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## DIADSE National Report – Hungary<sup>1</sup>

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<sup>1</sup> NOTE: An earlier version of this paper was also presented as a “National report, discussion document” at the ISLSSL XI European Regional Congress 2014 – Young Scholars Session, Dublin 17 September, 2014.

## 1. Introduction

This study was prepared in the framework of the “*Dialogue for Advancing Social Europe – DIADSE*” project (Supported by the European Commission - Industrial Relations and Social Dialogue Program, nr VP/2014/004 - VS/2013/0037). The study intends to examine the effects of labour and social reforms in Hungary in the context of industrial relations. In this perspective, the study aims to put specific focus on two issues: to analyze how the great economic crisis has affected – directly and indirectly – these labour law reforms and how social dialogue and collective bargaining have played a role in these reforms.

### 1.1. Impact of the financial and economic crisis

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.<sup>2</sup> From 2000 onwards, half a decade of debt creation fuelled illusionary growth, which ended in 2006. “Since 2006, Hungary has been stumbling from crisis to crisis”<sup>3</sup> and has been struggling to bring its public finances under control. On the one hand, Hungary was among the first countries to have a government speak openly about austerity measures (already in 2006).<sup>4</sup> The outbreak of the global crisis in 2008 has just intensified the austerity situation. On the other hand, later on, the post-2010 government has continuously tried to avoid the term ‘austerity’.

In effect, Hungary has experienced interrelated crises: a ‘home-made’ debt induced crisis (which began well before the global economic crises) coincided with global credit crunch beginning in the autumn of 2008. An ongoing employment and demographic crisis and a deep political crisis topped up the situation and there has been a serious danger that the interrelated crisis might feed back on one another and plunge Hungary into a whirlpool.<sup>5</sup> As a result, by the end of 2011 it was one of the most financially vulnerable countries in Europe outside the euro area.<sup>6</sup> However, the crisis only had a short-term effect on GDP.<sup>7</sup>

On the whole, as Szabó puts it, the direct economic effects of the crisis have been limited, as the post-2010 government’s policies have had a more fundamental transformative impact on politics, including labour issues.<sup>8</sup>

### 1.2. Political context

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<sup>2</sup> EEAG (2012) p. 129.

<sup>3</sup>Toth A., Neumann L. and Hosszu H. (2012) p. 138.

<sup>4</sup> Varga M. (2015) p. 317.

<sup>5</sup> Toth A., Neumann L. and Hosszu H. (2012) p. 138, 152.

<sup>6</sup> EEAG (2012) p. 129.

<sup>7</sup> Borbély Sz. and Neumann L. (2015) p. 187.

<sup>8</sup> Szabo I. (2013) pp. 205–215.

After the resignation of former socialist prime-minister (Ferenc Gyurcsány) in 2009, the succeeding caretaker government (led by Gordon Bajnai) pushed on with austerity<sup>9</sup> while still keeping the institutional status quo (including some forms of tripartite negotiations). The centre-right government (led by Viktor Orbán) won a two thirds majority in the general elections of 2010 and 2014 and embarked on a series of unorthodox policy measures. Hungary has implemented several policy measures since mid-2010, which were greeted by strongly-worded protests from the European Commission and the European Central Bank.<sup>10</sup> 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.<sup>11</sup> The government has continuously tried to avoid the term ‘austerity’ when describing the reform-measures. Nevertheless, combined with some unique, unorthodox policy measures, many typical ‘austerity’ measures have been maintained<sup>12</sup> and implemented by the government, resulting in considerable welfare retrenchment.<sup>13</sup> The government has embarked on a major redesign of the welfare state to turn it into a workfare state.<sup>14</sup> As some commentators describe it, the peculiarity of the Hungarian political ‘model’ carried out by the post-2010 government is the combination of a radical neoliberal and statist agenda.<sup>15</sup>

The post-2010 government has had an overwhelming parliamentary majority which allowed the government to create a ‘strong state’. Marginalization of social dialogue, abandoning of tripartism, re-shaping the institutional foundations of collective bargaining and flexibilization of employment contracts law have been part of this endeavour, as we shall see in details. The idea of the ‘strong state’ and a majoritarian democracy has envisaged a new social contract and a ‘system of national cooperation’, where the government can represent and unite the interests of both sides of the industry (workers and employers) and there is no real need for consensus-making processes.<sup>16</sup> The Prime Minister (Orbán, Viktor) directly emphasized on numerous occasions that both the interests of the employees and that of the employers (all ‘voters’) are to be represented by “them” (meaning the state) and not by the social partners.<sup>17</sup> Some reports even label such tendencies as ‘autocratic’.<sup>18</sup> Anyhow, this statement is quite telling and symbolic in terms of the destiny of social dialogue in Hungary.

A comprehensive labour law reform – which basically and symbolically equals to a new unitary Labour Code in post-socialist countries and in Hungary especially – had been on the agenda of previous governments as well, but political tensions and internal conflicts had always blocked the preparation of a comprehensive legislative proposal. The new Government’s political aim was to carry out a full turn in the country’s development – being more than a change of government, but slightly less than a change of regime – by fundamentally reshaping the legal system in line with its political will. A new Labour Code fitted well into this concept and the minister (Matolcsy) ‘ordered’ the preparation of a new

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<sup>9</sup> For example, measures implemented in line with the convergence programme regulating EMU accession, wage freeze on public employees’ wage scales, cancelling the 13th month salary in the public sector etc.

<sup>10</sup> EEAG (2012) p. 130.

<sup>11</sup> Krén I. (2013)

<sup>12</sup> For example, freeze on public employees’ wage scales.

<sup>13</sup> Varga M. (2015) p. 316.

<sup>14</sup> Toth A., Neumann L. and Hosszu H. (2012) p. 151.

<sup>15</sup> Szabo I. (2013) p. 213.

<sup>16</sup> Cf. Toth A. (2015)

<sup>17</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015) p. 14.

<sup>18</sup> Guardiancich I. ed. (2012) p. 19.

Labour Code at the end of 2010 with an overwhelming emphasis on job creation (and the quality of jobs was not really an issue from a labour law perspective).

### 1.3. Basic context and objectives of labour law reforms and social dialogue initiatives

The Hungarian labour market is characterised by a moderate unemployment rate, a relatively low participation rate and flexible labour market institutions.<sup>19</sup> Union coverage is low and declining, and the unions have little power.<sup>20</sup> In many post-communist countries – including Hungary – unions have a ‘mobilization deficit’, which means that they have problems responding to employee discontent.<sup>21</sup> In other words: trade unions seem to be distant from people.<sup>22</sup> According to some opinions, Hungarian society is – by default – “very individualistic, highly segmented and lacks a strong grassroots institutional network”, which is not a good foundation for the trade union movement.<sup>23</sup> Moreover, at many companies workplace representation is complicated by union rivalry, while on the national level, extreme fragmentation of trade unions exists (currently, there are six national confederations<sup>24</sup>).

Hungary’s employment protection index is 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.<sup>25</sup> As EPL indicators of the OECD show, the strictness of employment protection (standard contracts) was continuously the lowest among CEE countries in the period of 1990-2013.<sup>26</sup> According to some researches, the former Labour Code<sup>27</sup> of Hungary was already one of the most liberal in Europe (cited by Arató, and Nacs), but after the introduction of the new Labour Code in

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<sup>19</sup> Köllő, J. (2011)

<sup>20</sup> 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. It is difficult to estimate the number of active workers who are members of trade unions in 2015, the guesses are ranging from 300 to 450 thousand members. [http://szabim.blog.hu/2015/03/12/szakszervezeti\\_tagletszam\\_magyarorszagon](http://szabim.blog.hu/2015/03/12/szakszervezeti_tagletszam_magyarorszagon) In the private sector, according to some estimations, less than 5% of workers are members of a trade union. Girndt R. (2013b) p. 3.

<sup>21</sup> Varga M. (2015) p. 315.

<sup>22</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015) p. 24.

<sup>23</sup> Toth A., Neumann L. and Hosszu H. (2012) p. 152.

<sup>24</sup> There are six union confederations: MSZOSZ (National Confederation of Hungarian Trade Unions); ASZSZ (Autonomous Trade Unions Confederation); SZEZ (Forum for the Cooperation of Trade Unions); ÉSZT (Confederation of Unions of Professionals); LIGA (Democratic League of Independent Trade Unions); MOSZ (National Federation of Workers’ Council). MSZOSZ, ASZSZ, SZEZ and ÉSZT emerged as reformed organisations from the unified trade union confederation SZOT, which existed before 1989. LIGA and MOSZ, are newly created unions which represent workers across the whole economy. LIGA and MOSZ are more close to the current right-wing Government. On the 1<sup>st</sup> of May in 2013 MSZOSZ, ASZSZ and SZEZ has agreed to create a new, unified confederation together through fusion, which was realized in 2014 and was named Hungarian Trade Union Confederation (original Hungarian abbreviation: MSZSZ).

Employers’ organisations are also quite fragmented. The most important ones are: MGYOSZ (Confederation of Hungarian Employers and Industrialists); VOSZ (National Association of Entrepreneurs and Employers); AMSZ (Agricultural Employers’ Federation); ÁFEOSZ (National Federation of Consumer Cooperatives); KISOSZ (National Federation of Traders and Caterers); OKISZ (Hungarian Industrial Association); IPOSZ (Hungarian Association of Craftsmen’s Corporations); Stratosz (National Association of Strategic and Public Utility Companies).

<sup>25</sup> European Foundation for Living and Working Conditions, *Measuring Job Satisfaction in Surveys – Comparative Analytical Report*, Dublin 2007, p. 5.

<sup>26</sup> <http://stats.oecd.org/#>; Also cited by: Drahekoupil J. and Myant M. (2015) p. 333.

<sup>27</sup> Act XXII. of 1992.

2012 (and a number of changes of the former labour code between 2010 and 2012) it got even more flexible.<sup>28</sup>

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.

As regards the labour law context, the "*Magyar Munka Terv*" (*Hungarian Work Plan*) was adopted in 2011. The main aim of the plan was to remedy sustainably the low employment rate in the country (which has always been one of the main overall problems of the Hungarian economy). It was the operational programme for the prime minister's ambitions to create 'one million new jobs in the next ten years' and to build up a labour market in Hungary which can be "the most flexible in the world".<sup>29</sup> 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.<sup>30</sup> 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 has set 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. 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.<sup>31</sup>

As regards EU Labour Law, the official reasoning of the draft Labour Code (2011) 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. The same attitude is applied in relation to international law (e.g. ILO conventions). It must be noted – as a sign of the risky equilibrant attitude of the legislator – that after the passing of the Labour Code, the EU has continuously pushed the Hungarian legislator to accomplish some smaller modifications in the adopted text (especially related to some working time rules<sup>32</sup>, 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).

As it is impossible to comprehensively examine the labour and social law reforms in this small briefing, in the next chapter, the paper focuses on some central conceptual changes.

## 2. Main domestic labour and social law reforms

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<sup>28</sup> Krén I. (2013)

<sup>29</sup> The Prime Minister's speech as cited by Gyulavári T. and Kártyás G. (2015) p. 47.

<sup>30</sup> 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.

<sup>31</sup> Gyulavári T. and Kártyás G. (2012) p. 170.

<sup>32</sup> For example: the definition of 'Flexible working arrangement', Section 96, Subsection (2) of the new Labour Code.

## 2.1. 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 previous regulation, the employer could unilaterally order only a three-month reference period for calculating basic weekly working time).<sup>33</sup>

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) by softening the 'fair labour relations' criteria.

From an industrial relations-related 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.<sup>34</sup> 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 (see: the new Labour Code).

It is very difficult to talk about crisis-related labour law reforms in Hungary and the crisis has not been rigorously discussed from a labour law point of view in Hungary. 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.<sup>35</sup> 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.

## 2.2. The new Labour Code

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 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 general, the new Labour Code seeks to increase the parties' – collective and individual – autonomy and significantly reduces any legislative intervention. As such, labour law is mostly

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<sup>33</sup> Ferencz J. (2009)

<sup>34</sup> Krén I. (2013)

<sup>35</sup> Cf. Krén I. (2013)

seen in the ambit of civil law and not conceptualized as a field of purposive social law anymore

The adoption of the new Labour Code was coupled with a relatively selective and half-hearted consultation process<sup>36</sup>, together with a great extent of informality and an atmosphere of governmental rigor. As noted by Nacsa and Neumann, even if several years of preparatory legal work and lobbying efforts preceded the new Labour Code, preliminary impact analysis had not been carried out.<sup>37</sup> Furthermore, during the preparation of the Labour Code, no vivid institutional framework of social dialogue was in operation (see Chapter 3 on the structure on national level social dialogue). Tóth states that the Labour Code was born in an ‘institutional vacuum’.<sup>38</sup> The first draft of the Code was published by the Government in June 2011. The Proposal was drafted without any consultation with the social partners; national employers’ and employees’ organisations could submit their written proposals within a very short deadline of less than two weeks.

The text of the original proposal of the Code was written by five well-known labour law experts out of which three are barristers<sup>39</sup> and two law professors of the University of Pécs.<sup>40</sup> This group of well-known, high-level experts had started to design a new Labour Code out of their own initiative already some years ago<sup>41</sup> (as early as 2007), but later on (in late 2010) they have been mandated by the new Government – in a rather informal status of ‘advisors’ – to accomplish this mission. The group of experts had a clear political request to create a very flexible Labour Code boosting job creation, but in the details they virtually got full professional autonomy. The working method of the group of experts was not transparent at all.

After the completion of the first draft, the Government started to consult only a selected group of social partners. On the side of trade unions they first consulted the LIGA Confederation and the MOSZ (Workers’ Councils) and included the National Confederation of Hungarian Trade Unions (MSZOSZ) at a later stage. The other three confederations, equally members of the former tripartite body, were left out of the negotiations. Trade unions opposed the Draft vehemently. The consulted employers’ side was also kind of pre-selected (limited to three confederations of the nine recognised peak level organisations). Not surprisingly, employers were pleased by the Draft and supported the idea that the introduction of more flexible employment regulations will boost competitiveness. Thus, they stayed rather passive during the consultations. In the first stages of consultations, the two sides were consulted separately, rather haphazardly and on a totally non-transparent way. The Government was rather ‘silent’ during such consultations, it only collected the opinions. Pleas from both sides for the launch of a structured, transparent tripartite social dialogue process were rejected by the Government.

A second Draft was made public on 30 September 2011. It took into account the results of consultations to a certain extent, but did not change in merit the cut-back of trade unions’ rights. The Government filed the proposal to the Parliament on 26 October 2011. More than 700 proposals for further amendments were filed during the parliamentary debate. As for social dialogue, finally, the restarted consultation ended in a special – according to some opinions ‘dictated’ – compromise on some of the provisions of the new Labour Code that

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<sup>36</sup> Toth A. (2012)

<sup>37</sup> Nacsa B. and Neumann L. (2013) p. 99.

<sup>38</sup> Toth A. (2012) p. 3.

<sup>39</sup> Lajos Pál, György Lőrinc and Róbert Pethő.

<sup>40</sup> György Kiss and Gyula Berke

<sup>41</sup> For a long time, the group had a sixth member, István Horváth, who was left out from the actual work for unknown – but supposedly for political – reasons (István Horváth had been working in the administration of the previous Government).

were particularly unfavourable for employees and trade unions.<sup>42</sup> On 2 December, an agreement was signed by LIGA, MSZOSZ and the Worker’s Council Movement (MOSZ) which partially re-established some of the traditional rights of the unions. But as Tóth reminds us, “one of the conditions of the government for entering into a compromise with the unions was that the partners of the agreement had to declare that they had been consulted properly and that they supported the main direction of the new legislation.” This agreement guaranteed the government that there would be no further public protests on behalf of the unions.<sup>43</sup> Finally, the Parliament passed the Act on 13 December 2011. The LC, before it came into force, has already been modified significantly by the Act No. LXXXVI of 2012.

As it is impossible to comprehensively examine the new Labour Code in this contribution, the paper focuses on some central conceptual changes. In our opinion, the following five tendencies are epitomizing the essence of recent labour law reforms in Hungary and might give an impression about the trend and regulatory style of the new Code:

- Conceptual shift in the idea of labour law;
- Rearrangement of the legal sources of labour law;
- Re-regulation of collective labour law and the structure of industrial relations;
- Conceptual change in the legal protection against unlawful dismissal;
- Some distinctive changes in individual employment contracts law.

The paper continues with a more elaborated analysis and discussion on these five selected labour law issues.

### **2.2.1. 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 flexibilization 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.<sup>44</sup>

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.

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<sup>42</sup> Nacsa B. and Neumann L. (2013) p. 102.

<sup>43</sup> Toth A. (2012) p. 4.

<sup>44</sup> 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.



Researches show that the absence of labour market rigidities does not necessarily ensure positive labour market outcomes.<sup>45</sup> 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 flexibilization 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.”<sup>46</sup>

### **2.2.2. Rearrangement of the legal sources of labour law**

One of the main goals of the labour law reform has been 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. Because of the overriding “favourability” principle, employers were simply not motivated to conclude collective agreements. The Hungarian system of industrial relations is dominated by firm-level, single-employer, fragmented bargaining (if any). As a consequence, the coverage rate of collective agreements is still very low in Hungary.<sup>47</sup> Not only the quantity, but also the quality of existing agreements is problematic: research carried out on this subject has pointed out several weaknesses with regard to the content of collective agreements.<sup>48</sup> Collective agreements often merely repeat the statutory rules<sup>49</sup>, and regularly include illegal or meaningless terms and conditions.

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.

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<sup>45</sup> EEAG (2012) p. 129.

<sup>46</sup> Gyulavári T. and Kártyás G. (2012)

<sup>47</sup> 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.

<sup>48</sup> Fodor T. G., Nacsá, B., Neumann, L. (2008)

<sup>49</sup> These are the so-called ‘Parrot clauses’.

In such a context (extension of the regulatory 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 trade unions are cut back 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.<sup>50</sup> 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.<sup>51</sup> 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 and their coordinative role. Nonetheless, as researches show, it is difficult to measure, whether collective bargaining arrangements got even more decentralized during the crisis (probably not).<sup>52</sup> As “higher” level collective agreements hardly exist in Hungary, the above-mentioned rule concerning the relationship between collective agreements concluded at different levels is not of great importance in practice.

### **2.2.3. Re-regulation of collective labour law and the structure of industrial relations**

The most significant changes of the new Labour Code probably relate to re-regulation of 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). Since 1992 Hungary has a dual channel workplace representation scheme with parallel works councils and unions at company level.

According to some commentators, the “hidden agenda of the 2012 Labour Code was to curb unions’ workplace influence.”<sup>53</sup> 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 importantly against dismissal) to each and every trade union representatives without numerical limits, while the new rules restrict the number of protected officials (up to 1-5 officials, depending on the size of the workplace<sup>54</sup>, plus one further representative who is nominated by the highest body of the trade union);

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<sup>50</sup> In most of the post-socialist, CEE-countries, collective bargaining (if any) has always taken place mostly at micro (company) level.

<sup>51</sup> Section 277 of the new Labour Code.

<sup>52</sup> Krén I. (2013)

<sup>53</sup> Neumann L., Berki E. and Edelenyi M. (2014) p. 435.

<sup>54</sup> For instance, establishments/premises with an average headcount of up to 500 employees can have only one protected trade union official.

- Eliminates the right/power of veto ('kifogás' in Hungarian) against unlawful measures by the employer negatively affecting workers<sup>55</sup>;
- Reduces the possibility for monitoring of working conditions;
- Decreases the time-off for union activity and terminates the legal possibility to demand pecuniary compensation for non-used exempted working time by union officials (which was an important income for trade unions);
- Terminates some information and consultation rights (and shifts them to works councils exclusively) and some information will be available for trade unions only on demand<sup>56</sup>;
- Mandates consultations with works councils instead of trade unions in cases of restructuring the employer's organization (collective redundancy, transfer);
- Abolishes time-off (paid leave) for union activists for purposes of union-organised education.
- According to the Labour Code, trade union officials do not count as 'representatives of the employees'.<sup>57</sup> This interpretative rule has a special consequence in relation to, among others, the rules on legal consequences of wrongful termination of employment. At the employee's request the court shall reinstate the employment relationship if the employee served as an employees' representative at the time the employment relationship was terminated wrongfully. This rule (chance for reinstatement) consequently does not apply to trade union officials.

It must be noted that most of the above-mentioned rules are dispositive (except for businesses in public ownership), so collective agreements may derogate from the law. Thus, in principle, collective agreements may still provide for extended protection available to trade union representatives, pecuniary compensation for unused time-off etc. However, in practice, it is very difficult for trade unions to achieve such agreements. Public opinion and especially employers criticized the former – more generous – rules sharply, as the number of protected representatives could be extremely extensive and disproportional, extensive time-off (and/or its cash compensation) could be misused by unions etc. Accordingly, employers are usually insisting on the new standard – less union-friendly – rules described above and are rarely keen on concluding agreements in favour of trade unions (of course, in some companies there are good, well-established cooperative relationship between the management and unions and collective agreements maintain – or even extend – former union privileges on a voluntary basis). In general, as Gyulavári and Kártyás also note it, the new regulatory context poses an enormous challenge for Hungarian trade unions. “Whether they can grow up to their new role

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<sup>55</sup> 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.

<sup>56</sup> Furthermore, the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation covers facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or its functioning. This section of the Labour Code (Sec. 234) is worded very vaguely.

<sup>57</sup> Section 294, Subsection 1. e) of the Labour Code defines employees' representative' as follows: it shall mean “any member of the works council, shop steward, and the workers' representative sitting on the supervisory board of a business association.” According to some opinions, in this aspect, ILO convention 135 was not taken into consideration. Képesné Szabó, Ildikó and Rossu, Balázs (2015)

under the changed legal circumstances and become an equal bargaining partner with employers is yet to be seen.”<sup>58</sup>

As collective bargaining is highly decentralised in Hungary (and the coverage of sectoral/industry agreements is quite limited), the legal position of company level union branches is a crucial issue. It must be mentioned that the first proposal of the new Labour Code (July 2011) 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 (December 2011). As a consequence, the changes were finally not as radical as originally planned by the Government. However, the cut-backs in trade unions’ rights and the corrosion of unions’ operating conditions are still considerable – especially in the interpretation of trade unions – and they might have a negative impact on unions’ functionality (for instance, trade unions’ bargaining position might be undermined, there might be a drop in union services provided for members etc.). According to some opinions, the changes might imply a drive towards further individualisation of labour relations.

As for the *rights of works councils (WCs)*, for the first sight, they are strengthened:

- 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<sup>59</sup>). Furthermore, it has become a general rule that employers shall ask for the opinion of the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees.<sup>60</sup>
- 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

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<sup>58</sup> Gyulavári T. and Kártyás G. (2015) p. 58.

<sup>59</sup> It must be noted that this rule is problematic in light of the Directive 98/59/EC and its interpretation (see especially: C-383/92 Commission v UK [1994] ECR I-2479). The Court pointed out in the Commission v UK case, that Member States must take all measures necessary to ensure that workers are informed, consulted and in a position to intervene through their representatives in the event of collective redundancies.

<sup>60</sup> Section 264 of the Labour Code. The Code even provides for an exemplificative list about the most important actions of the employer, where such ‘consultation’ is required:

- a) proposals for the employer’s reorganization, transformation, the conversion of a strategic business unit into an independent organization;
- b) introducing production and investment programs, new technologies, or upgrading existing ones;
- c) processing and protection of personal data of employees;
- d) implementation of technical means for the surveillance of workers;
- e) measures for compliance with occupational safety and health requirements, and for the prevention of accidents at work and occupational diseases;
- f) the introduction and/or amendment of new work organization methods and performance requirements;
- g) plans relating to training and education;
- h) appropriation of job assistance related subsidies;
- i) drawing up proposals for the rehabilitation of workers with health impairment and persons with reduced ability to work;
- j) laying down working arrangements;
- k) setting the principles for the remuneration of work;
- l) measures for the protection of the environment relating to the employer’s operations;
- m) measures implemented with a view to enforcing the principle of equal treatment and for the promotion of equal opportunities;
- n) coordinating family life and work;
- o) other measures specified by employment regulations.

the rules relating to employment (but the Code does not assure effective, concrete legal means to WCs to carry out this new task).

- The new right to conclude normatively binding works agreements (equivalent to collective agreements) has been introduced (see below in details).

However, the participation and co-determination rights of works councils are still not considerably broadened in merit (for example, the only one real co-determination right of Hungarian works councils relates to the appropriation of welfare funds<sup>61</sup>). Furthermore, the new Code removed the effective sanctions safeguarding the observation of co-determination and consultation rights (under the previous legislation, violation of rights of participation resulted in null and void legal action of the employer, while the new Labour Code does not expressly stipulates any sanction).<sup>62</sup> Accordingly, participation and co-determination rights of works councils might be labelled as soft laws or 'lex imperfecta'.<sup>63</sup> It is also remarkable that the Code's Chapter on works councils does not use the notion of 'consultation' itself. Instead, legal terms as 'giving opinion', 'requesting information' and 'initiating negotiations' are applied. Thus, the slightly more rigorous legal consequences and well-established – EU-law-based – context of 'consultation'<sup>64</sup> are overshadowed in this context.

Section 234 of the Labour Code puts considerable limits for information and consultations rights. According to this provision, the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation covers facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or its functioning. Furthermore, the representatives acting in the name and on behalf of works councils or trade unions are not authorized to disclose any facts, information, know-how or data which, in the legitimate economic interest of the employer or in the protection of its functioning, has expressly been provided to them in confidence or to be treated as business secrets, in any way or form, and are not authorized to use them in any other way in connection with any activity in which this person is involved for reasons other than the objectives specified in this Code. Any person who is acting in the name or on behalf of the works council or trade union shall be authorized to disclose any information or data acquired in the course of his activities solely in a manner which does not jeopardize the employer's legitimate economic interest and without violating rights relating to personality. The very open, flexible wording of Section 234 has been heavily criticized by both trade unions and works councils.

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

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<sup>61</sup> Section 263 of the Labour Code.

<sup>62</sup> Cf. Hungler S. (2015)

<sup>63</sup> The Code only declares that the employer, the works council or the trade union may bring an action within five days in the event of any violation of the provisions on information or consultation. The court shall hear such cases within fifteen days in non-contentious proceedings (Section 289).

<sup>64</sup> According to Section 233 of the Labour Code, 'consultation' shall mean the establishment of dialogue and exchange of views between the employer and the works council or trade union. Consultation shall take place with a view to reaching an agreement, in such fashion as consistent with the objective thereof and ensuring: *a*) that the parties are properly represented; *b*) the direct exchange of views and establishment of dialogue; *c*) substantive discussions. The employer may not carry out the proposed action during the time of consultation, or for up to seven days from the first day of consultation ('suspensive effect'), unless a longer time limit is agreed upon. In the absence of an agreement the employer shall terminate consultation when the said time limit expires.

only the cases in which such a deviation is not allowed<sup>65</sup>). 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.

There is one important sectoral exception to this dominant rule of absolute dispositivity: the Code severely limits the scope of *collective bargaining in state/municipality owned companies*.<sup>66</sup> In this sector, collective agreements must not deviate from the basic mandatory rules on notice period, severance pay, wages, some working time rules (e.g. daily breaks) and industrial relations issues (including union representatives' rights, legal protection, time-off). This cogent regulatory concept reflects the governmental intention to safeguard public interests and to protect public money. However, this harsh differentiation between public and private companies breaks with the traditionally sector-neutral nature of Hungarian labour law and it has been heavily criticized by almost all affected stakeholders (trade unions and employers alike).<sup>67</sup> This stipulation hit the unions at major public utility companies harshly and it has the capacity to undermine their organisational strength.<sup>68</sup>

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 election of members of the works council. Under the new, simplified rules, trade unions shall be entitled to conclude a collective agreement if the number of its members reaches 10 % of the number of employees. The trade unions with entitlement to conclude a collective agreement in line with the afore-mentioned 10% threshold-rule may do so collectively (this is a kind of obligation for coalition). Even if this threshold can't be considered to be particularly high<sup>69</sup>, some trade unions have lobbied – unsuccessfully – for the lowering down the threshold or for the possibility of unions' coalition to reach the 10 % in alliance. Some empirical research has confirmed that, as it could be expected, some of the smaller company unions lost bargaining rights due to the new rules.<sup>70</sup>

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

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<sup>65</sup> The structure of the Act is very difficult because of this complex system of derogations and because of the extensive use of cross-references.

<sup>66</sup> Section 205-206 of the Labour Code.

<sup>67</sup> In this context, Nacsa and Neumann emphasizes a further harmful side-effect of this rule. They call it 'negative solidarity'. The essence of this tendency is described as follows: "As the law implied stricter labour standards for the public sector, now private-sector employers also incline to implement public sector rules into the collective agreement and aimed to levelling downward labour relations. Therefore sectoral union's main concern is to prevent such "negative solidarity" of employers." Nacsa B. and Neumann L. (2013) p. 108.

<sup>68</sup> Toth A. (2012) p. 8.

<sup>69</sup> Gyulavári and Kártyás label it as a 'soft' criterion, which may foster collective bargaining. Gyulavári T. and Kártyás G. (2015) p. 28.

<sup>70</sup> Nacsa B. and Neumann L. (2013) p. 103.

normatively binding works agreements and all possible derogations offered by the Code can be utilized (similarly to collective agreements). Only wage bargaining is excluded from the scope of these agreements (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 (quasi collective 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<sup>71</sup>; lacking autonomous legal personality of the council as being part of the employers’ organizational structure; excluded right to organise strike etc.) and lack of strong co-determination rights to meaningfully pressure employers. All in all, the danger of docile, “yellow” – “puppet” – 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.<sup>72</sup> 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. There is no available data on the number of works council agreements, yet their real number is certainly negligible. The conclusion of such agreements is not at all a trend since the passing of the new Code (basically the same rule was in force in the period of 1999-2002 – under an earlier right-wing government – and it was also not resulted in a considerable number of such ‘quasi’ collective agreements).

#### **2.2.4. Conceptual change in the legal protection against unlawful dismissal**

The new Labour Code introduces a number of fundamental changes affecting employment contracts law and individual labour law (see for Chapter 2.2.5. more details), however, a conceptual change with the most far-reaching consequences certainly affects the rules related to the legal protection against unlawful dismissal. In short, 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 (‘reinstatement’). According to these ‘old’ rules, the court could 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 – kind of automatically – reimbursed for lost

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<sup>71</sup> 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.

<sup>72</sup> Szabó calls it ‘a secret weapon’ for employers. Szabo I. (2013) p. 211.

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 a very exceptional possibility). 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 fully fair for employers). Furthermore, legally speaking, the employee was not obliged to mitigate the costs. In the new system the employer is to provide financial 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 and complex as the employee needs to show that he/she has suffered a real damage in relation to the unjust dismissal). Moreover, there is a statutory limit on the most typical share of damages: 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 in the former scheme) is completely ruled out from the system. Accordingly, the gravity of the breach of law is irrelevant in the current system, the legal consequences of unjust dismissal (if any) are determined solely by the proven actual harm suffered by the employee (in line with the logic of liability for damages). In lieu of being able or eager to show the actual damage, the employee may demand a lump-sum payment equal to the sum of absentee pay due for the notice period when his employment is terminated by the employer (in practice, this lump sum payment is usually relatively low and offers not enough motivation to start a lawsuit).

Furthermore, the Curia (the highest judicial authority in Hungary) is of the opinion that solely on the ground of unlawful dismissal, in the absence of any additional elements constituting a violation of personality rights, no payment (‘*sérelemdíj*’ in Hungarian) for the violation of personality rights (which replaced non-pecuniary damages) can be claimed.

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. As Gyulavári and Kártyás describe it, “the new rules shifted the emphasis from punishing the employer and full reparation of damages to recovering only a very limited part of the damages incurred by the employee in case of wrongful dismissal.” They continue by stating that it is questionable whether the employee receives appropriate reparation and whether the employer is efficiently restrained from introducing similar unlawful measures.<sup>73</sup> All in all, a large number of unlawful terminations can remain without any sanction, as employees won’t be motivated enough to file a case.

### **2.2.5. Some distinctive changes in individual employment contracts law**

In general, there is an increased possibility in the new Labour Code for ‘in peius’ individual contractual derogations. However, the main rule is maintained that the employment contracts may only depart from the ‘rules relating to employment’<sup>74</sup> in favour of the employee, on a

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<sup>73</sup> Gyulavári T. and Kártyás G. (2015) p. 40.

<sup>74</sup> 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.



general basis.<sup>75</sup> 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”.<sup>76</sup>
- By agreement of the parties, the employer may allocate the age-based extra vacation time by the end of the year following the year when due<sup>77</sup> (as a main rule, vacation time shall be allocated in the year in which it is due).
- 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”).<sup>78</sup> Before, such disciplinary measures could only be implemented on the basis of collective agreements.
- By the agreement of the parties, the basic wage may involve most of the wage supplements.<sup>79</sup> 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).<sup>80</sup>
- 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”).<sup>81</sup>
- In case of the specific employment contract of executive employees (such as managers), the parties contractual freedom is literally absolute: with some minor exceptions listed by the Code, the employment contract of executive employees may derogate from the provisions of Part Two of the Code in any direction.<sup>82</sup> Furthermore, the definition of the term ‘executive employees’ is very vague and broad, so its excessive application – bearing in mind the just described option for full dispositivity – might contribute to the intense flexibilization of working conditions for a large number of workers.<sup>83</sup>

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<sup>75</sup> 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.

<sup>76</sup> Section 51, Subsection (1) of the Labour Code.

<sup>77</sup> Section 123, Subsection (6) of the Labour Code.

<sup>78</sup> Section 56 of the Labour Code.

<sup>79</sup> Section 145, Subsection (1) of the Labour Code.

<sup>80</sup> Section 139, Subsection (2) of the Labour Code.

<sup>81</sup> Section 189 of the Labour Code.

<sup>82</sup> Section 209 of the Labour Code.

<sup>83</sup> Pursuant to Section 208 of the Code, ‘executive employee’ shall mean the employer’s director, and any other person under his direct supervision and authorized - in part or in whole - to act as the director’s deputy. Furthermore, employment contracts may invoke the provisions on executive employees if the employee is in a

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 state/municipality-owned corporate sector*. (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; the legal protection of parents of small children has also been reduced etc.)
- *Increased liability of employees for damages*. The concept of the regulation of liability for damages reflects a more dominant civil law approach.
- *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 (a new, civil – and business – law-influenced exemption clause significantly restricted the objective liability of employers).
- *Very flexible regulation of working time and wage supplements*. It is no space here to go into details, but it might be useful to call attention to one of the most controversial rules within Labour Code's Chapter on working time. This is the so-called 'settlement period' (elszámolási időszak).<sup>84</sup> The settlement period is not to be mixed up with the term 'working time frame' (munkaidő-keret in Hungarian) which is synonymous with the reference period in the meaning of the 2003/88/EC Directive on the management of working time. The 'settlement period' is a unique model of a kind of 'working time banking' and it can be applied in the absence of a working time frame. Its application in practice raises many open questions as the laconic wording of the Code is not so informative and the whole legal institution raises the question of possible non-compliance with EU-law. This working time arrangement is used to 'settle' the plus or minus (credit and debit) working hours accrued or not worked in the first week of the settlement period. The employer is thus entitled to require the worker to complete his/her weekly standard normal working time over a longer period. Both the length (up

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position considered to be of considerable importance from the point of view of the employer's operations, or fills a post of trust, and his salary reaches seven times the mandatory minimum wage. As a consequence, by way of an employment contract, it is relatively easy to qualify any employee (with a salary reaching seven times the minimum wage) as executive employee, giving ground to literally full dispositivity in labour law.

<sup>84</sup> Section 98 of the Labour Code.

to 16 weeks) and the starting date of the settlement period are determined by the employer.<sup>85</sup> By using the ‘settlement period’, the employer can rather easily escape overtime-payment (on a rather non-transparent way).

— Etc.

The new *Labour Code* 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.<sup>86</sup> Similarly, the employer may alter the work schedule for a given day upon the occurrence of unforeseen circumstances in its business or financial affairs, 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).<sup>87</sup> This rule can limit employers’ demand for overtime work and thus, at the end of the day, it might lead to wage cuts.

The new Labour Code heavily and increasingly relies on – basically civil law-influenced – *open norms / general clauses*. The increased use of such open norms is fully understandable in the modern age of overly complex employment relationships, but – in the lack of steady and coherent judicial (or other authoritative) interpretation – they might entail a danger. The increased, non-transparent application of open norms might lead to arbitrariness from the side of employers and inconsistent, unpredictable legal practice in general. This danger is not only a theoretical one: still after almost 5 years of the adoption of the Labour Code, there is no guiding judicial interpretation on such new standards as, among others, “equitable assessment”, “unreasonable disadvantage”<sup>88</sup>, “intended purpose of the employment relationship”<sup>89</sup>, “major changes in the circumstances”<sup>90</sup>, “trust”<sup>91</sup>, “foreseeability” in the context of liability for damages etc.

As regards freedom of expression for instance, the Labour Code stipulates that “workers may not exercise the right to express their opinion in a way where it may lead to causing serious harm or damage to the employer’s reputation or legitimate economic and organizational interests” [Section 8, Subsec. (3) of the Labour Code]. In this context, the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) had invited the Government to review these provisions by assessing the need for amending these provisions so as to guarantee the respect of freedom of expression. The Committee pointed

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<sup>85</sup> Cf. Hungary: Working life country profile (2015), Eurofound.

<sup>86</sup> Section 146 of the new Labour Code (‘állásidő’). Toth A. (2012) p. 5.

<sup>87</sup> Section 97 of the new Labour Code. Furthermore, these deadlines are absolute dispositive rules in relation to collective agreements. As a result, collective agreements can even shorten them for the detriment of employees.

<sup>88</sup> According to Section 6, Subsection (3) of the Labour Code, employers shall take into account the interests of workers under the principle of equitable assessment; where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the worker affected.

<sup>89</sup> According to Section 8, Subsection (2) of the Labour Code workers may not engage in any conduct during or outside their paid working hours that - stemming from the worker’s job or position in the employer’s hierarchy - directly and factually has the potential to damage the employer’s reputation, legitimate economic interest or the intended purpose of the employment relationship.

<sup>90</sup> For example, according to Section 16, Subsection (2) of the Labour Code, unilateral commitments (such as bonus-rules etc.) may be amended to the beneficiary’s detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the person making the commitment whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship.

<sup>91</sup> According to Section 52, Subsection (1) d), employees shall perform work in such a way that demonstrates the trust vested in him for the job in question.

out that the broad wording of Section 8 could entail serious restrictions to freedom of expression.<sup>92</sup> Especially the notion of the employers' organizational interests is vague.

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. work performed for multiple employers) and some specific varieties of part-time work (on-call employment, job-sharing).<sup>93</sup> 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, sketchy) of atypical forms of employment can create difficulties and uncertainties in practice. The much awaited success (i.e. the employment-creation effect<sup>94</sup>) of this new regulatory approach of atypical employment can only be judged after a couple of years of practice, but theoretical doubts prevail.

As we have mentioned already, one of the main goals of the new Labour Code was to align labour law with civil law. 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. However, Kiss notes that the endeavour to establish a transparent connection between labour law and private law failed, despite the initial intentions.<sup>95</sup>

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.<sup>96</sup> 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.<sup>97</sup> 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.

As regards *civil servants*, we refer to one big issue only: a new legislation further decreased the independence of officials in the central administration. New regulations adopted in 2010 introduced dismissal without notice. Although the Hungarian Constitutional Court and the European Court of Justice nullified this law, subsequent legislation only partially transposed the CJEU's rulings. The new system of dismissal includes elements allowing broad

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<sup>92</sup> ILO CEACR, Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3189906](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3189906) (Last visited: 15. 03. 2016.)

<sup>93</sup> It is important to note that the share of involuntary part-time workers in total employment between 2007 and 2012 increased among men and women. OECD (2014): *Society at a Glance*.

<sup>94</sup> 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.

<sup>95</sup> Kiss Gy. (2015)

<sup>96</sup> In British law: worker. In German law: „arbeitnehmerähnliche Person” etc.

<sup>97</sup> Gyulavári T. and Hős N. (2012) p. 260.

interpretation, such as justifying dismissal on ‘becoming unworthy’ of holding office and ‘losing confidence’ in a subordinate.<sup>98</sup>

### 2.3. Strike law

In December 2010, following the individual Member of Parliament motion, amendments to the law on the right to strike<sup>99</sup> 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 (‘essential’) service level and its conditions during the obligatory consultation period prior to strike (if it is not regulated by law<sup>100</sup>), or, if there is no agreement, the level should be defined by the court of public administration and labour. However, agreements are rarely reached on this issue in practice (because of the opposition of employers), while courts are reluctant to decide on minimal services (as judges are not well-prepared to pass such decisions on merit).<sup>101</sup> Accordingly, courts are habitually rejecting the applications of unions’ stating that the claims do not meet with the formal legal preconditions established by civil procedural law. Consequently, this change in strike law has practically led to restrictions of strikes and hampered the organization of strikes (because strikes in Hungary were typically concentrated in these sectors of essential services). However, in practice, as Neumann, Berki and Edelenyi observes it, public sector employees (including employees in essential services) tend to opt for demonstrations even when they have the right to strike (state-run public transport used to be an exception, prior to the 2010 legislation).<sup>102</sup> Social partners proposed some alternative solutions for deciding on essential services (e.g. parity committee, arbitration), but these proposals were not taken into account by the Government.

The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) previously noted that the ITUC alleged that as a result of the 2010 amendment of Act VII of 1989 on strikes (Act on Strikes), there were growing difficulties in exercising the right to strike in practice; and that, as confirmed by the Government, trade union applications for determination of the minimum level of service in the sectors of transport by road and rail had often been rejected by the courts due to formal deficiencies and, consequently, no strikes had been staged in the relevant sectors. The Committee had requested the Government to take steps to ensure that the application in practice of section 4 of the Act on Strikes as amended, did not impede the lawful exercise of the right to strike. The Government indicated that: (i) the wording of the Act on Strikes as amended offers less opportunity to abuse the right to strike as occurred occasionally under the previous legislation and encourages the parties to reach an agreement on minimum services; (ii) based on the recent practice regarding trade union applications to the courts for determination of minimum services, it became necessary to amend and clarify the provisions of the Act on Strikes with respect to services where parties could frequently not agree, so as to guarantee a predictable service level for users; (iii) therefore the definition of the still adequate service was included in Act XLI of 2012 on

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<sup>98</sup> Neumann L., Berki E. and Edelenyi M. (2014) p. 435.

<sup>99</sup> Act No VII of 1989.

<sup>100</sup> The minimum service level is regulated by acts only in some sectors (e.g. postal services, transportation of persons). Such acts typically define a relatively high level of minimum services which can render strikes ineffective.

<sup>101</sup> 1/2013.(IV.8.) KMK vélemény a sztrájkjog gyakorlásának egyes kérdéseiről (Opinion of the Administrative-Labour Department of the Curia).

<sup>102</sup> Neumann L., Berki E. and Edelenyi M. (2014) p. 436.

passenger transport service, which means that transport employees are not hindered by the lack of regulation in starting a strike; and (iv) for the same reasons, Act CLIX of 2012 on postal services stipulates the extent and conditions of the still adequate services regarding postal services. The Committee also noted the views of the workers' side of the National ILO Council that: (i) the Act on Strikes as amended in 2010 tightens the requirements of minimum services stipulating that strikes cannot be launched in a legal manner as long as the issue has not been settled by the parties; and (ii) with regard to public transport, the act defines minimum services during a strike, but in such a manner that it calls into question the pressure a strike can exert. Recalling that minimum services should be confined to operations that are strictly necessary to ensure that the basic needs of the users of the relevant service are met, the Committee requested the Government to indicate the minimum services prescribed for the public transport and postal sectors and to transmit copies of the relevant laws and regulations. More generally, the Committee requested the Government to take the necessary steps to ensure that, failing agreement of the parties, applications to the courts for determination of the minimum service level are expeditiously decided upon so as *not to unduly impede the exercise of the right to strike*.<sup>103</sup>

#### **2.4. Social security – some characteristic changes**

In the new Constitution (Fundamental Law)<sup>104</sup>, 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.<sup>105</sup>

Before the crisis, 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%.<sup>106</sup> For example, since 2010, the new conservative government has sharply cut unemployment and social benefits.<sup>107</sup> 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 and it is the shortest in the EU.<sup>108</sup> The aim of the reform was twofold: firstly, budgetary saving, secondly, stimulation of employment. Furthermore, participation in public work is the basic condition if someone wants to receive social

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<sup>103</sup> ILO CEACR, Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3189906](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3189906) (Last visited: 15. 03. 2016.)

<sup>104</sup> The Parliament passed the new Basic Law of Hungary in April 2011.

<sup>105</sup> Cf. *The New Constitution of Hungary*, Eötvös Károly Policy Institute, the Hungarian Civil Liberties Union (HCLU) and the Hungarian Helsinki Committee (HHC), 14 April 2011.

<sup>106</sup> OECD (2014): Society at a Glance.

<sup>107</sup> Hárs Á. (2013)

<sup>108</sup> On 1<sup>st</sup> September 2011 and on 1<sup>st</sup> January 2012 the eligibility of the jobseekers' allowance was changed. First of all the two part of duration was ceased. From 1<sup>st</sup> September 2011 the duration of the benefit has consisted of one part. The length of duration decreased from 270 days to 90 days.

assistance. 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.

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. All in all, anti-poverty programmes have been replaced by workfare measures. 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.

According to the current policies of the government (and the plans for the future), the decision-makers continuously intend to reduce the system of social transfers and substitute it with a broader workfare system. In other words: in terms of labour market policy, the regime relies heavily on punitive workfare programmes (public scheme work as described above), while in cash social assistance is marginalized. Further extensions of workfare have been announced recently, even though the Hungarian state spent a disproportionate amount of public resources on these programmes already in previous years (in 2012 0.47% of Hungary's GDP, in contrast to 0.01% in Poland, 0.02% in the Czech Republic, and 0.07% in Slovakia according to the data of the Heinrich Böll Stiftung).

In September 2014 a study was published by HAPN (Hungarian Anti-Poverty Network) titled 'The Workfare Scheme Trap'. It is a summary of a non-representative research. The main findings of the research are the following:

- The majority of public scheme workers are doing low prestige jobs.
- This type of employment does not help the members of the target group to get back into the labour market.
- The salary is lower than the minimum wage; the living wage is under the poverty line as well.
- The workfare work scheme is unpredictable, the majority of people work part time and the working conditions are unfavourable.

In spite of these facts majority of respondents prefer to stay in this position, because the money they earn in short term is more than the level of relevant social transfers; and their opinion is that it is easier to get into the world of workfare work scheme than find their way back into the primary labour market. According to HAPN, the most threatening feature of this system is that workfare workers get into a vicious circle by the workfare work scheme, because in most of these cases they circulate in the world of grey/black labour market,

workfare work scheme and social transfers. According to the most optimistic estimates only 5-10% of the workfare workers can find their way back to the primary labour market.<sup>109</sup>

The above described 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 with the exception of Hungary.<sup>110</sup> By 2012 (compared to 2007) real value of social assistance and benefit levels dropped by 20%.<sup>111</sup> 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.). For instance, in 2011 a tax credit for children was introduced. This is the only segment of the welfare arena where the government has made significant improvements.

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 rate of personal income tax (2011) in the expectation that it would be accompanied by economic growth.

As a conclusion, we can state that the overriding Hungarian social policy attitude towards crisis-management was unique – ‘unorthodox’ – , especially from an international comparative perspective. As we have mentioned before, public social spending in percent of GDP increased in all OECD countries with the exception of Hungary. Furthermore, in contrast with many other countries, in Hungary, the capacity of the public employment service (PES) was further cut during the crisis.<sup>112</sup> The capacities of the public employment service had been insufficient even before the crisis: their budget for operating costs was half of that in countries with a similar unemployment rate. The strong emphasis on public works as a remedy to the unemployment problem is also distinctive, at least within the EU, where only Ireland created public employment posts on a large scale according to ILO.<sup>113</sup> Additionally, the three-month maximum duration of the wage-related phase of the unemployment benefit is extremely short by European comparison.

### **3. Position and role of the social partners**

#### **3.1. National level social dialogue**

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<sup>109</sup> See for details: Hungarian Minimum Income Network – The Progressive Realization of Adequate Minimum Income Schemes (Year 2 Report, 2014), December 2014.

<sup>110</sup> OECD (2014): Society at a Glance.

<sup>111</sup> Varga M. (2015) p. 317.

<sup>112</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 63.

<sup>113</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 63.



### 3.1.1. Institutional structure

In the early years of crisis, between 2006 and 2009, national level tripartite negotiations were relatively intensive (especially in the public sector). In relation to the crisis, several packages of measures proposed by the government were negotiated in the national tripartite body, such as reallocation of the European Social Fund, micro-loans, loan guarantees, wage subsidies for employers hiring workers laid-off by other companies due to the economic crisis, accelerating public infrastructure investments, proposal for shortened working hours while compensating employees' lost income from the Labour Market Fund.<sup>114</sup> However, as Borbély and Neumann observes it, there was no coordinated response to the crisis and a lack of consensus on the measures taken indicated the overall weakness and fading role of tripartite institutions. Accordingly, a comprehensive general agreement (practically a western European-style social pact) could not be achieved.<sup>115</sup> For example, on 6 March 2009 an agreement was signed by the government and the employers on the scope, objectives and principles of negotiations about the social and economic situation, and on the measures to be adopted by the government. However, the trade unions failed to reach a common collective position and two union confederations refused to sign the agreement.<sup>116</sup>

*Erosion of social dialogue* has been a trend in the last half decade: „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.”<sup>117</sup> One can assume that the government wanted to act unilaterally. The adoption of the new Labour Code was also coupled with a relatively selective and half-hearted consultation process.<sup>118</sup> 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.

In 2011, just during the preliminary works of the new Labour Code, the National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács, OÉT*), the standing cross-sectoral tripartite body<sup>119</sup> was disbanded.

The role of the OÉT used to be quite significant. OÉT was the highest tripartite body of national-level, cross-sectoral social dialogue. It had existed under several names from 1988 to 2011 (for instance, between 1998 and 2002 the first Orbán government similarly restructured the tripartite body, but the successor socialist government re-established the OÉT in its original setting). Social partners were able to intervene or proactively participate in the level of policy making through the OÉT. The members were six national level trade union confederations, nine employers' confederation and the representatives of the Government. For a long time, OÉT was operating on the basis of a tripartite agreement, but in 2009 it became

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<sup>114</sup> Glassner V. and Keune M. (2010) p. 7.

<sup>115</sup> Borbély Sz. and Neumann L. (2015) p. 194.

<sup>116</sup> Guyet R., Tarren D. and Triumph C.-E. (2012) p. 25.

<sup>117</sup> Krén I. (2013)

<sup>118</sup> Toth A. (2012)

<sup>119</sup> 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 amended 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<sup>119</sup>) was disbanded.

regulated by law (Act LXXIII of 2009 on the National Interest Reconciliation Council), because the Constitutional Court determined<sup>120</sup> that the OÉT shall be considered an actor of public power. As such, it lacked the legal basis, thus its activity had to be regulated in order to be legitimate.

OÉT has been ceased in 2011. The announcement of the new government was made without any consultation with the social partners. The Government argued that they are ‘reorganising the outmoded system of interest concertation’, mostly because the OÉT functioned ‘with no sufficient cost effectiveness, representing a narrow social strata’ and it was difficult to reach agreements. Hungarian trade unions protested against this step and condemned, as they called it, the ‘authoritarian procedures of the Hungarian Government’. In the eyes of trade unions, the abolishment of OÉT was intended to do away with any meaningful dialogue; to water up the structure and to take away competencies and establish a pseudo consultation - consultative rights, where the government is an observer only.<sup>121</sup> According to some commentators, the disbandment of OÉT also had a clear financial implication for trade unions, entitling them to far less financial support from the state.<sup>122</sup> Furthermore, the lack of OÉT has also undermined trade unions public visibility and their mobilization power.

Instead of OÉT, a new, larger (multi-partite) and merely consultative body, the National Economic and Social Council (NGTT) was created.<sup>123</sup> 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).<sup>124</sup> The NGTT is a consultative, proposal-making and advisory body independent from the Parliament and the Government, established to discuss comprehensive matters affecting the development of the economy and society, and national strategies across government cycles, and to promote the development and implementation of harmonious and balanced economic development and the related social models. It is the most extensive and diverse consultative forum for social dialogue between the advocacy groups of employers and employees, business chambers, NGOs, Hungarian representatives of academia both in and outside Hungary, and churches. The number of members of the NGTT is 32, divided into five sides.<sup>125</sup> The government is not a full-time member, so the negotiations are fully autonomous (but not really effective). The role of the Government in the work of the NGTT is rather ambiguous: it is no longer one of the sides, it merely acts as an ‘observer’, but in practice, the Government seems to dominate the work of the NGTT.<sup>126</sup> The Council meets at plenary sessions, and their preparation may receive contributions from professional working groups, either permanent or ad-hoc responsible for certain tasks. The plenary session shall be convened as necessary but at least four times a year. In the matters on its agenda, the Council’s plenary session engages in consultation, gives opinions, adopts positions, makes

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<sup>120</sup> Constitutional Court Decision, number 40/2005 (X. 19.).

<sup>121</sup> Tripartite Social Dialogue Abolished, 30. 05. 2011. <http://www.liganet.hu/page/206/artID/6056/html/tripartit-social-dialogue-abolished.html> (Last visited: 14. 03. 2016.)

<sup>122</sup> Varga M. (2015) p. 317.

<sup>123</sup> Act XCIII of 2011 on the National Economic and Social Council.

<sup>124</sup> Pursuant to Section 153 of the Labour Code, the Government is authorized to determine the amount and scope of a) the mandatory minimum wage, and b) the guaranteed wage minimum, following consultations in the Nemzeti Gazdasági és Társadalmi Tanács (National Economic and Social Council) by means of a decree.

<sup>125</sup> Membership structure: Representatives of the Business Scene (advocacy groups and organizations of employers, national business chambers): 12; Representatives of Employees: 6; Representatives of NGOs: 5; Representatives of the Scientific Field: 5; Representatives of Churches: 4. the duration of the term of the NGTT is 4 years. Members are nominated by relevant organizations in each field of interest. The Ministers or executive officers appointed by them shall attend the Council's plenary sessions as permanent guests with a consultative right. The President or Vice President of the Hungarian Competition Authority and the Central Statistical Office shall attend the Council's plenary sessions as guests with a consultative right.

<sup>126</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015)

proposals, adopts recommendations, and takes decisions on its own operation.<sup>127</sup> It is obvious that the rather toothless and ‘soft’ NGTT does not aim to carry out intensive social dialogue and it is not comparable with the former OÉT. Furthermore, the NGTT is not specialized for the issues of the world of work.

Due to the pressure from certain social partners and international forums, the Government has started to accept that the re-establishment of some form of tripartite social dialogue in the private sector is necessary. As of February 2012, the newly set up Standing Consultative Forum of the Industry and the Government (*Versenyszféra és a Kormány Állandó Konzultációs Fóruma, VKF*) is intended to fulfil the previous role of OÉT, but it is uncertain how serious is the impact of the VKF. VKF is independent from the NGTT. The VKF is only a rather ‘informal’ forum without legislative background, criteria for representativity and fixed rights of real participation. VKF was established by the government at the end of 2011. Originally only three employers’ organisations (VOSZ, MGYOSZ, AFEOSZ) and three trade union confederation (LIGA, MSZOSZ, MOSZ) were invited to participate. Later on, all national-level social partners have become involved one way or another. Its status is not fully institutionalized (it has no legal background in public law); its functioning and consultation process are not fully transparent.

VKF is intended to be a permanent tripartite social dialogue forum especially focusing on labour-related issues of the private sector (while the multi-partite, legally regulated NGTT has a much wider function). Negotiations are based on the initiatives of the social partners. The main forum of the VKF is the plenary meeting which is convened as necessary but at least two times a year. The VKF operates in closed sessions. The plenary meetings are prepared by a Monitoring Committee, headed by the under-secretary of state responsible for employment policy. The Monitoring Committee has a semi-annual work schedule and it meets every two months (but at the request of four members can be convened at any time). The VKF participates in the preparation of governmental decisions, holds tripartite consultations, delivers opinions, makes proposals, discusses national strategies with regard to economic issues affecting the private sector. As experiences show, the VKF has a more limited role, visibility and influence than the former OÉT had. According to some opinions, the VKF is not seen by the government as a real partner and agreements are reached very rarely (and they are not necessarily fully followed by the Government).<sup>128</sup> For example, there were a number of changes within labour law which were only negotiated partly or with delay with the social partners.

For instance, in 2015 there were intensive consultations carried out within the VKF concerning the modification of the Labour Code (and the Strike Law). Both sides – i.e. employers and trade unions – prepared their detailed side’s proposal, but the VKF was able to reach agreement only on a very limited number of – rather technical – issues. Afterwards, the Government prepared a Draft Bill for the relatively comprehensive modification of the Code, but it was only partially and sporadically based on the negotiations of the VKF. The Draft was supposed to be enacted by the end of 2015, but finally it has not been passed. By the way, the Draft was focusing on rather technical, minimal adjustments of the Code, not much

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<sup>127</sup> The NGTT, at its plenary sessions, has discussed among others, the following topics of great importance for the whole of the society: modifications of the Labour Code; consultation on the national health system; minimal wages; national rural development plan; certain issues of sustainable development in relation to the Rio+20 Summit; strategic questions of higher education and adult education; reform of the Hungarian pension system; the perspectives of the domestic construction industry; National Energy Strategy and the future of atom energy; etc. The Council has also unanimously adopted a declaration on the protection and enhancement of the role of the family.

<sup>128</sup> Cf. Képesné Szabó, Ildikó and Rossu, Balázs (2015)

conceptual issues have been put on the agenda (probably the Government's obvious resistance to any conceptual modification pre-empted such proposals in advance and by nature). Negotiations have restarted in 2016 – on a rather non-transparent way – but the adoption of any modification of the Labour Code is not foreseeable in the time of writing (early 2016). These 'rounds' of negotiations on the eventual modification of the Labour Code are aptly symbolizing the nature of macro-level social dialogue in Hungary: it is rather ineffective, lengthy, non-consensual, non-professional and, at the end of the day, subjected to the Government's will. As a recent research study states (based on the opinion of union-leaders): social partners in Hungary have to face a government that does not see the importance of the instrument of social dialogue and does not aim to reach an agreement with the other parties.<sup>129</sup>

OKÉT is the National Public Service Interest Reconciliation Council (*Országos Közszolgálati Érdekegyeztető Tanács*). OKÉT is the high-level tripartite social dialogue forum of the whole public sector. It represents all of the employees who are engaged in public sector, including public servants, civil servants, policemen, defence force officers, members of the armed forces etc. It was established in December 2002. Besides the OKÉT, there are some specific interest reconciliation forums in various branches of the public sector, such as the Labour Council for Public Service Employees (KOMT) and the Public Service Interest Reconciliation Forum (KÉF) for public officials. OKÉT is a national tripartite forum, which was originally set up to deal with wage (salary) and employment policies and labour law related issues of the public sector in general, but today it serves the purposes of merely disseminating information rather than consultation. The OKÉT holds consultations, delivers opinions, makes proposals, discusses national strategies within its field of operation. The influence of the OKÉT is considered to be limited (for example, it has exercised no influence or voice over the series of important laws reshaping public administration and public services). As Szabó observes it, OKÉT's influence on public sector wage setting has weakened substantially and continuously.<sup>130</sup>

Under the new Civil Servants' Act, in addition to trade unions a new chamber-like public body – the Hungarian Faculty of Public Service – was established on 1 July 2012 to represent professional interests. All civil servants automatically become members of the Faculty. Its responsibilities include upholding the prestige of the civil service, consultation on legislation affecting the employment and working conditions of government officials, conducting ethics procedures etc.<sup>131</sup> Trade unions have watched critically these mandatory membership-based chambers.

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

None of the social dialogue institutions has strong co-decision rights in Hungary; in practice, they have rather 'soft' competences and limited power. The *tendency* is clear (and not unusual in CEE): unions are experiencing a weakening of their role in national-level policy-making.<sup>132</sup> This tendency is especially remarkable and troublesome if one takes into account the fact that in CEE-countries – mostly for historical reasons – the institution of tripartite social dialogue usually plays a more important role than collective bargaining and other forms of social

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<sup>129</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015) p. 21.

<sup>130</sup> Szabo I. (2013) p. 212.

<sup>131</sup> Neumann L., Berki E. and Edelenyi M. (2014) p. 435.

<sup>132</sup> Kahancová M. (2015) p. 350.

dialogue.<sup>133</sup> Tripartism somewhat compensated for weak bargaining capacity at sectoral and firm level. It is not a novelty that “the significance of tripartite forums has always been subject to the willingness of governments to enter into negotiations”<sup>134</sup>, but social partners can experience an extreme form of arbitrariness from the side of the government in contemporary Hungary.

### **3.1.2. Initiatives of the national level social partners**

As we have already mentioned, on the national level, extreme fragmentation of trade unions exists (currently, there are six national confederations). The degree of divisiveness among trade unions is high. There is a traditional split between communist successor organizations (in terms of membership) and the ‘anti-communist’ unions established in opposition to the communist successors. This split has been causing difficulties since the early 90s. As Varga underlines it, this division is replicated also in the political sphere, with the former at times supporting the Socialists, and the latter at times offering support to FIDESZ, the country’s right-wing ruling party. Varga continues by stating that while certain trade unions were able to launch protests and a rail strike against the former Socialist government, the short-lived united trade union front disintegrated after the Orbán Viktor’s return to power in 2010.<sup>135</sup>

The Government has also been effective in preventing big trade union protest by playing off trade unions against one another. Furthermore, probably the most confrontational federation, the LIGA, is belonging to the traditionally right-wing cluster of unions (without a communist past), so the Government could exploit this situation. Between 2006 and 2010 many protest were organized by LIGA against the austerity measures of the Socialist government. The protests took the form of several strikes involving rail workers throughout the country. Throughout 2011, trade unions still coordinated actions and initiated a series of public protests, campaigns, especially in response to proposal of the new Labour Code.<sup>136</sup> The whole process of the adoption of the new Labour Code as well as the content of the amendments was fiercely opposed by all trade unions. Still, trade unions were unable to submit one detailed, joint, fully professional, adequate proposal to the Government (they were split along the traditional bipolar divide).

Trade unions were active in campaigning and lobbying against the new Labour Code. 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’s 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. As such, trade unions exerted some pressure on the government via international forums.

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

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<sup>133</sup> Borbély Sz. and Neumann L. (2015) p. 191.

<sup>134</sup> Borbély Sz. and Neumann L. (2015) p. 192.

<sup>135</sup> Varga M. (2015) p. 317.

<sup>136</sup> Varga M. (2015) p. 317.

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.<sup>137</sup>

Probably the protest against the proposal of the new Labour Code was the last unified action of national level trade unions for a long time.<sup>138</sup> As we have already mentioned, the campaign was partly effective, as the government signed a special "last minute" agreement with a few of the national trade union associations just before the adoption of the new Code (December 2011). On the one hand, this agreement has somewhat softened the new Code's anti-union drift. On the other hand, it has revived the sharp dividedness of unions. This agreement was also the basis of the VKF, as it has been described above.

Thus, the protest of trade unions against the Labour Code was not at all a full success story for unions. Furthermore, in the eyes of the public it was even worse: trade unions were largely focused on their own prerogatives in fighting against the new Code. They were concentrating on and fighting for specific issues of collective labour law highly important for their own operation (e.g. time-off for union activity, legal protection of union representatives). The public opinion could hardly associate itself with these rather technical issues and trade unions largely overlooked to responsively represent workers' real needs during lobbying for the modification of the Proposal.

As Varga notes, LIGA took part in protests only as long as the government refused to grant rail workers a series of bonus pay increases, and left the protests as soon as it acquiesced. LIGA and the other government-friendly union confederation (MOSZ) became the government's preferred negotiation partners.<sup>139</sup> As we have already mentioned, the VKF agreement was also concluded with these two confederations (and the MSZOSZ joined them). Varga continues by stating that after the LIGA stopped supporting the other unions in the wake of the government's offer, the protests initiated by trade unions were no longer able to reach out to society at large and no longer took the form of strikes. The Government used tailored offers to remove the most strike-prone organization, LIGA, and in particular its rail workers union, from its ranks and thereby underlining the lack of solidarity among trade unions. All in all, *union actions in response to austerity measures in Hungary were frail and limited*.<sup>140</sup>

LIGA also won a huge project ('A munkáért', in Hungarian) which was financed by HUF 1.6 billion in the framework of the New Széchenyi Plan. The project was based on four pillars: impact assessment of the new Labour Code, promotion of collective agreements, counselling for young people to prepare them for the world of work by preparation of teaching materials and training for entrepreneurs. The amount of funding was unusually high, unprecedented in the world of Hungarian trade unions. The project ended in 2015. For many reasons (expiry of the project, internal conflicts etc.) the LIGA has got in a kind of crisis by the end of 2015. In January 2015, after 20 years, Gaskó István, the president of LIGA resigned. LIGA is now facing difficult times, but it is also an opportunity for revival.

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 6 December 2013 the founding congress of the new Hungarian Trade Union Confederation (MSZSZ) took place in Budapest. Through the integration of three big national confederations

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<sup>137</sup> Cf. Bernaciak M. (2015) p. 26.

<sup>138</sup> Including a „trade union D-Day“ on 1 October 2011 to protest Government policies.

<sup>139</sup> Varga M. (2015) p. 317.

<sup>140</sup> Varga M. (2015) p. 318.

– 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 about 250000 active and 100000 pensioner members (according to the self-report of the organizations). 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 within an even more autonomous and contractual system of labour law regulation. However, the integration process has been very protracted and controversial, coupled with personal conflicts, internal (financial, structural etc.) disputes and, as a result, it has never been fully completed. Furthermore, SZEF has already left the new Confederation in 2015. Accordingly, the revitalization and the real – much reasonable – unification of the trade union movement in Hungary are still pressing needs and open, potential issues. Pleas for a united and strong trade union movement have been on the agenda of nearly all confederations for decades now, however, no effective, consensual actions followed.

Péter Pataky (former chairman of MSZOSZ) rightly stated that the pursued renewal of the Hungarian union movement has to start rather at work establishment and industry level „to change the fragmented, inefficient, economically ailing, personal and group interest shielding structure.“<sup>141</sup>

All in all, the current status of Hungarian trade union confederations is a bit chaotic, worrisome and promising at the same time. In brief, LIGA has arrived to a big turning point, the big merger (MSZSZ) is unsuccessful so far. However, this turmoil might also be a good start for a real renewal.

Leaders of the trade union confederations of the Visegrad countries (V4) held their annual meeting in Budapest on January 25-26 2016. All Hungarian trade union confederations were represented. The union leaders exchanged views about the different conditions for collective interest representation and defence and called for meaningful social dialogue at all levels for promoting sustainable economic and social development. They underlined that the key economic and labour statistics are clearly proving that economic growth, increasing productivity in the V4 region have not been resulting the proportionate improvement in wages and living conditions.

### **3.2. The role of sectoral and company level industrial relations**

Kahancová states that in CEE-countries limited evidence exists on negotiated responses to the crisis at sectoral and company levels.<sup>142</sup> This is especially true for the case of Hungary. Neumann indentified some 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.”<sup>143</sup> Furthermore, restructuring of a

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<sup>141</sup> Cited by Girndt R. (2013a) p. 5.

<sup>142</sup> Kahancová M. (2015) p. 350.

<sup>143</sup> As a result, one 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 L. and Boda D. (2010)

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.<sup>144</sup> Another study points out that no single preferred corporate strategy for crisis management can be pinpointed in Hungarian companies.<sup>145</sup>

As the collective action capacities of Hungarian unions are very low in general, the presence of negotiated crisis responses depended entirely on management's discretion.<sup>146</sup> Accordingly, tailor-made, negotiated crisis responses happened only in some specific sectors and multinational companies with a trade union presence took the lead. However, in most of the cases, crisis responses – if any – were still carried out on a non-negotiated basis, based on individual employment contracts and unilateral management decisions.

From the mid-nineties, company-level collective bargaining in Hungary has been mainly focusing on wage growth and fringe benefit packages. The crisis has brought in a new focus: job security got priority during the crisis. Protecting skilled workers and avoiding dismissals were often shared aims of unions and employers.<sup>147</sup> Lay-offs were mostly focused on temporary agency workers. Trade unions recognized their limits: they focused on saving jobs instead of demanding higher wages and accepted more flexible working conditions (such as working time accounts) and pay rescheduling. Some authors call these tendencies as a form of 'concession bargaining'.<sup>148</sup> Szabó argues that as a result, "the crisis led to a growing gap between skilled, unionized insiders with employment stability and unskilled outsiders losing their job."<sup>149</sup>

For example, in the automotive sector several company-level agreements with union-approval emerged in the early years of the crisis, adopting crisis adjustment measures, including working time reductions. Such agreements at carmaker companies provide unique and specific examples. In these cases, therefore, the crisis had even a positive impact on labour relations.<sup>150</sup> Working time and pay rescheduling was often compensated by job security measures, as it happened at the Audi plant, for example. Similarly, in April 2009 GM Opel made an agreement with the unions to introduce a four-day working week for permanent staff. The aims of the agreement were to reduce production following declining demand and at the same time save jobs. Workers received 50 per cent of their salary for hours not worked. The contracts of temporary workers were not renewed, however.<sup>151</sup>

As reported by Glassner and Galgóczi, the case of the Suzuki car factory in Esztergom, North Hungary, should be mentioned separately because of the controversial measures it has adopted to cope with the crisis. About 1,200 workers – out of 5,523 – have been dismissed. Initially, 320 workers on probation were made redundant; the number of shifts was reduced from three to two, production will be terminated on Saturdays and night shifts cancelled. The next phase of lay-offs focused on temporary agency workers, in respect of whom the trade unions have no influence whatever. The most controversial measure applied by Suzuki,

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<sup>144</sup> Neumann L. (2010)

<sup>145</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 40.

<sup>146</sup> Neumann L. and Boda D. (2011)

<sup>147</sup> Neumann L. and Boda D. (2011)

<sup>148</sup> Szabo I. (2013); Neumann L. and Boda D. (2011). However, this attitude is not fully equivalent to the standard 'concession bargaining' policy pursued by American and West European labour unions, since the unions in Hungary do not have the bargaining power to prevent the management from carrying through their intentions. What happened in Hungary mostly was that the unions simply accepted their management's crisis-relief measures – as a necessary evil – in order to preserve jobs. *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 93.

<sup>149</sup> Szabo I. (2013) p. 208.

<sup>150</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 95.

<sup>151</sup> Glassner V. and Keune M. (2010) p. 23.



however, was as follows. In connection with the reduction of the number of shifts from three to two, the company announced the termination of the company bus service that transported commuter workers distances greater than 30 kilometres. At the same time, it offered the affected employees a three month bonus payment if they accepted voluntary departure. Thirteen bus transfers in Hungary and twelve bus transfers from Slovakia were stopped. Eight hundred employees accepted redundancy, mostly Slovakian guest workers.<sup>152</sup>

In some cases the crisis has not affected Hungarian plants harmfully; on the contrary, at some multinationals, the parent companies' cost-saving measures have led to job creation. For example, Electrolux, has announced 3,000 job cuts worldwide, but has expanded production in Hungary.<sup>153</sup> Mercedes launched its Hungarian subsidiary in 2012 (Kecskemét) with hospitable attitude towards unions.

A Eurofound research has also revealed the fact that social dialogue with trade unions was undermined in a number of countries – including Hungary – by the action of employers. For example in Hungary, employers sought to introduce new channels of social dialogue by promoting direct dialogue with workers themselves. Such action also carries the risk of undermining the role of works councils.<sup>154</sup>

Krén confirms that there are no representative researches about the impact of the crisis on industrial relation processes in Hungary. “However, a research carried out through interviews and case studies with 1000 work places in the private sector (not public sector) during 2009 and 2010 shows, that in 80% of the surveyed companies there was no change of industrial relations (e.g. introduction of information and consultation) according to the interviewed HR managers. In 20 % - 30 % of companies were there had been social dialogue when the crises began, the information and consultation got more regular. Only in 10% of the companies which were sampled in the research changes of collective agreement were made. Further on it has been shown in the research, that only in 10 % of the companies participating in the study changes of working time regulation were made. The appearance of termination of collective agreements was negligible according this non representative research.” The same research has shown that in cases, where a company was bound by a collective agreement, the level of employment remained stable during the crisis.<sup>155</sup>

All in all, bargaining coverage rates have shown remarkable stability throughout the years of the crisis.<sup>156</sup> These numbers are not only the indication of the fact that the majority of employers did not use the crisis as a pretext to withdraw from collective agreements, but also the sign of the lack of negotiated responses to the crisis.<sup>157</sup> Furthermore, contrary to the statistics, according to trade unions and research findings, collective bargaining coverage, especially that of wage agreements, fell during the economic crisis (but precise statistical data are missing as the official register of collective agreements is not fully reliable due to the very low level of compliant registration).<sup>158</sup> According to a recent study, in the first half of 2015 bargaining coverage rate was only around 25%.<sup>159</sup> Seeing that Hungary is a country with a

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<sup>152</sup> Glassner V. and Galgóczi B. (2009) p. 25.

<sup>153</sup> Glassner V. and Galgóczi B. (2009) p. 27.

<sup>154</sup> Guyet R., Tarren D. and Triomph C.-E. (2012) p. 64.

<sup>155</sup> Krén I. (2013)

<sup>156</sup> In Hungary the official number of registered agreements and their coverage did not change between 2008 and 2013. However, earlier figures on agreements registered with the Centre for Social Dialogue indicate that collective bargaining coverage fell by 14 percentage points between 2001 and 2012 – from 47 per cent to 33 per cent. Borbély Sz. and Neumann L. (2015) p. 202.

<sup>157</sup> Szabo I. (2013) p. 208.

<sup>158</sup> Borbély Sz. and Neumann L. (2015) p. 202.

<sup>159</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015)

very low coverage of collective agreements, the possibility of assessment of the impact of the crisis on collective agreements is restricted. Taking these facts into consideration, in sum, Krén assumes the following impact of the crisis on companies' level<sup>160</sup>:

- Companies with a developed social dialogue dismissed mainly workers with irregular work contracts;
- Reduction of wages were mainly done by postponing, pausing wage development and wages subsidiaries;
- Dismissals were highly likely in companies without social dialogue;
- In case of dismissals in companies with social dialogue the employees' representatives reached better conditions for the dismissed employees.

All in all, companies where the trade unions could take an active part in developing recovery strategies were the exception rather than the rule (and in these exceptional cases the influence of the trade union was largely due to its connections with international labour organisations).<sup>161</sup>

According to most of the studies, the lack of *sectoral collective agreements* is one of the main reasons why the structure of industrial relations in CEE-countries – including Hungary – deviates from European standards.<sup>162</sup> Governments of Hungary have always tried – at least officially – to reinforce industry-level bargaining. The main institutional frameworks for sectoral bargaining are the government-supported sectoral social dialogue committees, known as ÁPBs (made up of employers' associations and unions).<sup>163</sup> ÁPBs are bipartite bodies which aim to encourage the balanced development of a given sector, as well as to help the realization of autonomous social dialogue on a sectoral level. Within the ÁPB there is a possibility (for those entitled to do so) to conclude collective- and other agreements. However, these efforts have not been successful. There are less than 20 industry-level agreements, signed by employers' organisations, and there is no indication that the number will increase. The prevailing attitude of employers is a reluctance to join employers' organisations or to authorise them to conclude industry agreements. In general, there is no real cooperation between the sectoral level social partners.<sup>164</sup>

As Krén notes it, none of the sectoral collective agreements agreed after 2000 were fundamentality renewed or changed in the crisis. From the practice of ÁPBs, only some best practices might be cited with very marginal effects (if any). For instance, as Krén documents it, in the ÁPB of the Food industry the social partners prepared in 2008 a research and advisory opinion about the crisis in the food sector with strategic proposals how to improve competition of the Hungarian food industry and to prevent workplaces. In the ÁPB of the machinery sector the social partner held conferences in 2009 with the following crisis-related subjects: "The potential impact of the crisis on mechanical engineering", "job security in order to ensure employment in the sector" and "Tender opportunities in the engineering sector". There had been similar conferences organised by the respective ÁPB for other sectors. Main issue was the prevention of jobs during the crisis.<sup>165</sup>

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<sup>160</sup> Krén I. (2013)

<sup>161</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 93.

<sup>162</sup> Kohl H. (2015) p. 288.

<sup>163</sup> Act LXXIV of 2009 on sectoral social dialogue committees (In Hungarian: *Ágazati Párbeszéd Bizottságok, ÁPB*).

<sup>164</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015)

<sup>165</sup> Krén I. (2013)

In principle, the government has the right to extend collective agreements to all employees in an industry under certain preconditions (the request must be made by both parties and they must be able to fulfil certain criteria of representativity). However, this power has not been widely used and currently only three agreements, covering electricity, and parts of the construction and catering and tourism industries have been extended in this way (the baking industry's agreement was previously also extended but the extension was withdrawn in August 2013).<sup>166</sup> According to estimations, the employment effect and the coverage of extensions is marginal in Hungary. All in all, sectoral agreements have not played any role in crisis-management.

#### 4. Labour market effects of the reforms

With regard to *employment indicators*, some years ago Hungary still belonged to the tail-enders of the EU, while by now the country has become a top performer concerning the pace of improvement on the labour market. According to the OECD, between 2007 and 2013, there was only a marginal increase in Hungary's employment rate and the low participation rate did not considerably change.<sup>167</sup> The employment rate among the 15–64 year-old population rose steadily but at a slow pace up until 2003, and then, following a minor dip, stabilised at about 57 per cent. As a result of the crisis, it dropped from 56.7 per cent in the fourth quarter of 2008 to 55.5 per cent in the fourth quarter of 2009 and further to 54.5 per cent in the first quarter of 2010. This figure was 9 percentage points below the average of the 27 EU.<sup>168</sup> In addition, the economic crisis probably led to unreported or concealed work spreading more widely, and increasing in volume (especially between 2008 and 2010).<sup>169</sup>

According to the latest data, however, a positive trend regarding growth in the number of people in employment has remained intact over the last couple of years. For example, the annual average number of the employed was 4,210 thousand in 2015, exceeding by 110 thousand that of the previous year. The employment rate among the population aged 15-64 was 63.9% in 2015, 2.1 percentage points higher than in 2014<sup>170</sup> (while it was only 54.9% in 2010<sup>171</sup>). The rate of unemployment has shown a gradual decrease. In 2010 it was 11%, by 2013 it dropped to 10%, in 2014 it was 7.7% and in 2015 it was only at 7%.<sup>172</sup> Furthermore, real net wages in the private sector have been increasing every year since 2008.<sup>173</sup> Despite these *promising trends*, there is still much to do and several more measures are necessary to maintain this positive tendency. Furthermore, it would be *hard to construe a direct link between labour law reforms and improving employment indicators*. Many experts would certainly agree with Girndt, who states in his research findings that “business and union representatives alike said the government-vaunted positive impact of the new labour

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<sup>166</sup> Fulton L. (2015)

<sup>167</sup> OECD (2014): *Society at a Glance*.

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 Á. (2013).

<sup>168</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 18.

<sup>169</sup> *The Hungarian Labour Market Review and Analysis – The effects of the crisis (2011)* p. 41.

<sup>170</sup> Hungarian Central Statistical Office (KSH), 28 January 2016  
<https://www.ksh.hu/docs/eng/xftp/gyor/fog/efog1512.html>

<sup>171</sup> According to the OECD, between 2007 and 2013, there was only a marginal increase in Hungary's employment rate. OECD (2014): *Society at a Glance*.

<sup>172</sup> Képesné Szabó, Ildikó and Rossu, Balázs (2015)

<sup>173</sup> Szabo I. (2013) p. 207.

regulations on employment has not come about.”<sup>174</sup> Gyulavári and Kártyás draw an even more radical conclusion: the Code did not give an impetus to the growth of employment and “instead of creating many new jobs, the new employment law will deepen social inequality, especially in the case of low-skilled, vulnerable employees.”<sup>175</sup>

No doubt, the new Code has met its original aim of increasing flexibility, but *the social consequences of such a reform are to be seen* in the future. Only the flexibility part of the flexicurity concept was implemented.<sup>176</sup> Furthermore, it is open to discussion how big the real need was for such an enhanced flexibility. The World Economic Forum prepares yearly The Global Competitiveness Report.<sup>177</sup> 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 and thirteenth (13.) in 2015-16. 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, not a real issue when doing business. Among others, the most such problematic factors in Hungary are rather 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 the intense flexibilization of Hungarian labour law can’t be convincingly justified by pressing business and market needs. Furthermore, the flexibilization of labour law might still seem economically enticing in the short run, but might turn out to be more socially destructive in the long run.

Referring to the Europe 2020 Index (2014 edition), as regards competitiveness in terms of progress towards Europe 2020 goals, Hungary ranks 25th (out of EU-28), right after Croatia, followed only by Greece, Romania and Bulgaria. As far as labour market efficiency<sup>178</sup> is concerned – as one of the indicators / units of the Europe 2020 Index – Hungary has relatively efficient labour markets (18th).<sup>179</sup> This correlation might confirm the assumption that not the lack of labour market efficiency is the main obstacle of Hungary’s competitiveness. In other words: flexibilization of labour law has not much direct effect on the country’s competitiveness.

According to some empirical research (carried out in October-November 2012 at 16 companies)<sup>180</sup>, the new *Labour Code distorted the balance of power* in favour of employers

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<sup>174</sup> Girndt R. (2013a) p. 2.

<sup>175</sup> Gyulavári T. and Kártyás G. (2015) p. 16.

<sup>176</sup> Gyulavári T. and Kártyás G. (2015) p. 57.

<sup>177</sup> World Economic Forum, [www.weforum.org/reports](http://www.weforum.org/reports)

<sup>178</sup> The labour market efficiency index takes into account 4 factors: hiring and firing practices, cooperation in labour-employer relations, pay and productivity, extent of taxation on incentives to work.

<sup>179</sup> *The Europe 2020 Competitiveness Report, Building a More Competitive Europe*, 2014 Edition, World Economic Forum, Geneva.

<sup>180</sup> In course of the fieldwork about 50 interviews were done with union leaders as well as managers and company documents (primarily collective agreements) were studied. The research was commissioned and funded by the LIGA Trade Union Confederation and was organized by the Institute of Economics of the Hungarian

even in cases of strong union presence.<sup>181</sup> The same empirical research has confirmed the researchers' hypothesis that the new Code favours employers, while worsen the employees' position in a number of ways. According to the EPL indicators of the OECD, the strictness of employment protection (standard contracts) had always been relatively low in Hungary, but – after a long stability between 1990 and 2012– it dropped significantly (from 2.0 to 1.59) from 2012 to 2013.<sup>182</sup> This might be in connection with the new Labour Code.

The effect of labour law reform on collective bargaining is also doubtful and not necessarily in line with the original aims of the legislator. The European Committee of Social Rights concluded that the situation in Hungary is not in conformity with Article 6§2 of the European Social Charter on the ground that *no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements*, even though the coverage of workers by collective agreements is manifestly low.<sup>183</sup> As we have mentioned before, the ILO has also criticised the Code for – among others - insufficient promotion of collective bargaining and peaceful industrial relations. It would be too early to judge whether the new Code really increases the number – and the excellence and creativity 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. In line with everyday experiences, some empirical researches have already shown that Hungarian *bargaining parties are rather reluctant and cautious in innovatively using the increased scope for bargaining*.<sup>184</sup> Gyulavári and Kártyás states that “social partners have not reported remarkable developments regarding the number and contents of collective agreements.”<sup>185</sup>

The reasons might be manifold and to a large extent such reasons are beyond the scope of legal analysis. Complex structural<sup>186</sup>, sociological<sup>187</sup>, historical<sup>188</sup> and even psychological motives might be in the background. However, one – probably simplifying – explanation might be that employers have been given – by default – an already sufficiently flexible set of labour law norms by the new Code and, in most of the cases, they are not motivated to bargain collectively in merit. Additional incentives for bargaining are not institutionalized. All in all, the envisaged activating role of the new Code on industrial relations does not seem to be fulfilled. With time it might change, but signs for optimism are limited and the long-term effects are difficult to predict. The majority of Hungarian workers is still structurally unaffected by collective bargaining and genuine collective bargaining is very rare.

There is a big *contradiction in the 'Janus-faced' governmental policy towards collective bargaining* in Hungary. On the one hand, the Labour Code (as it has been described above) has liberalized bargaining processes and has given a wide open space for collective bargaining (see: absolute dispositivity as a main rule) to ideally facilitate autonomous bargaining.

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Academy of Sciences. See the original research report in Hungarian: <http://econ.core.hu/file/download/mtdp/MTDP1302.pdf>

<sup>181</sup> Nacsá B. and Neumann L. (2013) p. 99.

<sup>182</sup> <http://stats.oecd.org/#>; Also cited by: Drahoukoupil J. and Myant M. (2015): Labour's legal resources after 2004: the role of the European Union, *Transfer: European Review of Labour and Research* August 2015 21: 327-341, p. 333.

<sup>183</sup> European Committee of Social Rights, Conclusions 2014 (HUNGARY) Articles 2, 5, 6, 21 and 22 of the Revised Charter, January 2015, p. 18.

<sup>184</sup> Laki M. et al (2013); LIGA (2015)

<sup>185</sup> Gyulavári T. and Kártyás G. (2015) p. 28.

<sup>186</sup> Mass privatization after the change of regime; domination of micro, small and medium sized enterprises in the economy etc.

<sup>187</sup> Lack of skills, tradition, know-how etc.

<sup>188</sup> Low coverage of collective bargaining is a typical feature of post-socialist countries.

Theoretically and ‘on paper’, this solution fits into European traditions and it is not to be blamed. On the other hand, one can experience an overall de-motivating, unsympathetic climate towards collective bargaining.

Firstly, on the political-ideological level, the ever increasing statism and governmental unilateralism might have the indirect, spill over effect to de-motivate autonomous private regulatory initiatives such as collective bargaining. As a consequence, trade unions are still much more trying to focus on national level politics, even in the lack of meaningful tripartism. The concentration on creative local-level collective agreements and proactive bargaining is still insufficient. Thus, one might have the feeling that the limited capacities of trade unions are further lavished by the miss-targeting of their focus. Szabó and many others are not optimistic at all in this sense, as the majority of Hungarian workplaces are non-unionized and unions at the workplace have been operationally weakened by the Labour Code.<sup>189</sup> Trade unions seem to fall between two stools: they find it more and more difficult to influence government policies, but they are not really present at shop floors.

There are other factors in strengthening the feeling of an overall de-motivating, unsympathetic climate towards collective bargaining. Secondly, from an economic perspective, the strong governmental intervention in income policies (through taxation, social transfers etc.)<sup>190</sup> might preoccupy one of the genuine roles of collective bargaining to a considerable extent. Thirdly, from a financial aspect, the non-transparent and rather ad hoc governmental support programmes for social partners might be able to create the atmosphere of uncertainty and confusion. Fourthly, from a legal viewpoint, as it has been described before, the institutional promotion of collective bargaining is rather inadequate. Furthermore, the generally flexible, employer-friendly nature of labour law offers not much motivation for employers to bargain collectively in merit.

As we have mentioned, one of the overall purpose of the labour law reform was to reduce the extremely large number of litigious proceedings, especially by reducing the sanctions for unlawful termination of the employment relationship. In our opinion, from the first moment it was a very disputable regulatory idea. As a consequence, a large number of unlawful terminations will remain without any sanction, as employees won’t be motivated enough to file a case. As statistics show (see the chart below), *the number of labour law-related litigious proceedings has decreased drastically in the last couple of years* (for instance, during ten years, between 2004 and 2014 it roughly halved). Although this tendency might have a complex set of reasons and is not easy to be explained, the new Labour Code (and especially its new rules on the cut back of legal protection against unlawful dismissal) certainly plays a role. Furthermore, one must remember that the number of litigious proceedings not equals to the number of conflicts. Only the number of litigious proceedings has decreased, the number of ‘everyday’ workplace-conflicts might even increased in relation with the new Code. Accordingly, the assumed social costs of the huge number of unsolved labour law conflicts can be seen as a risk and as a harmful side-effect of the labour law reform. Furthermore, this tendency might have a spill-over effect and *might undermine labour law compliance in general*. Furthermore, labour law-related professionalism might also come in danger in the lack of stable and ample, well-established jurisprudence. Thus, in our opinion, these rules of the Labour Code need to be revisited and some form of punitive element should be re-built in the system.

*Number of labour law court cases (1991--2014)*

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<sup>189</sup> Szabo I. (2013) p. 211.

<sup>190</sup> Borbély Sz. and Neumann L. (2015) p. 169.

1991	28 253
1992	31 319
1993	17 349
1994	28 243
1995	14 458
1996	12 842
1997	13 318
1998	10 589
1999	11 490
2000	23 732
2001	26 099
2002	24 798
2003	29 801
2004	28 856
2005	32 818
2006	27 903
2007	26 538
2008	24 086
2009	25 075
2010	26 745
2011	22 844
2012	18 299
2013	16 023
2014 (first half)	7403

*Source: 1991--2003: Tóth A., Nacsá B. and Neumann L. (2004): Thematic Feature -- Individual Labour/Employment Disputes and the Courts (EIRO 2004). As of 2003: A bírósági ügyforgalom 2013. évi főbb jellemzői Országos Bírósági Hivatal, Bírósági Főosztály, Statisztikai Elemző Osztály. 2014: OBH XXI.B.1.15/8.*

## **5. Concluding remarks**

As it was already mentioned before, it is very hard to prove the direct effect of the crisis on labour law reforms in Hungary. The passing of a completely new Labour Code was much more a result of the strong-minded political will of the Government. In general, the new Labour Code seeks to increase the parties' autonomy and significantly reduces any legislative intervention. Although the new Code seems to be reasonably successful in general, some conceptual critiques might still be raised. As a result of space-limitations, this paper has analyzed only some critical cornerstones of the new labour law architecture of Hungary. In all fields there are some identifiable negative consequences – and/or possibly unwanted side-effects – of the reform. Firstly, the intended job-creating effect of the Code can't be proved. Secondly, the Code does not seem to practically intensify collective bargaining processes (in contrast with its aim). Thirdly, the re-regulation of trade unions and works councils have not brought about a meaningful revitalization of industrial relations, but has caused quite a lot of uncertainties and tensions. Fourthly, the new Code might undermine labour law compliance in general by leaving a large number of unlawful terminations without any meaningful sanction. On the whole, it would still be a misleading simplification to blame the current Government and the new Labour Code for all problems of the labour market in Hungary and especially for ineffective social dialogue processes. Only time will tell if social dialogue will revive or not in Hungary and legislation as such has a limited capacity in this context.



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