Italian Labour Law e-Journal
Issue 2, Vol. 17 (2024)
ISSN 1561-8048
https://doi.org/10.6092/issn.1561-8048/19395

The enforcement of labour laws in Hungary – the deficits of the collective dimension*

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Abstract

This paper aims to provide an illustrative assessment of the functioning of labour law enforcement in Hungary from a collective labour law perspective, based on selected topical regulatory case studies. In doing so, the paper intends to demonstrate the generally and largely deficient nature of the collective dimension of labour law enforcement in Hungary. Namely, the first case study describes the situation of amicable settlement of collective labour disputes in Hungary and the prevailing institutional vacuum in this regard. The second case study deals with the very limited possibilities of "*actio popularis*" and strategic litigation in Hungarian labour law and the potential of these legal mechanisms to further labour law enforcement. The third case study outlines the meagre legal and practical room for manoeuvre of alt-labour organisations in the Hungarian context and points out that their chance for collective bargaining is extremely small. The paper formulates some policy pointers and proposals on how the collective dimension of labour law enforcement (especially concerning these three regulatory fields illustrated by the case studies) could be further promoted and enhanced in Hungary, especially in the context of a constantly changing, new world of work.

Keywords: Enforcement of Labour Laws; Trade Unions; Alt-Labour Organizations; Alternative Dispute Resolution; Actio Popularis.

* The research was supported by the Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law (Research programme: "A foglalkoztatási szabályok érvényesülése és kikényszeríthetősége"). This essay has been submitted to a double-blind peer review.

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1. Introduction: the general weaknesses of the collective dimension of labour law enforcement in Hungary.

Generally speaking, the way Bercusson described the overall industrial relations climate of some post-socialist countries is perfectly true for Hungary as well: these states are, by and large, characterized by the presence of heterogeneous and fragmented trade unions and employers' organisations, a limited scope of collective bargaining, with collective bargaining systems more decentralised and operating mainly at company level, underdeveloped sectoral level bargaining, the absence of collective participation in decision-making at the workplace and an asymmetrical tripartism, with strong governments confronting weaker social partners.[1]

The status of collective bargaining in Hungary is characterised by fragmented, decentralised, weakly coordinated, predominantly single-employer bargaining, negotiated mainly between a company-level trade union and a single employer. In sum, social partners are weak, collective bargaining coverage is low (around 20 per cent) and sectoral-level negotiations are practically non-existent.[2] Furthermore, not only the quantity, but also the quality of existing agreements is problematic: empirical research has pinpointed several weaknesses with regard to the content of collective agreements.[3] Collective bargaining agreements often merely repeat the statutory rules,[4] and regularly contain illegal or meaningless terms and conditions. Besides, the promotion of collective bargaining has always been far from a "success story" in Hungary. What is more, several international criticisms have been formulated in this regard over the past two decades.[5] In sum, collective agreements seem to play a minimal (and declining) role in employment regulation.[6] All in all, as it is almost generally and uniformly concluded by the authors of the literature available on the topic, labour relations in Hungary are characterised by a diminishing freedom to organise, weakening trade union rights, increasingly meaningless (national and sectoral) reconciliation

[1] Bercusson B., *European Labour Law*, *2nd edition*, Cambridge University Press, Cambridge, 2009, 266; cited also by Shvelidze Z., *European Social Dialogue and Associated Countries*, in Kun A., Ter Haar B. (eds.), *EU Collective Labour Law*, Edward Elgar Publishing, Cheltenham, 2021, 206.

[2] Gyulavári T., Kártyás G., *Why Collective Bargaining is a 'Must' for Platform Workers and How to Achieve it,* in Boto J. M. M., Brameshuber E. (eds.), *Collective Bargaining and the Gig Economy*, Hart Publishing, Oxford, UK / New York, USA, 2022, 99-116, 112.

[3] Fodor T. G., Nacsa B., Neumann L., Egy és több munkáltatóra kiterjedő hatályú kollektív szerződések összehasonlító elemzése [Comparative Analysis of Single- and Multi-Employer Collective Agreements] 2008, available at: http://www.mkir.gov.hu/doksik/ksz/elemzes/orszagos_osszegzo_tanulmany.pdf .

[4] These are the so-called "parrot clauses".

[5] Not too long ago, both the ECSR (European Committee of Social Rights) and the ILO have criticised Hungary for the insufficient promotion of collective bargaining. *See*: ECSR, Conclusions 2014 (HUNGARY) Articles 2, 5, 6, 21 and 22 of the Revised Charter, January 2015, 18; ILO, *Memorandum of Technical Comments on Hungary's Draft Labour Code*, 8 November 2011.

[6] However, the new Labour Code of 2012 intended to strengthen the parties' collective contractual freedom by reducing the regulatory role of the state. The new Code significantly extends the role of collective agreements for the advancement of a more flexible, more reflexive, more autonomous system of employment regulation. Anyhow, the reformed hierarchy of labour law sources did not manage to strengthen collective bargaining. *See* for further details: Kun A., *Hungary: Collective Bargaining in Labour Law Regimes*, in Liukkunen U. (ed.), *Collective Bargaining in Labour Law Regimes*, Springer International Publishing, Cham, 2019, 333-356; Gyulavári T., *The Hungarian Experiment to Promote Collective Bargaining: Farewell to the 'Principle of Favour'*, in Gyulavári T., Menegatti E. (eds.), *The Sources of Labour Law*, Kluwer Law International BV, The Netherlands, 2020.

of interests, furthermore, a contradictory regulatory environment.[7] Furthermore, the entire collective bargaining system seems to be fading away and struggling with fundamental structural problems.[8] In other words: the impact of collective labour law in general is marginal in Hungary, thus its potential role in labour law enforcement is also structurally and seriously limited, as it will be further illustrated and substantiated by the three topical regulatory case studies presented in this paper.

The general starting point of the paper is, as it is rightly pointed out by an ETUI research, that from a strictly formal point of view, employment regulation in Central Eastern European countries including Hungary (with a predominantly statist tradition of regulation) provides an acceptable level of protection for employees.

"However, workers' formal rights are being violated and circumvented on a massive scale. Because the oversight system is non-effective, employees lack sufficient access to justice; furthermore, the courts and administrative bodies approach regulation in a highly formalised way so that the violations and circumventions become 'normalised' over time, rendering formal regulation ineffective."[9]

The non-enforcement of existing regulations, non-effective oversight mechanisms, and the deficit of employees' sufficient access to justice are a run-of-the-mill experience in Hungary, and collective labour law structures do not seem to have real potential to provide help in this regard. In the following, the latter observation will be illustrated and substantiated through three case studies on regulation: the first one from the institutional point of view (the lack of a proper ADR[10] / ASLD[11] mechanism in the domain of collective labour disputes in Hungary); the second from the procedural aspect (the potentials of *actio popularis* and strategic litigation in Hungarian collective labour law) and the third from the pragmatic perspective (the very limited legal and practical possibilities of alt-labour organisations in Hungary).

In this context, in sum, the paper aims to provide an illustrative assessment of the functioning of labour law enforcement in Hungary from a collective labour law perspective, based on some regulatory case studies. In doing so, the paper intends to illustrate the generally and largely deficient nature of the collective dimension of labour law enforcement in Hungary by way of three topical regulatory case-studies.

The first case study (Section 2) describes the situation of the amicable settlement of collective labour disputes in Hungary and the prevailing institutional vacuum in this regard. The second case study (Section 3) deals with the very limited possibilities of *actio popularis* /

[7] Szabó I., *The Legal Status of Trade Unions in Hungarian Labour Law*, PhD Dissertation, University of Pécs–Faculty of Law, Pécs, 2021, available at: https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/szabo-imre-szilard/szabo-imre-szilard-vedes-ertekezes.pdf .
[8] Gyulavári T., Kártyás G., nt. (2), 114.
[9] Muszyński K., *Reform and oversight mechanisms are not enough – Access to justice for workers and employment standards in Central Eastern European countries*, Working Paper, Brussels, ETUI, 2020, 4, available at: https://www.etui.org/publications/reform-and-oversight-mechanisms-are-not-enough .
[10] ADR: Alternative Dispute Resolution.
[11] ASLD: Amicable Settlement of Labour Disputes.

collective interest representation[12] and strategic litigation in Hungarian labour law and the potential of these legal mechanisms to further labour law enforcement. The third case study (Section 4) outlines the narrow legal and practical room for manoeuvre of alt-labour organisations in the Hungarian context and points out that their chance for collective bargaining is extremely small.

The paper formulates some policy pointers and proposals on how the collective dimension of labour law enforcement (especially concerning these three regulatory fields, case studies) could be further promoted and enhanced in Hungary, especially in the context of a constantly changing, new world of work.

All in all, the goal of this study is not to offer a comprehensive assessment of this vast topic, but rather to describe some of the characteristic (institutional, procedural and pragmatic) shortfalls of Hungarian collective labour law, especially in the context of the enforcement of labour laws.

2. Amicable settlement of collective labour disputes: institutional vacuum.

As regards the amicable resolution of collective labour disputes of interests in Hungary, the state and the social partners established the Labour Mediation and Arbitration Service (*Munkaügyi Közvetítői és Döntőbírói Szolgálat – MKDSZ*) in 1996, but it has been out of operation since 2015. Partially instead of MKDSZ, a renewed independent service, the Labour Advisory and Dispute Settlement Service (*Munkaügyi Tanácsadó és Vitarendező Szolgálat – MTVSZ)*[13] was created in 2016 (in the framework of a so-called "GINOP" EU-funded project) to promote the effective and swift resolution of industrial disputes of interests. MTVSZ was available for trade unions, works councils and employers (without restrictions for private sector, public sector, or small and medium-sized employers) and offered wide-ranging – and rather popular – services (including consultancy, conciliation, negotiation, mediation, and arbitration) with considerable labour law expertise. MTVSZ was operated by a consortium of social partners[14] in the framework of a nationwide network of prominent labour law academics and experts. The members of MTVSZ were independent labour lawyers (mainly recruited from universities' labour law departments) as a guarantee for expertise. The services of the MTVSZ were free of charge and extensive, ranging from consultancy, conciliation and negotiation to mediation and arbitration. The broader mission of MTVSZ included the promotion of collective bargaining and peaceful industrial relations, and it also strived to serve as a prominent "think tank" in collective bargaining and collective labour law. The legal basis of MTVSZ was provided by Government Decree no. 320/2014 (XII.13.), but the Labour Code made no reference to it. In Central Hungary, MTVSZ was operated by the government, while in the six other regions of the country, it was run by an

[12] 'CIR', as labelled by ter Haar B., *The role of collective interest representatives in enforcing EU labour rights, A Thematic Working Paper for the Annual Conference of the European Centre of Expertise (ECE) in the field of labour law: Enforcing EU labour rights*, European Commission, 2024.
[13] The legal background of the MTVSZ is Government Decree no. 320/2014 (XII.13.).
[14] *See*: https://www.munkaugyivitarendezes.hu/.

independent consortium of social partners (including the National Federation of Workers' Councils and Confederation of Unions of Professionals, together with four employer organisations from the SME sector).[15]

In the first phase of its operation (2016–2019), the six regional units of the Service (i.e. exclusive of the separate central unit run by the Ministry) handled a total of one hundred and fifty cases, the majority of which were about providing advice and assistance in collective bargaining or collective disputes (one hundred and thirty-one), but they also included some cases of classic mediation (thirteen) and conciliation (five). The Service was involved in arbitration on only one occasion. In the second phase of its operation (2019–2022), MTVSZ handled a further one hundred and fifteen cases. The role of the employers' side and the employees' side in initiating cases was roughly even. The figures show that the Service's operations were solid and extensive. The Service's primary task in practice was not classic, formal dispute resolution (e.g. mediation) but rather the provision of preventive, advisory assistance and forms of assisted bargaining.

It must be acknowledged that MTVSZ, like any new system, faced some challenges such as the lack of a legal personality and explicit "institutionalisation and embeddedness" in the structure of labour law (and the Labour Code), as well as the lack, or inadequacy, of targeted "steering" legal mechanisms towards the Service. Furthermore, the rather fragmented structure, the high number of consortium partners, the lack of a coherent image and administration, the downsides of the "project logic" (e.g. labelled and earmarked financial resources, limited possibility for long-term planning) also hindered the fully effective operation of the Service.

It can be affirmed that in Hungary, in the world of work, the culture of alternative dispute resolution (ADR) is still not sufficiently developed, and MTVSZ (or a similar structure) should continue to play an important role in improving this situation. At the same time, it must be recognised that the overall conditions for the embeddedness of a culture of ADR in the world of work are very complex and cannot necessarily be influenced directly by state / regulatory interventions (*see*: culture of dispute, "collective activism", traditions, vitality of industrial relations, etc.).

It must be noted that MTVSZ ceased to operate as of January 2022, simply because the underlying EU-project expired. Currently (in December 2023, at the time of drafting this paper, but already since June 2022), the future of MTVSZ – and the whole culture of amicable resolution of collective labour disputes in Hungary – is fully unpredictable and there is an institutional vacuum in this regard.[16]

Over the past decade, the Service itself, the social partners in the consortium and the labour law community in general have made several constructive suggestions for the further

[15] Code of Conduct, Procedures of the MTVSZ is available at:
http://www.jogpontok.hu/download/vitarendezes__kodex.pdf .

[16] *See* for further details: Kun A., Merre tovább? alternatív vitarendezés a kollektív munkajogban – A Munkaügyi Tanácsadó és Vitarendező Szolgálat (MTVSZ) második (2019–2021) működési ciklusa és perspektívái [Where Do We Go from Here? Alternative Dispute Resolution in Collective Labour Law – The Second Operational Cycle (2019–2021) and Perspectives of the Labour Advisory and Dispute Settlement Service (MTVSZ)],), in *Munkajog*, 1, 2022, 61-67.

development of this mechanism. Nevertheless, the proposals remained proposals, i.e. none of them have been implemented so far.

The six years of operation of MTVSZ demonstrated that it was able to perform its tasks to a high standard, that there was a stable demand for its services in the world of work, and that the Service's operations became increasingly extensive. Furthermore, de jure, there is no doubt that the state has a duty to ensure that the type of services provided by the Service over the past six years, that is, effective mechanisms for the amicable resolution of collective labour disputes are somehow maintained (as part of the legal obligation of the promotion of collective bargaining).[17] The current "*ex lex*" situation in this regard is clearly unsustainable, and the state should either organise/set up a similar ADR structure, or at least design a similar "project" (consortium) for this purpose.

In our view, structures and mechanisms dealing with amicable dispute settlement in the field of collective labour disputes need to be strengthened, and beyond dispute settlement, such a mechanism should also be vested with wide-ranging and dynamic preventive, educative, training, promotional and advisory functions with a view to improving the bargaining culture. "Assisted bargaining" should also be promoted in order to channel expertise into bargaining processes.

Comparative research suggests that *the industrial relations-character of a country* largely and paradigmatically determines the nature of the dispute resolution system. As a matter of fact, in countries where collective bargaining processes are weak, no special priority is given to industrial courts or labour courts over ordinary civil or common law courts, and where social partners are not particularly strong, we can typically expect to see strong, administrative, state-run ADR-mechanisms.[18] In other words, we can assume that where collective representation and voice mechanisms are generally weak, these mechanisms can play a smaller role in encouraging the internal, negotiated resolution of disputes. Therefore, in such cultures, there might be a greater need and room for state-run, administrative, external ADR-services. Apparently, Hungary belongs to the latter type of countries. Consequently, it can be presumed that it is a *strong state-based system (a standalone ADR-agency, as a principal recommendation) that would be the most appropriate for Hungary.*

3. "*Actio popularis*" and strategic litigation in labour law: procedural and constitutional obstacles.

In principle, the enforcement of labour law rules by collective parties could also come up through *actio popularis*. In the following section, we will discuss the definition of *actio popularis* in general before going into details about the Hungarian regulation in this regard. We will

[17] ILO C154 – Collective Bargaining Convention, 1981 (No. 154) as ratified by Hungary.
[18] Koukiadaki A., *International Comparative Report on "Individual and Collective Labour Dispute Settlement Systems – A Comparative Review" (Volume II), Project "Supporting the transition from informal to formal economy and addressing undeclared work in Greece"*, International Labour Office in cooperation with the European Commission's Directorate-General for Structural Reform Support (DG REFORM, former SRSS), 2020, 28–30, 104., also citing Valdes D.V., *Labour conciliation, mediation and arbitration in European Union countries*, Ministerio De Trabajo Y Asuntos Sociales, 2003.

focus our attention on the possibility of workers' representatives and trade unions to represent employees' rights during hearings.

3.1. The concept of "*actio popularis*".

In order to define *actio popularis*, we need to go back to the ancient Roman law. *Actio popularis* was an action in Roman penal law brought by a member of the community for the sake of public order.[19] Roman law gave every Roman citizen (*quivis ex populo*) the right to file a complaint in connection with a public crime that did not affect them personally.[20]

Even today, there are certain legal instruments that originate from *actio popularis*. We could mention public interest litigation in India,[21] or class action (lawsuits) in the USA or in the UK, which are procedures of a similar nature.[22]

Actio popularis is a legitimate instrument in some fields of law in Hungary as well, for example, in the domain of consumer protection, especially in the case of general terms and conditions. Actions may be brought in the public interest to establish the invalidity of an unfair contractual term between a consumer and an enterprise by a) the prosecutor; b) the ministers and the heads of autonomous state administration organs, main government agencies and central agencies; c) the heads of the capital and county government offices; d) economic and professional chambers or interest representation organisations; and e) with regard to the consumer interests protected by it, the association that is engaged in the protection of consumer interests, and the association established to protect consumer interests under the law of any Member State of the European Economic Area.[23]

Some authors have already raised the idea that the rules of general terms and conditions should also be applied more extensively in certain fields of labour law. As defined by the Hungarian Act on the Civil Code, general terms and conditions (hereinafter referred to as: "GTCs") designate contractual terms that are not negotiated individually by the parties but are determined unilaterally and in advance by the person applying them for concluding several contracts.[24] Such a situation can easily arise when signing an employment contract or creating a policy.[25] According to Gyulavári and Kun's opinion, in labour law, the provisions

[19] Boudewijn Sirks A. J., *Cognitio and Imperial and Bureaucratic Courts*, in Katz S. (ed.), *The Oxford International Encyclopedia of Legal History*, Oxford University Press, Oxford, 2009.
[20] Boudewijn Sirks A. J., *ibid*
[21] *See*: https://www.ecchr.eu/en/glossary/public-interest-litigation/ .
[22] Udvary S., *Pro actione collectiva – A komplex perlekedés amerikai eszközei, különösen a class action összehasonlító vizsgálata az intézmény magyarországi recepciója céljából* [Pro actione collectiva – A comparative study of the American instruments of complex litigation, in particular class action, with a view to their reception in Hungary], , Patrocinium Kft., Budapest, 2015.
[23] Act V of 2013 on the Civil Code, Article 6:105, Section (1).
[24] Act V of 2013, Article 6:77, Section (1).
[25] *See* more in Nádas G., *Általános szerződési feltételek a munkajogban, fogyasztó-e a munkavállaló?* [General Terms and Conditions in Labour Law, Is the Employee a Consumer?] in Árva, Zs., Szikora, V., (eds.), *A fogyasztók védelmének új irányai és kihívásai a XXI. században* [New Directions and Challenges of Consumer Protection in the 21st Century]. Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen, 2018. 313–328., Kiss G., *Az általános szerződési feltételek és a kollektív szerződés lehetséges kapcsolódási pontjai* [Possible Interfaces Between the General Terms and Conditions and Collective Agreements], in Pál L., Petrovics Z. (eds.), *Visegrád 16.0 – A*

of the GTCs could and should have great importance (especially in relation to work- and performance conditions internally regulated by company policies, by-laws etc.).[26] The Civil Code attempts to regulate GTCs along the conceptual criteria of unfairness in the first place. GTCs are considered to be unfair if they set forth the rights and obligations arising from a contract unilaterally and unreasonably, and by violating the principle of good faith and fair procedure, to the detriment of the (often weaker) party contracting with the other party (i.e. the employer in our case) applying that contract term. And the reason why we should discuss the interpretation of particular labour law acts as GTCs is that the Civil Code allows for *actio popularis*, as it has been stated above.

Further examples that can be cited from the Hungarian regulation where *actio popularis* exists are lawsuits dealing with environmental protection or animal welfare, or the violation of equal treatment.[27]

3.2. The Hungarian regulation.

One of the basic principles of the law of civil procedure declares that the court adjudicates the legal dispute of the parties upon their request. A party interested in the dispute has a constitutional right to take his or her case to court, which also includes the right not to take it to court.[28]

In the domain of labour law enforcement, there is only one possibility provided for trade unions to represent employees in an *actio popularis* / CIR type procedure, and that is the violation of equal treatment. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter referred to as: "Equal Treatment Act") states the following:

A lawsuit under personal or labour law because of a violation of the principle of equal treatment before the court may be instigated by a) the Public Prosecutor, b) the Equal Treatment Authority,[29] or c) NGOs and interest representation organisations, if the violation of the principle of equal treatment or a direct threat of the violation was based on such a characteristic that is an essential feature of the individual, and the violation of law or a direct threat of the violation affects a larger group of people that cannot be determined accurately.[30]

XVI. Magyar Munkajogi Konferencia szerkesztett előadásai [Visegrád 16.0 – Proceedings of the 16th Hungarian Labour Law Conference], Wolters Kluwer, Budapest, 2019, 134–145., Herdon I., Sipka P., Zaccaria M. L., *Van? Volt? Lesz? – A munkaszerződés létezésének dogmatikai és gyakorlati problémái* [There Is? Was? Will Be? – The Dogmatic and Pragmatic Issues of the Existence of Employment Contracts], in *Munkajog* [Labour Law], 4, 2021, 1-9.

[26] Gyulavári T., Kun A., *A munkáltatói szabályzat az új Munka Törvénykönyvében* [The Employers' Regulations in the New Labour Code], in Magyar Jog 9, 2013, available at: http://real.mtak.hu/81492/1/A20munkC3A1ltatC3B3i20szabC3A1lyzat_u.pdf .

[27] *See* in details below.

[28] The Fundamental Law of Hungary, Article XXVIII: In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

[29] Office of the Commissioner for Fundamental Rights, Directorate-General for Equal Treatment.

[30] Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, Article 20.

The latest condition – "violation affects a larger group of people that cannot be determined accurately" – is intended to ensure that the legislation is consistent with constitutional principles. According to a prominent decision by the Hungarian Constitutional Court from 1994,[31] a general prosecutorial right of action violates the right of individuals to self-determination, autonomy of action and also the rule of law.[32] In accordance with the principle cited, the Equal Treatment Act does not deprive individuals of their right of action because the infringement litigated must affect a larger group of people that cannot be determined accurately. Research from 2016 found that out of 90 *actio popularis* procedures, 18 were initiated on the grounds of the violation of equal treatment.[33] Employment-related *actio popularis* cases have been initiated on several occasions, for example, with reference to the employer's unlawful discrimination against trade union member employees.[34]

Currently, the Hungarian Labour Code, Act I of 2012 (hereinafter referred to as: "HLC" or "Labour Code") does not regulate the right of trade unions to *actio popularis* / CIR at all. Trade unions have the general right to represent their members before the employers or their interest groups concerning the workers' rights and obligations relating to their financial, social, as well as living and working conditions. Trade unions are also entitled to represent their members – upon authorisation – before the court, the relevant authority and other organs with a view to protecting their economic interests and social welfare.[35] As we can see, trade unions have dual representation rights. They can act at their own discretion against the employer, however, they can only represent their members before a court, authority or other body based on legal *authorisation*.

According to a prior (socialist) Hungarian Labour Code from 1967,[36] trade unions could act without special authorisation in the name of and on behalf of employees. This broader representation right of trade unions was applicable in the case of all employees, not only in the case of trade union members. In fact, the Constitutional Court declared in 1990[37] that the unconstitutionality of the contested provision cannot be established in relation to either Article 4[38] or Article 70/C (1)[39] of the Constitution from 1989. At the same time, trade unions' right of representation without authorisation may violate the employee's right of self-determination, which is an essential part of the Constitution (Article 54).[40] Based on the

[31] 1/1994. (I. 7.) Decision by the Hungarian Constitutional Court
[32] Gyulavári T., Kártyás G., *A munkaügyi perek számának csökkenése Magyarországon: okok és lehetséges megoldások* [The Decline in the Number of Labour Lawsuits in Hungary: Reasons and Possible Solutions]., Friedrich-Ebert Stiftung, 2023, 24, available at: https://library.fes.de/pdf-files/bueros/budapest/20639.pdf .
[33] Gelencsér D., *Közérdekű igényérvényesítés Magyarországon I. – a gyakorlat tükrében* [Public Interest Litigation in Hungary I – What the Practice Shows], in *Eljárásjogi Szemle*, 3, 2016, available at: https://eljarasjog.hu/2016-evfolyam/kozerdeku_igenyervenyesites_magyarorszagon_i/.
[34] For example: Bács-Kiskun County Court 3.Mf.21.085/2010/3. or Kecskemét Labour Court 2.M.722/2009/7, cited by Gelencsér D., *ibidem.*
[35] Act I of 2012 on Labour Code, Article 272, Section (6)-(7).
[36] Act II of 1967 on Labour Code, Article 15, Section (2).
[37] 8/1990. (IV. 23.) Decision by the Hungarian Constitutional Court.
[38] Constitution of the Republic of Hungary, Article 4: "Trade unions and other interest groups protect and represent the interests of employees, cooperative members and entrepreneurs."
[39] Constitution of the Republic of Hungary, Article 70/C, Section (1): "Everyone has the right to form or join an organization with others for the protection of his or her economic and social interests."
[40] The Constitution of the Republic of Hungary, Article 54, Section (1): "In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights."

provision in question, it is possible that a trade union can exercise its representation right against the employee's will. In the end, the Hungarian Constitutional Court decided in 1990[41] that the above-mentioned rule was unconstitutional because trade unions' right of representation without authorisation violated the employee's right of self-determination.[42] This decision has had a long-lasting, overly general and harmfully conclusive effect on the future of *actio popularis* / CIR in Hungarian labour law.

3.3. Comments on the currently effective legislation and some proposals.

It is important to highlight as a general context that the number of labour lawsuits in Hungary dropped by more than 80 per cent between 2010 and 2021.[43] Although day-to-day contentious situations in the world of work are just as numerous as always (or even more), fewer of them reach the courts. The sharp decline can be explained by several reasons such as the changes in the judicial system of administrative and labour procedures[44] or the trade unions' low membership and representative rights etc.

As discussed above, Hungarian trade unions can only represent their members before the court upon authorisation. The tentative, broader adoption of the legal institution currently only included in the Equal Treatment Act – the right to *actio popularis* / CIR – would probably change the current situation significantly. In this case, trade unions would be entitled to initiate a lawsuit to enforce claims arising from the employment relationship if the infringement or a direct threat of an infringement affected a larger group of people that cannot be precisely defined. For instance, in the opinion of *Gyulavári and Kártyás*, this could be an effective instrument against quasi-normative instruments (for example, regulations, normative instructions, by-laws, codes of conduct) of employers violating the law[45] (which is quite common in practice, as one can assume). In sum, we firmly suggest that the role of trade unions be strengthened in labour law claims enforcement.

We also strongly recommend for policymakers and the legislator to take into account and consider the ideas expressed in the recent proposal of *Rasnača et al.* on a "Directive on Effective Enforcement in EU labour law." The authors claim that Member States shall ensure that representative trade unions and other representative and qualified entities have the right to bring representative actions before courts and competent administrative authorities on behalf of right-holders.[46] Similarly, in line with *Szabó's* point of view, according to trade unions a broader right to *actio popularis* would be an advantageous regulatory solution also in the sense of procedural economy. Furthermore, Szabó notes that this legal possibility

[41] 8/1990. (IV. 23.) Decision by the Hungarian Constitutional Court
[42] Szabó I. S., *The Legal Status of Trade Unions in Hungarian Labour Law*, Novissima, Pécs, 2022, 209.
[43] *See* more in: Gyulavári T., Kártyás G., nt. (31), 5–16.
[44] Independent Administrative and Labour Courts were abolished as of 31 March 2020.
[45] Gyulavári T., Kártyás G., nt. (31), 25.
[46] Rasnača Z., Koukiadaki A., Lörcher K., Bruun N., *Proposal for a Directive on Effective Enforcement*, in Rasnača Z., Koukiadaki A., Lörcher K., Bruun N. (eds.), *The Effective Enforcement of EU Labour Law*, Bloomsbury Publishing, Oxford, 2022, 513.

would not necessarily violate employees' right to self-determination.[47] We fully agree with Muszyński as well, who argues that in order to prevent the normalisation of labour law-related violations and circumventions, it would be necessary to expand access to justice for workers (and their representatives). In this regard, we second the argument that "this could be facilitated where trade unions foster pro-worker legal interpretations by engaging in strategic litigation".[48] In sum, we believe that *actio popularis* /CIR (in well-defined scenarios of labour law) could be an effective tool for strategic litigation.

4. The possibilities of "alt-labour" organisations: practical difficulties of collective bargaining.

As it is often emphasised in labour law literature, in the ever expanding and diversifying world of the so-called "non-standard" work (see for instance: gig economy, platform work, etc.), *"there seems to be an antagonistic conflict between the logic of competition law and that of labour law"*.[49] This claim is true not only in the context of new, non-standard legal relationships, but also in respect of more "conventional" legal relationships under civil law. In many cases, this dilemma follows from the classification (or misclassification) of work relationships; that is, from the fact that the classification of legal relationships in connection with certain recent work organisation and employment arrangements and methods may be controversial.

In sum, Hungarian labour law legislation cannot effectively deal with the so-called "alt-labour" (*see below for a definition of the term*) labour market phenomena and direct labour actions, which are – for the moment – marginal in the practice of labour relations and completely unknown in the application of the law in courts. From the point of view of substantive law – to make a long story short –, two provisions must be examined first (in addition to the underlying Article VIII of the Fundamental Law of Hungary, which states that "everyone shall have the right to establish and join organisations" (2) and that "trade unions and other interest representation organisations may be formed and may operate freely on the basis of the right of association" (5)).[50] The two further provisions to be examined are as follows: the concept of *trade unions with representation* and the *scope of application ratione personæ of collective agreements*. As for trade unions, the rights guaranteed by Act I of 2012 on the Labour Code – in addition to the fulfilment of the basic conditions[51] of civil law – are vested in the trade union that is represented at the employer. The trade union that is technically represented at the employer is the one which – in accordance with its statutes – operates an organ entitled

[47] Szabó I. S., nt. (41), 211.
[48] Muszyński K., nt. (9), 4.
[49] Kun A., *A szakszervezeti szervezkedés szabadsága versenyjogi kontextusban* [The Freedom of Trade Union Activities in the Context of Competition Law], in Pál L., Petrovics Z. (eds.), *Visegrád 17.0 – Proceedings of the 17th Hungarian Labour Law Conference*, Wolters Kluwer, Budapest, 2020, 167–189.
[50] Fundamental Law of Hungary, Article VII, Sections (2) and (5).
[51] The foundation, organisation, the changes thereof and the operation of trade unions are all regulated by the rules on associations, so the provisions of Act V of 2013 of the Civil Code on associations must be applied with respect to its legal status, as well as those of Act CLXXV of 2011 on the Freedom of Association, Public Benefit Status and the Operation and Funding of Non-Governmental Organisations.

for representation or has such an officer at the employer.[52] The notion itself rests on the presumption that trade union activities take place predominantly in the framework of the employers' organisational level (typical for post-socialist countries), as it is reflected by the majority of trade union rights (bear in mind the institution of "time-off" granted for trade unions for instance). Note that in its decision no. 53 BH2022, the Curia examined (in relation to the fulfilment of the right to be consulted) the legal conditions that are necessary in order for the trade union to exercise its rights contained in Chapter XXI of the Labour Code at the workplace. The jurisprudence "arose" in the field of media industry, and it can be summarised as follows: the mere circumstance that a trade union has – lawfully – elected a particular employer's employee as its officer and defined this person's status as an officer in its statutes, in the absence of a specific power of representation (i.e. such a provision) in the statutes is not enough; the officer in question shall not be considered entitled to act as a representative at the given employer, nor shall the trade union concerned be regarded as entitled to act as such a representative.[53] Consequently, a potential "exertion of pressure" or "mobilisation" (as forms of collective action) cannot be concluded with a "meaningful" agreement from the perspective of collective labour law. Considering that the collective agreement signed by the trade union cannot apply to "employees" (i.e. workers) employed under civil law; that is, pursuant to the Labour Code, such an agreement can only regulate rights or obligations deriving from or related to an employment relationship.[54]

At the same time, it can be asserted as a starting point that work cannot only be conceived in terms of an employment relationship, i.e. in a legal relationship based on an employment contract.[55] Persons who are not in an employment relationship, i.e. the self-employed and those employed in the informal economy (in a structure that is not always easy to define) fall outside the "traditional" logic of trade unions. It is important to underline that the freedom of organisation of the self-employed (and even more so, their right to bargain collectively) can be reasonably limited by competition law to a certain extent (think of the so-called "cartel phenomenon").[56] This stratum of society, which performs a significant amount of work and not only in the media industry, is typically employed with a civil law contract (most commonly, a work contract or a contract of agency) at various business organisations. However, they can be in the same kind of (economically dependent) situation as employees (in the legal sense), so they should, in principle, benefit from similar social and labour law protection.[57]

[52] HLC, Article 70, Section (2).
[53] For more information, *see*: Szabó I. S., *A szakszervezet képviseleti jogosultságának feltételei* [The Conditions of the Representation Rights of Trade Unions] , in Pál L., Petrovics Z. (eds.), *Visegrád 20.0 – Proceedings of the 20th Hungarian Labour Law Conference*, Wolters Kluwer, Budapest, 2023, 284–294.
[54] HLC, Article 277, Section (1).
[55] On novel types of work relations, *see*: S Szekeres B. *Munkajogon innen – munkaviszonyon túl. A gazdaságilag függő önfoglalkoztatás és annak munkajogi védelme* [Outside the Scope of Labour Law – Beyond Employment Relationship. Economically Dependent Self-Employment and Its Protection by Labour Law]. Doctoral dissertation, University of Miskolc, Faculty of Law, 2018; Gyulavári T. *A szürke állomány, Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán* [The Grey Matter. Economically Dependent Work on the Border of Employment Relationship and Self-Employment]; Budapest, Pázmány Press, 2014.
[56] Kun A., nt. (48).
[57] Kiss G., *Vázlat a munkát végző személyek védelméről* [Outline on the Protection of Persons Performing Work] , in *Miskolci Jogi Szemle,* 17, 2, 2022, 213.

Workers' organisations, including those in Hungary, have been experimenting with various forms of organisation depending on the given economic and social contexts, of which the media industry is a prime example – and let us take this thought further than the Hollywood strike series of 2023.[58] Trade unions representing an innovative, open and network-type organisation logic and other alternative and flexible interest representation structures are beginning to emerge. In labour law literature, these phenomena are often referred to as "alternative" trade union activities (i.e. "alt-labour"). It is remarkable that trade unions around the world are increasingly undertaking the protection of the interests of all economically dependent workers, including the self-employed, and they are doing so in their own interest (as there are more and more of such workers), and legal regulations are keeping up with this phenomenon. The number of "alt-labour" organisations has been clearly and steadily increasing, in contrast to the level of organisation and membership of traditional trade unions.[59] In Hungary, such organisational activities can be currently observed in two sectors: within the media industry[60] and the communities of delivery persons.[61]

In our view, in order to "manage" these phenomena in time, it is now high time for Hungary to introduce a labour law framework that would open up the possibility for such persons' interest representation organisations (i.e., trade unions) to sign (some forms of) collective agreements with principals and clients. Agreements of this kind already exist in Germany,[62] the country that is often considered to be a "model" for Hungary in terms of labour laws. In this respect, a classic example is Paragraph 12a of the German Act on Wage Agreements (Tarifvertragsgesetz, TVG), bearing the title "Arbeitnehmerähnliche Personen".[63] This provision orders the application of the Act on Wage Agreements in the case of those persons who have a status comparable to that of employees. The essential components of the – rather complex – substantive legal definition of this category of persons are the following: they are economically dependent persons who need social protection similarly to employees, who carry out their activities on the basis of a work contract or a contract of agency, who perform work personally, and who work for a specific person for

[58] *"The leaders of the American Writers Association voted in favour that after the preliminary agreement concluded between the trade union negotiating parties, Hollywood studios and streaming providers, their members could go back to work, and with that, the strike of Hollywood writers practically ended after 148 days, the CNN reported."* Available at: https://telex.hu/kulfold/2023/09/27/irok-sztrajk-vege-hollywood-munkabeszuntetes .

[59] Rácz-Antal I., *A digitalizáció hatása a munkajog egyes alapintézményeire* [The Effect of Digitalisation on Certain Basic Institutions of Labour Law], Doctoral Thesis, Károli Gáspár University of the Reformed Church in Hungary, Budapest, 2022, 125.

[60] Mérce, 17 October 2023, available at: https://merce.hu/2023/10/17/a-kormany-evek-ota-nem-kezeli-az-rtl-es-sztrajkhoz-vezeto-munkajogi-hianyossagokat/ .

[61] Mérce, 26 May 2023, available at: https://merce.hu/2023/05/26/szervezodni-kezdtek-a-magyarorszagi-futarok-tobb-ezer-fos-szakszervezet-a-celjuk/ .

[62] For more information, *see:* Kiss G., *A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében* [The Problematics of Persons with a Status Comparable to That of an Employee in the European Union and the Lack of Regulations on This Status in the Hungarian Labour Code], in *Jogtudományi Közlöny*, 1, 2013, 1–14.

[63] The origins of this provision go back to the early 1900s, and it was enacted in the TVG in 1974, after numerous substantive law precedents. *See:* Brecht-Heitzmann H., Kempen E., Schubert J., Seifert A. (eds.), *Tarifvertragsgesetz*, Bund Verlag, Frankfurt am Main, 2014, 1694.

the most part, or receive at least half of their income on average from this particular person.[64] Therefore, the TVG makes it possible for the interest representation organisations of such persons[65] to sign collective agreements with the representative bodies of principals or clients.[66]

The Hungarian professional literature tends to focus on the challenges of the labour law regulation of the activities performed by persons with a status comparable to that of employees (included in the "original" 2011 Draft Labour Code, but discarded in the end).[67] However, it is important to point out that (in connection with this category of workers) the introduction of labour rule(s) applicable to persons with a status comparable to that of employees and the possibility to sign a collective agreement are not directly related (i.e. one does not follow from the other). In other words, in our view, in principle, it would be possible to establish a rule concerning collective agreements without making the rules applicable to persons with a status comparable to that of employees relevant in employment relationships (the above-mentioned German solution is also similar to that). In theory, such a rule on collective agreements could be possible – not necessarily within the Labour Code, but for instance, within the realm of competition law[68] (as an exception to the so-called "prohibition of cartels"), or in other, so-called sectoral or professional laws. In our opinion, this arrangement would not be ruled out even by the provisions of the Fundamental Law of Hungary regulating the possibility of concluding collective agreements.[69]

In sum, in our view, regulation and collective bargaining dynamics might need to be adapted to inclusively extend collective bargaining rights to everyone at work, including those

[64] TVG, Article 12a, Section (1). In the case of certain activities (e.g. journalism), a lower income may also become grounds for those performing such activities to fall under this law.
[65] According to György Kiss, the practice of narrowing down workers' representation to trade unions and ensuring the right of signing collective agreements only for trade unions is becoming increasingly outdated in today's labour law. Kiss G., *A jogalkotó felelőssége a munkajog állapotáért* [The Legislator's Responsibility for the Condition of Labour Law], in Bankó Z., Berke G., Pál L., Petrovics Z. (eds), *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére* [Festschrift in Homage of the 70th Birthday of György Lőrincz], HVG-Orac, Budapest, 2019, 222. .
[66] For the moment, this provision is deemed significant especially in the media industry. *See*: Brecht-Heitzmann H., Kempen E., Schubert J., Seifert A. (eds.), nt. (62).
[67] According to the Draft: "Article 3: (1) The provisions of this Act pertaining to notice, severance allowance and liability, as well as its provisions regarding the mandatory minimum wage shall be duly applied for the persons defined in Paragraph (2) (hereinafter: a person with a status comparable to that of an employee). (2) Any person shall be considered a person with a status comparable to that of an employee – in view of all the circumstances of the case – who performs work for someone else on the basis of other than an employment contract, provided that: a) he/she performs work personally, for a remuneration, on a regular and permanent basis and for the same person, b) no other regular gainful employment can be expected of him/her in addition to the performance of the contract. (3) During the application of Paragraph (2): a) any work performed on behalf of an economic entity of which he/she or a relative of his/hers is the majority owner shall be considered as personal; b) any relative of the recipient of the performance, and those in regular economic contact with this person, as well as those who are considered to be affiliated undertakings shall be regarded as identical persons. (4) The provisions of Paragraphs (1)–(3) shall not apply if the regular monthly income deriving from this contract exceeds five times the amount of the mandatory minimum wage in force during the performance of the contract".
[68] Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.
[69] Paragraph (2) of Article XVII of the Fundamental Law of Hungary stipulates that "employees, employers and their organisations shall have the right to enter into negotiations for the purpose of concluding collective agreements".

currently fully "unaffected" by collective bargaining in Hungary (e.g. non-standard contracts, undeclared workers, those in the "grey zone", some employee-like categories of the self-employed, precarious workers). The new realities of the transformations of work in general must be much better recognised by collective bargaining dynamics. As the world of work is increasingly transformed (*see*: digitalisation, automation, globalisation, population ageing etc.), collective bargaining is of heightened importance, as it has the potential to deliver responsive, flexible, balanced and tailored solutions to the emerging challenges.

5. Concluding remarks.

The first case study has shown that the amicable settlement of collective labour disputes lacks proper institutional backing in Hungary, and there seems to be no political willingness to strengthen these mechanisms.

The second case study has revealed that *actio popularis* and strategic litigation in labour law is currently almost non-existent in Hungary, and there is a huge room and need for development in this regard. For example, Hungary and other EU Member States should ensure that representative trade unions and other representative and qualified entities have the right to bring representative actions before courts and competent administrative authorities on behalf of right-holders. As it was highlighted, we fully agree with Muszyński, who argues that in order to prevent the normalisation of labour law-related violations and circumventions, it would be necessary to expand access to justice for workers (and their representatives). In this regard, we second the argument that "this could be facilitated where trade unions foster pro-worker legal interpretations by engaging in strategic litigation".[70] *Actio popularis* (in well-defined scenarios of labour law) could be an effective tool for strategic litigation.

The third case study has described the very limited legal and practical possibilities of alt-labour organisations in the Hungarian context and pointed out that their chance for collective bargaining is extremely small. Hungarian labour law legislation cannot effectively deal with the so-called "alt-labour" labour market phenomena and direct labour actions, which are – for the moment – marginal in the practice of labour relations and completely unknown in the application of the law in courts. It should be mentioned that gradually, the European Union is beginning to formulate a clear position in this matter.[71] Published in 2022 by the European Commission, the Guidelines (on the application of competition law to collective agreements for self-employed persons) wish to guarantee – in certain cases – the exemption of the self-employed from the rules of competition law and their right to collective bargaining. The scope of the Guidelines covers collective agreements negotiated and concluded by self-employed workers or their representatives and their business partners, where such agreements, by their nature and purpose, relate to the working conditions of such

[70] Muszyński K., nt. (9), 4.
[71] For more information, *see*: Rácz-Antal I., *Collective Agreements for Self-Employed Workers Under the New Commission Guidelines*, in Auer Á., Bankó Z., Békési G., Berke Gy., Hazafi Z., Ludányi D. (eds.), *Festschrift in Homage of the 70th Birthday of György Kiss: Clara pacta, boni amici*, Wolters Kluwer Hungary, Budapest, 2023, 590–596.

self-employed individuals. Although – for the moment – the Guidelines have no binding power whatsoever on the legislation of the Member States, they do provide important guidance regarding the interpretation of the "status comparable to that of an employee".

All in all, to contest the potentially increasing "irrelevance of labour law" (and especially collective labour law) in terms of regulating labour markets and employment conditions in Hungary, a comprehensive and forceful paradigm shift seems to be absolutely necessary.

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