s its economy showed serious structural problems, which manifest themselves in slow growth, low investments and low labour force participation. The financial crisis hit its economy the hardest among the 'Visegrád' countries. By the end of 2011 it was one of the most financially vulnerable countries in Europe outside the euro area.[2]

The Hungarian labour market is characterised by a moderate unemployment rate, a relatively low participation rate and flexible labour market institutions.[3] Union coverage is low and declining, and the unions have little power.[4] Hungary's employment protection index is also the lowest in the region, while hiring and firing costs are low by international comparison. The adjustment of wages is also relatively easy. Employment Protection Level (EPL) in Hungary is lower than the EU-average.[5] According to some researches, the former Labour Code[6] of Hungary was one of the most liberal in Europe (cited by Arató, and Nacsa), but after the introduction of the new Labour Code in 2012 (and a number of changes of the former labour code between 2010 and 2012) it got even more flexible.[7]

---

[1] Associate Professor, Head of Department, Károli Gáspár University, Hungary, Budapest, Faculty of Law, Department of Labour Law and Social Security, E-mail: kun.attila@kre.hu

[2] EEAG (2012), *The EEAG Report on the European Economy*, "The Hungarian Crisis", CESifo, Munich 2012, p. 129.

[3] Köllő, J. (2011), "Employment, Unemployment and Wages in the First Year of the Crises", In: K. Fazekas and Gy. Molnár (eds.), *The Hungarian Labour Market Review and Analysis,* Institute of Economics, Hungarian Academy of Sciences, Budapest.

[4] According to several sources, 10 -16 % of the Hungarian employees (450,000 - 550,000 people) are trade union members in 2013. FES, Hungary - labour relations and social dialogue Annual Review 2013, p. 6.

[5] European Foundation for Living and Working Conditions, *Measuring Job Satisfaction in Surveys – Comparative Analytical Report,* Dublin 2007, p. 5.

[6] Act XXII. of 1992.

[7] Krén, Ildikó: Hungary: Impact of the crisis on industrial relations, 2013, EIROnline, http://www.eurofound.europa.eu/eiro/studies/tn1301019s/hu1301011q.htm (Last visited: 01. 08. 2014.).

One of the key questions facing Hungarian policy makers is how to increase labour force participation. Labour law reforms are supposed to be framed in this context. However, the extremely low participation rate has not considerably changed so far.[8]

As for the political context: The centre-right government won a two thirds majority in the elections of 2010 and 2014 and embarked on a series of unorthodox policy measures.

As regards the labour law context, the "*Magyar Munka Terv" (Hungarian Work Plan)* was adopted in 2011. The main aim of the plan is to remedy sustainably the low employment rate in the country (which is one of the main overall problems of the Hungarian economy). It is the operational programme for the prime minister's ambition to create 'one million new jobs in the next ten years'. In principle, the plan intends to create new, long-term jobs with the aim of supporting sustainable employability. In line with the Magyar Munka Terv, the new Labour Code (Act I of 2012) is also designed to serve the creation of new jobs.[9] As a consequence, in general, it provides less protection for employees and more power is given to employers. Thus, the sustainability-oriented, qualitative aspect of the ILO's 'decent work' idea is less emphasized than the purely quantitative aim of job-creation. The 'Hungarian Work Plan', prepared by the Ministry for National Economy sets the policy context for labour law reforms by formulating the main strategic goals of strengthening economic growth, encouraging the increase of employment and enhancing the competitiveness of Hungary's economy. As a consequence, a shift is detectable concerning the sharing of risks related to employment.[10]

As it is impossible to comprehensively examine the new Labour Code in this small briefing, the paper focuses on some central conceptual changes.

2. Preliminary and temporary measures in labour law to tackle the crisis

The first real signs of crisis-related labour law reforms in Hungary appeared already in June 2009 when the Hungarian Parliament adopted amendments to the former Labour Code allowing the temporary introduction of more flexible (and shortened) working time. This measure was intended to mitigate companies' unbalanced needs for workforce during the high-time of the crisis (between 1 April 2009 and 31 December 2011). Temporary state subsidies were also provided for employers (on a tendering basis) for shortened working hours.

Among others, the amendments also provided that as of 1 June 2009 an employer has the possibility to unilaterally set the working time reference period at four months (under the

[8] According to the OECD, between 2007 and 2013, there was a marginal increase in Hungary's employment rate. Society At A Glance 2014; OECD Social Indicators, The Crisis and Its Aftermath. http://budapestbeacon.com/public-policy/oecd-data-compares-post-crisis-hungary (Last visited: 02. 08. 2014.)
In addition, emigration from Hungary is increasing according to various sources and anecdotal evidence. The main destinations are constant, for the time being: Austria, Germany and (increasingly) the UK. See in details: Hárs, Ágnes: Labour market crisis: changes and responses, Tárki, 2013, Budapest. http://www.tarki.hu/en/news/2013/items/20130305_hars.pdf (Last visited: 01. 08. 2014.).

[9] The final text of the legislation was adopted by the Parliament on 13th December, 2011. As of 1st July, 2012. the new Labour Code (Act I. of 2012) came into force.

[10] In the opinion of Gyulavári and Kártyás, approximately half of the former labour law rules were fully changed or fundamentally amended, and the majority of the modified provisions are disadvantageous for employees. Gyulavári, Tamás – Kártyás, Gábor: The Hungarian labour law reform. The great leap towards full employment? *Dereito* Vol.21, nº2: 167-188 (Xullo-Decembro, 2012) · ISSN 1132-9947 Recibido: 11/10/2012. Aceptado: 22/11/2012. p. 170.

previous regulation, the employer could unilaterally order only a three-month reference period for calculating basic weekly working time).[11]

Another crisis-related modification was related to the moderation of the so-called 'fair labour relations' criteria for public procurement and state subsidies (despite trade unions objection). This modification has undermined the idea of socially responsible public procurement (promoted by the EU).

From a practical point of view, researches reveal the fact that trade unions in particular had not made many innovative proposals for crisis management between 2008 and 2010, but business associations have been more active.[12] This might be one explanation why the concerns for flexibility have taken precedence over the issue of job security in policy-proposals and, at the end of the day, in the actual reforms.

Neumann indentified some further typical practical problems concerning company level actions of crisis-management:

- "At Hungarian subsidiaries of multinational companies the lack of anticipation of structural changes is due to the fact that strategic decisions are made in the company headquarters abroad – often the Hungarian management is only informed at the last moment and is left with the responsibility for implementing decisions and crisis management and trade unions have no direct access to decision-making.[13]
- Restructuring of a company is regarded as an internal affair as long as the company does not request help or subsidy from the Public Employment Service or a higher level government agency."[14]

In general, it is very difficult to talk about crisis-related labour law reforms in Hungary and the crisis has not been rigorously discussed in Hungary from a labour law point of view. It remains questionable whether the measures have been taken because of the crisis or because the newly (in 2010) elected government has changed ways of governing due to political-ideological reasons.[15] In our opinion, the latter factor is much more important and decisive. The change of government led to far-reaching changes in labour law and worker´s rights and fundamental social rights got under pressure.

3. General context of the overall reform in labour law

The general revision of labour law and the new Labour Code turns the whole world of Labour Law upside down: all fields of labour regulation are affected by significant changes, alterations. The new Code, in general, offers more flexible regulations and reduces, to a certain extent, the labour law risks and burdens for employers, while on the other hand, a

[11] Ferencz, Jácint: The labour law aspects of the economic crisis, In: Dávid R., Neckář J., Sehnálek D., (Editors). *COFOLA 2009: the Conference Proceedings*, 1. edition, Brno : Masaryk University, 2009.
[12] Krén, Ildikó *Op. cit.*
[13] As a result, we can have the impression that in Hungary collective bargaining has played only a limited role (if any) in protecting workers and / or facilitating enterprise adaptability during the crisis. The issue of job security is not a priority in collective bargaining in Hungary. *Cf.*: Neumann, László–Boda, Dorottya: A válság hatása a vállalatok gazdálkodására [The effect of crisis on the management of enterprises] Conference paper, Szirák, 2010. http://econ.core.hu/file/download/szirak2010/Boda_Neumann.pdf (Last visited: 01. 08. 2014.)
[14] Neumann, László: National Background Report and Seminar – HUNGARY, Institute for Social Policy and Labour, Budapest, 27 National Seminars on Anticipating and Managing Restructuring - A.R.E.NA.S. (Service contract VC/ 2008/0667).
[15] *Cf.* Krén, Ildikó *Op. cit.*

decrease of employees' rights is detectable (at the same time, the new Code contains a few improvements for workers too). From a technical, purely professional point of view (the clarity of the regulations etc.), the Code shows a rather good progress and it provides a far more detailed, elaborated and transparent system of rules (but on a very complex way).

In our opinion, the following three tendencies are epitomizing the essence of recent labour law reforms in Hungary:

- Conceptual shift in the idea of labour law;
- Erosion of social dialogue;
- Rearrangement of the legal sources of labour law.

The paper continues with a more elaborated analysis on these three points.

1. Conceptual shift in the idea of labour law

The new Labour Code's core objectives are the following:

- To achieve increase in employment rates via the promotion of employers' competitiveness by flexibilisation of employment protection;
- To support enterprise adaptability and innovation;
- To introduce clearer, simplified regulations; resolve contradictions;
- To improve labour market flexibility;
- To align labour law with civil law.[16]

As a consequence, labour law is now seen in Hungary not as 'social law', but rather as one instrument of economic and employment policy. The official reasoning of the draft Labour Code contains the following formulations of such policy-objectives: "reducing the regulative functions of state regulation", "implementation of flexible regulations adjusted to the needs of the local labour market" etc. One can have the impression that the unrestrained faith in the omnipotence of the market and the contract (as a regulatory tool) overshadows the state's role as the guardian of decent working conditions.

Researches show that the absence of labour market rigidities does not necessarily ensure positive labour market outcomes.[17] As a consequence, there are serious doubts whether the new Code – especially in the current economic environment – would truly promote the extension of employment (researches show that the promotion of employment depends slightly on the method of labour law legislation, it is basically and predominantly defined by the economic environment). All in all, the very idea of the creation of new jobs via the flexibilisation of labour law is more than questionable. As Gyulavári and Kártyás articulate it, "the main question concerning the reform is, what effects may be expected as a consequence of flexibilising employment protection legislation."[18]

[16] The new Labour Code clarifies precisely, which provisions of the Civil Code can be applied in labour law. In the past, the relationship between the Civil Code and the Labour Code was rather hazy and ad hoc. See especially Section 31 of the Labour Code.
[17] EEAG (2012), *The EEAG Report on the European Economy*, "The Hungarian Crisis", CESifo, Munich 2012, p. 129.
[18] Gyulavári, Tamás – Kártyás, Gábor, *op. cit.* p. 167.

The World Economic Forum prepares yearly The Global Competitiveness Report.[19] One of the key indicators of the Report is the so-called „most problematic factors for doing business" ranking. This chart summarizes those factors seen by business executives as the most problematic for doing business in their economy. From a list of 16 factors respondents are asked to select the five most problematic factors and rank them from 1 (most problematic) to 5. One of the factors is „restrictive labour regulations". In Hungary, this factor („restrictive labour regulations") is not seen (and has never been seen recently) by business executives as a major problematic factor for doing business in the country: the ranking of this factor (out of the 16 factors) was the ninth (9.) in 2010-11; the eleventh (11.) in 2011-12; the eleventh (11.) in 2012-13 and the twelfth (12.) in 2013-14. Thus, according to business executives, labour law in Hungary is less and less perceived as rigid and restrictive, and it is not a noticeably problematic factor when doing business. Among others, the most such problematic factors in Hungary are the following (2013-14): 1. Access to financing; 2. Policy instability; 3. Tax rates; 4. Tax regulations; 5. Inefficient government bureaucracy. As a comparison, it is important to mention that in 'Western'-European EU member states, „restrictive labour regulations" are typically among the „top" problematic factors in such rankings (e.g.: Germany: 2.; Denmark: 4.; France: 1.; Poland: 2.; Spain: 3.; United Kingdom: 8. etc., in 2013-14). These records also confirm our assumption that further flexibilisation of Hungarian labour law can't be convincingly justified by pressing business and market needs.

2. Erosion of social dialogue

In 2009 (based on a ruling of the Hungarian Constitutional Court questioning the codetermination rights granted to national and sectoral social dialogue structures), the Parliament adopted two acts – Act LXXIII on the National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács, OÉT*) and Act LXXIV on sectoral social dialogue committees (*Ágazati Párbeszéd Bizottságok, ÁPB*) – revising the powers of these structures and setting representation criteria for the organisations involved. The new system came into force in October 2009. These acts amend the extent of social dialogue by reducing their role, which used to be quite significant. In 2011, just during the preliminary works of the new Labour Code, the OÉT (the standing tripartite body[20]) was disbanded. Instead of OÉT, a new, larger (multi-partite) and merely consultative body, the National Economic and Social Council (NGTT) was created. For instance, the minimum wages are no longer decided in negotiations by the OÉT but set by the government (after some 'soft' consultation in the NGTT). In October 2012 there was a consultation on minimum wage 2013 within the newly set up Consultative Forum of the Industry and the Government (Versenyszféra és a Kormány Állandó Konzultációs Fóruma, VFK[21]), but it is doubtful, how serious is the impact of these negotiations. VKF is only an 'informal' forum without legislative background and fixed rights of real participation.

[19] WEF, http://www.weforum.org/reports/global-competitiveness-report-2013-2014

[20] The National Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT) was the highest tripartite body of social dialogue. It had existed under several names from 1990 to 2011. Social partners were able to intervene or proactively participate in the level of policy making through OÉT. The members were six national level trade union confederations, nine employers' confederation and the representatives of the Government. OÉT has been ceased in 2011.

[21] VKF was established by the government at the end of 2011, three employers' organisations (VOSZ, MGYOSZ, AFEOSZ) and three trade union confederation (LIGA, MSZOSZ, MSOZ) were invited to participate. Its functioning and consultation process are still rather unclear.

Similarly, until 2011 there has been a severe consultation of social partners in the Governing Board of the Labour Market Found (Munkaerőpiaci Alap Irányító Testülete, MAT), which was a tripartite body. Since 2012 there is a new functioning of the LMF without social partner involvement.

As a consequence, „after the inauguration of the new government regular consultation between government and social partners came to an end. All crisis related measures introduced by the government were not consulted with the social partners."[22] One can assume that the government wanted to act unilaterally in response to the crisis.

The adoption of the new Labour Code was also coupled with a relatively selective and half-hearted consultation process. In general, one can have the impression that the very idea that public policy measure should be transparent and agreed on through the social dialogue institutions suffers serious deficit.

3. Rearrangement of the legal sources of labour law

One of the main goals of the current labour law reform is to revitalize the contractual sources of labour law. The main aim is to strengthen the role of the collective agreement as a contractual source of labour law.

Already in 1992, when the previous Labour Code was passed, the legislator intended to assign a fundamental role to collective agreements as the central regulatory tools of the labour market. However, the past two decades have shown that the legislator's intention was only partially fulfilled, inasmuch as the role of collective agreements in the development of the local labour market remained relatively limited. The main reason for this being that the relatively dispositive ('one way permissive') regulatory approach of the former Labour Code, that is, permitting any departure from the law in general only in favour of the employee, worked against the autonomous regulation of the labour market. Employers were simply not motivated to conclude collective agreements. As a consequence, the coverage rate of collective agreements is still very low in Hungary[23], and also the quality of existing agreements is low (often just simply repeating the statutory rules[24]).

On the contrary, in the new Code the general nature of the rules of law is that the collective agreement may depart from the provisions of the law without restriction, that is, even to the employee's detriment, which means that the law, in contrast to the collective agreement, is dispositive (i.e. absolute dispositive) in its nature. This brand new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. According to the legislator, this "minimalist" regulatory concept may contribute most effectively to creating a mutual interest in the conclusion of collective agreements, to the wider application of collective agreements and to the enhancement of their scope and coverage.

In such a context (extension of the role of collective bargaining), it would have been logical to put some emphasis on the reinforcement of the position of the bargaining partners, especially that of trade unions. However, the contrary is happening in the new Code, as the rights of

[22] Krén, Ildikó *Op. cit.*

[23] According to data from 2009, only 33.9% of all employees were covered by collective agreements. Industrial Relations in Europe 2010, European Commission, 2011, p. 36.

[24] These are the so-called 'Parrot clauses'.

trade unions are degraded to a considerable extent (as we shall see below). Furthermore, question arises whether the parties, practically speaking, are well-prepared enough for such a new expected climate of bargaining intensity and culture.

Another concern to be raised in the context of collective bargaining is that the new Code doesn't offer meaningful solutions for the on-going and historically-rooted problem of extreme decentralization of collective bargaining in Hungary.[25] What is more, the new Code gives some impetus to the further decentralization of collective bargaining by stipulating that a collective agreement of limited effect (e.g. company-level agreement) may derogate from one with a broader scope (e.g. sectoral agreement) - unless otherwise provided therein - insofar as it contains more favourable regulations for the employees.[26] This means that the sectoral agreement (higher-level agreement) can allow – by way of a kind of 'opening clause' – the lower-level collective agreement to derogate 'in peius'. This possibility may undermine the already very low effectiveness of sectoral level agreements. Nonetheless, as researches show, it is difficult to measure, whether collective bargaining arrangements got even more decentralized during the crisis (probably not).[27]

It would be too early to judge whether the new Code really increases the number (and the excellence of the content) of collective agreements. However, it is obvious that the current climate of the economic crisis (and its aftermath) does not support the long-term planning attitude of employers, which would be an important motive for concluding collective agreements.

4. Employment contracts law

In general, there is an increased possibility in the new Labour Code for 'in peius' contractual derogations. However, the main rule is maintained that the employment contracts may only depart from the 'rules relating to employment'[28] in favour of the employee, on a general basis.[29] There are some exceptions to this main rule in the new Code, as the new Code strives to enhance the regulatory margin of the parties' agreements (in line with the civil law origins of labour law). As such, the Code offers some exceptional possibilities for the parties to derogate – by way of individual agreement – from the 'rules relating to employment' also to the detriment of the employees. Taking into account the typically unequal position of the parties, these agreements can easily be risky and abusive for employees. Among others, such possible derogations – and special agreements – are the following:

- It is a basic pillar of labour law that employers shall provide the necessary working conditions. However, the text of the new Labour Code contains a remarkable exception: „unless otherwise agreed by the parties".[30]
- By agreement of the parties, the employer may also allocate the age-based extra vacation time by the end of the year following the year when due.[31]

[25] In most of the post-socialist, CEE-countries, collective bargaining (if any) has always taken place mostly at micro (company) level.
[26] Section 277. of the new Labour Code.
[27] Krén, Ildikó *Op. cit.*
[28] For the purposes of the Labour Code, 'employment regulations' shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee. Section 13. of the Labour Code.
[29] See Section 43, Subsection (1) of the new Labour Code: Unless otherwise provided for by law, the employment contract may derogate from the provisions of Part Two and from employment regulations to the benefit of the employee.
[30] Section 51, Subsection (1) of the new Labour Code.

- In the event of any infringement of obligations arising from an employment relationship the collective agreement or - if the employer or the worker is not covered by the collective agreement - the employment contract may prescribe detrimental legal consequences consistent with the gravity of the infringement ("Legal consequences for the employee's wrongful breach of duty").[32] Before, such legal consequences could only be implemented via collective agreements.
- By the agreement of the parties, the basic wage may involve most of the wage supplements.[33] Furthermore, the amount of wage supplement is calculated based on the employee's base wage. Again, „unless otherwise agreed by the parties" (thus, the basis of calculation can be much lower than the basic wage).[34]
- If so agreed by the parties in writing, employees may be required to provide financial precautionary guarantees ('deposit') to the employer if their job involves the handling of cash or other valuables received from, or provided to, third parties; or their job involves the exercise of supervision of such transactions ("employee guarantees").[35]
- In case of the specific employment contract of executive employees (such as managers), the parties contractual freedom is literally absolute: with some exceptions, the employment contract of executive employees may derogate from the provisions of Part Two of the Code.[36]

As in many fields of labour law, in the regulation of labour disputes, the new Code seeks to increase the parties' autonomy and significantly reduces any legislative intervention by merely attempting to determine provisions that serve as guarantees.

To some extent, it was motivated by the crisis as well that the legislator developed a specific regulatory approach related to the labour law of businesses in public ownership. These specific provisions are basically cogent in their nature, that is, employers are prohibited from concluding employment contracts (or collective agreements) in departure from the law. This regulatory concept reflects the better enforcement of public interests and better protection of public money. Furthermore, the new Code left it open for the legislator to determine specific labour law rules with respect to more differentiated employer groups at a later date.

The new Labour Code introduces a number of other fundamental changes affecting employment contracts law (however, on these points we can't go into details in this briefing paper):

- *Termination of fixed-term contracts*: Under the new rules it is now also possible to terminate a fixed-term employment contract by ordinary notice (under very strict conditions).
- *Reduced protection of employees from termination of employment* (for example, sick leave is no longer classified as a protected period: that termination of employment can be communicated during a period of incapacity due to illness, although the notification period commences only after the end of the incapacity due to illness etc.)
- *Increased liability of employees for damages*. The concept of the regulation of liability for damages reflects a more dominant civil law approach.

---

[31] Section 123, Subsection (6) of the new Labour Code.
[32] Section 56 of the new Labour Code.
[33] Section 145, Subsection (1) of the new Labour Code.
[34] Section 139, Subsection (2) of the new Labour Code.

[35] Section 189 of the new Labour Code.
[36] Section 209 of the new Labour Code.

- *Limited liability of employers for damages*. The concept of the regulation of liability for damages reflects a more dominant civil law approach and the employers' risks are reduced.
- *Very flexible regulation of working time and wage supplements.*
- *Etc.*

A *conceptual change with the most far-reaching consequences* certainly affects the rules related to the *legal protection against unlawful dismissal*. The new Labour Code reduces the legal protection against unlawful dismissal. Whereas the "old Labour Code" foresaw that, when a court found that an employer had unlawfully terminated an employee's employment, the employee could request to continue being employed in his/her original position. The court may in such circumstances and at the employer's request release the employer from having to reinstate the employee in his/her original position, if the continued employment of the employee cannot be expected of the employer. Should the employee not request to be reinstated in his/her original position or should the court release the employer from this obligation, the court was empowered, after weighing all applicable circumstances to sentence the employer to the payment of not less than two and not more than twelve months' average earnings to the employee (as a kind of punitive sanction). In such cases, the employment relationship is deemed to have terminated on the day the court handed down its ruling on the unlawfulness of the action. In the case of unlawful dismissal, the employee was to be reimbursed for lost wages (and other emoluments) and compensated for any damages arising from such loss. The portion of wages (and other emoluments) or damages recovered otherwise was neither to be reimbursed nor compensated.

Under the new provisions, there are no more general obligations for re-instatement (i.e.: re-instatement becomes very exceptional). In the old system, compensation of lost wages was quasi automatic and without limits and it was due for the whole duration of the lawsuit (which, without doubt, was not always fair for employers). Furthermore, legally speaking, the employee was not obliged to mitigate the costs. In the new system the employer is to provide compensation for all losses caused through the unlawful dismissal with a view to the rules on liability for damages (as a consequence, justification becomes more difficult). The damages (as lost earnings) thus paid may not exceed the total amount of the employee's twelve-month absence pay. Furthermore, the 'punitive sanction' (2-12 months 'salary) is completely ruled out from the system. All in all, sanctions for unlawful termination of the employment relationship are drastically limited in the new Code. The overall purpose of the reform was to reduce the extremely large number of litigious proceedings (which is, in our opinion, a very debatable regulatory idea). As a result, the legal consequences of unlawful terminations are revised and „lightened" in order to avoid solutions which enforced the employers to pay excessively, un-proportionately high amounts.

The new Labour Code also *shifts some of the risks* related to employment relationship from the employer to the employee. For example, the Code sets forth that in case of unavoidable external influence (force majeure), such as a power cut, the employee is no longer entitled to receive the basic salary. The risk posed by unavoidable external influence is thus shifted to the employee from the employer.[37] Similarly, the employer may alter the work schedule for a given day upon the occurrence of unforeseen circumstances in its business or financial affairs,

[37] Section 146 of the new Labour Code ('állásidő'). Tóth, András: The New Hungarian Labour Code - Background, Conflicts, Compromises, Working Paper, Friedrich Ebert Foundation Budapest, June 2012, p. 5.

at least four days in advance (while in general, the work schedule shall be for at least one week and shall be made known at least seven days in advance).[38]

A further important improvement of the new Labour Code is that it expands the list of *atypical employment relationships*. For instance, the new Code contains new forms of employment (e.g. on-call employment, job-sharing, work performed for multiple employers) which are specific varieties of part-time work.[39] According to the legislator, one of the fundamental tools for creating flexibility in employment is the regulation of atypical forms of employment. In this respect, the new Code sets out to provide wider scope for the agreements of the parties and only intervenes in the shaping of the forms of employment by the parties inasmuch as necessary to enforce the best interests of employees as a guarantee and to protect important public interests. On the other hand, this relatively vague 'under-regulation' (i.e. not detailed) of atypical forms of employment can create difficulties and uncertainties in practice. The much awaited success (i.e. the employment-creation effect[40]) of this new regulatory approach of atypical employment can only be judged after a couple of years of practice, but theoretical doubts prevail.

The first draft of the new Code attempted to extend the scope of the Labour Code to other forms of employment. The Proposal introduced the category of *„person similar in his status to employee"* widely known in an increasing number of countries.[41] Workers in this category depend economically on the users of their services in the same way as employees, and have similar needs for social protection. For that reason, the Proposal suggested extending the application of a few basic rules of the Labour Code (on minimum wage, holidays, notice of termination of employment, severance pay and liability for damages) to other forms of employment, such as civil (commercial) law relationships aimed at employment (a 'person similar to an employee'), which in principle do not fall under the scope of the Labour Code.[42] This new concept could have been an important and ground-breaking development in employment contracts law, but finally it was left out from the final text of the Code, mainly because of political debates.

5. Trade union law and collective bargaining

The most significant changes of the new Labour Code probably relate to limitations to the rights of trade unions and to the slightly increased (and restructured) rights of works councils (and to the moving of some trade union prerogatives to works councils).

Looking at trade union (representatives) rights, the new Labour Code provides for the following most important modifications:

- Reduces the labour law protection available to trade union representatives for carrying out their functions in enterprises. The former rules granted protection (most

[38] Section 97 of the new Labour Code.

[39] However, the share of involuntary part-time workers in total employment between 2007 and 2012 increased among men and women. Society At A Glance 2014; OECD Social Indicators, The Crisis and Its Aftermath. *Op. Cit.*

[40] Already the 'Hungarian Work Plan' pointed out and presumed that the employability of some disadvantaged groups of the labour-market (e.g. young workers, women with small children, elderly workers etc.) could be improved by the extension of flexible and atypical forms of employment.

[41] In British law: worker. In German law: „arbeitnehmerähnliche Person" etc.

[42] Gyulavári, Tamás and Hős, Nikolett: The road to flexibility? Lessons from the new Hungarian Labour Code. *European Labour Law Journal*, Volume 3 (2012), No. , p. 260.

importantly against dismissal) to each and every trade union representatives, while the new rules restrict the number of protected officials (up to 2-6 officials, depending on the size of the workplace);
- Eliminates the right of veto against unlawful measures by the employer negatively affecting workers[43];
- Reduces the possibility for monitoring of working conditions;
- Terminates the legal possibility to demand pecuniary compensation for non-used exempted working time by union officials (which was an additional source of funding for trade unions);
- Terminates some information and consultation rights (and shifts them to works councils exclusively).
- Abolishes time-off for union activists for purposes of education.

It must be mentioned that he first proposal of the new Labour Code would have diminished and restricted the rights of trade unions even more radically, but the government signed a special "last minute" agreement with a few of the national trade union associations just before the adoption of the Act. As a consequence, the changes were finally not as radical as originally planned by the government (but the cut-backs in trade unions' rights are still considerable, especially in the interpretation of trade unions). According to some opinions, the changes might imply a drive towards further individualisation of labour relations.

As for the rights of works councils (WCs):

- WCs have become the sole partner of the employer as far as information and consultation is concerned (for example, in case of collective redundancies, if there is no WC, the employer does not have to comply with the consultation obligations of the EC-Directive).
- Task of monitoring of working conditions and compliance has been shifted to WCs from TUs as it is the responsibility of the works council to monitor the observance of the rules relating to employment.
- The new right to conclude normatively binding works agreements (equivalent to collective agreements) has been introduced (see below).

However, the rights for participation and co-determination of works councils is still not considerably broadened (for example, the only one co-determination right of Hungarian works councils relates to the appropriation of welfare funds and it is basically unchanged under the new Code).

As we have already mentioned, the new Code significantly extends the role of *collective agreements* for the advancement of a more flexible, more reflexive, more autonomous system of employment regulation. In the new system, collective agreements may differ from the general rules implied in the Code, also for the detriment of employees (in other word, this is the fully dispositive, absolute permissive character of the Code, as a main rule; the Act lists only the cases in which such a deviation is not allowed). As a consequence, there are less cogent and/or relatively dispositive rules in the Code. As such, the Code strengthens the parties' contractual freedom, reducing the regulatory role of the state.

As for the capability of a trade union to conclude a collective agreement, the legislator has removed the former rule which linked the representativity of trade unions to the result of the

[43] The reason for this being that this is an institution that was fundamentally based on the specific role of trade unions in the socialist economic and political system and that the regulation thereof by law is not reconcilable with the market economy; it unreasonably and dysfunctionally restricts the proprietary rights of employers coming under private law.

election of members of the works council. Under the new rules, trade unions shall be entitled to conclude a collective agreement if the number of its members reaches 10 % of the number of employees (this is often labelled as a relatively „soft" criteria).[44]

As we have already mentioned, the new Code introduces the new right of works councils to conclude normatively binding works agreements. The works council can now, under Section 268 of the Code, conclude agreements with the employer to regulate the terms and conditions of employment with the exception of wages and remuneration. As such, these agreements can take over the roles of collective agreements. These normatively binding works agreements (concluded by 'cooperative' WCs at company and plant level) offer the subsidiary possibility for works councils (and employers) to substitute for collective agreements under specific conditions. Such works agreements are valid only in cases where there is no collective agreement in force and there is no trade union authorised (with at least '10%' support) to enter into a collective agreement. In principle, this provision can be useful (especially in the SMEs-sector) as only a very modest number of industry collective agreements (with a wider scope) have been concluded and trade union density is low in Hungary. Under the above-mentioned conditions, all terms and conditions of employment may be regulated in these normatively binding works agreements and all possible derogations offered by the Code can be utilized (similarly to collective agreements). Only wage bargaining is excluded (which remains the exclusive competence of trade unions).

On the other hand, there are some theoretical and practical risks related to such normatively binding works agreements. According to some academics, this legal possibility may undermine the effectiveness and the very idea of collective bargaining, mainly because of the following reasons: the presumed loyalty of "cooperative" WCs; the impartial status of WCs; the weak bargaining capacity of WCs (e.g. lacking labour law protection of members[45]; lacking autonomous legal personality of the council as being part of the employers' organizational structure; excluded right for strike etc.) and lack of strong co-determination rights to meaningfully pressure employers. All in all, the danger of docile, "yellow" WCs and unbalanced derogations are at stake. Employers can be motivated to facilitate the creation of 'yellow' works councils in order to be able to profit from the flexible agreements concluded with these partner-like works councils. On the other hand, from a more optimistic perspective, such future agreements might serve as the first step (and the 'catalyst') of any collective arrangements in small and medium sized companies especially (previously without any structure of industrial relations). All in all, at this stage, it is very difficult to objectively foresee the possible balance or imbalance of the pessimistic worries and the optimistic hopes related to this new element of industrial relations.

As for strike-law, in December 2010, following the individual Member of Parliament motion, amendments to the law on the right to strike were adopted by the Hungarian Parliament, in just one week. As a result, striking against an employer carrying out an activity serving the basic interest of citizens is unlawful, unless the parties agree on the minimum service level and its conditions, or, if there is no agreement, the level should be defined by the court. This change in strike law has practically led to restrictions of strikes. .

It is generally perceived that the crisis has facilitated reorganization and integrative processes within the trade union movement. Something similar has happened in Hungary (however, it would be difficult to say that the merger, described below, is a response to the crisis). On December 6 2013 the founding congress of the Hungarian Trade Union Confederation

[44] Gyulavári, Tamás and Hős, Nikolett *Op. cit.*

[45] Only the chairman of the works council enjoys labour law protection (against termination of employment). See Section 260, Subsection (3)-(5) of the Labour Code.

(MSZSZ) took place in Budapest. Through the integration of three big national confederations – the Autonomous Trade Union Confederation (ASZSZ), the National Confederation of Hungarian Trade Unions (MSZOSZ) and the Forum for the Co-operation of Trade Unions (SZEF) – the largest interest representation organisation in Hungary has been created with 250000 active and 100000 pensioner members. The new confederation aims at more efficient representation of workers. Probably, such integration-aimed developments may help unions to grow up to their envisaged new character created by the new Labour Code: to become effective bargaining partners of employers in an even more autonomous and contractual system of labour law regulation.

6. Social Security law – some reforms

In the new Constitution (Fundamental Law)[46], the right to social security is degraded to the level of an abstract state objective. While according to the former Constitution, citizens had the right to social protection, in the new Fundamental Law the state only "strives to provide social security". While on the basis of the former Constitution the right to social services guaranteeing a minimum subsistence was enforceable in case of illness, old age, disability, orphanage or involuntarily unemployment, the new Fundamental Law eliminates the reference to the minimally required level of services. The article stating that the nature and extent of social measures may be made dependent on the individual's activities that are useful for the community denies the equal dignity principle.[47]

Until recently, Hungary had a relatively generous package of social protection benefits. Economic restrictions and budget cuts since 2007 have resulted in a cut in social protection benefits. According to the OECD, Hungary responded to the crisis by cutting real social spending by 17%.[48] Since 2010, the new conservative government has sharply cut unemployment and social benefits.[49] For example, the maximum possible duration (90 days) of the job search allowance ('álláskeresési járadék') is now shorter than the average time required for finding new employment.[50] The aim of the reform was twofold: firstly, budgetary saving, secondly, stimulation of employment. Furthermore, attending in public work is the basic condition if someone wants to receive social assistance (until 2010: 'on-call subsidy', from 2010: 'employment replacement subsidy'), otherwise there will be no entitlement provided for any benefit from state finances. Private pensions were nationalised at the beginning of 2011, and the assets of the pension funds, among others, were used to cover the revenue shortfall in 2011. Early retirement options in the general pension regime were eliminated.

These changes are especially remarkable if we take into account that there were only a few instances of assistance benefits being cut within OECD countries after 2008. Furthermore, during the crisis, public social spending in percent of GDP increased in all OECD countries

[46] The Parliament passed the new Basic Law of Hungary in April 2011.

[47] *Cf.* Eötvös Károly Policy Institute, the Hungarian Civil Liberties Union (HCLU) and the Hungarian Helsinki Committee (HHC): The New Constitution of Hungary, 14 April 2011.

[48] Society At A Glance 2014; OECD Social Indicators, The Crisis and Its Aftermath. http://budapestbeacon.com/public-policy/oecd-data-compares-post-crisis-hungary (Last visited: 02. 08. 2014.)

[49] Hárs, Ágnes: Labour market crisis: changes and responses, Tárki, 2013, Budapest. http://www.tarki.hu/en/news/2013/items/20130305_hars.pdf

[50] On 1st September 2011 and on 1st January 2012 the eligibility of the jobseekers' allowance was changed. First of all the two part of duration was ceased. From 1st September 2011 the duration of the benefit has consisted of one part. The length of duration decreased from 270 days to 90 days.

with the exception of Hungary.[51] Thus, Hungary tackled the crisis not so socially sensitively. Childcare provisions are exceptions. The current conservative government puts particular emphasis on the extension and family-friendly modification of various family-related benefits (social benefits, tax allowances etc.).

The new government introduced in 2010 a new, gigantic public works programme (National Public Work Scheme). It is fair to say that this programme is the central and overriding element of the government's employment policy. Social benefit was linked to compulsory public work, while various benefits and pension-type supports (early or disability pensions) have been abolished or severely curtailed, with former beneficiaries being channelled into the same programme. This large-scale public works programme is believed to stimulate labour market demand. Public work has, in fact, been the source of slightly rising employment recently. On the other hand, the programme is under critics. As said, the scheme has been developed at the expense of other active labour market measures. Furthermore, employing people in public works projects for a short time and for little money may help the statistics, but behind such a policy there are no real sustainability concerns. The public works programme is not closely linked to the real, competitive labour market, so it is questionable how can it support proper transition to the 'real' labour market.

In order to tackle the crisis and curb unemployment, the recommendations of the European Union advised Member States to adopt labour market incentives and improve the situation of disadvantaged labour market groups. In Hungary, a "job protection action plan" has introduced targeted reductions in social security contributions for groups weakly attached to the labour market (such as young entrants, women returning from maternity leave, untrained workers and the long-term unemployed).

The Hungarian government introduced exceptional taxes on the financial sector (and on the telecommunication and the retail industries).

The current government has an obvious preference for the 'upper-middle class' and introduced a flat tax rate in the expectation that it would be accompanied by economic growth.

7. Input from international and supranational authorities

The whole process of the adoption of the new Labour Code as well as the content of the amendments was fiercely opposed by the national trade unions. In a joint letter of 4 September 2011, the six Hungarian trade union confederations (ASZSZ, ÉSZT, LIGA, MSZOSZ, MOSZ and SZEF) requested ILO technical assistance to examine the proposed Labour Code amendments as regards their compatibility with Hungary's obligations under a number of ILO Conventions. A high-level mission composed of trade union leaders from the ITUC and the ETUC also visited the country at the end of August and the beginning of September 2011.

On 8 November 2011, the ILO delivered its Memorandum of Technical Comments on Hungary's draft Labour Code, criticising several provisions on both collective and individual rights which run counter to Hungary's obligations under various ILO Conventions (ILO 2011). The ILO criticised the draft for – among others - insufficient promotion of collective bargaining and peaceful industrial relations, for lack of an overarching non-discrimination

[51] Society At A Glance 2014; OECD Social Indicators, The Crisis and Its Aftermath. *Op. cit.*

clause, and for expanding the possibilities for employers to avoid liability for damages relating to workplace health and safety. The ILO's concerns were taken into account only to a limited extent.

As regards EU Labour Law, the official reasoning of the draft Labour Code contained a remarkable – and very clear-cut – formulation of the related policy-approach: The Code attempts to make good use of the opportunities afforded by European labour law directives and to implement as flexible regulations as possible adjusted to the needs of the local labour market. Thus, EU labour law is seen not as a minimum, but rather as a maximum, when it comes for protection. After the passing of the Labour Code, the EU has 'informally' pushed the Hungarian legislator to accomplish some smaller modifications in the adopted text (especially related to some working time rules[52], transfer of undertakings etc.). According to some experts, there are still some rules in the new Code which might be in contradiction with EU labour law directives (especially in the Chapter of working time).

*Beyond labour law, H*ungary has implemented several policy measures since mid-2010, which were greeted by strongly-worded protests from the European Commission and the European Central Bank.[53] Furthermore, the government had refused to communicate with the IMF after September 2010. After the election in April/May 2010 the new conservative government introduced several changes to "correct" the economic policy of the former socialist-liberal government, always explaining that firstly there is no crisis and there is no need to get money from the IMF and the EU.

[52] For example: the definition of ' 'Flexible working arrangement' , Section 96, Subsection (2) of the new Labour Code.

[53] EEAG (2012), *The EEAG Report on the European Economy*, "The Hungarian Crisis", CESifo, Munich 2012, p. 130.