

Book Review

The power of the collective: a remarkable book on European collective labour law, Edited by Beryl ter Haar and Kun Attila (Edward Elgar Publishing, 2021)

Reviewed by Péter Sipka*

1. Introduction

It would be difficult to answer the question of what is currently considered the greatest challenge in labour law. Many authors publish on this topic, where digitalisation, the change in the forms of work, questioning the very existence of labour law, the eternal battle between social aspects and economic interests, the impact of migration on labour law, etc. are recurrent themes.

In the light of the above, the book "EU Collective Labour Law", published in 2022 and edited by Beryl ter Haar and Attila Kun, is particularly noteworthy, as it organises the high-level studies on collective labour law by Europe's renowned labour lawyers into a well-defined conceptual framework.

The authors highlighted four of the abovementioned issues: as the result of the effects of digitalisation, the current form of the regulation on occupation has been questioned,¹ furthermore, the COVID-19 epidemic has led to the fact that masses of people suddenly started to work from home in an underdeveloped (partly unregulated) manner, and subsequently, the issue of safety at work (including the issue of mandatory testing and vaccination) has come under the spotlight. In addition to the above, the issue of climate protection is also being passed through in the world of work, moreover, a growing number of international documents are concluded to combat poverty and promote sustainability.²

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¹ See Explanatory memorandum of point 1 of the proposal for a Directive on improving working conditions in platform work.

² E.g. European Pillar of Social Rights, the proposal for a directive on adequate minimum wages in the European Union.

The effects described above could individually have the potential to strongly transform an area of law, however, their joint emergence in a relatively short period clearly calls for a profound reform of labour law.

The professionals currently dealing with labour law starts to think in several directions when examining the above problems: on the one hand, it is fundamentally questionable whether the autonomy of labour law can be maintained in the long term, i.e. whether it can retain the characteristics (e.g. the enforcement of social aspects, the instrumental nature of the labour market, etc.) that make it remarkably different from other areas of law. If so, will they remain regulated by Member States or will EU legislation have an even stronger influence in certain areas? The related question, independently of the answer to the first question, is by what means current (and future) forms of work should/may be regulated: can the current triple system of normative acts, collective agreements and individual agreements be maintained or will new forms of regulation (e.g. GTC) also become widespread with the new forms of work? Another question that should not be neglected is the legal status of the workers: will the "employee" – "subject to civil law contracts" dichotomy be maintained, or will an interim solution emerge, and certain legal relationships take on a "hybrid" nature?

Although the above issues may be addressed by very different proposals, the common feature of most of them is that they rely heavily on collective labour law, as the majority view is that structural problems should be addressed through collective labour law instruments. The concerned book intends to support this position as it does not seek to provide a long and immensely deep dogmatic analysis of a monographic nature, but rather to link together a logical chain of separate studies, each focusing on a specific sub-area and that are excellent in themselves.

Due to this methodology, it can be stated with certainty that the reader will encounter all the important issues of current (European) collective labour law, i.e. the book contains the results of the areas of labour law covered in a coherent and thoroughly processed manner. In the following, I will intend to justify this statement by presenting the work in more detail.

2. The concept of the volume: the theoretical and practical result of collective collaboration.

In the course of a job, it is exceptionally advisable if a person has a good relationship, one might say, friendship with the colleagues, since this is often reflected in the results. In present case, this state of grace was maintained, as both the editors and the authors are close friends, each with a clear passion and dedication to their own area, therefore, the cover image of the book is a manifestation of the authors' commitment to the book (subject) as well as a manifestation of the power of the collective. The authors of the volume clearly support the ideas of collective labour law even in their editorial methodology: just as a great book on labour law is likely to be the result of collective cooperation, the labour law problems raised in the volume can also be answered with such method, using the ideology of collective labour law.

According to the starting point of the editors (authors), the achievements of collective labour law at EU level (including social dialogue, EU social and employment policies and other employment-related financial programmes) are an unquestionable consequence of the development of the EU, which, even in the absence of specific legislative competence in this area, established the *European collective labour law* in the broad sense. This became de facto part of the EU *acquis*³ and gradually broadened the areas concerned by interpreting the rights enshrined in the founding treaties.⁴ This raises the appropriate question of the extent to which the “resulting” body of law can respond to the specific challenges that labour law faces, and to what extent the approach of the *acquis* in this area can be applied to labour law as a whole?

It is beyond doubt that today collective labour law provisions are unavoidable in both EU and national legal systems, however, the choice of topic is certainly interesting from the point of view of whether collective labour law will have an increasing or a decreasing influence on regulation in the future. The development of law in this area is beyond doubt, as the European Pillar of Social Rights has a definite impact on the exercise of collective rights in the context of fair working conditions,⁵ however, it may be questionable whether this is the most appropriate way to address the issues described in the introduction and raised in the following sections.

Regarding the COVID-19 pandemic, we have undoubtedly seen an effort on the part of both the EU and the Member States to maintain (strengthen) collective dialogue and consultation with the social partners during the pandemic, although, in my view, labour law could not provide truly convincing protection concerning this issue. The shutdown/restructuring caused by the epidemic was ultimately an economic-financial burden on the employers' side, which was settled either independently or with state support (through public acts). This has taken the form of various financial aid packages and policy decisions at EU level, in which social partners indeed played a significant role, but this role was in the form of decision support, where the social dimension was taken into account. Consequently, it can be stated that the labour law-institutional structure made a significant contribution to crisis management, which is to be considered as success, however, there is still considerable room for development.

The second issue, the emergence of *digitalisation* and artificial intelligence, will lead to an irreversible transformation of labour law in the long term, and may also fundamentally challenge our current rules and knowledge of occupation.⁶ In this process, collective labour law has an unavoidable role and responsibility, not only at Member State level, but also at European level, as it is clear that the issue cannot be accurately addressed by individual labour law instruments due to individual isolation. Therefore, if we aim to preserve labour law values

³ Chapter “Introduction” p. 17.

⁴ Bercusson B., *European Labour Law*, II ed., Cambridge University Press, Oxford, 2009, 329.

⁵ Zaccaria M. L., *Perspektívák és kihívások - a Szociális Jogok Európai Pillérének potenciális hatása a magyar munkajogra* [*Perspectives and challenges - the potential impact of the European Pillar of Social Rights on Hungarian labour law*], in *Közjogi Szemle*, 1, 2018, 43.

⁶ Hajdú J., *A mesterséges intelligencia hatása a munkaerőpiacra, avagy elveszítik-e a robotok az ember munkáját* [*The impact of artificial intelligence on the labour market, or will robots take our jobs?*], in *Infokommunikáció és Jog*, 2, 2020, 9.

for the future, we can most likely do so through collective means.⁷ In this context, it is noteworthy that a draft of the directive of the European Parliament and of the Council on platform work is now available has already become available, which draft defines, for example, the notions of platform work⁸ and platform workers⁹, which can be considered as the first major legislative step in the field of the legal protection of such persons. The explicit aim of the proposal is to preserve and improve the protection of people working in this manner by, fostering social dialogue on algorithmic management systems, introducing collective rights regarding information and consultation on substantial changes related to use of automated monitoring and decision-making systems.¹⁰

The authors also raise the possibility of using European collective labour law in further problem area, namely the area of climate change, as it is part of the post-COVID relaunch programme of the European Union.

Although, at first sight, the link between the two areas may appear as distant, the authors argue that social dialogue is essential in technological change, which is obviously primarily economic, thus it helps to manage change. From this aspect, it seems that the authors consider not only the set of instruments of collective labour law to be followed, but also the approach of problem management.

At first reading, among the challenges raised by the volume, the issue of the *fight against poverty* might be the least classically labour law-related. In this context, the authors themselves point out that this issue is indeed primarily a global problem, however, that it has unavoidable labour law implications such as the issue of adequate minimum wages¹¹ to be provided in the European Union, or the fight against poverty mentioned in the Social Pillar.¹² From this context alone, it is clear that the authors of the volume use the notion of (European) collective labour law in the broadest possible sense, while at the same time claiming that we can, with the tools and approach of this area of law, contribute to addressing not only labour law (sectoral) but also global problems.

⁷ For example, the European Pillar of Social Rights, explicitly emphasises, in addition to economic development, social development based on equal opportunities, fair working conditions, social protection and social inclusion. – see, for further detail in Jakab N., *Robotika és a jog – A robotika munkajogot érintő kapcsolódása [Robotics and the law - Robotics in relation to labour law]*, in *Miskolci Jogi Szemle*, 15, 2020, 1. 55.

⁸ Any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.

⁹ Any person performing platform work who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice.

¹⁰ Explanatory memorandum of the proposal, nt. (1), 4.

¹¹ See e.g.: Proposal for a directive on adequate minimum wages in the European Union, Brussels, 28.10.2020, COM(2020) 682 final, 2020/0310 (COD).

¹² Preamble, Point 9; Article 6(b); Articles 12-14.

3. The structure of the book and the main topic of each study.

The volume can be divided into four structural units, which on the one hand provides a framework, and on the other hand a logical chain for the writings: the first one contains a theoretical foundation of collective labour law, presenting its most important sources and fundamental values. The main topic of the second part is social dialogue, the third one focuses on employee participation and collective bargaining, while the fourth and final chapter looks ahead.

Studies were carried out on the following topics:

In his initial study, *Eduardo Ales*¹³ presents the basic institutions of collective labour law and its relationship (interplay) with EU law, systematically reviewing the sources of law by which the area concerned is strengthened. In the paper, the author also makes a special reference to the relevant case law of the CJEU, thus supporting the hypothesis of the editors that the institutions of the European collective labour law have, through the case law of the courts, a broad impact on the development of law at both national and EU level.

In the following paper, *Jerome Porta* and *Tatiana Sachs*¹⁴ discuss the importance of the representation of employees and the solidarity, pointing out that the development of a unified European collective labour law is somewhat prevented by the differences between each national regulation, but that a common minimum is essential for the socially strengthening Europe.

In his work, *Vincenzo Pietrogiovanni*¹⁵ discusses the right to collective bargaining as a fundamental right. In the course of it, he describes the relevant legal environment of the EU and the changes (developments) in the content of the right, highlighting that there is still considerable progress to be made in this area.

*Piotr Grzebyk*¹⁶ discusses the enforceability of the right to strike as a fundamental right, taking into account the reasoning in the Viking and Laval cases, presenting the specific interpretation of the CJEU.

At the end of the first part, two short studies step outside the narrowly interpreted framework of EU law: in their paper, *Elena Gerasimova* and *Elena Sychenko*¹⁷ examine the impact of the European Social Charter and the European Convention on Human Rights on the development of European collective labour law, furthermore, they present the influence of such documents on the Member States. Subsequently, *Valérie Van Goethen* and *Vongai Masocha*¹⁸ analyse the relationship between the European Union and the ILO reflected in institutional and legal texts from the perspective of the ILO.

¹³ Eduardo Ales: EU Collective Labour Law: if any, how?

¹⁴ Jerome Porta és Tatiana Sachs: Conceptual issues on representation and solidarity.

¹⁵ Vincenzo Pietrogiovanni: Collective bargaining: (not just) a fundamental right.

¹⁶ Piotr Grzebyk: The right to strike as a fundamental right.

¹⁷ Elena Gerasimova, Elena Sychenko: European Social Charter and European Convention on Human Rights.

¹⁸ Valérie Van Goethen és Vongai Masocha: Collective labour law and the European Union: an ILO perspective.

The second structural unit (Social Dialogue) begins with a synthesis study in which *Paul Copeland*¹⁹ presents the social dialogue policy of the EU from its inception through the obstacles to its development, and then refers to the potential for future developments.

This is followed by a remarkable paper by *Natalie Videbaek Munkholm*²⁰ on the sources of law of social dialogue and the documents that are the results of its implementation. A particular value of the work is that the author highlights some problematic topics that need to be developed in the future.

Looking at the challenges of tripartism in the EU, *Jozef Kšíňan*²¹ concludes that, although the notion has a significant impact primarily in national law, it is also often present at EU level and it will become an increasingly important part of the decision-making mechanism in the long term.

In the next chapter, *Manuel Antonio Garicía-Munoz Albambra*²² analyses European sectoral social dialogue. In his study, which includes both qualitative and quantitative elements, he points out in which cases sectoral social dialogue can be a useful instrument, without hiding its negative prognoses.

For those concerned with (European) labour law, the social dialogue emerging in nations of “associated country” status associated with the EU can be of particular interest. The study of *Zakaria Shvelidze*²³ on this topic points out that in such countries, the status of EU associate offers the possibility to reflect the EU values already acquired/accepted as strongly as possible in domestic law, although, the author argues that the desired level is still far from being reached.

In the following paper, *József Hajdú* presents the role and impact of social partners in the EU level problems of pensions and unemployment.²⁴ In his study, Professor Hajdú points out that the EU with its current structure, does not have the resources to make meaningful progress on these issues, and can therefore act primarily by promoting coordination and cooperation between Member States.

Subsequently comes the writing of *Attila Kun*,²⁵ who examines the links between social responsibility and social dialogue in the EU, pointing out that soft law instruments (CSR, RBC, due diligence) are increasingly becoming hard law in certain areas, such as human rights.

The third part of the book is organised under the general term collective bargaining and employee’s involvement. In the first essay, *Elisabeth Brameshuber*²⁶ presents the background and functioning of information and consultation rights, as well as the relevant CJEU case law, moreover, at the end of the article, the author also proposes a rethink of the scope of the legislation.

¹⁹ Paul Copeland: The politics of EU Social Dialogue.

²⁰ Natalie Videbaek Munkholm: Social Dialogue in the EU (legal).

²¹ Jozef Kšíňan: EU issues on tripartism.

²² Antonio Garicía-Munoz Albambra: European Sectoral Social Dialogue.

²³ Zakaria Shvelidze: European Social Dialogue and Associated Countries.

²⁴ Hajdú József: Social Partners’ involvement in the EU-level social policy issues, focusing on pensions and unemployment.

²⁵ Kun Attila: Social Dialogue and Corporate Social Responsibility (CSR) in the EU.

²⁶ Elisabeth Brameshuber: Information and consultation rights.

The next paper is written by *Iacopo Senatori* and *Angela Rauseo*,²⁷ who produced a summary of the European Works Council, including a case study, in which the achievements and shortcomings of the practical effectiveness of the Directive on the European Works Council are presented.

Subsequently, the study of *Beryl ter Haar*,²⁸ one of the editors of the volume, on the regulation of transnational company agreements (TCAs) within the EU can be read, in which she reviews the content of the documents, the issue of enforceability and the results of the analysis of the ILO.

This is followed by the writing of *Alexander De Becker*²⁹ on the different models of collective bargaining in the public sector and their international legal framework. In the writing, the author points out that Article X of TFEU does not distinguish between the labour law of private and public sector, therefore, on this basis (taking into account Article 152) the possibility of social dialogue is open to the parties. The author, using comparative methods, compares the Scandinavian and Franco-Belgian models, however, she does not see any realistic possibility of applying them uniformly.

Diana Haas and *Wolfhard Kohte*³⁰ examine participation and representation rights in the field of occupational health and safety in the light of the framework directive, pointing to the need to strengthen such right in small and medium-sized enterprises in particular.

This is followed by the work of *Daniel Ulber*³¹ on board-level representation. The author describes the development of employee representation in detail, its sources, the challenges arising from the interconnection of labour law and company law, and subsequently, makes *de lege ferenda* proposals for the development of the law.

The importance of employee participation is also emphasised in the following study by *Teresa Coelho Moreira* and *David Carvalho Martins*,³² in which study the authors focus on the representation that arises in the restructuring of firms. In this context, they cover the main stages in the development of EU legislation on collective redundancies, the evolution of the current notions of employee/representative of employee /company, pointing out that such rules are essential for adequate legal protection.

In the following paper, *Lukasz Pisarczyk* and *Katarzyna Wieczorek*³³ examine the role of the transfer of undertakings on collective agreements and employee representation. They present the positive impact of the development of European law in this area and emphasise the importance of the law-developing interpretation of the CJEU.

No volume on collective labour law can be written without mentioning competition law. Accordingly, the study by *Teun Jaspers*³⁴ an in-depth analysis of the collision of competition

²⁷ Iacopo Senatori, Angela Rauseo: European Works Councils.

²⁸ Beryl ter Haar: The EU and transnational company agreements.

²⁹ Alexander De Becker: Collective bargaining in the public sector: different models in a distinct international framework..

³⁰ Diana Haas, Wolfhard Kohte_ Occupational health and safety – representation and participation

³¹ Daniel Ulber: Board-level representation.

³² Teresa Coelho Moreira, David Carvalho Martins: The role of employees (and their representatives) in company restructuring.

³³ Lukasz Pisarczyk, Katarzyna Wieczorek: The influence of a transfer of undertaking on collective agreements and employee representation.

³⁴ Teun Jaspers: Collective bargaining and EU competition law.

law formulas with collective labour law, as well as the EU law governing this area. In the latter context, the author points out that, although the non-application of competition law rules is the precondition of exercising fundamental social rights, there is still much to be done on the path to a social Europe.

In the following study, the challenges to equal treatment arising in the course of collective bargaining are discussed by *Petra Herzfeld Olsson*.³⁵ In the introduction to the paper, the author states that, although equal treatment is, in essence, the cornerstone of social policy, its enforcement is still very difficult. Supporting this, the author analyses the challenges arising in the course of collective bargaining processes, concluding that the implementation of equal treatment is the most important task of the social partners.

In the paper concluding the part, *Pieter Pecinovsky* and *Mariagrazia Lombardi*³⁶ examine the enforceability of the social dimension of the EU, presenting the levels of labour inspection, two specific examples of cooperation as good solution and the role of the European Labour Authority.

The final chapter of the book focuses on future perspectives and challenges. *Davia Pertylaitė*³⁷ provides a synthesis study of the opportunities and challenges for the development of European collective labour law. In her paper, she presents the achievements of European collective labour law until today, analyses the instruments of national and EU collective labour law, highlighting the fact that further development in the future, based on common values and principles, may lead to institutional and economic development.

In her concluding essay, *Tonia Novitz*³⁸ presents European collective labour law as a new representation of the "human face" of labour law. In her work, she describes the development of European collective labour law until today, and stresses that Europe in crisis is specifically in need of collective labour law instruments (protection) to address economic challenges, expressing the hope that their strong manifestation will restore the "human face" of law at the same time.

4. Final thoughts.

Summarising the above, it can be seen that the book, with its chapters, covers a very broad spectrum, with each of the analyses dealing with a specific area being a serious and in-depth work, therefore it can be said that it presents and analyses all of the essential elements of current European collective labour law. Consequently, the book is likely to become an essential part of the own library of the professionals dealing with European collective labour law, moreover, for university students, it can also serve as a useful textbook that is easy to learn. I hope that the readers of this book will, after reading it, adopt the values and attitudes

³⁵ Petra Herzfeld Olsson: Collective bargaining and equal payment.

³⁶ Pieter Pecinovsky, Mariagrazia Lombardi: Social partners, labour inspectorates and the enforcement of the EU's social dimension.

³⁷ Davia Pertylaitė: Overview of common issues and evolution of EU Collective Labour Law

³⁸ Tonia Novitz: Re-introducing a human face – the future of EU Collective Labour Law.

of the editors and authors, and consequently that the objectives pursued by themselves will hopefully be more likely to be put into practice

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