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Imre Szilárd Szabó

The Legal Status of Trade Unions in Hungarian Labour Law

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Consultant: Dr. Gyula Berke

Habilitated Associate Professor

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The background of choosing my topic, its current significance, the structure of my paper

The freedom of association, the right to organise, as well as to collective bargaining and action, with special regard to the right to strike, to information and to the freedom of expression are fundamental rights guaranteed in the Universal Declaration of Human Rights,[1] the Conventions and Recommendations of the International Labour Organisation (ILO), the European Convention on Human Rights, the revised European Social Charter, the Charter of Fundamental Rights of the European Union, as well as in most of the national constitutions, which are guaranteed on the level of fundamental laws as well. In the past few decades, especially since the economic and financial crisis of 2008, the slow erosion of both individual and collective employees' rights has become a constant global experience of trade unions.[2]

As is almost generally and uniformly concluded by the authors of the literature available on the topic, labour relations in Hungary are characterised by *weakening freedom to organise, weakening trade union rights*, increasingly *meaningless (national and sectoral) reconciliation of interests*, furthermore, *a contradictory regulatory environment*. This means that the environment affecting labour (and the redistribution of the gross domestic product) is thus constantly changing, while the opinions of the advocacy organisations meant to represent the interests of those affected are becoming marginalised, or neglected in many cases. This phenomenon is also amplified by the social processes hampering the search for collective solutions from the start, so the individual strategies overtake, or at least greatly weaken the need for, and the strength of collective action. The employees tend to seek ways to enforce their interests individually (in many cases, to "vote with their feet"), that is, to find a job with another employer, than to try to improve the employment conditions by joint action. This is especially true in the current labour market situation, i.e. considering the increasing lack of labour force in the past few years[3]. This is obvious from the indicators of the organisational levels of trade unions as well. The number of organised employees (similarly to the international trends) has been steadily decreasing since the change of the political

[1] Civil liberties are indispensable in exercising trade union rights in the broad sense of the word, especially the right of persons to freedom and security; freedom from tyranny; the freedom of opinion and expression; the freedom of association; the right to a fair trial by an independent and impartial tribunal, as well as the right to the protection of the property of trade union organisations. See: International Labour Conference, 81st Session, 1994; Report III (Part 4B), p. 14

[2] The programme of the European Trade Union Confederation (ETUC): https://www.etuc.org/en/european-trade-union-confederation-14th-congress-etuc19 (downloaded on 10.04.2020)

[3] At the time of concluding my paper (April 2020), the so-called coronavirus situation carries yet unknown economic and labour market consequences.

system in 1989, this is why representativeness and democratic legitimacy have become key questions. Hungarian advocacy groups, while they have first-hand experience of these processes, except for some positive exceptions, keep their relative shares and inherited positions in the narrowing "market", however, an extraordinarily high level of segmentation continues to characterise them as well.

In my doctoral thesis, I have primarily endeavoured to explore the content of the above hypotheses by presenting the historical development in Hungary, the external and internal legal environment, as well as by making proposals and critical, analytical remarks that intend to improve (de lege ferenda) the effective regulation. I am trying to answer the question of what kind of legal regulation would be suitable for "vitalizing" the trade unions, and whether labour law in itself may prove to be the right means in this respect. In this respect, the sociological and social-psychological dimensions of this question, with a few exceptions, were not subjects of this paper. However, the questions under review also generate topics for not only legal dogmatic discussions but also, disputes of a strongly legal policy (in some respects, public policy) nature, although collective labour law, by nature, counts as a strongly politicised regulatory area, and labour law is one of the "most political" branches of law.[4]

As regards the topic of the treatise, it should be classified in the area of political and legal sciences, also touching upon the disciplines of labour law and labour relations, as a result of which my research can be placed in the group of social sciences. In applying the methods of analysis, in addition to analysing the data and literature available on the practices of international and Hungarian labour law norms and labour relations, it was vital to apply the interdisciplinary and trans-jurisdictional compliance method, which primarily contains sociological criteria. Given the uniqueness of the topic, in addition to analysing the literature and the laws, which is well-established practice in legal research, empirical research, i.e. the analysis of the related documents (which constitutes the fourth part of my paper) has been given an important role too. The key methodological difficulty of this research was that this topic is not paid adequate attention to in Hungarian legal literature.

[4] György Kiss: Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre (The New Hungarian Civil Code and the Regulation of Labour Law, with special regard to Individual Employment Contracts), Polgári Jogi Kodifikáció (Civil Law Codification), issue 2000/1, p. 15

Analysis of the historical part

Before the change of the political and economic system in 1989, there was ample literature on the history of the Hungarian "labour movement" and trade unionism,[5] however, researchers in the various fields of science (such as historians, sociologists and lawyers) have dealt with the topic of my thesis very seldom since 1990.[6] The science of labour law itself *"has only paid very little attention to research into the historical development of Hungarian labour law"*, which involved *"the lack of ideological and science history research efforts"*.[7] It should also be noted that at the moment, Hungary has no independent journal dealing specifically with collective labour law, which fact is not adequately explained by that the practical significance of collective labour law in itself is far behind its importance in Western Europe.

Hungarian labour law literature has three monographs on collective agreements, the first one of which is the comprehensive study with a wide international perspective, authored by Béla Perneczky, written in 1938, between the two world wars, which was unprecedented in Hungarian legal science.[8] Its dogmatical part provides a profound review of the subjects of the legal institution, as it discusses in detail (and with criticism) the prevailing theories of the era (representational, associational, as well as cumulative).[9] This was followed by the essay written on the subject by Mrs. István Hágelmayer in 1979,[10] in which the labour law, political and economic conditions of

[5] Without being exhaustive, we may think of the works of Péter Sipos, Edit S. Vince, Tibor Erényi, Kálmán Szakács or Sándor Jakab here.

[6] The publications on this topic, again without being exhaustive, include: Judit Lux: A magyarországi szakszervezetek történetéből (Details from the History of Hungarian Trade Unions), revised edition, Friedrich Ebert Foundation, Budapest, 2008; Erzsébet Szalai: A civil társadalomtól a politikai társadalom felé. Munkástanácsok 1989-1993 (From Civil Society to Political Society, Workers' Councils between 1989 and 1993). T-Twins Kiadó, 1994; András Tóth: Civil társadalom és szakszervezetek (Civil Society and Trade Unions), Szociológiai Szemle (the journal Sociological Review), issue 3, 1995, pp. 21-50; Ferenc Tóth: Konszenzuskereső évek. Az Autonóm Szakszervezetek Szövetsége (Years of Seeking Consensus: the Autonomous Trade Union Confederation), Budapest, Autonóm Szakszervezetek Szövetsége (Autonomous Trade Union Confederation), 1998; Péter Sipos: A szociáldemokrata szakszervezetek története Magyarországon (The History of Social Democratic Trade Unions in Hungary), Magyar Tudományos Akadémia Történettudományi Intézet (Institute of History, Research Centre for the Humanities, Hungarian Academy of Sciences), Budapest, 1997; Jenő Gergely: A keresztény szindikalizmus története a XIX-XX. században (The History of Christian Syndicalism in the 19th-20th Centuries), Keresztény Szakszervezetek Nemzetközi Szövetsége (International Confederation of Christian Trade Unions); MTA-ELTE Pártok, Pártrendszerek, Parlamentarizmus Kutatócsoport (MTA-ELTE Research Group on Parties, Party Systems and Parliamentarism), Budapest, 2007.
This of course does not include the authors dealing with the changes of Hungarian labour relations, including but not limited to Erzsébet Berki, Mária Ladó, László Neumann and László Thoma.

[7] Gyula Berke: A kollektív szerződés a magyar munkajogban (Collective Agreements in Hungarian Labour Law), Pécsi Munkajogi Közlemények (Pécs Labour Law Publications), Monographs, Pécs, 2014.9

[8] Béla Perneczky: A kollektív munkaszerződés (Collective Labour Agreements), Grill Károly Könyvkiadó Vállalata (Grill Károly Publishing), Budapest, 1938

[9] Gyula Berke: Perneczky Béla, a munkajogász (Béla Perneczky, the Labour Law Expert), in: Bankó, Zoltán; Berke, Gyula; Pál, Lajos; Petrovics, Zoltán (ed.) Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére (Festive Studies in Honor of the 70th Birthday of György Lőrincz), Budapest, Hungary: HVG-ORAC Lap- és Könyvkiadó Kft (HVG-ORAC Press and Book Publishing), 2019, p. 39

[10] Mrs. István Hágelmayer: A kollektív szerződés alapkérdései (Fundamental Questions of Collective Agreements), Budapest, Akadémiai Kiadó, 1979

the socialist period were inevitably taken into account.[11] These works have remained indispensable elements of the adaptations on the topic of trade unions, as well as their legal status and rights.[12] A comprehensive study (a mini-monograph) on the legal nature of the so-called contractual sources of law and their classification in the system of the sources of law, their validity and effect was last published in 2014, and it was written by Gyula Berke.[13] The above-mentioned works dealt with the historical development of trade unions as well, although, quite understandably, the focus of the theoretical tenets was the central question about the legal nature and binding force of collective agreements.[14] When discussing the historical part, I attempted to describe the major changes in the laws on trade unions within the framework of this thesis. I reckon that further research should be done into this topic.

The relevant international laws

A *trade union* is a unique social organisation of employees, *established on the basis of* the so-called freedom of association as *"a universal human right"*[15], the purpose of which is to promote and protect the interests of employees.[16] The trade union rights related to the freedom of association and the freedom to organise are guaranteed by international law as well. Thus, these are guaranteed, as described in the third part of my treatise, by the Universal Declaration of Human Rights,[17] the

[11] This is also the case with the paper entitled "Útmutató a kollektív szerződés készítéséhez" ("Guidelines for the Preparation of Collective Agreements") written by Szeged University Lecturer László Nagy, Táncsics Szakszervezeti Könyv- és Folyóiratkiadó (Táncsics Trade Union Publishing of Books and Journals), Budapest, 1980

[12] József Radnay: A szakszervezetek és jogaik fejlődése (The Development of Trade Unions and their Rights), in: Ünnepi dolgozatok Hágelmayer Ida tiszteletére (Festive Studies in Honor of Ida Hágelmayer), Budapest: ELTE ÁJK, 2005, II, p. 177

[13] Berke (2014), op.cit.

[14] There are generally three kinds of terminologies used in Western European collective contractual law in their jurisprudence, legal regulatory, contractual and judicial practices. In the individual countries, these contracts are called differently: collective agreements, tariff agreements and collective contracts. In the case of the last two names, it is the same type of contracts, they only differ in their names. The definition 'tariff contract' is used in Germany, Italy and the Benelux states, in Denmark, as well as in Switzerland, in addition to the term 'aggregated-employment contract'. In the labour laws of France, Austria, Great Britain and Ireland, the term 'collective contract' is used. For more detail, see: Tamás Prugberger: Európai és magyar összehasonlító munka- és közszolgálati jog (European and Hungarian Comparative Labour and Public Service Law), KJK-Kerszöv Jogi és Üzleti Kiadó Kft (KJK-Kerszöv Law and Business Publishing Kft), Budapest, 2000, p. 95

[15] Introduction: Labour Rights, Human Rights, International Labour Organisation, International Labour Review, Vol. 137, No. 2, 1998, pp. 127-133

Mrs. Czugler-Iványi Judit–Attila Kun –Imre Szilárd Szabó: Az alternatív vitarendezés alanyai a munkavállalói oldalon; mitől kollektív egy érdekvita? (szakszervezet, üzemi tanács) (Subjects of Alternative Dispute Settlement. on the Employer's Side: What Makes a Dispute on Interests Collective?) (trade union, works council), HVG-ORAC Lap- és Könyvkiadó Kft (HVG-ORAC Press and Book Publishers Kft), 2017, p. 27

cf. ILO Declaration on Fundamental Principles and Rights at Work, 1998

[16] Freedom of Association and Protection of the Right to Organise Convention No. 87, Article 10

17 Civil liberties are indispensable in exercising trade union rights in the broad sense of the word, especially the right of persons to freedom and security; freedom from tyranny; the freedom of opinion and expression; the freedom of association; the right to a fair trial by an independent and impartial tribunal, as well as the right to the protection of the property of trade union organisations. See: International Labour Conference, 81st Session, 1994; Report III (Part 4B), p. 14

International Covenant on Civil and Political Rights[18] adopted by the United Nations General Assembly at its 21st session on December 16, 1966, the International Covenant on Economic, Social and Cultural Rights of the United Nations,[19] also adopted by the United Nations General Assembly at its 21st session on December 16, 1966, the conventions of the International Labour Organisation (ILO) [20], the European Convention on Human Rights signed by the Council of Europe in 1950,[21] the European Social Charter adopted in the framework of the Council of Europe in

[18] Pursuant to Article 22, "*1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."*

[19] Pursuant to Article 8, "*1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. 2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention."*

20 The fundamental international standards on the freedom of association and collective bargaining are laid down in the Freedom of Association and Protection of the Right to Organise Convention No. 87 (1948) and in the Right to Organise and Collective Bargaining Convention No. 98 (1949). The other international documents dealing with these rights and freedoms include the following: Workers' Representatives Convention 1971 (No. 135) on Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (e.g. on the protection of trade union officials and their time off for trade union duties and activities); Recommendation No. 143 of 1971 concerning Workers' Representatives; as well as Recommendation No. 163 of 1981 on Collective Bargaining. The following belong to the international standards on social dialogue: Recommendation No. 94 on the Negotiations and Cooperation between Employers and Employees at the level of the Undertaking (1952), as well as Recommendation No. 129 on Communications within the Undertaking (1967). Since then, Convention No. 98 has been supplemented by Convention No. 151 of 1978 on Labour Relations (Public Service) and Convention No. 154 of 1981on Collective Bargaining.

In addition to these, the majority of the ILO conventions and recommendations contain provisions which support social dialogue by requiring consultation with the representative organisations of the employers and the employees.

[21] Pursuant to Article 11 (Freedom of assembly and association) of the European Convention on Human Rights (hereinafter referred to as: ECHR),

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The document that inspired the creation of the ECHR, i.e. the Universal Declaration of Human Rights (hereinafter referred to as: UDHR) contains specific provisions on the right of association (Article 20.2), and it specifically

1961[22], as well as the law of the European Union.[23] The primary goal of international and European level regulation is to ensure that the regulation of the labour relations between the nation states and the elaboration of the individual elements of the structure thereof rest on nearly the same bases, by acknowledging the right to organise. This right, and the right to collective bargaining are declared as fundamental human rights by the international and European norms.[24]

In analysing this legal material, I have taken into account, within the framework of this study, the standard legal practices of the supervisory organs of ILO [the Committee of Experts on the Application of Conventions and Recommendations 25 (hereinafter referred to as: the ILO Expert Committee or Expert Committee), as well as the Committee on Freedom of Association of the ILO Board of Directors[26] (hereinafter referred to as: the Freedom of Association Committee)], which examine how the member states of ILO apply the International Labour Standards that they have ratified in their laws and practices. For drawing my conclusions, I reviewed the relevant cases discussed by the European Court of Human Rights, as well as the Committee of the Court, along with the classified "case law" of the European Committee of Social Rights. At the same time, the different aspects of trade union rights are in a very close connection with each other, so the enforcement of certain rights obviously affects the practical implementation of several other rights. Gladstone, Pankert and Yemin[27] , representing the position taken by ILO, emphasise that the (so-

mentions the right to establish or join trade unions (Article 23.4). Most of the conventions on social freedoms do so, e.g. the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8.1).

[22] Article 5 of the Charter obliges the member states not to restrict the right of the employees and the employers to organise. The member states of the Council of Europe, in their Treaty of Rome in 1950, then in their Treaty of Paris in 1952 agreed to create the safeguards of the enforcement of civil and political rights and freedoms. In 1961, in Turin, the European Social Charter was signed as one of the key steps in the legislation of the Council of Europe. Then the revised European Social Charter was signed in 1996 in order to modernise the system of protection of the European social rights.

[23] Article 12 of the EU's Fundamental Rights Charter. Articles 151–156 of the Treaty on the Functioning of the European Union (TFEU). However, the process of Community legislation is one of the peculiarities of the legal order of the European Union as well, in which the trade unions were assigned an essential role in the elaboration of the guidelines concerning labour law (e.g. Directive 96/34/EC, Directive 97/81/EC, Directive 99/70/EC). For more detail, see: György Kiss: Az Európai Unió munkajoga (Labour Law of the European Union), Osiris, Budapest, 2002, Barnard, Catherine: EU Employment Law, Oxford University Press; 4. edition, Oxford, 2012
Article 27 of the EU's Fundamental Rights Charter confirms that information and consultation of the appropriate level and due timing should be ensured for the employees or their representatives in the cases and under the conditions specified in the European Union law and the national laws and practices. For more detail, see: Directive 2010/18/EU, Regulation No. 2007/2004/EC, Directive 97/81/EC.

[24] Swepston, Lee: Human rights law and freedom of association: Development through ILO supervision, International Labour Review, Vol. 137, No. 2, 1998. Special Issue: Labour rights, Human rights, pp. 169-194
Rita Kovács: A kollektív tárgyalás és kollektív szerződés jogi alapjai (The Legal Foundations of Collective Bargaining and Collective Agreements). Acta Universitatis Szegediensis: forum: publicationes doctorandorum juridicorum, No. 4, 2014, p. 48

[25] Committee of Experts on the Application of Conventions and Recommendations

[26] Committee on Freedom of Association

[27] Gladstone, Alan–Pankert, Alfred-Yemin, Edward (1989): A Munkaügyi Kapcsolatok rendszere az iparilag fejlett piacgazdaságokban, in: A munkavállaló, a munkáltató és az állam (The System of Labour Relations in Industrially Developed Market Economies, in: The Employee, the Employer and the State), Munkaügyi Kutatóintézet Kiadványai (Publications of the Research Institute for Labour), Bp., 1989, pp. 138-189

called bipartite) concept of trade union, which is traditionally based on the bargaining between the employer and the trade union, *"has taken on a new dimension through the development of the welfare state, in the wake of which the national-level (so-called tripartite) negotiations on economic and social issues that are relevant for the interests of the employers and the employees, held with the participation of the government, have been assigned an ever growing role"*.[28] Despite all these peculiarities, trade union rights do not constitute a closed, accurately definable system with exhaustively listed elements, what is more, the content and impact of the rights of the same definition may be different from each other, and not even the rights legalised in different areas of the same country are equivalent (e.g. private and public sectors).[29] It should be noted that the definitions of the ILO conventions and recommendations basically characterise the social dialogue and collective bargaining in the broad sense of the word as a kind of "part-whole" relationship.[30] However, the impacts that have been exerted by the different international organisations on the evolution of labour relations should also be noted. It is remarkable that tripartism exerted an expressly strong impact in Central and Eastern Europe after the Berlin Wall had come down, one of the explanations for which is the strong presence of ILO in the region.[31]

[28] András Tóth: Civil társadalom és a szakszervezetek (Civil Society and Trade Unions), http://www.szociologia.hu/dynamic/9503toth.htm. OTKA 513, "Szaktudás és polgárosodás" kutatási programme (Expertise and the Road to a Bourgeois Society Research Programme), 1994

[29] György Kenderes: A szakszervezeti jogok elemző bemutatása magyar és nemzetközi vonatkozásban (The Analytical Review of Trade Union Rights in Hungarian and International Aspects), Miskolci Jogi Szemle (Miskolc Legal Review), issue 2017/2, Special Edition, p. 258; Kiss (2005), op.cit., p. 360

[30] Collective bargaining in the public service. The way forward, Geneva, ILO, 2015, p. 200

[31] Mária Ladó: Munkaügyi kapcsolatok, szociális párbeszéd - nemzetközi tapasztalatok, in.: Érdekegyeztetési modellek és a szociális párbeszéd Európában (Labour Relations, Social Dialogue – International Experience, in: Models of Interests Reconciliation and Social Dialogue in Europe) (ed.: Judit Lux). Friedrich Ebert Foundation, Trade Union Project, 1999, 19

Effective legal regulation

The goal of the fourth part of the thesis is to provide a (primarily critical) presentation of the effective legal regulation, as part of which the effective (civil and labour law) material has also been assessed, with special regard to the issues related to the potential practical harmony of the key international characteristics, standards, requirements, legal norms, as well as the different international courts (which are described in the third part of my treatise). The problems, normative and literary sources, and judicial practices related to the legal institutions under review are supplemented by the findings of the empirical research conducted and described in detail, with the de lege ferenda proposals in several cases.

"The regulation of trade unions has become rather lopsided", this is György Kiss's final conclusion on the effective law, in his study entitled *"The legal dogmatic situation of trade unions and their legal policy options based on Hungarian labour law regulations from 1992 until now"*[32] published in 2015. It is also here that he asks the question *"whether the regulation of trade unions is justified or necessary at all if it is a social organisation"*[33].

The changes in collective labour law introduced in Act I of 2012 on the Labour Code (hereinafter referred to as: Mt) were sharply criticised by all the Hungarian trade union confederations.[34] The

[32] György Kiss: A szakszervezetek jogdogmatikai helyzete és jogpolitikai lehetőségei a magyar munkajogi szabályozás alapján 1992-től napjainkig (The legal dogmatic situation of trade unions and their legal policy options based on Hungarian labour law regulations from 1992 until now), in: Szakszervezetek és kollektív szerződések az új Munka Törvénykönyvében (Trade Unions and Collective Agreements in the new Hungarian Labour Code), MTA-PTE Összehasonlító és Európai Foglalkoztatáspolitikai és Munkajogi Kutatócsoport (MTA-PTE Comparative and European Employment Policy and Labour Law Research Group), 1, Akadémiai Kiadó, Budapest, 2015, pp. 11-45

[33] Kiss (2015), op. cit. p. 31

[34] Examples from the policy statements of the trade union confederations operating in the competitive sector from the past few years:

1. Position taken by the LIGA Trade Unions: "*On the other hand, the change in the area of collective rights appears in the systematic removal of the safeguards for the enforcement of the rights."* – excerpt from the preface of the study written by the trade unions, in: Erzsébet Dabis –Gábor Feleky –János Lőrinczi –Balázs Rossu –Krisztina Ruzs Molnár: Elemző tanulmány – az új Munka Törvénykönyvének hatásvizsgálata (Analytical Study – Impact Analysis of the New Hungarian Labour Code) (Független Szakszervezetek Demokratikus Ligája, Democratic League of Independent Trade Unions, TÁMOP-2.5.3.C-13/1-2013-0001) - 03.2015
   For more detail, see: Az új Mt. története (2011) (History of the New Hungarian Labour Code): http://www.liganet.hu/page/88/art/6296/akt/0/html/az-uj-mt-tortenete.html (downloaded on 26.12.2019).
2. Opinion of the National Federation of Workers' Councils on the draft Hungarian Labour Code (2011): "*it substantially restricts the workplace rights of trade unions"*.
   http://www.vpdsz.hu/2011pdffajl/pdf_08/Mt_MOSZ_velemeny_110804.pdf (downloaded on 26.12. 2019)
3. The Hungarian Trade Union Confederation (2018) puts it like this in the so-called White Book: *"the tendency that shows in the regulation is clear: the goal is to weaken the influence of the trade unions, thus to restrict the interests of the employees to the minimum level required by international standards, or even below these, in certain cases…"* https://www.pvdsz.hu/uploads/Feher_konyv.pdf (downloaded on 26.12.2019).

trade unions primarily talked about the withdrawal[35] and curbing[36] of their rights, ultimately about the marginalisation[37] of their role. No major novelties were introduced by the Mt with regard to the general regulation of the legal status of trade unions, within the framework of the Fundamental Law of Hungary. However, at least according to the intent of the legislators, the Mt wished to significantly increase the scope of what is called contractually based regulation, as well as the possibilities available for collective autonomy, i.e. the regulatory options for the agreements between the legal bodies of collective labour law, following a fundamentally new legal policy objective in the rules on employment. Thus, the labour market significance, influence and responsibility of the trade unions would increase, as consequence of the reduced functions of state regulation. The question remains to what extent this idea could be "successful" and what the correlations with the regulatory environment of the trade unions are. The assessment of "success" should also be analysed in the context that the "power" of trade unions shows continuous decrease, so the deficiencies of appropriate authorisation (legitimacy) become more visible. In other words, the question becomes to what extent there is a contradiction between this factor and the "efficiency" of the regulatory approach back in 2011, according to which the reason for the fact that the "radius of operation" of collective agreements was extraordinarily low in Hungary (extending to a mere one quarter of the total number of employees)[38] was that there was a mutual lack of interest in the conclusion of collective agreements. In relation to the collective labour law content of the Mt, on the level of principle, I do share the critical opinions voiced in the relevant legal literature[39] but I have a different approach to the assessment of the situation. The problem stems from the structure of the trade unions that evolved at the time of the change of the regime, as well as the decades-long lack of creativity of legislation, and the solutions that lacked meaningful concepts. In this respect, not even Hungary's accession to the European Union proved to be a genuine turning point[40], the

[35] See the termination of the right to the so-called trade union "objection", related to which the trade unions indicated that in parallel to the termination of this right, the suspension of the execution of the employer's decision should at least be ensured in the judicial procedure, at the well-founded proposal of the trade union.

[36] For example, the reduction of the extent of the time off for trade union duties and activities, the elimination of the practice of the redemption of the "untaken leave hours" as required by law from the part of the employer, limitation of the number of protected officials, etc.

[37] In some trade union opinions, the fact that the provisions on trade unions were placed at the end of the Labour Code conveyed a symbolic message in itself, what is more, this chapter was placed after the regulation of the works council with employer's participation.

[38] See the data in an annual breakdown in: Károly Fazekas – Júlia Varga: Munkaerőpiaci tükör (Labour Market Overview), 2014, MTA Közgazdaság- és Regionális Tudományi Kutatóközpont Közgazdaság-tudományi Intézet (MTA Institute of Economics, Centre for Economic and Regional Studies), Budapest, p. 255

[39] Tamás Gyulavári –Nikolett Hős: The Road to Flexibility? Lessons from the New Hungarian Labour Code. EUROPEAN LABOUR LAW JOURNAL, issue 2012/4, pp. 253-270

[40] See: Attila Kun: A munkajogi jogharmonizáció folyamatának eredményei és kérdőjelei (Results and Question Marks of the Process of Labour Law Harmonisation), Imre Szilárd Szabó: Az európai szociális párbeszéd hatása a magyarországi szakszervezetek működésére és az ágazati szociális párbeszédre (The Impact of Social Dialogue in Europe on the Operation of Hungarian Trade Unions and the Sectoral Social Dialogue), in: Miskolczi, Péter Bodnár (ed.): Az Európai Unióhoz történő csatlakozásunkat követő hazai és európai jogfejlődés (Legal Development in

changes in the laws related to trade unions could be influenced by the trade union lobby (interests) prevailing at any time, which could typically be traced only in the changes of minor legal institutions. [41] In my hypothesis, the Mt (in itself) slightly deteriorated the positions of the trade unions, however, the spectacular weakening of interest reconciliation had a meaningful effect on the influence of (mainly, national-level) organisations, on the labour processes, which effect does "spiral down" in the world of labour.

Since this act took effect, the trade unions must have accumulated sufficient experience on what these changes in fact mean for practice and whether the current opinions justify the critical remarks made in the heat of the changes. I regarded it as important to include a chapter in my doctoral thesis in which the research methodology is supplemented with an instrument that allows that, in addition to the analysis of the laws and the relevant literature, the opinion of the trade unions, which are the subject of the thesis, also appear on how suitable the statutory environment is for their representing employees' interests. For reaching this goal, I found the preparation of my own questionnaire the most efficient method, deeply believing in that the right sampling may contribute to drawing meaningful conclusions and may provide an opportunity for conducting further analyses. One of the key starting points of scientific research is that the researcher detaches the subject from himself, this is the basic axiom on which the selection of a scientific method is built. In my case, it was especially hard to fulfil this criterion, as I have been working together with trade unions for several years, however, this apparent contradiction did not cause any difficulty; the findings were not influenced by the different interests and in my analysis, I always strove to remain objective. The summary of the research relies on the analysis of the data of the questionnaires completed by the heads of the trade unions. In compiling the questionnaire[42] that served as the basis for this research, I took into account the specific proposals for the modification of the laws, the issues arising in judicial practice, the disputes occurring in legal literature, as well as the needs formulated on the level of theory.

In the case of the individual questions, I have analysed the legal institutions under review in detail, as follows:

1. The right of trade unions to enter into collective agreements
2. Trade union officials and labour law protection

Hungary and Europe after Hungary's Accession to the European Union), Budapest, Wolters Kluwer Hungary Kft, 2020

[41] A very telling case of this is the change in the extent of time off for trade union duties and activities.

[42] which is available as the annex to the study prepared about the research. A szakszervezeti jogok gyakorlati érvényesülése (Practical Implementation of Trade Union Rights), Pécsi Munkajogi Közlemények (Pécs Labour Law Publications), Year XIII, special edition

3. The legal institution of time off for trade union duties and activities
4. The exercising of the individual trade union rights stipulated in Mt
5. The relationship between the trade union and the works council

On the methods of research into opinions

During sampling, I endeavoured to follow a predefined procedure[43]. As the first step in this process, the so-called "basic multitude" had to be defined, which can be approached from several directions for the purpose of the research. On the one hand, the number of trade unions registered (and operating) in Hungary is very hard to define,[44] on the other hand, there is a very high extent of potential "duplications" of the data, as during taking the samples, the individual forms of association should be reckoned with, including the membership relations between the trade unions and the trade union federations. The right of association cannot only be exercised by natural persons but also, by legal entities, this is the way how the confederations of trade unions can be established, whose members can obviously be independently registered trade unions that comprise natural person members. As long as a confederation and a member trade union are also "queried", this may distort the sample. In defining the framework and technique of the sampling, as well as the size of the sample, I strove to avoid distorting the data in such a way on the one hand, while I wanted to achieve that the questionnaire be sent to as many places as possible, on the other hand. Of course, it was also a criterion that it should be "targeted" at such leaders of trade unions where the contents of the questionnaire are relevant. Thus, the target group was specifically those organisations of employers and organisations on a sectoral level that operate under the effect of the Mt and the Kjt (Act on the Legal Status of Public Employees), as the questions related to the rights of the trade unions regulated in Mt are only relevant with regard to these legal relations, along with the rights of the trade unions related to collective bargaining. According to the rules on collective agreements, entering into collective agreement is possible in the case of those employees with regard to whom there is a legal source that regulates this legal institution, one that allows the conclusion of such a contract, and specifies different legal consequences for it. In the public sector, the laws on the so-called public service legal relationship do not regulate the legal institution of collective agreements (however, it should be noted that employees can be employed under the effect of these laws too, for whose employment relationships collective agreements can be entered into according to the

[43] Ede Lázár: Kutatásmódszertan a gyakorlatban az SPSS programme használatával (Research Methodology in Practice by Using the SPSS Programme), Scientia Publishers, Kolozsvár (Cluj Napoca, Romania), 2009
[44] For more details, see: Imre Szilárd Szabó: A magyarországi munkavállalók szakszervezeti szervezettsége és a szakszervezeti taglétszám jelentősége az érdekegyeztetés különböző fórumain (The Level of Trade Union Organisation of Hungarian Employees and the Significance of Trade Union Membership at the Different Forums of Interests Reconciliation), JURA, issue 2019/2

provisions set out in Mt), while the trade union rights were given a different interpretation from the one in Mt, in an independent regulation,[45] so for the trade unions operating in these areas (for example, for central state administration or law enforcement)[46], the questionnaire would have been uninterpretable. The problems underlying this issue are perhaps best illustrated by the example of the law referring to those employed by the National Tax and Customs Administration of Hungary (NAV).

The sampling was finally done by my having relied on different open databases. Such databases included the trade union database created by the research institute Policy Agenda,[47] which discloses the list of trade unions with the highest membership fees (and thus, presumably, the highest memberships too) on an annual basis. If I had only relied on this database, it would have restricted the research to the trade unions with expressly high memberships, so I tried to enlarge the scope of sampling by the (publicly accessible) trade union data.[48] The homepages of the national trade union confederations were available for this, where the list of member organisations is also available (along with their e-mail addresses, in many cases), which in itself created a considerable sampling source. In addition to these, I also sought contact details for such trade unions which are not members of either of the Hungarian confederations of trade unions, via the internet.[49]

I have established the correlations[50] between the confederations and their member organisations by using the civil society organisation name-list[51] available on the homepage operated by the National Office for the Judiciary[52], so when a trade union federation was included in the sample, the member organisations of the federation were not. Finally, the sample that I had created in this way extended

[45] Thus, the major differences, besides, e.g. the fact that no collective contractual rights are ensured by Kttv (Act on Public Servants in Public Service) or Kit (Act on State Management), lie in that the possibility to agree with the employer on the use of premises by the trade unions is not stipulated, and the possibility to decide on the utilisation of the time off for trade union duties and activities is also removed. For more detail, see: László Búza – István Horváth: Kollektív munkaügyi viták és az alternatív vitarendezés lehetőségei a közszolgálati és hivatásos jogviszonyban állóknál (Collective Labour Disputes and the Opportunities for Alternative Dispute Settlement for those in Public Service and Law Enforcement Service Relationships), Budapest, HVG-Orac, p. 2017

[46] In Kttv, trade union rights are regulated under the title "Workplace Interests Reconciliation of Government Officials" (Kttv, Sections 200–202), while Chapter XXIII of Kit is about the reconciliation of interests and trade union rights.

[47] https://www.policyagenda.hu/szakszervezeti-adatbazis-nyito/ (downloaded on 29.11.2019)

[48] In today's Hungary, there are six national-level trade union confederations, which cover the majority of the trade union movement (Értelmiségi Szakszervezeti Tömörülés, i.e. Trade Union Federation of Professionals, Hetedik Szövetség, i.e. Seventh Confederation, LIGA Szakszervezetek, i.e. LIGA Trade Unions, Magyar Szakszervezeti Szövetség, i.e. Hungarian Trade Union Confederation, Munkástanácsok Országos Szövetsége, i.e. National Confederation of Workers' Councils, Szakszervezetek Együttműködési Fóruma, Cooperation Forum of Trade Unions).

[49] It is a relatively new phenomenon of the Hungarian labour relations that an increasing number of significant sectoral trade unions have become more and more "independent", especially in the area of the processing industry and transport, the aggregate membership of which even exceeds 30-40 thousand.

[50] www.birosag.hu

[51] The name list is authentic pursuant to Section 86(1) of Act CLXXXI of 2011. It is available at https://birosag.hu/civil-szervezetek-nevjegyzeke.

[52] As part of the basic data of organisations, the list of the social organisations establishing confederations is disclosed.

to as many as 66 trade union federations and trade unions,[53] which almost cover the scope of organised employees in Hungary but organisations with varying memberships were represented in it, from those with several hundred members to those exceeding ten thousand. In Hungary, it is also difficult to find specific, authentic data on the current membership of trade unions. Estimates mostly suggest memberships of 250 to 350 thousand, while the self-statements made by the trade unions mention 500 thousand members.[54]

Based on the compiled list, I contacted the highest-level leaders of the organisations individually, and sent them the questionnaires via e-mail in early December 2019. It was possible for them to submit their responses by 1st January 2020. I informed the respondents on that the questionnaires are completed anonymously, that I would handle the information, data and facts that have come to my knowledge confidentially, and that I would only publish the aggregated findings.
The questionnaires were filled out by the senior officials of as many as 23 trade unions and trade union federations, who (based on their responses) represent a total of 82,750 trade union members. When I aggregated the membership, I took into account the mathematical average of the data specified in the questionnaire (for example, when the indicated membership was between 1,001 and 2,000, I calculated with 1,500). Those who filled out the questionnaire had representation at a total of 444 employers. It should be noted that no other research of this magnitude has been conducted on this subject in the recent years. The "summary" primarily relies on the analysis of the data supplied in the questionnaires completed by the trade unions, which is supplemented by the presentation and sometimes analysis of the individual legal institutions on the basis of the relevant literature and legal practices.

[53] 14 confederations comprising legal entities and 52 trade unions representing natural person members.
[54] For more detail, see: Imre Szilárd Szabó, JURA, issue 2019/2, op. cit.

Summary, conclusions

1. It is a global phenomenon that these days, the trade unions do not tend to act as the "swords of justice" and "revolutionary reformers" but their primary attention is focused on safeguarding the existing interests of the employees. They operate within increasingly intense "structural restraints", as consequence of the accelerating technological changes, the need for the labour force of lower qualified employees is constantly decreasing, while those who are qualified higher demand and achieve increasingly higher salaries, not necessarily as a result of collective bargaining. These effects are continuously strengthening due to globalisation and the coming down of market restraints, the result of which is a kind of "double consequence": the trade unions are weakening and their space for manoeuvre in redistribution is decreasing.[55] With regard to the fact that in the relationship between capital and labour, the "exchange rates" considerably and continuously deteriorate, especially during times of crises and as consequence thereof, the trade unions (would) continue to play a role in the balancing of incomes and social inequalities. The examples still show that those countries in which social partnership and efficient social care systems (supplemented by proactive employment policy) work, are usually more successful and more competitive. However, one can also see that social dialogue, well-functioning labour relations, which include collective bargaining, as kind of constituent elements, jointly contribute to a democratic operation, including the rule of law (i.e. the trade unions are part of the comprehensive system of checks and balances). Thus, however surprising, a strong social dialogue does not weaken competitiveness but on the contrary, it reinforces it. Such a paradox is, however, not unknown in modern economics. [56]

2. The freedom of association, the right to organise, as well as to collective bargaining and action, with special regard to the right to strike, to information and to the freedom of expression are fundamental rights guaranteed in the Universal Declaration of Human Rights[57], the Conventions and Recommendations of the International Labour Organisation (ILO), the European Convention on Human Rights, the revised European Social Charter, the Charter of Fundamental Rights of the European Union, and/or in most of the national constitutions. Social dialogues have by now become

[55] Baccaro, Lucio (2011), 'Labour, Globalisation, and Inequality: Are Trade Unions Still Redistributive?' Research in the Sociology of Work, No. 22, p. 270

[56] "There is no more paradox in this [case for monopolies] than there is in saying that motorcars are traveling faster than they otherwise would because they are provided with brakes", Joseph A. Schumpeter: Capitalism, Socialism and Democracy, Harper & Brothers, 1942

[57] Civil liberties are indispensable in exercising trade union rights in the broad sense of the word, especially the right of persons to freedom and security; freedom from tyranny; the freedom of opinion and expression; the freedom of association; the right to a fair trial by an independent and impartial tribunal, as well as the right to the protection of the property of trade union organisations. See: International Labour Conference, 81st Session, 1994; Report III (Part 4B), p. 14

an indispensable part of the everyday operation and development of the European Union, offering excellent opportunities for the social partners despite their seemingly irregular operation.

3. The primary goal of international and European level regulation is to ensure that the regulation of the labour relations between the nation states and the elaboration of the individual elements of the structure thereof rest on nearly the same bases, by first of all acknowledging the right to organise. The role of civil society organisations and public bodies set up with different types of executive power (and in many cases, rights) should not be confused (and is specifically harmful to be confused) with that of the social partners.[58] Accordingly, in the third part of my paper, I have outlined the various criteria and practices of the international laws (universal, European and EU regulations) on trade unions, of which Hungarian statutory regulation is a part as well.

4. The ideas discussed in my study clearly reveal the sensitive issues that are brought up by the regulation of the legal status of trade unions and the regulation of collective labour law itself. Of course, it cannot be left uncommented either that the questions related to the legal status of trade unions, especially the right (ability and/or entitlement) to enter into collective agreements also bring up topics for not only legal dogmatics discussions but also, disputes of a strongly legal policy nature, adding that collective labour law, considering its nature, counts as a strongly politicised branch of law.

5. The relatively lengthy second part of my paper (the historical part) was meant to help one see the legal and structural changes in Hungary comprehensively. Researchers in the various fields of science (such as historians, sociologists and lawyers) have dealt with the topic of my thesis very seldom since 1990, so in this respect, my study may provide professional support to those involved in research into this field of study. In my opinion, today's practices cannot be fully understood either without being familiar with the historical development and evolution (not disputing, on the other hand, that the exploration of the organisation of trade unions, the socialisation thereof, the selection of leaders, and quite a number of other exciting and less thoroughly explored areas would also contribute to a fuller understanding of this question).

6. It is a well-known fact that the change of the political regime in 1989 brought about a nearly complete change of the trade union structure in Hungary (as well), as the "old style" trade union movement was not (could not be) compliant with the requirements of the new social and political

[58] ETUC programme: https://www.etuc.org/en/european-trade-union-confederation-14th-congress-etuc19 (downloaded on: 10.04.2020)

(and later, economic) conditions. At the same time, it can also be clearly stated that the earlier structure (along with its organisational, cultural and often human conditions) has been preserved to a considerable extent, and legal (labour law) regulation in itself has not been able to "free" the players from the employer's ("corporate") level for almost three decades now. I would like to note, however, that for the "breakout" from the corporate level, which is found desirable by many experts, it would be vital to make certain options to diverge from the law dependent on a higher level (for example, branch-level, sectoral or sub-sectoral) collective agreement but this is only conceivable after the structural transformation of the entire regulation has taken place. Thus, the questions on trade unions are also historically defined by the structure of the trade union movement, which is fundamentally organised on a micro-level (see time off work for trade union duties and activities), as well as the strongly decentralised nature of collective bargains, where it is an inevitable aspect that the overwhelming majority of trade union incomes are realised on the corporate level as well (in very exceptional cases, on a sectoral or sub-sectoral level).

7. It poses a specific challenge that the European social dialogue depends on the close connections between the European and national levels, as well as the intersectoral and sectoral levels, which could not be properly established in Hungary in the past thirty years either, apart from very few exceptions. This means that no uniform sectoral advocacy structure has been established either on the side of the employer, or on that of the trade union, and it was not institutionalised to such an extent either that would serve as an appropriate basis for its fulfilment. The actual influence of the employer partners, who are also present on the macro-level, on the sectoral policies can be questioned in a high number of cases; this is very visible in the case of the Sectoral Social Dialogue Committees, namely in the lack of agreements and inadequate operations. At the same time, the dual nature of the Hungarian economy also made it difficult to develop a system for the alignment of sectoral interests. In the elaboration of the sectoral structures, there are no genuine economic interests, so it can be stated that currently, neither the multinational companies nor the Hungarian small and medium enterprises, which employ seventy percent of the Hungarian employees, have real interests in the development of such structures.

8. The accents in employment policy have also shifted to a great extent. In some parliamentary cycles (especially in the period following Hungary's accession to the EU), the significance of sectoral policies was missing and was expressly devalued. The consecutive governments used ad hoc concepts, which were basically drifting with the tides (subordinated to short-term budgetary and political interests), which made mid- and long-term planning difficult, which would be an important element of reaching agreements. Despite the fact that it is still a large part of the

budgetary income that comes from the payments of the employees and the employers, any (autonomous) management and/ or control over these is fully missing (or has completely died off), while the utilisation of the (partially sectoral) (see vocational training, rehabilitation, social security, labour market, etc.) funds generated from these has tripartite supervision in many European countries.

9. It is especially typical of post-communist countries that the legal (statutory) regulation of the trade unions is strongly demonstrative regarding the legal policy judgment of trade unions. The general regulation of the legal status of trade unions in the area of labour law has basically not changed after the Mt (the Hungarian Labour Code) took effect in 2012, although, in the opinions that I have presented in my treatise, the Code changes the very basics of the workplace presence of trade unions. One of the key changes affected by the effective labour law regulation is that the question of the level of organisation has been appreciated from the side of the trade unions, which became a condition for entering into a collective agreement (the ability to enter into a collective agreement). However, this criterion (generally, the measurement of the level of support by any means) has become more and more invisible in the areas of different national, sectoral and branch-level interest reconciliation. The regulation related to the labour relations over the employer's level has not been a coherent system since the change of the political regime, it is contradictory at several points, it reflects expressly weak quality, uncreative, and ad hoc legislative solutions. The high number (multitude) of the players makes the system non-transparent, which is very well illustrated by the fact that there is no other EU member state where there are as many as six national trade union confederations on the employee side of the national alignment of interests (and even nine on the employer side!, let alone the ever increasing influence of the chamber of economy). This is especially strange if projected on the number of organised employees or even the number of the working age population. Thus, a uniform, normative regulation would be necessary, which would be able to somewhat standardise (simplify) the trade union structure. I regard the earlier idea in this regard as one to be supported (and also, somewhat "encouraging" for the movement too), i.e. that democratic legitimacy on the national (macro) level should be obtained at "social elections" (the earlier regulations of the elections of the social security administrations may serve as an example for organising such). For this, active political support and supporting empathy would be of primary importance. However, it should be highlighted that while the avoidance of the multitude of trade union organisations may be beneficial for the employees, the unification of the trade union movement through state interference, by using legislative means would run counter to the principles laid down in Articles 2 and 11 of Convention No. 87. The Committee of Experts on the Application of Conventions and Recommendations of ILO,*"in this question, while fully*

acknowledging the desire of any government to promote a strong trade union movement, avoiding the mistakes that arise from the unjustified multitude of small and competing trade unions, whose independence may be jeopardised by their weakness", also laid special emphasis on the fact that in such cases, it is more desirable for a government to endeavour for the establishment of strong and uniform trade unions by encouraging the voluntary unification of the trade unions, for which several means are available.[59]

10. The Hungarian Labour Code (Mt), at least according to the intent of the legislators, following a fundamentally new legal policy objective in the system of rules on labour relations, wished to significantly increase the role of the so-called contractual regulation as compared to the previous practice, as well as the possibilities of collective autonomy, i.e. the regulatory options of the agreements of the legal bodies of collective labour law. It is realised by the Hungarian Labour Code (Mt) through a complex system of specific system-building rules, the rightness of which idea of the legislator cannot be disputed but which will not (cannot) bring about genuine results, either in a qualitative or in a qualitative aspect, without the complete transformation of the regulation and a strong legal policy support. In other words, there will be not be more collective agreements, and quality will not substantially improve either.[60] However, this calls for other employment policy tools as well, with special regard to a state administration with appropriate capacities and the appreciation of employment policy. The European Committee of Social Rights has condemned Hungary regarding several issues: one of the main critical remarks pointed out the deficiencies in the efficient promotion and support of collective bargaining.[61] The explanation for this lies in that pursuant to Section 6 of the revised European Social Charter entitled "The Right to Collective Bargaining", in order to ensure the efficient exercise of the right to collective bargaining, the Parties undertake to promote the joint consultations of the employees and the employers[62], where it is needed and makes sense, they will support the mechanisms of the voluntary negotiations between the employers and employers' organisations on the one hand, and the employees' organisations on the other hand, in order to regulate the requirements and conditions of employment by collective

[59] See 1985 Extract, Paragraph 224, for more detail, see: Egyesülési Szabadság (Freedom of Association), op. cit. pp. 67-68

[60] Tamás Gyulavári thinks that this attempt has failed: *"However, the 2012 reform seems to be a failure."* Gyulavári Tamás: The Hungarian Experiment to Promote Collective Bargaining: Farewell to 'Principle of Favour', 2020, published in: The Sources of Labour Law, p. 259

[61] Kun (2016), p. 390, European Social Charter (revised), European Committee of Social Rights, January, Conclusions 2014 (HUNGARY) 2015, hudoc.esc.coe.int/eng#

[62] Act VI of 2009 on the Announcement of the Revised European Social Charter, Article 6 (1)

agreements,[63] they will promote the creation of an appropriate reconciliatory and voluntary decision-making mechanism necessary for the settlement of labour disputes.[64]

11. The different aspects of trade union rights are closely related to (overlap with) each other, so the enforcement of some rights logically impacts the practical implementation of several other rights. The "contradictions" of the effective regulation appear in several areas in collective labour law (for example, the procedures regarding the certification of trade union membership; the contradictory nature of the situation of the trade unions that obtained the ability to conclude contracts besides the effective collective agreement; losing the ability to enter into collective agreements; the definition of time off work for trade union duties and activities, the method of its calculation, the reasons for using time off work, the problems of the application of this system, or the "restraints" created by the different regulations on collective property), which may mean the sources of disputes on rights and interests between the parties of collective labour law. It can be concluded that the use of the terms related to trade unions in Mt is isolated with regard to several elements that are also analysed in this paper ("official", "senior authority"), with uncertain and indecipherable labour law content, but they carry different meanings from the aspect of civil law as well.

12. As regards the civil law status of trade unions, I, from my part, do not think that the practices of the right of association that have been established since the regime change are free of problems. In my view, a special, even a kind of sui generis civil law and related procedural law regulation should be created (applying the right of association as an underlying law), which would allow significantly shorter deadlines, especially for the registrations and modifications, similarly to the practices followed in the case of economic associations. It is unrealistic that, while an economic association can be established in an extraordinarily short time and the different corporate law transformations (very rightly) also require very little time, it means a longer duration and a judicial practice not free from contradictions for the other party of the labour relations, i.e. the trade unions. The question can also be raised that, while a trade union representing 10% of the employees is able to enter into a collective agreement, having 9 members, in the case of an economic association employing 89 persons, which is a company that can even be called significant in the Hungarian corporate structure, the same entity cannot lawfully register a trade union with such a number of employees.

[63] ibid. Article 6 (2)
[64] ibid., Article 6 (3)

13. Thus, I would find it important to thoroughly consider the provision of labour law "support" to trade unions, not in the least to think over the institution of time off work, i.e. one of the most sensitive areas of this regulation. It obviously sounds provoking to advocacy leaders but my opinion is that thinking over the amount of the time off work that can be used by one employee, which is presented in detail in my paper, and through this, the situation of the so-called "autonomised" officials, would be unavoidable in a renewed system. Such a system could even work in such a way that the salary costs of the officials and experts employed by the trade union could be financed from a state (employment) "fund", which would be provided by employers', employees' and supplementary state contributions by relying on a suitable methodology. Through this, the employer of the "full-time" trade union official could be the trade union, which would thus even be indisputable from a legal dogmatic aspect. At the same time, the major part of the members (who are not in the position, anyway, to be able to finance employee-related costs sustainably) would be freed from bearing the financial burdens of this arrangement. As a protection rule, it could at the same time be laid down that, as long as this arrangement is terminated for any reason whatsoever (for example, in the case of a change in the position of the official, such as a recall, resignation, or expiring mandates), the employer should be obliged to employ their employees again and / or further, with an objective labour law protection due for a predefined period of time. I would also propose that it should be considered that the parties should only be allowed to use this opportunity after reaching a certain level of organisation, which would greatly contribute to the merger of trade unions, primarily resting on reasonable interests. I find it important to point out that most of the trade union authorisations should be ensured independently from legal statuses and sectors, by differentiating the regulatory options of the collective agreements. In my view, the current extreme differences (public sector – market sector) are hard to justify, while in the case of public service, certain elements of the effective laws may be expressly contrary to international law.

My own direct research, which is also a part of my study, was meant to contribute to getting an overview from practical feedback. It also becomes clear from the findings of my research that eight years after the taking effect of the Hungarian Labour Code (Mt), it is justified to perform a comprehensive review of the effective labour law regulation. In my view, an inevitable element of this should be the strengthening of an institution that is closely related to the above questions, which is meant to appropriately settle the collective labour disputes. Also, a much more intense legislative support of such institution would be needed, by enlarging the scope of cases discussed by arbitrary courts in the direction and scope indicated in the relevant chapter. It is also clearly reflected by the

research that, as the positions taken are very strongly driven by interests (situations), these rules can only be changed after a very wide and thorough reconciliation of interests.

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