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The specific role of the collective and the individual sides of labour law from a “contract-based” aspect^[1]

ABSTRACT

This study explores the dualistic nature of labour law through the lens of contract theory, focusing on the dynamic interaction between its individual and collective dimensions. The individual side is examined within the framework of contractual freedom, risk allocation, and the influence of private law, particularly in market-driven employment contexts. In contrast, the collective side is addressed as a compensatory mechanism designed to mitigate social deficits and preserve long-term employment relations through normative regulation and collective agreements. By integrating contract theory, legal dogmatics, and regulatory aspects, the study highlights the importance of maintaining a balanced legal architecture that ensures both flexibility and protection in employment relationships.

Keywords: individual and collective dimensions of labour law ■ labour law dualism ■ freedom of contract ■ risk allocation ■ legal doctrine ■ social protection mechanisms ■ employment contract theory

I. INTRODUCTION

The central theme of our study is the analysis of the tensions arising from the unique and dual nature of labour law and the points of connection between individual and collective labour law. Our primary focus is on comparing the social aspect of labour law with its private law character, and examining the dilemmas and potential conflicts inherent in this comparison. We emphasise that in analysing the individual side, our investigation extends to the competitive environment created by the

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market economy and the phenomena observable in connection with it. Furthermore, we place the freedom of contract at the centre of our examination of the individual side, and discuss the rights and intentions of the parties in this context, as well as the limits of this freedom and the emerging dogmatic and private law issues. Through the analysis of the individual side, we aim to present the characteristics of labour law shaped by the labour market and the market economy. In our view, the dynamics and the potential for flexibility and contract formation found in individual law are always due to those private law elements, which – with their civil law nature and readiness to assume risk – are capable of adequately influencing the individual relationship between employer and employee.

As a counterbalance to the individual side, our study also examines the collective dimension of labour law, which, in our opinion, is predominantly characterised by social and “public law-like” features. By presenting the collective side, we also aim to provide a counterbalance to the freedom of contract in individual labour law, enabling the parties to actively participate in shaping the social framework. Our assumption is that the collective dimension of labour law represents a necessary institutional system that seeks to eliminate the social deficit identifiable on the individual side of labour law and to prevent the distortion of competition among workers – without imposing a disproportionate restriction on the concept of contractual freedom. We believe that such a distortion of competition and the predominance of private law elements would result in the loss of labour law’s distinctive regulatory character, forcing both employers and employees to enter into long-term legal relationships without mutual guarantees, in which the legal risks would become incalculable.

We anticipate that our exploration of the topic is more centred on legal theory than based on established judicial practice.^[2]

II. THE CENTRE OF THE PRIVATE LAW FRAME OF REFERENCE: „THE CONTRACT”

When examining the individual aspects of labour law and labour law from a private law perspective, it is important to focus on the institution that creates the legal relationship between the parties: the contracts. Labour law studies typically address issues concerning the formation, performance, and termination of contracts, and within these areas, it often explores recurring theoretical or practical dilemmas. Without disputing the fundamental significance of these aspects, we consider it important to emphasise the broader role and importance of the contract as a legal institution – both within the legal system generally and specifically within labour law.

[2] The translation of the study was prepared with the assistance of an artificial intelligence-based translation system.

We may confidently assert that recent academic discourse on labour law can be divided into two groups with regard to contracts, to put it somewhat bluntly: those who emphasize the legal institution of contracts and those who relegate it to the background. It is typically observed that when researchers examine the legal institutions of national labour law and their legal-dogmatic connections, the legal institution of contracts typically comes to the fore in some context.^[3] In contrast, when examining the social policy (labour law) of the European Union (hereinafter: EU) and its national transposition, the examination of contractual legal declarations is mostly neglected.^[4]

However, this two-pronged approach to labour law is purely a legal assessment and does not take into account the content of contracts that go beyond the scope of labour law, either within or outside the law.

Contracts as legally enforceable promises are also recognised in economic law.^[5] In this context, considerable emphasis is placed on the recognition of the principles of commitment and coordination. In labour law literature, promises relating to future facts and circumstances rarely appear,^[6] although this is perhaps one of the most striking features of contract law. Regardless of the issue of actual performance, the employment relationship is a long-term obligation,^[7] so in our opinion, instead of examining *ad hoc* facts, it is important to evaluate the promises made by the parties, both explicit and implicit, taking into account the psychological contract described below. The role of the promise is that the contracting parties set out how they intend to perform and shape the legal relationship between them. In labour law, the shaping of performance is an element which, unlike in classical private contract law, the employer can claim for itself,^[8] but – contrary to the classical approach – not because the law allows it, rather because the parties agree to this when concluding the contract.

Even without an explicit agreement between the parties, a contractual obligation to perform work on a permanent and dependent basis includes, as “*implied terms*” – or *naturalia negotii* – the standard elements of labour law, which are natural and, in many cases, mandatory.^[9]

The difference between an employment contract and an employment relationship lies in the fact that while the former embodies the will of the parties, the latter is independent of the will of the parties.^[10] Herefore, when the relativization of the importance of contracts is on the agenda, the question that needs to be addressed is whether we want to continue to give significance to

[3] See Prugberger – Jakab, 2019, 28-33.; Kiss, 2000, 3-17.

[4] Razzolini, 2010, 267-269.; Menegatti, 2020, 29.; Menegatti 2019, 71-83.; Herdon, 2023, 117.

[5] Szalai, 2013, 5-10.

[6] Kiss, 2017, 105-106.

[7] BH 2023.10.251.

[8] Kiss, 2014, 40-41.

[9] Bankó, 2020, 164-170.

[10] Kiss, 2014, 46.

the will of the parties or whether the state should decisively shape the (labour) relationship between the parties. However, György Kiss^[11] also points out that the displacement of the contractual basis of labour law is an interesting phenomenon because it is the contract that creates employment dependency, which is the basis of the independence of labour law. In contrast to the classic public law relationship between the state and its citizens, which in many cases involves state supremacy, the subjects of labour law are private parties in a relationship of equality in the absence of an employment contract. The formative role of the contract establishing the employment relationship cannot therefore be merely a transactional *causa*, since, precisely because of the requirement of permanent performance in labour law, "the exact determination of the synallagma in this type of legal relationship is generally not successful, unlike in exchange contracts in general."^[12]

It should be noted that, in addition to the classic, exclusively legal concept of a contract, labour law literature^[13] also recognises the concept of a psychological contract. This concept refers to an agreement between the parties that goes beyond the content of a classic legal contract. The literature^[14] includes, for example, the employer's demand for loyalty and flexibility on the one hand, and the employee's demand for material and intellectual advancement and the pursuit of personal interests on the other.

Approaches that place less emphasis on the importance of the contract are also not unified, as different positions are often underpinned by differing reasons. Approaches that place less emphasis on the importance of the contract are also not unified, as different positions are often underpinned by differing reasons. In the context of labour law, a typical justification for disregarding the contract is the underlying argument that the balance of power between the parties – namely the employer and the employee – is disrupted, resulting in a relationship of subordination. As a critique of this view, several questions arise: when is the balance of power disrupted, how long does subordination persist, and what is the actual purpose of labour law? In response to these guiding questions, it may be stated that the employment relationship – which is established by an employment contract – is capable of creating a hierarchy between the parties.

This gives rise to the dilemma that the moment the employment contract is concluded, and the preceding process leading up to it, may not necessarily fall within the scope of labour law rules, as there is not yet a relationship of subor-

[11] Kiss, 2014, 42-43.

[12] Kiss, 2014, 40.

[13] Tóth, 2022.

[14] Lőrincz, 2020, 11-12.

dination.^[15] The existence of labour law norms that differ from private law is justified by the need to restore the disturbed balance of power.^[16]

The theoretical question also arises as to whether, if the parties become subject to labour law by concluding the contract, further restrictions are necessary on the part of the legislator beyond the labour law norms. Given the purpose of labour law, the answer to this question may be negative, since labour law rules differ from purely private law norms in that they seek to restore the balance of power.

Alongside the concept of subordination, the restriction of contractual freedom for enforcing state interests may also arise. We fully agree with the approach of law and economics that states that,^[17] “labour law allows the state to regulate income distribution not only through taxes and benefits, but also by directly attempting to influence the level of wages and returns on capital (what economics refers to as pre-transfer or primary income).^[18] It is clear that the summary answer to the above questions is that the set of labour law norms is not an alternative to the contract, but that only the contract can determine its content.

When analyzing EU labour law standards, it should not be overlooked that, although EU legislation and case law conspicuously refrain from regulating contractual relations in labour law, this is not necessarily the task of EU law. International literature^[19] also emphasizes that EU legislation has so far neglected to define not only the concept of an employment contract but also that of an employee, leaving this primarily to practice, thereby making it more difficult to achieve the objectives of labour law. However, it is important to note that the aim of EU law is not to disregard the contractual principle, but merely to ensure that the system of labour law protection achieves the required level.^[20] This may give rise to a certain legislative need to ensure that the achievement of EU objectives and the contractual concept of labour law can be applied side by side in as many cases as possible.

The contract is often criticised for being marginal in importance, because it has little influence over the actual fulfilment of the dynamically evolving employment relationship and does not reflect its real content.^[21] In response to this, our critical position is that although it is true that a contract merely captures a given moment in time, this very characteristic enables it to record the parties’

[15] This is also reflected in Szalai’s law and economics approach, where he states that hierarchical relations and contracts are not in opposition to each other. A contract simply means that the parties agree in advance on the future relationship of subordination and superordination. See Szalai, 2013, 589.

[16] Lábady, 2002, 23-24.

[17] Szalai, 2013, 589.

[18] Szalai, 2013, 84.

[19] Menegatti, 2020, 29.

[20] Menegatti, 2020, 45.

[21] Békési, 2021, 24-26., 33.

promises – or, taking into account the employer’s superior bargaining position, the quasi-unilaterally determined terms by the employer – as a reference point. Fixing a promise at a specific moment is significant because any performance contrary to that can be evaluated dogmatically as a breach of contract, with the applicable legal consequences.^[22]

Although most sources on employment contracts emphasise the subordination and dependency of the employee, much less attention is given to the second component of economic dependence – namely, the allocation of risk. It can be stated that, alongside subordination, the conclusion of an employment contract also entails a unique form of risk allocation foreign to civil law, in such a way that nearly all employment-related risks fall on the employer. While it is true that in recent times the legislature has placed some risk on the employee as well, it is clear that these risks are significantly less substantial compared to those borne by the employer.^[23] We agree with Péter Sipka’s assertion that, whereas in civil law the liability of a party typically arises from a breach of contract, in labour law the guiding principle is risk allocation, which does not (necessarily) presuppose a breach of contract by the employer.^[24] Although due to constraints of length we do not examine the classification system of labour law in this study, we believe that the evaluation of risk allocation should serve as an independent criterion in the classification of legal relationships. However, this should be done in a reversed manner compared to other established criteria. That is, if one party in a contractual obligation assumes an irrational risk exceeding economic rationality, this may – in the presence of other supporting factors – indicate subordination, rather than the exercise of autonomous private will. A contract, therefore, always functions as a tool of risk allocation as well, and thus remains essential for the protection of the employee.^[25]

III. THE CONCEPT OF FREEDOM OF CONTRACT IN LABOUR LAW

Although modern labour law recognises the employment contract as a fundamental legal institution, the literature emphasises that the distinctive nature of the employment contract arises from the “influence of social elements infiltrating labour law.”^[26]

György Kiss provides a detailed analysis showing that during the existence of quasi-classical employment relationships, both individual and collective labour

[22] See Prugberger, 2008, 523-532.; Nádas, 2016, 479.

[23] Jakab, 2015, 24-26.

[24] Sipka, 2022, 119-120.

[25] Szalai, 2013, 53.

[26] Szalai, 2013, 53.

law were based on a closed contractual concept.^[27] Within this framework, the primary challenges and central issues revolved around the application of equal treatment and unilateral termination – particularly by the employer. Atypical forms of employment, which have in many areas replaced classical employment relationships, later evolving into certain forms of atypical employment relationships, emerged on the grounds of contractual freedom.^[28]

In this context, it becomes clear that the interference is not necessarily caused by the degree of contractual freedom present in labour law. Rather, the core dilemma stems from contractual solutions borrowed from civil law. Civil law and labour law are not strictly separated from one another^[29] – and in our view, nor should they be. Civil law aims to regulate personal and property relationships of individuals with general applicability. As the subjects of labour law are also individuals, they are fundamentally civil law entities. Contract law, governed by civil law, due to its emphasis on contractual freedom, allows these individuals to conclude a wide variety of agreements in terms of type, form, and content, within broadly defined public law limits.

Labour law does not deny the existence of contracts. Domestic legal regulation provides space for it not only in the establishment of the employment relationship but also during its fulfilment. Numerous provisions in Act I of 2012 on the Labour Code (hereinafter: the Labour Code or Mt.) allow or even require an agreement between the parties in order to deviate from certain legal rules. Depending on statutory authorisation, these agreements may deviate from the law to the benefit or detriment of either party or solely in favour of the employee.^[30]

The importance of the contractual principle is clearly reflected in how the legal regulation within the public sector is criticised when, under various public service relationships, the state unilaterally or quasi-unilaterally shapes the terms, thereby disregarding the employees' freedom of will. Furthermore, this public law-inspired approach to labour law was echoed during the pandemic, when employers were permitted to unilaterally mandate vaccination and sanction non-compliance. In this latter case, it was often emphasised that employers were exercising quasi-public law powers within an employment relationship, even though the constitutional legitimacy of such authorisation is questionable. Precisely because of such potentially negative consequences of a public law-oriented conception of labour law, we do not consider it appropriate to entirely or substantially disregard the contractual concept – regardless of the subordination that, although not denied by us, is in our view often overemphasised in certain sectors and labour market contexts.^[31]

[27] Szalai, 2013, 53.

[28] Bankó, 2008, 12.

[29] Bankó, 2008, 16.

[30] Kun, 2020, 148-149.

[31] See Herdon – Rab, 2021, 8-10.

By contrast, labour law – as a legal field regulating long-term performance-based legal relationships – necessarily requires, to a certain extent, the application of contractual freedom. This is because fundamental circumstances often change in long-term relationships, and the “constitutionally grounded freedom of contract enables the parties to adapt the system of their rights and obligations, the specific rules of their cooperation, and the reconciliation of their interests to the diverse circumstances of life, and to ‘elevate them to law’ within their contractual relationship.”^[32] Undoubtedly, in certain cases it is necessary and desirable to restrict specific elements of contractual freedom – particularly with regard to content regulation. However, from a fundamental rights perspective, the true essence of contractual freedom lies in the realisation of general freedom of action and the right to self-determination.^[33]

1. The relationship between limited rationality and legal economics in contracts

One of the most commonly cited justifications for limiting contractual freedom is the principle of bounded rationality. In individual labour law, this concept does not refer to the employee’s lack of information, but rather to their inability to make appropriate decisions, even when in possession of relevant knowledge and information.^[34] According to a paternalistic view, in individual labour relations the employee is considered the boundedly rational party, whose protection through state intervention and public authority is necessary and justified. This principle underlies the use of mandatory (cogent) rules, typically employed by the state to balance the unequal bargaining power between the parties. However, legal literature also takes a critical stance toward this approach,^[35] pointing out that excessive state protection or the application of cogent rules to all employees may, in many cases, restrict the decision-making autonomy of those legal subjects who are otherwise capable of making rational decisions. In such instances, state intervention – while aiming to counteract bounded rationality – may not be economically efficient, and could even prove counterproductive by preventing flexible agreements that reflect individual interests. From a law and economics perspective, then, while bounded rationality can justify limitations on contractual freedom, its mechanical or overly general application can lead to economic distortions and hinder the formation of optimal contractual relationships between the parties.

[32] Juhász, 2015, 40-41.

[33] Juhász, 2015, 40-41.

[34] Kun, 2020, 154.; Szalai, 2013, 61-62.

[35] Szalai, 2013, 555-556.

IV. THE 'NIGHT WATCHMAN' ROLE OF THE COLLECTIVE LABOUR LAW

The unique nature of labour law as a distinct legal branch has been significantly shaped by the correlative relationship between its individual and collective dimensions.^[36] Labour law's special character – situated at an equal distance from both private and public law – cannot and should not be denied. This particular positioning means that examining certain issues from either the individual or the collective perspective may yield divergent outcomes.^[37] This is no different when analysing freedom of contract within the broader context of labour law's undeniable economic and social dimensions. The present section of our study focuses on the role of collective labour law, examining it in relation to the individual and more private law-oriented aspects of labour law. Key topics include collective agreements, the social aspects they entail, and the collective interpretation of contractual freedom.

1. The Role of Collective Labour Law in Shaping Individual Employment Relationships

The collective side of labour law – as opposed to the individual dimension – serves a balancing function between the parties, reflecting its regulatory nature derived from the mutual promises forming the basis of their legal relationship. It encompasses the social and potentially competition-distorting instruments that allow for the specific shaping or transformation of the employment relationship. This collective dimension is designed to diminish the purely private-law character of the individual side, taking into account the enduring nature of employment relationships.^[38] In most Member States, the will of collective actors (e.g., trade unions and employer associations) has the potential – within the legal framework set by the legislature – to influence the rules applicable to the parties, going beyond the limits of the individual contract. As such, when shaping an employment relationship, the parties are not limited to defining their legal framework solely based on their bilateral agreement. This quasi-normative capacity of the collective side fosters cooperative and negotiated positions that support the enforcement of interests on both the employee and employer sides, while enabling constructive dialogue between them.^[39]

When we consider these entitlements and mechanisms, it becomes clear that – in contrast to the market-oriented logic of the individual side – the collective dimension holds a stable and strategic position. Rather than regulating the atomized elements of individual relationships and the circumstances of their per-

[36] Kiss, 2010, 564.

[37] Prugberger – Nádas, 2015, 21.

[38] Prugberger, 2016, 255-256.

[39] Zaccaria, 2021, 90-100.

formance, it seeks to establish the overarching framework and develop its components.^[40] By creating such a framework, collective labour law helps protect the social interests found within the individual side and ensures that the pressures of economic performance in a competitive market remain within manageable boundaries for both employees and employers. This, in turn, prevents the long-term employment relationship from becoming an obsolete or irrelevant legal institution.^[41] Therefore, the balancing function and the maintenance of a constant and dynamic fulfilment of responsibilities between the parties make the collective dimension of labour law indispensable. In our view, disregarding or marginalising the collective aspect poses a legal risk for both employers and employees – one that threatens the long-term sustainability of the employment relationship and may ultimately encourage its termination.

2. The Social and Economic Aspects of the Collective Dimension

Since its formation, collective labour law and its distinct institutional framework have served social functions and played a crucial role in legal protection and interest representation.^[42] Beyond its social protective function, the collective side undeniably responds to legal developments driven by economic and societal considerations and transformations. Thus, similar to labour law as a whole, the collective dimension can also be divided into areas that address social deficits and those shaped by economic necessity.

In our view, this internal differentiation within the system is equally attributable to the enduring nature of the employment relationship and its goal of generating economic outcomes. Tensions within the collective side ultimately arise from the fact that – whether considered from an individual or collective perspective – the parties to the legal relationship represent fundamentally opposing interests and positions.^[43] However, these parties share a common objective, and this shared goal neutralises their dissonance in a way that does not jeopardise the sustainability or longevity of the employment relationship.

Given the economic and social axes that define the collective side, it is crucial to examine the events and circumstances that motivate collective interest enforcement or social dialogue. Such circumstances – particularly in situations involving social rights enforcement – often include the erosion of social entitlements, the loss or distortion of interests among the contracting parties in a long-term relationship. These tensions may escalate to the point where social entitlements transform into social demands. As legal grievances intensify, the parties may resort to collective enforcement mechanisms as instruments of “ultima ra-

[40] Czuglerné – Mélypataki, 2021.

[41] Balogh, 2022, 6-7.

[42] Prugberger – Nádás, 2015, 18-24.

[43] Kun, 2018, 391-395.

tio” to assert their claims. For this reason, it is in the mutual interest of both employers and employees to maintain a balance in social entitlements. This is especially relevant given the recent elevated significance of economic performance, which remains a shared concern for both sides of the employment relationship. Society and the economy exert continuous pressure on the collective side of labour law, compelling the parties to adapt and rethink the rules of the system in response to real-life developments. Social and economic changes shape every aspect of work with such intensity that the parties must periodically redefine the framework of their relationship. In this context, the parties’ limited regulatory authority becomes increasingly important from the perspective of economic development. Therefore, the collective side’s role in interest coordination and cooperation does not necessarily entail the unconditional preservation of social entitlements. Instead, it can function as a means of balancing the competitive dynamics identified on the individual side and protecting against disproportionate distortions.^[44]

V. THE COLLECTIVE AGREEMENT AS THE IDEAL MIDDLE GROUND

The collective agreement can be considered the most flexible instrument of collective labour law. Through collective agreements, the parties involved in the employment relationship can assert their own interests and reconcile their social demands and economic performance.^[45] In this way, the parties essentially provide a framework for exercising their rights and fulfilling their obligations in which they feel most comfortable and can achieve maximum economic efficiency. In the case of collective agreements, it is important to highlight the differences inherent in their nature as opposed to individual contracts. These differences stem from the contractual nature of the agreement and its focus on social rights.

1. The Social Aspects of the Collective Agreement

Due to its unique contractual and quasi-imperative nature, the collective agreement is an ideal instrument for establishing a regulatory framework in the employment relationship that emphasises the social security of employees, even at the cost of proportionally limiting employer interests.^[46] The primary function of the collective agreement is protective: it ensures a genuine balance in employment conditions, aims to standardise employment relationships, and helps

[44] Zaccaria, 2021, 101-102.

[45] Kiss, 2010, 435., 483-484.

[46] Zaccaria, 2021, 11-13.

prevent industrial conflicts.^[47] Although a collective agreement is, at its core, a contract subject to the rules of contract law, its effects often resemble the binding nature of statutory provisions.^[48]

When examining collective agreements from a social perspective, their public law character becomes more apparent. This is particularly dominant in national legal systems where collective agreements serve as key instruments through which social partners can conclude generally applicable sectoral or national-level agreements – covering, for instance, minimum wage standards, national wage guarantees, or maximum working hours.^[49]

The collective side of regulation, through the institution of collective agreements, can fulfil its protective function by allowing the extent of protection to be determined by the parties within the boundaries set by law. When such an agreement is reached, both employer and employee sides – typically engaged in a hierarchically structured relationship – are placed on equal footing. This parity allows for effective interest representation and provides a flexible mechanism for securing workers’ social safety.^[50] At the same time, this shift to an equal footing also means that a fundamental principle of labour law is suspended now that the contractual negotiation process begins. From this point on, the procedures governing the resulting agreement are shaped by the nature of contracts themselves – most often subject to modified (special) private law rules softened by labour law in many Member States.

2. Freedom of Collective Bargaining

As previously discussed, the parties concluding a collective agreement fundamentally occupy a position of equality. However, the freedom to conclude such agreements – derived from this parity – cannot be equated with the freedom of contract found on the individual side, nor can it be viewed as a purely private law contractual freedom. Nevertheless, case law from the Court of Justice of the European Union (CJEU) makes it clear that the “free commitment” of the parties is an essential element of collective agreements as well.^[51] It is important to stress that the processes of concluding collective agreements are only valid if conducted in accordance with the procedural rules laid down by national laws. These limitations include the determination of the contracting parties, restrictions on amending the agreement, changes in the identity of the contracting entities, and the scope of issues that may be regulated within a collective agree-

[47] Hágelmayer, 1979, 305.

[48] Puskás, 2019, 80-81.

[49] Prugberger, 2001, 92.

[50] Kovács, 2011, 80-83.

[51] Asklepios Kliniken Langen-Seligenstadt GmbH and Asklepios Dientleistungsgesellschaft mbH vs. Ivan Felja and Vittoria Graf ((Judgment of 27 April 2017 in Joined Cases C-680/15 and C-681/15).

ment. In most cases, such restrictions are shaped by the collective traditions developed within each Member State. Accordingly, the degree of contractual freedom varies significantly between jurisdictions. This variation raises intriguing questions – chiefly whether the differing levels of freedom to conclude collective agreements might constitute a form of distortion of competition among Member States.^[52] To address this, it is necessary to examine Article 153 of the Treaty on the Functioning of the European Union (TFEU). This provision stipulates that the EU does not possess the competence to adopt legally binding legislation covering all aspects of collective labour law across the Union.^[53] Thus, the EU has, in effect, excluded the possibility of answering such a question within the scope of its competences.^[54]

Another important trend in collective bargaining is that, in most Member States, the entities authorised to conclude collective agreements are strictly defined and limited by statute.^[55] In this context, special mention must be made of a recent decision by the Hungarian Constitutional Court,^[56] which declared unconstitutional a provision of the Hungarian Labour Code (Mt.) that restricted the right of a trade union – once it had achieved representativeness – to amend an already existing collective agreement. This ruling is particularly forward-looking in the context of Central and Eastern European collective labour law traditions, and it marks a significant step toward expanding the scope of freedom in collective bargaining.^[57]

VI. CONCLUSION

In summary, it can be stated that the contract, as a legal fact that creates a relationship between the parties or as an institution endowed with collective binding force based on the agreement between the parties, is an essential element of labour law, without which we could not speak of the existence of the legal field. However, it is important to emphasize that, despite the contractual nature of labour law, it cannot be classified purely as a private law or public law contract or any other legal fact or obligation-creating relationship. This distinction is significant because the economic and social considerations found in

[52] Papp, 2014, 58.

[53] Ferencz – Göndör – Gyulavári – Kártyás, 2020.

[54] Hungler, 2020, 235.

[55] Prugberger – Nádas, 2015, 91-98.

[56] Decision 22/2023. (X. 4.) AB. According to the operative part of the decision, the Constitutional Court declared unconstitutional and annulled the text „- with advisory rights -” in Section 276 (8) of the Labour Code, and ordered a prohibition on its application in ongoing lawsuits.

[57] See further statistics and observations regarding the region’s collective traditions and collective actions: Gyulavári – Kártyás, 2023.

labour law compel differentiation within the legal field itself. This differentiation is most evident in the individual and collective freedom of contract discussed in the study, as well as the objectives of these contracts.

When considering the individual side of labour law, the focus should be on the law of contract. If we examine contract law from the perspective of risk bearing, we can see that it can effectively counterbalance the subordination to the employer.^[58] Therefore, unless the economic gap between the employer and employee has deepened to the point where it completely distorts the contracting process, the complete removal of the contractual concept is not justified. On the one hand, public law instruments are most necessary when the contractual relationship creates a strong dependency compared to classic private law, yet the subordinated party carries an unreasonable amount of risk in relation to this dependency.

On the other hand, when considering the collective side of labour law, it is clear that the collective agreement is fundamentally a dual-natured legal institution. The collective agreement, with its ability to protect and extend social rights, as well as its contractual nature, is a suitable tool to create frameworks in long-term employment relationships that consider both the employer's and employee's specific situations. Consequently, with the help of the freedom to contract,^[59] the collective agreement can preserve the unique nature of labour law, which contains both private law and public law elements.^[60]

REFERENCES

- Balogh Áron Péter (2022): A kollektív autonómia alapjogi összefüggései [Fundamental Rights Aspects of Collective Autonomy]. In: *Munkajog*. 2022/1. sz.
- Bankó Zoltán (2008): *Az atipikus munkajogviszonyok. A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon [Atypical Employment Relationships: Forms of Employment Deviating from the General Rule in the EU and Hungary]*. Pécsi Tudományegyetem Állam- és Jogtudományi Kar Doktori Iskola, Pécs.
- Bankó Zoltán (2020): A munkajogviszony létesítése és kezdete [Establishment and Commencement of the Employment Relationship]. In: Kiss György (ed.): *Munkajog [Labour Law]*. Dialóg Campus, Budapest.
- Békési Gábor (2021): A munkajog jogforrási rendszerének egyes sajátosságai, különös tekintettel a munkaszerződés tartalmának meghatározására [Some Features of the Sources of Labour Law, with Special Regard to the Content of the Employment Contract]. In: *Pécsi Munkajogi Közlemények*. 2021/1–2. sz.
- Czuglerné Iványi Judit – Mélypataki Gábor (2021): Érdekképviseletek a munkajogban [Interest Representation in Labour Law]. In: Jakab András – Könczöl Miklós – Menyhárd Attila – Sulyok Gábor (eds.): *Internetes Jogtudományi Enciklopédia [Online Encyclopedia of Legal Studies]*. (Munkajog rovat, editors: Kiss György – Kun Attila – Hungler Sára).

[58] Gyulavári, 2014, 73.

[59] Zaccaria, 2021, 93-95.

[60] Kártyás, 2020, 61-62.

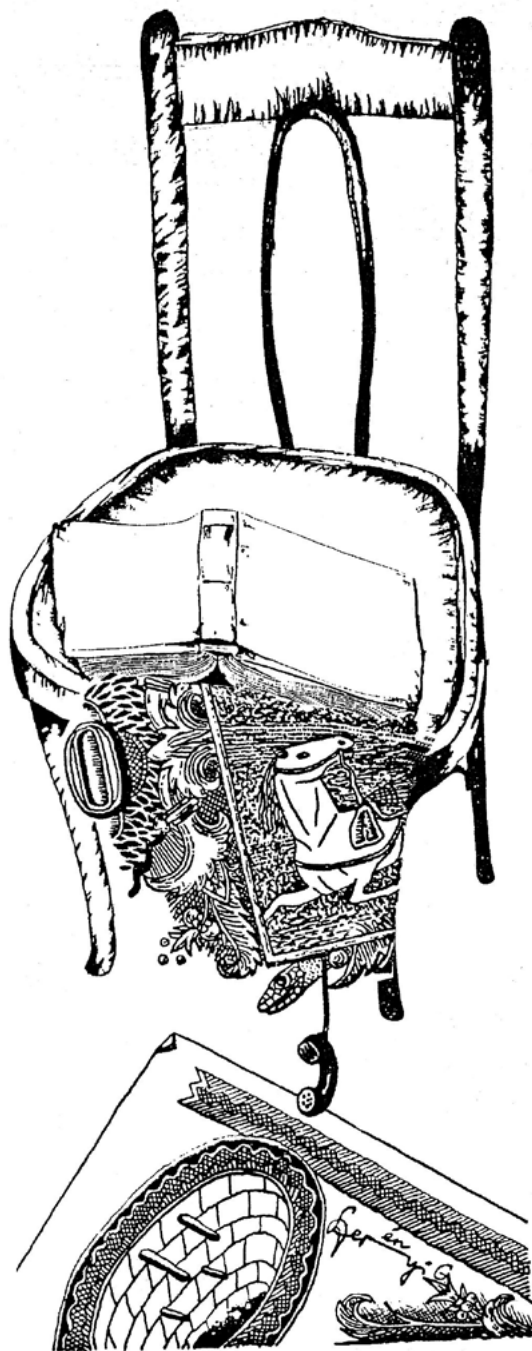
- Ferencz Jácint – Göndör Éva – Gyulavári Tamás – Kártyás Gábor (2020): *Munkajogi alapismeretek [Basic Knowledge of Labour Law]*. ELTE Eötvös, Budapest.
- Gyulavári Tamás – Kártyás Gábor (eds.) (2023): *A kollektív szerződéses lefedettség csökkenése Magyarországon (2012–2023) [The Decline of Collective Agreement Coverage in Hungary (2012–2023)]*. Friedrich-Ebert-Stiftung Budapesti Irodája, Budapest.
- Gyulavári Tamás (2014): *A szürke állomány: Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán [The Grey Area: Economically Dependent Work on the Borderline of Employment and Self-Employment]*. Pázmány Press, Budapest.
- Hágelmayer Istvánné (1979): *A kollektív szerződés alapkérdései [Fundamental Issues of Collective Agreements]*. Akadémiai, Budapest.
- Herdon István (2023): Are We Saying the Same Thing, but Actually Something Different? – Extracts for a Theory of Legal Interpretation in Labour Law. In: *Lex et Scientia*. Vol. 30/2023.
- Herdon István – Rab Henriett (2021): Hogyan írható elő kötelezően a védőoltás a gazdasági munkaviszonyokban? [How Can Vaccination Be Made Mandatory in Economic Employment Relationships?]. In: *Közjogi Szemle*. 2021/4. sz.
- Hungler Sára (2020): Az Európai Unió kollektív munkajoga [The Collective Labour Law of the European Union]. In: Hungler Sára – Gellerné Lukács Éva – Petrovics Zoltán – Dudás Katalin (eds.): *Az európai Unió szociális és munkajoga [Social and Labour Law of the European Union]*. ELTE Eötvös, Budapest.
- Jakab Nóra (2015): A munkajog és polgári jog kapcsolata a jogpolitika tükrében [The Relationship Between Labour Law and Civil Law in the Light of Legal Policy]. In: *Magyar Jog*. 2015/1. sz.
- Juhász Zoltán (2015): A szerződési szabadság és határai alkotmányjogi és magánjogi nézőpontból, valamint a „*clausula rebus sic stantibus*” elve [Freedom of Contract and Its Limits from a Constitutional and Private Law Perspective, and the Principle of *Clausula Rebus Sic Stantibus*]. In: *Közjogi Szemle*. 2015/1. sz.
- Kártyás Gábor (2020): XXI. század és munkajog: megőrizni vagy megreformálni? [21st Century and Labour Law: Preserve or Reform?]. In: Pál Lajos – Petrovics Zoltán (eds.): *Visegrád 17.0 – A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai [Visegrád 17.0 – Edited Papers of the 17th Hungarian Labour Law Conference]*. Wolters Kluwer, Budapest.
- Kiss György (2000): Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre [The New Civil Code and Labour Law Regulation, with Particular Regard to Individual Employment Contracts]. In: *Polgári Jogi Kodifikáció*. 2000/1. sz.
- Kiss György (2010): *Alapjogok kollíziója a munkajogban [Conflict of Fundamental Rights in Labour Law]*. Justis, Pécs.
- Kiss György (2014): Foglalkoztatás gazdasági válság idején – a munkajogban rejlő lehetőségek a munkajogviszony tartalmának alakítására (jogdogmatikai alapok és jogpolitikai indokok) [Employment During Economic Crisis – Opportunities in Labour Law to Shape the Content of Employment Relationships (Doctrinal Basis and Policy Reasons)]. In: *Állam- és Jogtudomány*. 2014/1. sz.
- Kiss György (2017): A munkaszerződés tartalmának összetettségéről [On the Complexity of the Content of the Employment Contract]. In: *Jogtudományi Közlöny*. 2017/3. sz.
- Kovács Erika (2011): A kollektív szerződés jogi természete [The Legal Nature of the Collective Agreement]. In: *Jura*. 2011/1. sz.
- Kun Attila (2018): Munkaviszony és a digitalizáció – rendszerszintű kihívások és a kezdetleges európai uniós reakciók [Employment and Digitalization – Systemic Challenges and Initial EU Responses]. In: Pál Lajos – Petrovics Zoltán (eds.): *Visegrád 15.0 – A XV. Magyar Munkajogi Konferencia szerkesztett előadásai [Visegrád 15.0 – Edited Papers of the 15th Hungarian Labour Law Conference]*. Wolters Kluwer, Budapest.

- Kun Attila (2020): Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről. A járványhelyzet egyes munka- és szociális jogi dilemmái [Fundamental Labour Law Issues: The Scope of Individual Agreements Between the Employer and Employee. Certain Labour and Social Law Dilemmas of the Pandemic]. In: *Glossa Iuridica*. 2020/különszám.
- Lábady Tamás (2002): *A magyar magánjog (polgári jog) általános része [General Part of Hungarian Private Law (Civil Law)]*. Dialóg Campus, Budapest–Pécs.
- Lőrincz György (2020): A munkaszerződés teljesítésének egyes kérdései [Some Issues of the Performance of the Employment Contract]. In: *Munkajog*. 2020/3. sz.
- Menegatti, Emanuele (2019): The Evolving Concept of “worker” in EU law. In: *Italian Labour Law E-Journal*. Vol. 12/2019.
- Menegatti, Emanuele (2020): Taking EU labour law beyond the employment contract: The role played by the European Court of Justice. In: *European Labour Law Journal*. Vol. 11/2020. DOI: <https://doi.org/10.1177/2031952519884713>
- Nádas György (2016): Szerződészegés a munkaviszonyokban [Breach of Contract in Employment Relationships]. In: Homoki-Nagy Mária – Hajdú József (eds.): *Ünnepi kötet dr. Czúcz Ottó egyetemi tanár 70. születésnapjára [Festschrift for Professor Ottó Czúcz on His 70th Birthday]*. Szegedi Tudományegyetem Állam- és Jogtudományi Kar, Szeged.
- Papp Mónika (2014): Immanens versenykorlátozások az Európai Bíróság joggyakorlatában [Immanent Restrictions on Competition in the Case Law of the European Court]. In: *Állam- és Jogtudomány*. 2014/4. sz.
- Prugberger Tamás – Jakab Nóra (2019): A munka-, és a vállalkozási típusú szerződéseknek a szerződő felek bizalmi jellegétől függő elhatárolása [Distinction Between Employment and Contractual Work Based on the Trust Between the Parties]. In: *Miskolci Jogi Szemle*. 2019/1. sz.
- Prugberger Tamás – Nádas György (2015): *Európai és magyar összehasonlító kollektív munkajog [Comparative Collective Labour Law in Europe and Hungary]*. Wolters Kluwer, Budapest.
- Prugberger Tamás (2001): Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni és a kollektív szerződésre [The New Civil Code and Labour Law Regulation, with Particular Regard to Individual and Collective Contracts]. In: Tóth Hilda (ed.): *A munkajog és a polgári jog kodifikáció és funkcionális összefüggései [Codification and Functional Relations Between Labour Law and Civil Law]*. Novotni Kiadó, Miskolc.
- Prugberger Tamás (2016): A kollektív munkajog jelentősége és egyes intézményeinek szabályozásával kapcsolatos problematikus megoldások a jog-összehasonlítás tükrében [The Importance of Collective Labour Law and Some Problematic Regulatory Solutions in Comparative Law Perspective]. In: *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXXIV. Miskolc.
- Prugberger Tamás (2008): A munkaszerződés megszegéséből eredő felelősség jogdogmatikai problémái és a tételesjogi rendezés [Doctrinal Issues and Codified Regulation of Liability Arising from Breach of Employment Contracts]. In: *Jogtudományi Közöny*. 2008/11. sz.
- Puskás Ágnes (2019): A kollektív szerződés jogi természetéről [On the Legal Nature of the Collective Agreement]. In: *Pro Futuro*. 2019/2. sz. DOI: <https://doi.org/10.26521/profuturo/1/2019/3783>
- Razzolini, Orsola (2010): The Need to Go Beyond the Contract: “Economic” and “Bureaucratic” Dependence in Personal Work Relations. In: *Comparative Labor Law & Policy Journal*. Vol. 31/2010.

- Sipka Péter (2022): Az előreláthatósági elv megvalósulása a tíz éves bírói gyakorlat alapján [The Implementation of the Principle of Foreseeability in Ten Years of Judicial Practice]. In: *Miskolci Jogi Szemle*. 2022/4. sz.
DOI: <https://doi.org/10.32980/mjsz.2022.4.2121>
- Szalai Ákos (2013): *A magyar szerződési jog gazdasági elemzése [Economic Analysis of Hungarian Contract Law]*. L'Harmattan, Budapest.
- Szalai Ákos (2013): A szerződés tartalma [The Content of the Contract]. In: *Pázmány Law Working Papers*. 2013/11. sz.
- Szalai Ákos (2013): A szerződési jog gazdasági elemzésének közgazdaságtani és jogi alapjai [Economic and Legal Foundations of the Economic Analysis of Contract Law]. In: *Pázmány Law Working Papers*. 2013/8. sz.
- Tóth Kristóf (2022): A pszichológiai szerződés elméletének egyes munkajogi kapcsolódási pontjai [Certain Labour Law Aspects of the Psychological Contract Theory]. In: *Pro Futuro*. 2022/1. sz.
- Zaccaria Márton Leó (2021): *Idejétmúlt koncepció vagy garanciális minimum? Avagy a munkavállalói alapjogok érvényesülése az uniós és a magyar jogban [Outdated Concept or Guarantee Minimum? On the Enforcement of Workers' Fundamental Rights in EU and Hungarian Law]*. HVG-ORAC, Budapest.

LIST OF JUDGMENTS

- 22/2023. (X. 4.) AB határozat.
- Asklepios Kliniken Langen-Seligenstadt GmbH és Asklepios Dientleistungsgesellschaft mbH kontra Ivan Felja és Vittoria Graf (C-680/15. és C-681/15. sz. egyesített ügyekben 2017. április 27-én hozott ítélet).BH 2023.10.251.



Szerényi Gábor grafikája