

EFFECTS OF THE NEW HUNGARIAN LABOUR CODE: THE MOST FLEXIBLE LABOUR MARKET IN THE WORLD?¹

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Abstract: *The new Hungarian Labour Code came into effect on the 1st of July 2012. The main objective of the reform is flexibilisation of labour law in order to increase the employment rate by promoting competitiveness of employers. This new orientation of labour law policy has been widely criticised, since the immediate effect of the new Act is the reduction of employee protection. Firstly, the paper describes the main objectives and background of the labour law reform. Secondly, we elucidate the main points of the reform, with a special emphasis on the situation of trade unions. The main question is, what effects may be expected as a consequence of flexibilised employment protection and diminished trade union rights.*

Keywords: *Hungarian labour law reform 2012, new Labour Code, flexibility, collective agreements, unfair dismissal, trade union rights*

1. BACKGROUND AND OBJECTIVES OF THE REFORM: THE MOST FLEXIBLE LABOUR MARKET IN THE WORLD?

1.1 Background of the 2012 reform

After the Second World War, Hungarian labour law, as all the other socialist labour laws in the region, was characterised by the existence of a Labour Code. During the socialist period (1948–1990) two Labour Codes were passed (1951 and 1967)² and this legal structure was maintained by passing the 1992 Labour Code.³ The 1992 Labour Code laid down minimum standards and more favourable rules might have been regulated by collective agreements. The 1992 Labour Code was criticized by legal practitioners, academics and politicians in relation to the following three problems:

a) The social and economic background of the Labour Code has been dramatically changed since 1990. The large state companies had disappeared and the dominant role of the former socialist industry has been taken by the third sector with micro and small businesses. The provisions of the 1992 Labour Code, tailored for large companies, cannot be applied properly in the new economic situation.

b) The original text of the 1992 Labour Code was amended too many (about 50) times, thus, the original meaning of many rules has been lost, what resulted in unpredictable court decisions. Consequently simplification and clarification of the existing ‘patchwork’ regulation became a general desire, developing the new rules on the basis of court case law.

c) The crucial problem of the Hungarian labour market is the extremely low employment rate, and the main reason is the very high cost of employment. In the opinion of em-

¹ The elaboration of the article was supported by the Friedrich Ebert Stiftung Budapest Office (www.fesbp.hu).

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² Statutory Rule 7 of 1951 on the Labour Code and Act 2 of 1967 on the Labour Code.

³ Act 22 of 1992 on the Labour Code.

ployers' organizations and several labour law practitioners, this cost shall primarily be cut by flexibilisation of employment law. Accordingly, they argued, that diminishing the rights of employees and trade unions would considerably increase the employment level. Evidently, this assessment was refused by trade unions and several academics.

1.2 Objectives and reality

Since the government fully agreed with the statement on flexibilization of labour law (point c. above), thus it became the central pillar and also the main 'battlefield' of the 2012 labour law reform. Flexibilisation was based on the legal policy argument of approximating labour law to civil (private) law. The simplification of legislation (point b. above) was handled as a secondary issue and the critic on the changing social, economic background (point a. above) was simply "lost in translation".⁴ Thus, the main question concerning the 2012 labour law reform is, whether rigidity of the Labour Code has been earlier the main obstacle of increasing employers' competitiveness and the number of employees in the Hungarian labour market.

The employment rate was 55,4 % in 2010, constantly the second lowest in the EU after Malta (EU average 64,6 %) and it was very far from the targets of the Europe 2020 Strategy.⁵ After 2010 the employment rate increased, however, almost exclusively in the form of public work programs.⁶ If we look at only the number of employees in the open labour market, excluding the number of civil servants, Hungarians working abroad and public workers, then there has not been considerable increase since July 2012.⁷ Evidently, it is hard to isolate the impact of the new Labour Code on employment growth, as it is a complex issue influenced by several policies beyond labour law, such as economic trends, taxation, active labour market measures etc.

Consequently, the main objective of the reform is flexibilisation of employment protection, in order to increase the employment rate by promoting competitiveness of employers. This strategy is in contrast with studies, which show that the Hungarian Labour Code has been quite flexible in an international comparison in the last two decades.⁸ In spite of this analysis, the government declared, that the Hungarian labour market shall be "the most flexible in the world"⁹, which will help to create one million new jobs in ten years (2010–2020).¹⁰

The flexibilisation strategy of the government identified the following areas, where the provisions of the 1992 Labour Code shall be fundamentally changed: regulatory role of collective agreements, termination of employment, working time, liability of employers for damages and trade union rights. It is the crucial question concerning the success of this governmental policy, whether these new flexible rules will generate one million new jobs.

⁴ There are only a few minor regulatory changes treating the problem of small enterprises.

⁵ Hungarian Work Plan, p. 9.

⁶ 57,2% in 2012 (<http://www.ksh.hu/docs/hun/xftp/gyor/fog/fog21206.pdf>) and 60% in January 2014.

⁷ www.ksh.hu/docs/hun/xftp/gyor/fog/fog21401.pdf.

⁸ CAZES, S., NESPOROVA, A. *Flexicurity: a relevant approach in central and Eastern Europe*. ILO, Geneva, 2007, p. 147; WALLACE, C. *Work Flexibility in Eight European Countries: A Cross-national Comparison*. *Czech Sociological Review*. 2003, Vol. 39, No. 6.

⁹ The Prime Minister's speech: <http://index.hu/belfold/2012/04/23/>.

¹⁰ Government Program 2010 (Nemzeti Megújulás Programja), p. 18. (www.kormany.hu).

In our opinion the new Labour Code may be a successful element in regional competition for foreign investments, since large, predominantly multinational companies may profit the most from these flexible employment provisions. But the small and micro enterprises hardly apply the Labour Code in practice, as the enforcement of the Labour Code is in general problematic in this part of the economy.¹¹ Thus weaker employment protection may contribute to economic growth but hardly generates mass employment.

The main critic of the new Labour Code is that the new rules degraded the protection of employees. Approximately half of the former labour law rules were fully or fundamentally amended, and the majority (circa 4 out of 5) of the modified provisions are disadvantageous for employees. Obviously, it would be impossible to give a comprehensive analysis of the new Labour Code in this article, thus the next chapter will briefly present some conceptual changes.

2. MAIN ELEMENTS OF THE REFORM: VARIED SOURCES OF FLEXIBILITY

The most important conceptual changes as well as withdrawals from former employee rights are as follows:

- enhanced role of collective agreements;
- decentralization of collective bargaining;
- collective agreement concluded by a Works Council;
- flexible regulation of working time and wage supplements;
- downgraded protection against unfair dismissal;
- limited liability of employers for damages;
- flexible regulation and new forms of atypical employment;
- reduced trade union rights.

2.1 Enhanced role of collective agreements: in melius and in peius deviation from the Labour Code

The most fundamental change is the increased role of collective agreements in the regulation of employment relationships. The 1992 Labour Code laid down minimum standards, and altering rules could be regulated by a collective agreement, if it was more favorable to employees (in melius deviation).¹² Exceptionally, amendments of the 1992 Labour Code introduced a few dispositive rules on working time after 2001, from which the parties could derogate to the detriment of the employees as well (in peius deviation).

Thus employers were simply not interested in concluding collective agreements, as it would have increased their costs without real offset. Certainly, there are further reasons behind the traditionally low number of collective agreements, such as the lack of collective bargaining tradition, weakness of trade unions, dominance of small and medium sized workplaces etc.

¹¹ LAKY, T. *Az atipikus foglalkozásokról*. (<http://people.mokk.bme.hu/~kornai/laky/Cikk/atipikus.pdf>), p. 14.

¹² Article 13 of the 1992 Labour Code.

According to data from 2009, only 33,9 % (901 500 persons) of all employees (2 656 000 people) were covered by any kind of collective agreement (workplace, sector etc.). In other words, approximately 2/3 of the Hungarian employees are not covered by any collective agreement. This rate is very low compared to the EU bargaining coverage rate of 66 %, thus, in contrast to the Hungarian figures two-thirds of all EU employees are covered by a collective agreement.¹³ Although the scope of collective agreements may be extended to an entire sector of the economy as well, in spite of it only 8,6 % of Hungarian employees were covered in 2009¹⁴ by such sector level agreements.¹⁵

Moreover, the substance of collective agreements has traditionally been rather inadequate and poor. Most of the collective agreements just repeat the rules of the Labour Code or include meaningless conditions.¹⁶ Therefore, the practice shows double unfavorable pictures. On the one hand, the number of collective agreements is very low, on the other hand, the content of existing agreements is also far from desirable.

The above described situation has not been changed by the detailed regulation of sector level collective bargaining in the separate Act on Sectoral Social Dialogue Committees in 2009.¹⁷ This Act introduced the possibility, that sector level collective agreements may be concluded in a Sectoral Social Dialogue Committee. However, experience showed the failure of this attempt, since these Sectoral Social Dialogue Committees has managed to conclude only a few such agreements.¹⁸ This deficiency may be partly explained by the fact, that employers' organizations represented in the above mentioned committees employ only a small proportion of employees, therefore it would be senseless to conclude a sector level collective agreement in order to establish uniform working conditions in the entire sector. Besides, many employers' organizations were influenced by the economic crisis to emphasize the difficulties in long-term planning, what would be an inevitable condition of concluding such an agreement. Thus, the Sectoral Social Dialogue Committees gave an adequate institutional framework for sectoral level social dialogue, in spite of that it could not change the motivation of the parties and the low interest in concluding higher level collective agreements.¹⁹

The new Labour Code introduced radical changes in the relationship between the statute and collective agreements: collective agreements may derogate from most of the rules on the employment relationship and on collective rights to the detriment of employees as well.²⁰ The new soft representativity criteria of trade unions may also foster collective

¹³ Industrial Relations in Europe 2010. European Commission, 2011, p. 36.

¹⁴ Unfortunately there is no more recent data on collective agreements.

¹⁵ http://tudasbazis.org.hu/index.php?option=com_content&view=article&id=198&Itemid=178.

¹⁶ NACSA, B., NEUMANN, L. A kollektív szerződés ereje, a szabályozás hatékonysága. In: FSZH Társadalmi Párbeszéd Központ: *Szociális párbeszéd új keretek között*. Budapest, 2009, p. 40; FODOR, T. G., NACSA, B., NEUMANN, L. *Egy és több munkáltatóra kiterjedő hatályú kollektív szerződések összehasonlító elemzése. Országos összegző tanulmány*. Kende Ügyvédi Iroda, Budapest, 2008, pp. 17-19; UNGI, N. a koll. Szerződések elemzésének tapasztalatai I-II., rész. *Munkaügyi Szemle*, 2007. január-február.

¹⁷ Act 74 of 2009 on sectoral social dialogue committees and certain issues on medium level social dialogue.

¹⁸ NACSA, B. *Az Ágazati Párbeszéd Bizottságok működésének jogi-munkajogi elemzése*. Budapest: Kutatási Zárótanulmány, 2010, p. 36.

¹⁹ ARATÓ, K. *A középszintű érdekegyeztetés változásai Magyarországon a PHARE projektől napjainkig, illetve az Ágazati Párbeszéd Bizottságok kapcsolatai a makroszintű érdekegyeztetés intézményeivel. Kutatási zárótanulmány*. Civil Európa Egyesület, Budapest, 2010, pp. 57-58, p. 64.

²⁰ Article 277 of the 2012 Labour Code.

bargaining: a trade union shall be entitled to conclude a collective agreement if its membership reaches 10% of all workers employed by the employer.²¹

These changes may promote collective bargaining at workplace level and collective autonomy will play a more significant role in employment regulation. However it is rather questionable, that the players on the two sides of industry (employers as well as trade unions) are well prepared for the collective bargaining process. At the same time, collective bargaining will remain at workplace level, since the conclusion of sector level collective agreements is not facilitated by the new legal and economic framework either, and the detailed rules are still missing from the Labour Code. Although there is not any data on these developments, but the social partners have not really reported remarkable developments regarding the number and contents of collective agreements.²²

2.2 Decentralization of collective bargaining: a harmful step

As an exception to the lack of special provisions on sector level collective agreements, the Labour Code regulates the relationship between higher (sector, subsector etc.) and lower (workplace) level collective agreements. According to the 1992 Labour Code, a collective agreement concluded at the workplace level may depart from one with a broader scope (sector, subsector) insofar as it specifies more favorable regulations for employees.²³

Although the new Labour Code retained this principle, however, added an important exception, giving floor to decentralization of collective bargaining. Namely, a collective agreement of limited effect (concluded at the employer) may derogate from one with a broader scope (concluded at sector or subsector level) insofar as it contains more favorable regulations for the employees, unless otherwise provided in the higher level collective agreement.²⁴ Therefore, the higher (sector, subsector) level collective agreement may contain a provision allowing the employer level collective agreement to derogate from its provision to the detriment of employees. This new possibility will weaken the capability of higher level collective agreements to standardize working conditions in an entire sector, thus it is a harmful legislative move, even if this opportunity will not be exploited widely.

2.3 Collective agreement concluded by a Works Council: the absolute dogmatic failure

The real bad news is that the new Labour Code allows works council agreements, concluded by the Works Council and the employer, to take over the role of the collective agreement. Before the 2012 reform Works Council agreements had a very different nature, since only “issues pertaining to the privileges of a Works Council and its relations with the employer” shall be set forth in such an agreement.²⁵

²¹ Article 276 of the 2012 Labour Code.

²² Conclusions of the Round-table discussion of Hungarian social partners at the Conference (“The new Labour Code in the light of international obligations”, www.pazmanymunkajog.com) organized by the Labour Law Department of Pázmány Péter Catholic University and Freidrich Ebert Stiftung (Budapest, 19 November 2013).

²³ Article 41 of the 1992 Labour Code.

²⁴ Article 277 of the 2012 Labour Code.

²⁵ Article 64/A of the 1992 Labour Code, introduced by an amendment of the original text in 1995.

According to the new Labour Code, the primary role of works council agreements is still arrangement of the relationship between the Works Council and the employer. However, works council agreements may contain provisions to govern rights and obligations arising in connection with employment relationships (normative part of the collective agreement). There is only one exception, namely works council agreements must not derogate from the provisions on wages.²⁶ Such works council (pseudo collective) agreements may be concluded on condition that the employer is not covered by the collective agreement it has concluded, and there is no trade union at the employer with entitlement to conclude a collective agreement.²⁷

The number of collective agreements is still very low, so the clear aim of this measure is to promote the conclusion of “almost” collective agreements in medium sized companies. A Works Council shall be elected if the average number of employees at the employer or at the employer’s independent establishment or division is higher than fifty.²⁸ Usually there is no trade union at employer level, as employee organizations are concentrated in large companies, particularly in state-owned (eg. Hungarian Railways and other public service companies) and multinational firms (eg. Tesco, Audi). Consequently, all the other firms have not really had a tradition, practice or even interest in collective bargaining. This situation may change a bit, as these medium sized employers will be motivated to conclude a works council agreement in order to profit from the flexibility of working time, wages etc. provision by way of derogation.

Although, the above described legislative objective, the promotion of collective bargaining in a wider range of medium sized companies, may be acknowledged, at the same time this legal solution raises serious dogmatic problems and doubts. Above all, the legal nature of a Works Council, as a labour law institution, must be the starting point: Works Councils are designed to foster “cooperation between employers and workers, and taking part in the employers’ decisions”.²⁹ This idea of participation seriously contradicts with the attributes of collective bargaining.

Furthermore, the Works Council must remain unbiased in relation to a strike organized against the employer, and they may not organize, support or obstruct strikes.³⁰ The lack of effective collective actions weakens the bargaining position of Works Councils.³¹ The labour law protection of the members of Works Councils is also missing, since only the chair of the Works Council enjoys protection against termination of employment.³²

Moreover, there is a danger, that certain employers may urge the election of “friendly” works councils in order to create a partner for concluding a works council agreement derogating from the Labour Code in the employer’s interest. First and last, the works council agreement, substituting a collective agreement, is a dogmatic failure and entails serious

²⁶ This exception is also a dogmatic failure, since higher wages are usually the compensation for several flexible provisions in the collective agreement.

²⁷ Article 268 of the 2012 Labour Code.

²⁸ Article 236 of the 2012 Labour Code.

²⁹ Article 235 and 262 of the 2012 Labour Code.

³⁰ The mandate of Works Council members participating in a strike shall be suspended for the duration of the strike (Article 266 of the new Labour Code).

³¹ GYULAVÁRI, T. (ed.). *Munkajog*. Budapest: ELTE Eötvös Kiadó, 2012, p. 53.

³² Article 260 (3)-(5) of the new Labour Code.

risks, however, it is hard to assess the prospective harm of this legal solution. Unfortunately there is no data on the number of such agreements, but in our opinion their real number is negligible. Thus this possibility should be deleted from the Labour Code.

2.4 Extremely flexible regulation of working time and wage supplements

The new chapters on working time and wages provide many obvious examples, how at first sight minor amendments may substantially affect working conditions. For instance the former compulsory wage supplement for afternoon shift work was deleted from the Labour Code, which may further reduce the generally low salary in large companies using shift workers (the national gross average is about 750 euros). Moreover, the basic wage may include most of the wage supplements provided by the Labour Code by agreement of the parties.³³ The collective agreement or the parties' agreement may of course contain such a payment, however, the inclusion of an 'extra payment clause' is rather doubtful at many workplaces due to the weak bargaining power of workers, lack of trade unions and the hard labour market situation (high unemployment). Certainly, there are many similar changes in these chapters, which erase former "acquired employee rights", which amendments have been intensely opposed by trade unions during the debate.

2.5 Unfair dismissal: radically limited sanctions

Termination of employment has not been really changed, but rather simplified, therefore termination by the employer has not become easier even a bit. Nevertheless, the legal consequences of unlawful termination (unfair dismissal) by the employer has been significantly restricted, thus, in certain cases an unfair dismissal may be even cheaper for the employer than continuation of an (unwanted) employment relationship.³⁴

According to the new rules, compensation for loss of income from employment may not exceed twelve months' absentee pay (wage).³⁵ Formerly, the employee was entitled to full payment between the dates of the termination of employment and the decision of the court, beyond an extra payment of 2–12 months' salary or reinstatement of the job. It is beyond question, that the old system was not always fair with employers, as in case the court proceeding lasted for 3, 4 or even 5 years, the employee was often entitled to a huge amount of compensation. Moreover, the employee was not obliged to mitigate the damages of the employer by searching for a new job in this period. Even if this system was justified by deterring employers to breach the rules on termination of employment, it punished employers for the length of court proceedings as well.

As a legislative answer for the above described problems, the new rules put the emphasis less on punishing the employer, but rather on recovering only a part of the damages of the employee in case of a wrongful dismissal. However, by limiting the compensation for loss of income to a maximum of twelve months' absentee pay with a very limited option

³³ Article 145 of the 2012 Labour Code.

³⁴ For example the employee does not have a lost income due to the maternity allowance and the employer immediately admits unlawful termination before the court.

³⁵ Article 82 of the 2012 Labour Code.

to restore the employment relationship,³⁶ it is questionable whether the employee receives appropriate reparation and whether the employer is efficiently restrained from similar unlawful measures. The new system has already caused a remarkable decrease in the number of labour law disputes.³⁷

2.6 Limited liability of employers for damages

More radical changes were introduced regarding the employer's liability for damages. Although the former general rule of objective liability was maintained, whereby the employer shall be liable to provide compensation for damages caused in connection with an employment relationship, however, the new exemption clauses remarkably restricted this liability. Namely, the employer shall be relieved of liability if able to prove: a) that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage; or b) that the damage was caused solely by the unavoidable conduct of the aggrieved party.³⁸

The reason behind this conceptual change is the will to restrict the almost absolute liability of employers, which was clearly established by court case law based on the provisions of the 1992 Labour Code.³⁹ However, the ILO recommended maintaining the wording of the 1992 Labour Code, since ILO standards do not recognize such elements of force majeure as an acceptable ground for refusing employment injury compensation. „With the exception of some limitative enumerated cases, ILO instruments aim at ensuring that employment injuries should be compensated with no fault imputed to either side, and compensation shall be provided without any question being raised as to whether the injury was attributable to fault on the part of the employer, the employee or any third party.”⁴⁰

2.7 Atypical employment relationships: flexible regulation and new forms

The 1992 Labor Code regulated five atypical employment relationships: part time employment, open-ended employment relationship, telework, temporary agency work and the employment relationship of executive employees. Besides, some other laws determined other forms of atypical employment (e.g. work from home, casual work). The new Labor Code expanded the list of atypical employment relationships. The appraised employment relationships according to the Law are presented in the chart below, sorted by the attributes of the typical employment relationship.

³⁶ Article 83 of the 2012 Labour Code “In addition to what is contained in Subsection (1) of Section 82, at the employee's request the court shall reinstate the employment relationship: *a)* if it was terminated in violation of the principle of equal treatment; *b)* if it was terminated in violation of Subsection (3) of Section 65; *c)* if it was terminated in violation of Subsection (1) of Section 273; *d)* if the employee served as an employees' representative at the time his employment relationship was terminated; *e)* if the employee successfully challenged the termination of the employment relationship by mutual consent or his own legal act therefor.”

³⁷ Unfortunately there is no available data on court cases, thus this information is deriving from labour judges.

³⁸ Article 166 of the 2012 Labour Code.

³⁹ KUN, A. A munkáltató kártérítési felelőssége. In: GYULAVÁRI, T. (ed.). *Munkajog*. Budapest: ELTE Eötvös Kiadó, 2012, p. 383.

⁴⁰ Memorandum of Technical Comments on the Draft Labour Code of Hungary. International Labour Office, November 2011 (www.szakszervezetek.hu), p. 11.

| Attributes of typical employment relationship | Atypical employment which differs by such attribute |
|---|---|
| Open-ended employment relationship | Fixed term employment relationship |
| | Simplified employment |
| Full time employment | Part time employment |
| | On-call work |
| | Job sharing |
| Work at employer's premises | Telework |
| | Home work |
| Work for one employer | Temporary agency work |
| | School association employment relationship |
| | Employment relationship with more employers |

Obviously, the legislature strives for full regulation of employment relationships, which may give some stability to the otherwise regularly (too often) changing provisions.⁴¹ The other reason behind this abundance of atypical forms in the new Labour Code is the assumption, that these forms may be the main generator of the one million new jobs. According to the National Work Plan, the low Hungarian employment rate is closely connected to the low activity rates among some disadvantaged groups of employees on the labour market such as women with small children, young workers, elder workers some years before the pensionable age, workers whose employability has changed due to an accident etc. By referring to international experience, the document points out that the employability of these disadvantaged groups could be enhanced by the extension of flexible forms of employment.⁴²

However, some rules on atypical forms of employment, especially regarding on-call work, job sharing and joint employment, are fairly brief and sketchy. Hungarian legal practice have shown so far reluctance from using vaguely regulated new legal institutions, consequently, it is doubtful whether the adoption of these new forms of employment in itself will generate the expected employment effect.

2.8 Right to strike: minimum services

The Basic Law (constitution) guarantees the right to strike,⁴³ however, the detailed provision are contained by a separate law and not in the Labour Code.⁴⁴ Therefore, the new Labour Code did not have any effect on strike regulation. At the same time there has been one significant amendment to the law on strike, namely the regulation of the minimum services. Accordingly minimum services must be ensured at employers, which provide public services, such as public transport, communications, electricity, water supply etc.⁴⁵ This minimum level may be regulated by law, otherwise the parties must agree on it, or

⁴¹ For instance there were two new Acts on Casual work in 2009 and 2010.

⁴² Hungarian Work Plan, pp. 11–12.

⁴³ Basic Law, article XVII.(2).

⁴⁴ Act 7 of 1989 on Strike.

⁴⁵ In force from 31 December 2010.

the court may decide on the details of the minimum level. In practice it means that the most active trade unions (eg. at Budapest Transport Company) may go on strike only after the decision of the court on minimum services.

3. TRADE UNIONS: THE ULTIMATE LOSERS OF THE REFORM?

3.1 Changing relationship of trade unions and Works Councils

According to the 1992 Labour Code, the representativity of trade unions was based on the results their candidates achieved at the elections of Works Councils.⁴⁶ As the most important union rights were ensured only to representative trade unions (e.g. stipulation of a collective agreement), it was the best interest of the union to raise as many candidates to the elections as possible and to facilitate their effectiveness by all means. The union's candidates generally were members or officials of the trade union.

As a result, if such union-candidates were elected as Works Council members, the personnel of the two different organizations were united, and the employer was to consult the same persons in the Works Council and at the bargaining table over a new collective agreement. Due to the different attributes of the two organizations of employee's representation, such practice proved to be unbeneficial. In many cases the "legally lightly armored" Works Councils lost their autonomy, and became a consultative body of the trade unions.

According to the new Labor Code, exercising union rights is not based on the results achieved at the works council's elections any more. Now a trade union may conclude a collective agreement if its membership reaches ten per cent of all workers.⁴⁷ So it has a lower chance that trade unions and works councils fuse together. However, as Works Councils have many important rights, it could still be useful for trade unions to get as many mandates in Works Councils as possible.

3.2 Trade unions versus Works Councils: reshuffled rights

Albeit the new Labour Code considers none of the two types of employee's representation primary over the other, one could experience a shift of emphasis in favor of works councils':

- In the structure of the Code the rules concerning Works Councils are presented before the rules of trade unions, which was the other way round in the previous Labour Code.
- According to the new law, monitoring the compliance with labour law became the general task of Works Councils and not of trade unions as it was before, even though the necessary authority is not assured for works councils (e.g. the right to initiate proceedings before authorities).⁴⁸
- EU law calls for consultation with the representatives of the employees in cases of restructuring the employer's organization (transfer, collective redundancy). The

⁴⁶ Article 33 of the 1992 Labour Code.

⁴⁷ Article 276 of the 2012 Labour Code.

⁴⁸ Article 262 of the 2012 Labour Code.

new Labour Code grants this authority specifically for Works Council and not trade unions.⁴⁹

- Finally, the new Labour Code allows the employer to conclude a works council agreement which is equivalent to the collective agreement, provided that there is no collective agreement at the employer or a trade union entitled to conclude one.

Considering the aspect of protection of employees' interests, the significance of trade unions is obviously higher than of Works Councils, as the later can influence the decisions of the employer only by its rights for consulting and informing. Thus it seems odd that the new Labour Code gives Works Councils a role to substitute unions. Whatever authority is granted for Works Councils by law, it cannot supplement the organizing power of trade unions.

3.3 Shrinking rights of trade unions

The new Labour Code diminishes the rights of trade unions in several respects:

- a) The legal protection against termination of employment is provided not for every officer of the trade union (as in the 1992 LC), but only for minimum 2, maximum 6 officers (depending on the number of employees at the workplace).⁵⁰
- b) The employees designated by the trade union are entitled to a shorter working time reduction, this is one hour after every second member of the trade union⁵¹. In this way, if the trade union has 200 members by the employer, its members are entitled to 100 extra hours/month.
- c) Working time reduction cannot be redeemed by the employer, if the trade unions are not using this extra working time.⁵² On the contrary, the 1992 Labour Code allowed redeeming half of the extra working time, if the trade union members were not using it.⁵³ This was an important source of income of trade unions.

Despite these restrictions, the position of trade unions will be strengthened by the changing role of collective agreements in the regulation of employment relations. According to the new rules, trade unions can derogate from most of the rules of the Labour Code to the detriment of employees (see above). In this way trade unions will gain a strong bargaining position against employers and their responsibility is also higher concerning the result of such bargaining.⁵⁴

3.4 Labour law protection: restricted number of protected trade union officials

Consequently, the most important change concerning the legal status of trade unions refers to union officials. As the trade union official is a central actor in the collective life at the employer, he/she is granted a special legal protection against otherwise unilateral

⁴⁹ Article 72 and 265 of the 2012 Labour Code.

⁵⁰ Article 273 of the 2012 Labour Code.

⁵¹ In the 1992 Labour Code this was 2 hours after every third member of the trade union.

⁵² Article 273 of the 2012 Labour Code.

⁵³ Article 25 of the 1992 Labour Code.

⁵⁴ <http://www.hrblog.hu/azujmt/2012/01/27/uzemi-tanacs-kontra-szakszervezet-ki-az-erosebb-1-resz-2/>.

measures of the employer, which could uproot her among the workers whose interests she represents. Such protection shortly means that the employer is entitled to make unilateral decisions concerning the trade union official only if previously consulted with and got consent of the trade union. According to the new Labor Code such measures are only dismissal and employment differing from the employment contract.⁵⁵ Especially the protection against dismissal has significance in practice, as the employer shall terminate the employment relationship of a trade union official only with the previous written consent of the trade union.

Whilst according to the 1992 Labor Code this labour law protection was granted for each and any office holders of the trade union, the new rules restrict the number of protected officials. At all autonomous establishment of the employer, based on the average statistical number of employees in the previous calendar year, the maximum number of protected trade union officials is determined by law. Not depending on the number of the employees, all unions which has representation at the employer are entitled to protect plus one official, who is selected by the supreme body of the union.

| Number of employees at the establishment | Number of protected officials | |
|--|-------------------------------|--|
| | At the given establishment | + 1 person for the whole employer, chosen by the supreme body of the union |
| 1–500 persons | 1 person | |
| 501–1000 | 2 persons | |
| 1001–2000 | 3 persons | |
| 2001–4000 | 4 persons | |
| 4001– | 5 persons | |

It frequently occurs that an employee is a trade union official and member of the Works Council too. In such situations, according to the previous court practice, the legal protection applied to the person by both titles, and both the union and the Works Council needed to give consent.⁵⁶ Such 'overprotection' is not sustained by the new regulation: if the chair of the Works Council happens to be a protected trade union official as well, the labour law protection applies to him only by the latter title.⁵⁷

While the new rules on trade union officials aim to decrease the number of protected employees, the transitory rules of the new Labour Code prescribed that all officials who were granted labour law protection the day before the new Code came to effect (that is 30th of June 2012), will stay under that protection until their employment relationship ends or they lose their union mandate.⁵⁸ Interestingly, the legislator made a step back at the last moment, and left the previously mandated union officials' protection unharmed.

⁵⁵ Article 273 of the 2012 Labour Code.

⁵⁶ See e.g. court decision BH 2000, 463.

⁵⁷ Article 260 (5) of the 2012 Labour Code.

⁵⁸ Act 86 of 2012, Article 14 (1).

4. APPRAISAL OF THE REFORM: AN UNAMBIGUOUS MOVE TOWARDS FLEXIBILITY

Although the main aim of the new Hungarian Labour Code is clear, that is to rapidly increase the employment rate, however it is rather doubtful whether a more flexible regulation of labour law is the proper way to reach this ambitious goal. The most contested issue is whether and to what extent the reform will contribute to reach the desired employment objective of the government, i.e. to create 1 million new jobs within 10 years.

The new Labour Code amended about half of the text of the 1992 Labour Code and introduced fundamental changes. It is still far from being the most flexible labour law in Europe, however, the changes mainly favour employers' interests to the detriment of employees.⁵⁹ It is of course questionable whether labour law does play such an important role in investment decisions that this reform will be an effective instrument to create more (and especially better) jobs.⁶⁰

At the same time, the truly much more "flexible" labour law regulation will contribute to the deepening of social inequalities. As a recent OECD report points out "a key challenge for policy, therefore, is to facilitate and encourage access to employment for under-represented groups, such as youths, older workers, women and migrants. This requires not only new jobs, but jobs that enable people to avoid and escape poverty. Policy reforms that tackle inequalities in the labour market, such as those between standard and non-standard forms of employment, are needed to reduce income inequality."⁶¹

At the same time the new regulation sets an enormous challenge for Hungarian trade unions. Whether they can grow up to their new role in the changed legal circumstances and be an equal bargaining partner with employers is yet to be seen.

⁵⁹ GYULAVÁRI, T., HÓS, N., KÁRTYÁS, G., TAKÁCS, G. *A Munka Törvénykönyve 2012. Kompkonzult.* Budapest, 2012.

⁶⁰ More and better jobs: Patterns of employment expansion in Europe. European Foundation for the Improvement of Living and Working Conditions, 2008.

⁶¹ Divided we stand: Why inequality keeps rising. An Overview of Growing Income Inequalities in OECD Countries: Main Findings. OECD, 2012, p. 41.