THE CHANGING ROLE OF THE EMPLOYER IN THE LIGHT OF WORK-LIFE BALANCE

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Abstract: *The development of European labour law is unique in that its development and scope are closely linked to promoting competitiveness and the efficiency of the common market. Accordingly, following the establishment of the European Union, the rules of labour law have primarily served economic and competitiveness objectives (e.g., employment protection, organisation of working time, etc.).*

However, as integration deepened, European labour law also incorporated a number of principles primarily aimed at the social well-being of citizens. This has led EU law to move away from the narrow framework of labour law and consider the employment relationship as a matter of regulation as a life situation, with the creation of the Social Pillar of European Rights.

In this article, we examine how the Work-Life Balance Directive has placed the employer in a new role and what new obligations this new role entails.

Keywords: *work-life balance, duty of care, implied terms*

INTRODUCTION

I. THE EUROPEAN UNION'S LEGISLATION AND THE LABOUR LAW

On March 25, 1957, in Rome, the representatives of the Belgian Kingdom, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxemburg, and the Kingdom of the Netherlands signed the treaty establishing the European Economic Community.

It can be noted that the treaty's parties already state in the Introductory Provisions that the fundamental aim of their efforts is the continuous improvement of their citizens' living and working conditions. Accordingly, Article 2 of the Fundamental Principles explicitly states that the Community's task is to promote the harmonious development of economic activities, sustainable and balanced economic growth, greater stability and a more rapid rise in living standards, and closer relations between its Member States, by establishing a common market and by progressively approximating the economic policies of the Member States. Thus, according to point (i) of Article 3, Community activities shall include the establishment of a European Social Fund to improve employment opportunities for workers and contribute to raising their standard of living.

Article 48 of the Treaty of Rome explicitly sets the objective of ensuring the free movement of workers, including the abolition of all discrimination on the grounds of nationality, remuneration and other conditions of work and employment, which must cover the whole range of the employment relationship. Title 3 of the Treaty deals with social policy. Article 117 explicitly emphasises the need to improve employees' living and working conditions of employees in order to make it possible to reconcile them while maintaining

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constant development. Article 118 contains an exhaustive list of areas where, under the fundamental principles, the Commission is responsible for promoting close cooperation between Member States on social policy matters.

They established the European Social Fund, as foreseen in the Introductory Provisions and provided in Article 119 for provisions to be taken to ensure equal pay for men and women for equal work. Furthermore, they also define remuneration. It is clear that among the social provisions, the European Economic Community in 1957 explicitly sought to establish a welfare system for a wide range of employees. The before-mentioned contractual agreements and the work initiated based on them following the signing of the Treaty have now created a system that is rich in detail and broader in its scope for employees to assert their interests, and which does not seek to lose sight of the primary objective, which is also set out in the Treaty of Rome, of creating a single market in which everyone can enter and offer their goods and services free of restrictions, based on the principle of free competition. It is clear, however, that value creation and the provision of services still require labour and human resources. For this human resource to achieve the highest possible living standards for EU citizens, there needs to be a high level of cooperation and coordination at the EU level, now covering 27 Member States.

While there is no doubt that the legislation in the field of labour law over the last decades is remarkable and has had a positive impact on the lives of all citizens, it is remarkable that the EU's legislative competence has not developed in the area of classical labour law. In recent years, however, the EU has been legislating in a number of other areas under the flagwords of fair working conditions, equal treatment and transparency. However, while these rules undoubtedly have an impact on the employer-employee relationship, they do not directly affect the dynamics of individual employment contracts. Still, in our view, the very appearance of these rules directly affects the framework within which the employment contract is performed.

The starting point of the present study is that the employment contract as a contract does not necessarily contain all the rights and obligations that the parties are obliged to follow in the establishment and maintenance of the employment relationship, but rather a set of rules that guide the parties in the absence of a specific written legal norm.[1]

In our view, labour law relations cannot be considered as a mere set of contract rules but are permeated by the overarching principle of mutual trust, whereby the parties implicitly commit themselves to each other in a number of areas not covered by the text of the contract itself.[2] Carbelli's work shows that the courts often apply these tacit obligations in cases where no specific rule is found. All these approaches are also to be found in EU legislation and case law since the development of the law is essentially moving in a direction which is based primarily on a higher-level framework of relations between the employee and the employer.[3]

[1] KUN, A. A méltányos mérlegelés elve a magyar munkajogban – méltánytalanul mellőzve. [The principle of fair consideration in Hungarian labor law – unfairly ignored]. *Magyar Jog*. 2017, No. 12, p. 735.

[2] CARBELLI, D. The Implied Duty of Mutual Trust and Confidence: An Emerging Overarching Principle? *Industrial Law Journal*. 2005, Vol. 34, No. 4, p. 7.

[3] BUSBY, N. *A Right to Care? Unpaid Care Work in European Employment Work*. Oxford: Oxford University Press, 2011, p. 7.

In light of those mentioned above, the employment contract can in no way be regarded as a classic (complete) contract in the sense that, because of the specific nature of the contract (duration, the importance of external changes, etc.), the system of rights and obligations is necessarily incomplete. It follows directly from this, however, that the content of the legal relationship is of paramount importance between the lines so that the conduct of the parties, although not describable in a specific matrix of behaviour, must be examined in the context of clear expectations. This expectation, also known in the legal literature as implied terms,[4] essentially means that the rights and obligations of the parties go beyond the classic legislative expectations and lead the parties to go beyond the legal positions set out in the contract, in many cases going beyond them, and to take all further steps to ensure that the legal relationship is maintained and that its purpose is fulfilled.[5]

In this paper, we examine the extent to which the development of European Union law has affected the regulation of individual employment relationships. We are not interested in the specific legal changes but rather in the process by which the approach and vision of labour law regulation have changed as a result of the changes in EU rules.

II. TRENDS IN THE DEVELOPMENT OF LABOUR LAW IN THE EUROPEAN UNION

Today, the EU's complex body of legislation covers various matters affecting employers and employees. It seeks to shape its legislative products to meet the demands of economic life in such a way that it achieves the fundamental objectives mentioned before. Naturally, EU legislation does not necessarily imply uniform rules throughout the EU, as the directives - for which there is an obligation to implement - offer or may offer several alternatives to individual Member States regarding how to transpose them into their national law and harmonise national law with EU law.

The directions are clear, and in all circumstances, the only objective is to improve the well-being of citizens and employees. From 1957 onwards, EU legislation has become more and more widespread, giving the Court of Justice of the EU an increasing opportunity to interpret the provisions governing the rights of EU employees and to give them a guideline of principle not only in a specific case and for the specific Member State, but for all EU Member States and all citizens and employees. The limits of this presentation obviously do not allow exhaustiveness. Still, we will highlight the nodes of the EU legislation and case law that are clearly subjective and based on the authors' choice of judgment. This process is reflected not only in the lower-level legislation but also reflected in the amendments to the founding treaties. Today, the Treaty on the Functioning of the European Union provides a much broader form of legislation regarding social security than

[4] KISS, G. *A foglalkoztatás rugalmassága* és *a munkavállalói jogállás védelme*. Budapest: Wolters Kluwer Hungary, 2020, p. 108.
[5] Ibid., p. 241

the Treaty of Rome. New pillars emerged in the EU legislation, including one explicitly aimed at ensuring employees' rights. The EU also allows other international treaties to influence and shape EU social policy.

Let's examine the most recent legislative acts that can be linked to the European Union, which have a fundamental impact on the world of employment. We must highlight the Platform Work Directive and the agreement confirmed by the Employment and Social Affairs Ministers of the Member States on the Platform Work Directive, which is an interim agreement between the presidency of the Council and the negotiators of the European Parliament reached on 08th of February 2024, which is considered a legal act. The Employment and Social Affairs Ministers of the Member States confirmed this Directive. The legal classification of platform work is one of the most complex issues in labour law. This form of work has become a defining phenomenon in the labour market; however, there is no such stable regulation or practice available in this regard.[6]

In addition, the Directive of the Parliament and the Council on the adaptation of the rules on non-contractual liability to artificial intelligence and the Directive on liability in the field of artificial intelligence should also be highlighted since it cannot be denied that artificial intelligence is gaining ground in the world of employment, and this raises questions which need to be answered not only by the legislation of the Member States but also by legislation at EU level for the Union as a whole.

Since its foundation, the European Union has faced challenges in the world of employment that go far beyond the national frameworks. Ensuring that companies employing workers have as many market opportunities as possible, in addition to social aspects, is clearly not negligible.

In the decades between 1957 and today, the law of the European Union is constantly changing and evolving. In the ever-expanding Union with more members, each candidate country is trying to align its national law with EU law on all issues. There should also be harmonisation[7] of workers' rights and the rules protecting the employer in the candidate country – future Member State – until the accession to the European Union. This was also part of the admission procedure for the countries of Central and Eastern Europe, as most of the countries of Central and Eastern Europe, including Hungary, were first admitted as associate members, and the treaty guaranteeing associate membership set out the actions that the candidate

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[6] NÁDAS, G., ZACCARIA, M. L. Munkaviszony-e a platform munkavégzés? A Kúria első platform munka-ítéletének kritikai elemzése. [Is platform work an employment relationship? A critical analysis of the Curia's first platform work ruling]. *Jogtudományi Közlöny.* 2024, No. 6, pp. 283–294.

[7] The European Agreement establishing an association between the Republic of Hungary and the European Communities and their Member States, signed in Brussels on 16. December 1991. Art. 68.The approximation of legislation covers in particular the following areas: customs law, company law, banking law, company accounting and taxation, intellectual property law, protection of workers at work, financial services, competition rules, protection of the life and health of humans, animals and plants, food law, consumer protection including product liability, indirect taxation, technical rules and standards, transport and environment.

countries had to take before they could become members.[8] This also significantly impacted labour law legislation, as national rules had to be prepared for the situation when a country becomes a full member of the EU.

III. THE IMPORTANCE OF WORK-LIFE BALANCE IN RECENT EU LEGISLATION

The work-life balance, especially today, is not only about the need to reconcile work and family life but also about data protection or even lifelong learning, development of workers, etc. At the same time, it would be impossible to strike a balance between work and family life without taking into account the specific features of labour law that are linked to the status of parent or carer, such as leave or flexible working arrangements, since it is essentially this type of instrument that (also) brings the issue into the realm of labour law. To put it another way, without strengthening labour and social law measures to support parents, and especially women's parents, on the one hand, the work-life balance would not be achieved, and, on the other, women would suffer serious disadvantages in the labour market.

Of course, these disadvantages do exist at present and are, to some extent, at the forefront of legal regulation–we would point to the principle of equal pay for equal work as the most tangible example–but we cannot, nevertheless, talk of real equal opportunities, of real equality of treatment on the labour market.

One of the main catalysts for work-life balance legislation has been the European Pillar of Social Rights (Pillar),[9] Article 9 of which explicitly addresses work-life balance on the basis that it is a fundamental requirement of EU social policy to create working conditions for parents and carers that allow this balance to be achieved without disadvantaging workers in either area. This general expectation is fleshed out in the recent development of the Directive. Still, attention should also be drawn to the other articles of the Pillar, which protect workers' fundamental rights of a social nature (see, typically, the fundamental right to decent working conditions).

This article does not go into the detailed provisions of the Directive, which have already had to be implemented by the Member States. For the discussion, it is rather pointed out that, even when the document was being drafted, the lines and aspirations

[8] At its meeting on 11 September 1998, the Government adopted the legal harmonisation programme for the period up to 31 January 2001 (Government Decision 2212/1998 (IX.30.), the basic purpose and task of which is to schedule the legal harmonisation tasks necessary for accession and undertaken in the screening negotiations. In addition to the provisions of the Europe Agreement, the White Paper and the Single Legislative Harmonisation Programme (Government Decree 2282/1996 (X.13.)), the programme now aims to introduce the whole body of Community law in the country and to set a timetable for its implementation. The new alignment programme is closely in line with the commitments and positions taken in the accession negotiations and with the national programme for the adoption of the acquis. These documents have shaped the content of the new alignment programme in the preparation and scheduling of its tasks. No J/1040. report on the progress in the implementation of the Association Agreement and on the implementation of the government action plan for its further implementation, and more generally on the state of Hungary's integration into the European Union Rapporteur: Dr János Martonyi Minister of Foreign Affairs.

[9] In: *European Commission* [online]. [2025-05-05]. Available at: <https://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

to be promoted were clear, moving from a higher guarantee of equal opportunities on the basis of gender to some general labour law issues, and that, given the economic and social context, this Directive was one of the first achievements under the Pillar to actually break new ground while maintaining the old rights and principles. In this context, the fundamental right to freedom for mothers and fathers, or even the fundamental right to flexible working conditions, is just as important as the premise of equal pay, which has traditionally been central.

The directive was drawn up primarily for demographic and economic reasons and, on the narrow legal side, primarily to strengthen the legal status of workers with children (with families). In particular, the directive is intended to encourage fathers to take paternity leave[10] and to motivate Member States in general to maintain a system of labour law regulation that allows for these rights.

As a background to the economic rationale, we would point out that the EU labour market is also, wittingly or unwittingly, a highly competitive area for Member States, as a favourable legal environment can attract investment from employers, which can lead to economic recovery, but this is primarily a national drive to serve the widest possible range of employer interests, which are the primary concern of legislators. This means that the ideal labour market regulation should stimulate the economy while at the same time improving the interests of employees. In the present case, the legislator is seeking to increase employment by making labour more easily and flexibly available as a resource, which serves the dual purpose of helping employers overcome the current general shortage of human resources and of helping workers maintain their standard of living during what is inevitably a period of decline, by ensuring a basic minimum level of benefits[11] and continuity of progress.[12]

On the basis of a similar principle, the legislator has also taken steps to involve fathers as much as possible in the childbearing process, which obviously gives an emotional charge to both parents and children. At the same time, we notice that the father's presence around the child significantly reduces the mother's time away from work since if the tasks are shared between the parents, the mother can use her freed-up (uncommitted) energies to work.

The Directive is, therefore, primarily intended to strengthen the legal status of workers, in certain respects, in such a way and to such an extent that they do not suffer any disadvantages in terms of their private and family life as a result of having a child, in addition to their work. Strengthening the position of women workers in the labour market is, therefore, a specific need. Still, basic requirements such as the establishment of an appropriate system of legal remedies or protection against possible retaliation by employers naturally apply to both sexes. The Directive also aims to encourage Member States and the social partners to play an active role in reconciling work and family life, as provided for in the Directive, by setting more favourable rules for workers and by giving the social partners a prominent role.

[10] Article 4 of the Directive.
[11] Section (30) of the Preamble of the Directive.
[12] Section (38) of the Preamble of the Directive.

IV. THE ROLE OF EMPLOYERS IN OTHER LEGAL SOURCES

The European Minimum Wage Directive, which took a long time to complete, fits well with the above-described process. In this context, of course, we cannot ignore the debates that preceded it or the voices that challenged the economic justification of the minimum wage itself. However, the view that the minimum wage has not only an economical but also a social function has emerged in the decision-making bodies of the European Union, and Article 153 of the Treaty on the Functioning of the European Union provides the legal basis for the European Parliament and the Council to adopt a directive to this content.

Of course, in the vast majority of cases, EU directives are the result of political compromise, which is very evident in the minimum wage directive. The directive's text does not meet many people's initial expectations. Still, it is a very important step in improving the living and working conditions of employees in a proper and uniform way across the EU Member States.

Legislative intentions to achieve a work-life balance are a very important direction, and they can now be seen in the form of directives.

Directive 2022/2041 of the European Parliament and the Council on the adequate minimum wages in the European Union explicitly refers to all the principles and previous legislation to which we have referred above. It also refers to the International Labour Organisation's Convention No. 131 of 1970,[13] which refers explicitly to the procedure for fixing minimum wages. The directive clearly intends to take further steps to improve living and working conditions in the EU. In fact, workers' organisations generally agreed with the objectives of the initiative and its possible content as defined in the second phase of the consultation. They stressed the need to respect national traditions and the autonomy of the social partners.[14]

There is another important element to be highlighted from the preamble of the Directive, which states that, in the context of the reduction in collective bargaining coverage, it is essential that Member States promote collective bargaining agreements, facilitate the right to collective bargaining agreements on wage agreements and thus improve the wage-setting provided for in collective agreements in order to promote the protection of workers by minimum wages.

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[13] Minimum Wage Fixing Convention, 1970 (No. 131) *Article 4.*
1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.
2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.
3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of:
(a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
(b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

[14] TAKÁCS, D., VARGA, D. Gondolatok az Európai Parlament és a Tanács megfelelő minimálbérekre vonatkozó irányelvjavaslatának margójára. [Thoughts on the margin of the proposal for a directive of the European Parliament and the Council on adequate minimum wages]. *Munkajog.* 2021, No. 1, pp. 35–42.

The conclusion mentioned above is also quite relevant and significant since recent research has confirmed that the presence of trade unions is declining, thus reducing the number of employers and employees covered by collective agreements. However, in many respects, the minimum wage directive has disappointed those who might have had exaggerated expectations.

The aforementioned statement is also significant because the Directive itself seeks to encourage the social partners to bargain collectively. Still, it also creates the possibility, as a subsidiary rule, to define, after consultation with the social partners, the framework conditions for collective bargaining on the basis of legislation or agreement with the partners, thus ensuring the establishment of minimum wage agreements. In our view, the Directive clearly seeks to meet several objectives, one of which is clearly to increase collective bargaining coverage, and another is clearly to ensure that the living conditions of those who work in the EU are constantly improved. Of course, the Minimum Wage Directive itself raises many questions, some of which can, of course, be answered from previous legislative provisions and the judicial rulings interpreting it so that the concept of wages is only a reference to the principle of equal pay for work of equal value, which we believe will be a major issue to be examined once the Minimum Wage Directive is implemented. The article by the authors Dóra Takács and Dóra Varga accurately points out the underlying objectives of the directive beyond the above.

Of course, in addition to legislation, EU labour law is fundamentally influenced by the judgments of the Court of Justice of the European Union, which interpret, and in many cases supplement, and fill in any gaps in the application of labour law.

The law - law-developing role of the Court of Justice of the European Union is unquestionable as it takes a position on important issues which have a far-reaching impact not only on the legislation of the Union but also on the legislation and case law of the Member States. One of the first decisions on labour law was De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community.[15] At the same time, the most recent decisions include judgment C-184/22.[16] Over the past de-

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[15] Case 17/57.

[16] Clause 4(1) and (2) of the Framework Agreement on part-time work concluded on 6 June 1997 and annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

1. Must be interpreted as meaning that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes 'less favourable' treatment of part-time workers, within the meaning of Clause 4(1), which is not capable of being justified by the pursuit, first, of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and, secondly, of the objective of preventing full-time workers from being treated less favourably than part-time workers.

2. Article 157 TFEU and Article 2(1)(b) and the first paragraph of Article 4 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning, first, that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes indirect discrimination on grounds of sex if it is established that that legislation disadvantages a significantly higher proportion of women than men without it also being necessary for the group of workers which is not placed at a disadvantage by that legislation, namely full-time workers, to be

cades, case law has had an undeniable impact on labour law thinking. It is clear that the Union's legislation is primarily aimed at elaborating principles, leaving sufficient room for manoeuvre for national legislation. Any gaps in regulation are filled by case law.

The interpretative and law- law-developing role of the judgments has far-reaching consequences, as the decision in a dispute in one Member State has an impact on the whole European Union; the parties to the case refer to the judgments and analyse the arguments in the jurisprudential discourse, so we can say that the judgments of the Court of Justice of the European Union in the field of labour law are of great importance. Just consider the judgments that have interpreted the concept of pay for the first time, examined the requirement of equal treatment, or guided the issue of working time, such as the Jaeger case, the SIMAP case, the Tyco case, or the recent Hungarian decision on weekly and daily rest periods.

CONCLUSION

From the above written, it can be seen that recent legislation and the court practice based on it have not only had a direct impact on certain elements of the employment relationship but have also developed and reinforced an idealised conception of the employer's role, some elements of which go well beyond specific contractual obligations. The resulting employer's duty of care is a highly complex, sometimes economically restrained and rational set of obligations which permeates the whole of the employment relationship. Employer care could be understood as a set of employer obligations. Still, the interrelationships between the rules affecting the legal relationship and the expectations that emerge from court judgments suggest that, overall, 'good care' is more than simply the strict observance of obligations. From the employer's side, it is desirable to create a uniformly protective and supportive work environment (both physical and psychological) that does not merely formally comply with legal requirements but promotes (or at least enables) the fulfilment and development of employees at work.

Legal developments in this case, therefore, although in many cases it is still difficult to deduce this from the individual national codes, EU documents and case law (not least the sectoral labour shortages that are likely to arise as a result of the changing labour market) also point in the direction of this being in the near future not only a matter of principle but also of economic interest for employers.

made up of a considerably higher number of men than women and, secondly, that such discrimination cannot be justified by the pursuit of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and of the objective of preventing full-time workers from being treated less favourably than part-time workers.