COMPLEX APPROACH TO THE ATYPICAL FORMS OF EMPLOYMENT CONTRACTS

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The primary subject of regulation under Hungarian and international employment law is the traditional, or typical, or standard employment relationship. This type of employment contract is of fundamental importance and is characterised by unlimited duration or open-ended term, full time employment, and the contract is entered into by a single employer and a single employee. The object of this contract is the work to be carried out at the place and time specified by the employer with the tools provided by the employer. The regulation of this type of contract under employment law plays a norm creating role, as this employment contract type represents the standard by which all different types are judged; and which are called atypical contracts[1]

The overall objective of this study is not just to present the atypical employment relationships in the light of employment law, but to present a complex approach to discussing them. The inception of atypical employment contracts and their increasing popularity can not be explained merely with the toolbox of Jurisprudence; in order to understand them; we must see the underlying social, economic and political processes. Introducing his own dissertation, Bankó states that atypical employment relationships have a unique complexity; they have touch-points with fundamental questions of legal dogmatics, the scientific literature of atypical employment relationships is vast and diverse, it is interdisciplinary, furthermore, the concept is well known all over the world and the fundamental questions of the field are the same, far and wide[2].

Certain atypical employment relationships can be traced back to the changing economic relationships, particularly to the inception of the globalised labour market. In this market, the employees must possess a different skillset to the previous, domestic labour market, which almost exclusively only set national expectations. The rise of the multinational corporations and their increasing role in employment act as an incentive for the employees to change[3]. This change has reached labour law as a discipline, because

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[1] GYULAVÁRI, T: A szürke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán. 2014, (manuscript) 105.

[2] Bankó, Z: Az atipikus munkaviszonyok. A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon. PhD Dissertation, Pécs, 2008 7.

[3] HÁRS, Á: Az atipikus foglalkoztatási formák jellemzői és trendjei a kilencvenes és a kétezres években. Közgazdasági Szemle, 2013./2 224-250; http://elorejelzes.mtakti.hu/_downloaddoc.php?docid=66&mode=articles (date of download:15.04.2014.)

it has to react to the new phenomena emerging in the multinational environment. Social changes associated with globalisation are also reflected in labour law, as the growing difference between the ones who are undeveloped and disadvantaged and the developed countries and social groups leads to the exclusion of certain regions and individuals from the world of work, and this has a significant impact on the entire society. The current political elite has to respond to this phenomenon, therefore a public policy answer has to be found to the changing nature of work. According to Attila Kun, one of the main dilemmas of labour law, whether it is to be considered as a right of social nature (worker protection) or rather, as a „servant" of economic rationality[4].

The main findings of the Thesis can be summarised as follows

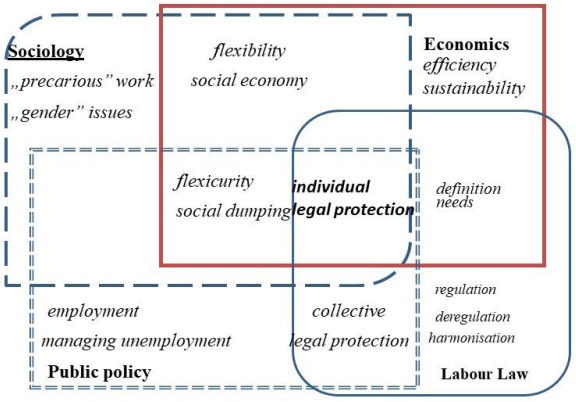
One of the key findings of the complex approach to the examination of atypical employment relationships is that the intersection of the results and preferences of various fields of science is very narrow. This difference in viewpoints is perhaps the reason why the results of professional and research groups hardly appear in the works of related disciplines, as it does not allow any deviation from the focal point. On the following figure, I strive to map out the network between the examined fields of science (labour law, public policy, economics and sociology).

Based on theoretical scientific literature, it can be concluded that the fields of science described above are examining overlapping issues as well, in the assessment of atypical forms of work. I have concluded based on the results of my research that, individual legal protection forms the intersection of the sets; which is, in practice, the assessment of the rights and obligations of an employee under his employment contract and the benefits and burdens thereof. However, in my opinion, the questions explored by collective labour law are hardly examined by the science of economics (unless as a negative factor of efficiency) whereas collective bargaining is particularly relevant to the protection of employee's interests. Similarly, it can be concluded that although the phenomenon of *flexicurity* lays outside the area of interest of classic labour law, it is studied extensively (and occasionally from a converse viewpoint) by sociology and economics and their results are built on by the political decision making bodies. „Precarious" or vulnerable legal relationships are mainly discussed in great detail in the literature of sociology as part of the study of atypical work and similarly, gender differences are also primarily studied in this field. The scientific results of sociology successfully promoted themes such as the question of how to increase employment or the question of unemployment to the field of public policy. These questions are not yet representing a research subject for labour

[4] KUN, A: Gazdasági racionalitás és munkajog: Az előreláthatósági klauzula esettanulmánya az új Munka Törvénykönyve tükrében. In. Publicationes Universitatis Miskocinensis. Sectio Juridica et Politica. Tomus XXXI.2013. 397.

law, and as they fall outside the world of employment relationships; and they also represent a peripheral area for economics. The questions on regulation and deregulation and the right proportion of these endeavours form the intersection of public policy and labour law. With the new Labour Code (Mt) which came into force in 2012, we can see that regarding atypical work, the regulatory approach is gaining traction. Legislative harmonisation represents a problem to be solved for public policy and labour law, which not only means a compulsion to comply with the ever changing EU legislation, but also an international pressure regarding the creation and maintenance of an open labour market. In connection with this, social dumping as an economic phenomenon represents an interesting question for economics, on the other hand, it represents an open question for decision makers whether these social processes need support or control.

FOCUSPOINTS OF THE SCIENTIFIC APPROACH TO ATYPICAL EMPLOYMENT RELATIONSHIPS



Novelties featured in Chapter XV of the Labour Code (Mt) include the introduction of new employment relationship types previously not regulated by the Code (split work or work for multiple employers) and the conversion of legal relationships into employment relationships which were not previously under the scope of the Code (working from a distance or outworking). Undoubtedly, if the management of legal relationships is left to the contractual freedom of the parties, it does not favour the employee with its more vulnerable position. However, in my opinion, the effectiveness of the protection of vulnerable employees, who is presumably the weaker party, is questionable under this laconic regulation. As an example of this, the regulation of outworking can be mentioned,

which previously had a more thorough regulation by means of secondary legislation, than the current regulation under the Labour Code. Tighter regulation meant that it left less room for the employers regarding the contractual terms and conditions, but it also meant that in case of dispute resolution, courts had less margin of discretion. Despite the above, in my opinion, precisely because of the comprehensive nature of the Code it is the right if not the best place to regulate atypical work relationships in, stating their position to the typical employment relationship and declaring that despite their different characteristics, these relationships collectively should be regarded as employment relationships. Furthermore, in the absence of different statutory provisions, all statutory guarantees contained in the Code should be applied to these relationships.

Job sharing and employment relationships created by multiple employers are newly introduced types of relationships in the Code, to which, according to the legislators, market demand gave birth. However, based on the findings described previously in the Thesis, the short spoken regulation of the Code not only did not simplify and legitimise these relationships at the same time, but the lack of detail in the regulation (in the absence of case law for the time being) also raised several controversial issues. *It is absolutely necessary to have the disputed points of law which emerged, settled in the Code.*

Self-employment as a generally accepted type of atypical work is entirely missing from the Code in force. Once we have established that featuring certain employment relationships in the Code primarily served declarative purposes, then we need to conclude that featuring self-employment is definitely a task for the future. The question of legislative support for the self-employed is on the agenda across the European Union, and in particularly, it is vitally important that in case of these workers, the legislature find a way to create real employment relationship status for the quasi self-employed, which is primarily to guarantee social rights for them.

In the context of simplified employment, a number of questions have been left open by the Code and the relevant Act of Parliament (Act XC of 2010, Chapter 1). Regarding the creation of the employment relationship, both legislative acts clearly state that work/employment can be created by verbal contract as well and that the employment relationship is created when a notification is sent to the tax authority. In my opinion, the fact that putting the employment contract into writing is no longer mandatory and that the relationship is created upon notification and not upon entering into contract, creates the possibility for abuse. According to the literal construction of the regulation, if the employer does not notify the tax authority about the employee, the relationship is not created. Neither the Code, nor the Act contains provisions regarding the legal consequences of the employer failing to submit the notification. Another problem is that if the parties created the relationship with a verbal contract and the employer fails to submit the notification, the employee with no written contract can not prove that the relationship was indeed created between them. In my opinion, even in cases of simplified employment, for employee protection in particular, it is justified to stipulate written employment contracts as a mandatory requirement.

A very large group, which until recently has completely been invisible for labour law is of the domestic workers. Despite the fact that their employment has been regulated on the level of primary legislation (Act XC of 2010, Chapter 1) their relationship is not to be considered an employment relationship but to *another relationship with the purpose of carrying out work*. In connection with the legislation, the question arises that since the law does not contain time constraints for domestic employment relationships, it allows for - through the registration process – a relationship, created within the formal legal framework, which is ongoing, full time occupation in a form of a *relationship with the purpose of carrying out work*, which is entirely free from tax and social security obligations burdening employed income. At the same time, this also means that domestic workers' position become very vulnerable as for their relationship the Labour Code will no longer apply, nor they acquire social security status, and they are entirely removed from the protection offered by social security systems. In my opinion, regulations covering casual workers could be extended to cover domestic workers too. In this case, the employee still does not qualify as an insured under the Social Security Act (Tbj), but they would qualify for benefits such as pensions, accidental health services, and job seekers' allowance.

Concerning the regulation of school cooperatives, the dual employment contract system raise number of problems in practice, and its dogmatic contradictions have already been brought to attention. In my opinion, the separation of the framework employment contract entered into with a member of a school cooperative from the „real employment contract" outlining the real tasks and duties of the job, raises a number of legal concerns (termination of relationship, protection against unfair dismissal), therefore revisiting these provisions is entirely justified.