

# Wage-setting in Hungary - From a Labour Law Perspective

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1. Introduction. 2. The Hierarchy of the Different Sources of Wage-setting. 2.1. Statutory, Central-level Wage-setting: the Minimum Wage. 2.2. Collective bargaining and Wage-bargaining. 2.3. Employment Contracts, Individual Bargaining and Corporate Practices. 3. Flexibility and Inflexibility in Wage-setting: Some Examples. 4. Equal Pay for Equal Work. 5. Summary and Conclusions — through Reference to the EU's Economic Governance.

## Abstract

The aim of the present paper is to analyse the structure and main labour-law related issues of wage-setting in Hungary. First, after the introduction, in Paragraph 2, the paper deals with the hierarchy of the different sources of wage-setting. In this context, three main levels – and their problematic issues – are analyzed: a) statutory, central-level wage-setting (including the national minimum wage); b) collective bargaining and wage-bargaining; c) individual bargaining, the role of the employment contract, and the main tendencies of corporate practices in wage-setting. Paragraph 3 describes some selected, remarkable examples for especially flexible and overly inflexible regulatory solutions in terms of wage-setting. Paragraph 4 takes account of the state of play of the equal pay for equal work principle within Hungarian labour law. Paragraph 5. concludes and sums up the paper by briefly sketching some of the most important and relevant observations of the EU's economic governance process in relation to the Hungarian mechanism of wage-setting.

**Keywords:** Wage-setting; Minimum Wage; Wage Bargaining; Flexibility; Equal Pay for Equal Work.

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## 1. Introduction.

While Hungary had a long and onerous history of centralized, administrative wage setting and wage control during the communist/state-socialist era, currently it has an even more decentralized wage-setting structure than most Western European EU Member States. In Hungary, labour market players are not really constrained by external factors in their wage-setting arrangements (with the important exception of the minimum wage, as discussed below). Collective agreements at the national or sector level are virtually non-existent, and even at micro level, within firms, wages are typically set individually<sup>1</sup>. Governments are often deliberately using income policy tools in relation to which the social partners have little or no influence, such as taxation, minimum wage setting and regulation of social transfers<sup>2</sup>.

It must be noted that Hungary has been experiencing a remarkably dynamic wage “boom” recently: according to official data, average gross earnings increased by 62% between 2010 and 2018<sup>3</sup>. However, as also noted (see later) by the EU’s Country Specific Recommendations, the gaps in employment and wages between skills groups and men and women remain wide in comparison with the EU average. Furthermore, Hungary traditionally has a very high tax wedge on labour costs. In sum, Hungary is still a low wage country in comparison with the EU average<sup>4</sup>. Currently, there is a shortage of labour in Hungary (job vacancies are on the rise) and company trade unions are more and more successful in making use of the tight labour market situation to bargain for higher wages (mostly in the private sector, especially in the automotive sector). Still, the level and influence of industrial action is comparatively low<sup>5</sup>.

The aim of the present paper is to analyse the structure and main labour-law related issues of wage-setting in Hungary. First, after the introduction, in Paragraph 2, the paper deals with the hierarchy of the different sources of wage-setting. In this context, three main levels – and their problematic issues – are analyzed: a) statutory, central-level wage-setting (including the national minimum wage); b) collective bargaining and wage-bargaining; c) individual bargaining, the role of the employment contract, and the main tendencies of corporate practices in wage-setting. Paragraph 3 describes some selected, remarkable examples for especially flexible and overly inflexible regulatory solutions in terms of wage-setting. Paragraph 4 takes account of the state of play of the equal pay for equal work principle within Hungarian labour law. Paragraph 5 concludes and sums up the paper by briefly sketching some of the most important and relevant observations of the EU’s economic governance process in relation to the Hungarian mechanism of wage-setting.

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<sup>1</sup> Kézdi G., Kónya I., *Wage Setting in Hungary – Evidence from a Firm Survey*, in *Working Paper Series, European Central Bank*, n. 1378, September 2011.

<sup>2</sup> Borbély Sz., Neumann L., *Similarities and diversity in the development of wages and collective bargaining in central and eastern European countries – a comparison of Hungary, Slovakia and the Czech Republic*, in Van Gyes G., Schulten T. (eds.), *Wage bargaining under the new European Economic Governance Alternative strategies for inclusive growth*, 2015, ETUI, Bruxelles, 214.

<sup>3</sup> Based on KSH (Central Statistical Office) data, reported by Berki E., *Munkaügyi akciók 2010 és 2019 között Magyarországon, különös tekintettel a sztrájkokra*, 2019.

<sup>4</sup> See for more details: Borbély Sz., Neumann L., (2).

<sup>5</sup> Berki E., (3).

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## 2. The Hierarchy of the Different Sources of Wage-setting.

### 2.1. Statutory, Central-level Wage-setting: the Minimum Wage.

Hungary has a government-mandated minimum wage. § 153 of the Labour Code (Act I of 2012, hereinafter referred to as: LC) deals with the minimum wage: the Government is authorized to determine the amount and scope of: a) the mandatory minimum wage, and b) the guaranteed wage minimum, following consultations in the NGTT (Nemzeti Gazdasági és Társadalmi Tanács; National Economic and Social Council) by means of a decree. As such, the requirement for consultation is rather soft; in principle, the government could take unilateral action if the social partners do not reach an agreement. The law allows that the mandatory minimum wage and guaranteed wage minimum specified by the Government for certain groups of employees may differ, however, Hungary has no differentiated minimum wage for certain (such as sectoral, age etc.) groups of employees. According to the LC<sup>6</sup>, “the amount and scope of the mandatory minimum wage and guaranteed wage minimum shall, in particular, be determined based on the requirements prescribed for specific occupations, the indicators of the national labour market, the status of the national economy, and the unique requirements of certain economic sectors and geographical areas in terms of workforce”. Accordingly, among the indicative – “soft” – criteria to be taken into account, no social factors are explicitly mentioned. Thus, the level of the minimum wage does not necessarily keep in line with either the concept of a living wage, or the poverty line. The amount of net minimum wage approximated the minimum subsistence level in 2018, however, for a long time, the gap between the monthly net minimum wage and the calculated monthly subsistence minimum had been significant. It is also set by the LC<sup>7</sup>, that the amount of the mandatory minimum wage and guaranteed wage minimum shall be reviewed each calendar year. However, in practice, longer-term wage agreements are typical recently (e.g. a six-year wage agreement was signed in November 2016 about plans, furthermore, the minimum wage agreement in 2018 was signed for 2 years, for 2019 and 2020). Furthermore, national-level minimum wage agreements (serving the basis for the Government’s decree) often contain – rather soft, legally non-binding – central wage-increase recommendations (usually in line with the rate of the increase of the minimum wage<sup>8</sup>).

The difference between the two types of minimum wage – mandatory minimum wage, and the guaranteed wage minimum – is the following: in case of full-time employees hired for jobs requiring at least secondary school qualification or secondary vocational qualification, the guaranteed wage minimum is to be paid (which is slightly higher than the “regular” mandatory minimum wage). Entitlement to the higher amount (the guaranteed wage minimum) is linked to the job (position), not to the employee. For instance, an employee with secondary school qualification working in a job not requiring – as set by law, collective agreement, or by the employer – at least secondary school qualification, is not entitled to the higher amount. The entitlement shall be decided on a case by case basis (there is no official, all-encompassing “list” of jobs giving entitlement to the higher amount). It

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<sup>6</sup> § 153, Section (3) of the LC.

<sup>7</sup> § 153, Section (4) of the LC.

<sup>8</sup> For example: 8% for 2019 and another 8% for 2020.

must be noted that only the basic wage is taken into account for the purpose of the minimum wage. The amounts of the minimum wage are the following:

Year	Minimum wage (HUF)	Guaranteed wage minimum (HUF)	Change of minimum wage (%)	Change of guaranteed wage minimum (%)
2019	149,000	195,000	8	8
2018	138,000	180,500	8.2	12.1
2017	127,500	161,000	14.9	24.8
2016	111,000	129,000	5.7	5.7

Source: Minimum wage and guaranteed wage minimum in Hungary 2019;

<https://www.rsm.hu/en/blog/2019/06/minimum-wage-and-guaranteed-wage-minimum-in-hungary-2019> [11 September 2019]

In accordance with the two-year agreement reached in December 2018, minimum wages will increase by a further 8 percent in 2020. According to statistics, among companies, 42.4% of employees in 2018 were affected by raising the minimum wage (which constitutes a considerable high share)<sup>9</sup>.

Erosion of social dialogue – especially on the national level – has been a trend in the last decade<sup>10</sup>. In 2011, just during the preliminary works of the new Labour Code, the National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT), the standing cross-sectoral tripartite body was disbanded. The role of the OÉT used to be quite significant; it was the highest tripartite body of national-level, cross-sectoral social dialogue. It had existed under several names from 1988 to 2011<sup>11</sup>. For a long time, OÉT was operating on the basis of a tripartite agreement, but in 2009 it became regulated by law (Act LXXIII of 2009 on the National Interest Reconciliation Council), because the Constitutional Court determined<sup>12</sup> that the OÉT shall be considered an actor of public power. In 2011, the announcement of the new government about the abolishment of OÉT was made without any consultation with the social partners. Instead of OÉT, a new, broader (multi-partite) and merely consultative body, the National Economic and Social Council (NGTT) was created<sup>13</sup>.

<sup>9</sup> Hornyák J., *Sosem látott számok: kiderült, mennyien dolgoznak minimálbérért Magyarországon*, 2019, <https://www.portfolio.hu/gazdasag/sosem-latott-szamok-kiderult-mennyien-dolgoznak-minimalberert-magyarorszagon.309419.html> (last access 27 October 2019).

<sup>10</sup> Toth A., Tóth A., *The New Hungarian Labour Code - Background, Conflicts, Compromises*, 2012, [http://www.fesbp.hu/common/pdf/Nachrichten\\_aus\\_Ungarn\\_june\\_2012.pdf](http://www.fesbp.hu/common/pdf/Nachrichten_aus_Ungarn_june_2012.pdf) (last access 1 October 2019).

<sup>11</sup> Between 1998 and 2002 the first Orbán government restructured the tripartite body, but the successor government re-established OÉT in its original setting.

<sup>12</sup> Constitutional Court Decision, number 40/2005 (X. 19.).

<sup>13</sup> Act XCIII of 2011 on the National Economic and Social Council.

The NGTT is a consultative, proposal-making and advisory body independent from the Parliament and the Government, established to discuss comprehensive matters affecting the development of the economy and society. It is the most extensive and diverse consultative forum for social dialogue between the advocacy groups of employers and employees, business chambers, NGOs, Hungarian representatives of academia both in and outside Hungary, and churches. The government is not a formal permanent member (it merely acts as an “observer”), so the negotiations are fully autonomous (nevertheless also not really effective). It is palpable that the rather toothless and “soft” NGTT does not aim to carry out rigorous social dialogue and it is not comparable with the former OÉT. Furthermore, the NGTT is not specialized for the issues of the world of work.

Mostly down to the pressure from certain social partners and international forums, the Government has started to accept that the re-establishment of some form of genuine tripartite social dialogue in the private sector is needed. As of February 2012, the newly set up Standing Consultative Forum of the Industry and the Government (*Versenyszféra és a Kormány Állandó Konzultációs Fóruma*, VKF) is intended to fulfil the previous roles of OÉT, at least to some extent. The VKF is independent from the NGTT. The VKF is only a rather “informal” forum without legislative background, clear criteria for representativeness and fixed rights of real participation. Its status is not fully institutionalized (it has no legal background in public law); its functioning is not fully transparent (e.g. it operates in closed sessions). Still, VKF is the “de facto” permanent tripartite social dialogue forum focusing especially on labour-related issues of the private sector (while the multi-partite, legally regulated NGTT has a much wider mission). As experiences show, the VKF has a more limited role, visibility and influence than the former OÉT had. According to some opinions, the VKF is not seen by the government as a real partner and agreements are reached very rarely (and they are not necessarily fully followed by the Government)<sup>14</sup>. For example, there were a number of changes within labour law which were only negotiated partly or with delay with the social partners. The consultations related to the minimum wages are taking place within the framework of the VKF (not really in the NGTT, as mandated by the LC, as cited above). Annual round of wage bargaining customarily commences with tripartite agreement on a minimum wage hike and a soft national recommendation for lower-level negotiations on an average wage increase.

Contrary to the idea of the uniform minimum wage system, there are two important non-standard forms of employment, where a reduced rate of minimum salary is applicable. As a consequence, these are, to some extent, “low cost”, “second-class” forms of employment.

Firstly, in 2010, the government introduced a new, gigantic public works (PW) programme (National Public Work Scheme)<sup>15</sup> to those who have fewer chances to get a job on the primer labour market. PW is a special form of employment. The aim is activation and thus breaking the benefit-dependency of these people. PW is the dominant component of the government’s employment policy (in sum: anti-poverty programmes have been replaced by workfare measures). The Programme is under the control of the Ministry of Interior.

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<sup>14</sup> Képesné Szabó I., Rossu B., *An attempt to revitalize social dialogue and national industrial relations systems in some of the CEECs – lesson learnt and best practices in the way out of the crisis*, 2015, [http://site21.rootor.com/img/21120/hungary\\_country-report\\_en\\_ir\\_vs\\_2014-0588.pdf](http://site21.rootor.com/img/21120/hungary_country-report_en_ir_vs_2014-0588.pdf) (last access 1 October 2019).

<sup>15</sup> Act CVI of 2011.

Then again, the programme is not without critics, as the scheme has been developed at the expense of other active labour market measures and it might entail some decent work deficits and in-work poverty. It is disputed how PW can support smooth transition to the “primary” labour market. To upgrade the scheme, PW is increasingly supported by targeted training programmes. All in all, the Government argues that the PW scheme has provided a great opportunity for the unemployed to enter the labour market and reduce poverty. There is no space here to go into details, but – from a pay-related perspective – it is highly important to mention that the income under the PW scheme is higher than the amount of the social benefit, but lower than the general statutory minimum wage<sup>16</sup> on the primary labour market (in 2019, the PW-related income is about 55% of the general statutory minimum wage, and it has a decreasing tendency<sup>17</sup>)<sup>18</sup>. The underlying idea is that the lower wage might motivate transition to the private sector.

Secondly, the legal construction of simplified employment and occasional work relationships (hereinafter: SE) is partly regulated by Chapter XV of the LC (as a specific form of the employment contract), partly by Act LXXV of 2010 on Simplified Employment (which regulates SE’s administrative, public law aspects). SE is formally an employment relationship, more precisely an atypical one, probably the most atypical one, being relatively far from the protective level of the standard employment relationship. In fact, the SE-system is a kind of “budget/low-cost”, or “second-class” employment relationship, partially “outsourced” from the scope of standard labour law (the LC defines the applicable and the non-applicable labour law rules). The SE system provides a “cheap”, administratively less burdensome and flexible – but also less protective – way of occasional employment. It is a form of casual work, or marginal part-time employment. Officially, it is intended to tackle undeclared work. Hereby, there is no space to go into more details, but it must be noted that SE entails lower, more flexible minimum wages (as of 2013): employers have to pay only at least 85% of the general national minimum wage and 87% of the national minimum wage for employees with secondary level qualifications (guaranteed wage minimum). Practically speaking, this might be one of the biggest enticements of the whole SE-system for employers (in light of this, Gyulavári heavily criticizes this regulatory solution and states that this differentiation can have no rational explanation<sup>19</sup>).

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<sup>16</sup> The rules of the general statutory minimum wage shall not apply in the PW scheme. § 2, Section (5), Point a), Subpoint al) of Act CVI. of 2011.

<sup>17</sup> For instance, the same proportion was around 80% in 2011, at the beginning of the Programme.

<sup>18</sup> See for further detailed statistics:

<https://kozfoglalkoztataskormany.hu/download/e/58/52000/KF%20B%C3%A9rek%20%C3%A9s%20jutat%C3%A1sok%20v%C3%A1ltoz%C3%A1sa%202011-2019.pdf> (last access 9 March 2019).

<sup>19</sup> Gyulavári T., *Az alkalmi munka a magyar jogban*, in Bankó Z., Berke Gy., Tálné M. E. (eds.), *Quid Juris?: Ünnepi kötet a Munkaügyi Bírók Országos Egyesülete megalakulásának 20. Évfordulójára*, 2018, MBOE, Budapest, 134-135.

## 2.2. Collective Bargaining and Wage-bargaining<sup>20</sup>.

Collective agreements are incorporated into the system of legal sources of labour law in Hungary<sup>21</sup>. The LC confirms this perception by stating (in § 13) that, “for the purposes of this Act [the LC], ‘employment regulations’ shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee adopted according to § 293”. According to § 279, Section (1) of the LC the effect of a collective agreement shall apply to any employer who is: a) a party to the collective agreement; or b) a member of the employers’ interest group that concluded the collective agreement. As such, the personal scope of the collective agreement is defined via the employer-side. Thus, the collective agreement (i.e. its “normative” part) is applied to all employees of a given employer (not only to the members of the party trade union)<sup>22</sup>. The parties cannot limit the scope of the agreement (however, geographical etc. differentiations in working conditions – including wages – might be possible<sup>23</sup>). It is notable that the personal scope of the collective agreement does not apply to executive employees (but the employment contract of such executives may derogate from this provision)<sup>24</sup>.

One of the main goals of the labour law reform in Hungary<sup>25</sup> – the new Labour Code – has been to revitalize the contractual sources of labour law. The main aim has been to strengthen the role of the collective agreement as a contractual source of labour law. “In order to achieve this policy aim, a new hierarchy of labour law sources was introduced: the collective agreement may deviate both *in peius* and *in melius* from the dispositive (not cogent) provisions of the Labour Code”<sup>26</sup>.

Already in 1992, when the previous Labour Code was passed, the legislator intended to assign a fundamental role to collective agreements as the central regulatory tools of the labour market. However, the past two decades have shown that the legislator’s rhetorical intention was only partially fulfilled inasmuch as the role of collective agreements in the development of the local labour market remained relatively limited. The main reason for this being that the relatively dispositive (“one way permissive”) regulatory approach of the former Labour Code, that is, permitting any departure from the law in general only in favour of the employee<sup>27</sup>, worked against the autonomous regulation of the labour market. Because of this

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<sup>20</sup> See for further details: Kun A., *Hungary: Collective Bargaining in Labour Law Regimes*, in Liukkunen U. (ed.), *Collective Bargaining in Labour Law Regimes*, 333-356. Some parts of this paper (and especially this chapter) draw heavily on this former paper of the author.

<sup>21</sup> On labour law in Hungary, see generally: Hajdú J., *Labour Law in Hungary*, 2011.

<sup>22</sup> In the judicial practice it is a prevailing position that parties to the employment contract – who otherwise are not covered by a collective agreement – might stipulate the use of a specific collective agreement.

<sup>23</sup> See § 12, Section (3) of the LC, according to which, among others, relevant labour market conditions can be taken into account in weighing the equal value of work for the purposes of the principle of equal treatment.

<sup>24</sup> § 209, Section (3) of the LC.

<sup>25</sup> On the reform in general: Kun A., *Labour Law reform in Hungary in context of the global economic crisis: a rugged journey towards flexicurity?*, in Aydın U., Oguz Ö. (eds.), *The Recent Changes in EU Labour Law*, 2014, 3-24.

<sup>26</sup> Gyulavári T., Kártyás G. *The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy*, 2015, 17.

<sup>27</sup> § 13 of the old LC (1992) laid down the general rule as follows: the collective agreement – unless otherwise provided by law – may derogate from the rule to the benefit of the employee. However, the term “unless otherwise provided in this act” in § 13 referred to the possibility for the legislator to eventually create cogent or (absolute) dispositive norms in certain cases (but the latter was very exceptional under the old LC).

overriding “favourability” principle, employers were simply not motivated to conclude collective agreements.

The Hungarian system of industrial relations is dominated by firm-level, single-employer, fragmented, un-coordinated bargaining (if any). As a consequence, the coverage rate of collective agreements is still very low. As collective bargaining is highly decentralised (and the coverage of sectoral/industry agreements is severely limited), the legal position of company-level union branches is a crucial issue (the overriding importance of workplace-level unions is a fact, inherited from the socialist era). However, in general, the collective action capacities of Hungarian unions are very low<sup>28</sup>.

As Neumann reports, there are two different sources for estimating bargaining coverage. One is the official registry of collective agreements maintained by the Ministry (MKIR). In December 2016 the registry showed 30 per cent overall coverage of employees. The second estimate stems from the Labour Force Survey; in the 2015 round of questionnaires, 21 per cent of respondents answered that his/her workplace was covered by a valid collective agreement. (In the earlier rounds of the survey this figure was higher: 27 per cent in 2004 and 22 per cent in 2009)<sup>29</sup>. Furthermore, contrary to the statistics, according to trade unions and research findings, collective bargaining coverage, especially that of wage agreements, fell during the economic crisis (but precise statistical data are missing as the official register of collective agreements is not fully reliable due to the very low level of compliant registration)<sup>30</sup>. According to another recent study, in the first half of 2015 bargaining coverage rate was only around 25%<sup>31</sup>. This can be close to reality.

Furthermore, not only the quantity, but also the quality of existing agreements is a problematic issue. Indeed, a research carried out on this subject has pointed out several weaknesses with regard to the contents of collective agreements<sup>32</sup>. Collective agreements often merely repeat the statutory rules<sup>33</sup>, and regularly include illegal or meaningless terms and conditions. A significant proportion of collective agreements in Hungary do not deal with pay issues; sometimes pay may be dealt with in separate agreements. It is often debated in Hungarian labour law scholarship and practice, whether these separate wage-agreements are to be considered collective agreements, or not (in terms of representativeness and other applicable rules etc.). In principle, their legal force is identical to collective agreements, however, collective agreements are often concluded for an indefinite period (or for several years), while wage-agreements are concluded annually. Collective agreements rarely set wage scales per se, but still often influence workers’ remuneration by setting longer-term agreements on wage supplements and premiums, bonuses, in-kind/non-wage benefits and rights and responsibilities connected with wage payments. Moreover, according to the Labour Force Survey, almost half of the employees covered by collective agreements said that there is no controlling function of the agreement (i.e. collective agreement has not much

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<sup>28</sup> Neumann L., Boda D., *The effects of the crisis on company policies*, in Fazekas K., Molnar G. (eds.), *The Hungarian Labour Market: Review and Analysis 2011*, 2011, 76-96.

<sup>29</sup> Neumann L., *Annual Review of Labour Relations and Social Dialogue*, 2017, 12.

<sup>30</sup> Borbély Sz., Neumann L., (2), 202.

<sup>31</sup> See generally Képesné Szabó I., Rossu B., (14).

<sup>32</sup> Fodor T. G., Nacsá B., Neumann L., *Comparative analysis of collective agreements covering one or more employers (original title: Egy és több munkáltatóra kiterjedő hatályú kollektív szerződések összehasonlító elemzése, in Hungarian)*, 2008.

<sup>33</sup> These are the so-called “Parrot clauses”.



impact on wages and working conditions)<sup>34</sup>. Only in exceptional cases a collective agreement includes wage scales (“tariffs”) that are supposed to be applied in determining individual basic wages. As reported by Tóth, within the basic framework of collectively agreed wages and working conditions there are broad possibilities for management to make unilateral decisions based on the performance of individual employees, as well as to bargain informally with individuals and groups outside trade union control<sup>35</sup>.

According to most of the studies, the lack of sectoral (subsectoral, industrial) collective agreements is one of the main reasons why the structure of industrial relations in CEECs – including Hungary – deviates from the European standards<sup>36</sup>. In practice, the results of the activities of ÁPBs (sectoral social dialogue committees)<sup>37</sup> have always been rather poor<sup>38</sup> (instead of vital bargaining, their activity was mostly limited to general, loose cooperation of the parties, research, etc.). No real sectoral wage agreement is concluded in the private sector. In principle, the government has the right to extend the scope of collective agreements to all employees in an industry under certain preconditions. However, the real labour market effect and the coverage of extensions is also marginal (almost non-existent) in Hungary.

From the mid-nineties, company-level collective bargaining in Hungary has been mainly focusing on wage growth and fringe benefit packages. The crisis has brought in a new focus as well: job security got priority during the crisis. Protecting skilled workers and avoiding dismissals were often shared aims of unions and employers<sup>39</sup>. Lay-offs were mostly focused on temporary agency workers. Trade unions recognized their limits: they focused on saving jobs instead of demanding higher wages and accepted more flexible working conditions (such as working time accounts) and pay rescheduling. Some authors call these tendencies a form of “concession bargaining”<sup>40</sup>. Szabó argues that as a result, “the crisis led to a growing gap between skilled, unionized insiders with employment stability and unskilled outsiders losing their job”<sup>41</sup>. Nowadays, company trade unions are more and more successful again in making use of the tight labour market situation to bargain for higher wages (mostly in the private sector, especially in the automotive industry).

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<sup>34</sup> Borbély Sz., Neumann L., *Neglected by the state: the Hungarian experience of collective bargaining*, in Müller T., Vandaele K., Waddington J. (eds.), *Collective bargaining in Europe: towards an endgame*, Vol. II, Chapter 14, 2019, 308.

<sup>35</sup> Toth A., *Regulated employment or regulated individual bargaining? Strategies of post-guild and post-socialist trade unions to regulate employment relations*, in Fazekas K., Koltay J. (eds.) *The Hungarian labour market – Review and analysis 2006*, 2006, 148-157.

<sup>36</sup> Kohl H., *Convergence and divergence – 10 years since EU enlargement*, in *Transfer: European Review of Labour and Research*, 21, 3, 2015, 288.

<sup>37</sup> Act LXXIV of 2009 on sectoral social dialogue committees and medium level social dialogue.

<sup>38</sup> “Practically zero” as Berke frames it. Berke Gy., *The Collective Agreement in the New Labour Code*, in Kiss Gy. (ed.), *Trade unions and collective agreements in the new Labour Code*, 2015, 128.

<sup>39</sup> Neumann L., Boda D., (28), 76-96.

<sup>40</sup> Szabó I., *Between polarization and statism – effects of the crisis on collective bargaining processes and outcomes in Hungary*, in *Transfer: European Review of Labour and Research*, 19, 2, 2013, 205–215; Neumann L., Boda D., (28), 76-96. However, this attitude is not fully equivalent to the standard “concession bargaining” policy pursued by American and West European labour unions, since the unions in Hungary do not have the bargaining power to prevent the management from carrying through their intentions. What happened in Hungary mostly was that the unions simply accepted their management’s crisis-relief measures – as a necessary evil – in order to preserve jobs. Fazekas K., Molnár Gy., *The Hungarian Labour Market Review and Analysis – The effects of the crisis*, 2011, 93.

<sup>41</sup> Szabó I., (40), 208.

As it was stated before, new LC establishes a general rule that collective agreement may deviate from the legal provisions without any restriction, even to the employee's detriment. This, means that the law has a dispositive (i.e. absolute dispositive) nature in relation to the collective agreement<sup>42</sup>. This brand-new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions<sup>43</sup> on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. According to the legislator, such a "minimalist" regulatory approach may stimulate more effectively a mutual interest in conclusion of collective agreements, wider application of collective agreements as well as the enhancement of their scope and coverage. However, it seems that bargaining parties are rather unwilling and careful in creatively using the increased scope for bargaining, since coverage rates are not 'booming' at all since 2012.

It is important to note that the new Code introduces the new right of works councils (elected representatives) to conclude normatively binding works agreements, which is a form of non-union bargaining. "Before the 2012 reform, works council agreements had a very different legal nature, since the law stipulated that only 'issues pertaining to the privileges of a works council and its relations with the employer' shall be set forth in such an agreement"<sup>44</sup> (having only a contractual, relative effect). The works council can now, under § 268 of the LC, conclude agreements with the employer to regulate the terms and conditions of employment with the exception of wages and remuneration. As such, these (quasi collective) agreements can take over the roles of collective agreements. These normatively binding works agreements (concluded by "cooperative", participatory, elected WCs at company and plant level) offer the subsidiary possibility for works councils (and employers) to substitute for collective agreements, but only under specific conditions. As it was mentioned before, such works agreements, can qualify as "employment regulations" (i.e. sources of law) for the purposes of the LC (§ 13). Such works agreements are valid only in cases where there is no collective agreement in force and there is no trade union authorised (with at least "10%" support) to enter into a collective agreement<sup>45</sup>. In principle, this provision can be useful (especially in the SMEs – small and medium size enterprise – sector) as only a very modest number of industry collective agreements (with a wider scope) have been concluded and trade union density is low in Hungary. Under the above-mentioned conditions, all terms and conditions of employment may be regulated in these normatively binding works agreements and all possible derogations offered by the LC be utilized (similarly to collective agreements). Only wage bargaining is excluded from the scope of these agreements (which remains the exclusive competence and monopoly of trade unions).

Berke makes two important remarks in this context. First, a works agreement may be concluded along with (or under the force of) the sectoral (subsectoral) collective agreement

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<sup>42</sup> The general rule is laid down in § 277, Section (2) of the LC.

<sup>43</sup> On Hungarian trade unions in general, see: Girndt R., *Trade unions in Hungary 2012: New hope in a year of woes?*, Friedrich Ebert Stiftung Budapest and FES Regional Project on Labour Relations and Social Dialogue, 2013; Kahancová M., *Central and Eastern European trade unions after the EU enlargement: successes and failures for capacity building*, in *Transfer: European Review of Labour and Research*, 21, 3, 2015.

<sup>44</sup> Gyulavári T., Kártyás G., (26), 27-28; Article 64/A of the 1992 Labour Code, introduced by an amendment of the original text in 1995.

<sup>45</sup> § 268, Section (1) of the LC.

covering the employer or multiple employers. Second, although the works agreement may not provide for the remuneration of work per se, the LC does not prohibit the employer – on the basis of § 16 of the LC – from undertaking a “unilateral commitment” in this respect (and from doing so even through the termination criteria relating to the validity of the works agreement)<sup>46</sup>. Furthermore, even though wage-bargaining is a prerogative of unions, employers shall consult the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees, including “setting the principles for the remuneration of work”<sup>47</sup>.

There might be some concerns about such normatively binding works agreements (“quasi” collective agreements), as – according to some academics – this legal possibility may undermine the effectiveness and the very idea of collective bargaining, mainly because of the following reasons: the presumed loyalty and impartial status of “cooperative” WCs; the insufficient bargaining capacity of WCs (e.g. lacking labour law protection of members<sup>48</sup>; lacking autonomous legal personality of the council as being part of the employers’ organizational structure; excluded right to organise strikes, etc.) and the lack of strong co-determination rights to meaningfully pressure employers. All in all, the danger of docile, “yellow” – “puppet” – WCs and unbalanced derogations are at stake. Employers can be motivated to facilitate the creation of “yellow(ish)” works councils in order to be able to profit from the flexible agreements concluded with “friendly” works councils. On the other hand, from a more optimistic perspective, such agreements could, in theory, serve as the first step (“catalyst”) of any collective arrangements in small and medium sized companies (SMEs) especially (previously without any structure of industrial relations). There is no available data on the number of such agreements, yet their real number is certainly insignificant (basically the same rule was in force in the period of 1999-2002 – under an earlier right-wing government – and it also did not result in a considerable number of such “quasi” collective agreements).

### 2.3. Employment Contracts, Individual Bargaining and Corporate Practices.

In general, the new LC has maintained the classical rule that the employment contracts may deviate from the “rules relating to employment”<sup>49</sup> only in employees’ favour<sup>50</sup>. However, the Code provides an increased possibility for “*in peius*” individual contractual derogations since there are some exceptions to the above-mentioned rule of favourability as the new Code strives to enhance the regulatory margin of the parties’ agreements (in line with the civil law origins of labour law). As such, the LC offers some exceptional possibilities for the parties to derogate – by way of individual agreement – from the law (also to the detriment

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<sup>46</sup> Berke Gy., (38), 125.

<sup>47</sup> § 264, Section (2), point k) of the LC.

<sup>48</sup> Only the chairman of the works council enjoys labour law protection (against termination of employment). See § 260, Sections (3)-(5) of the LC.

<sup>49</sup> For the purposes of the Labour Code, “employment regulations” shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee. § 13 of the LC.

<sup>50</sup> See § 43, Section (1) of the LC: Unless otherwise provided for by law, the employment contract may derogate from the provisions of Part Two and from employment regulations to the benefit of the employee.

of the employees). For example, in terms of wage-setting, § 145 Section (1) stipulates the so-called “built-in” wage supplements: the agreement of the parties may determine that the basic wage may include most of the statutory wage supplements (Sundays, bank holidays, shifts, night work) set forth in the LC. Furthermore, according to the LC, as a main rule, the amount of wage supplements is calculated based on the employee’s base wage, “unless otherwise agreed by the parties” (thus, the basis of calculation can be modified by way of the agreement of the parties, and can also be much lower than the basic wage)<sup>51</sup>. Obviously, employment contracts may only derogate from collective agreements in employees’ favour (collective agreement cannot make exceptions to the general rule of favourability in this context as only law is allowed to do so<sup>52</sup>).

In Hungary, wage-setting takes place mainly at the individual level. As Neumann and Tóth describe it, the present Hungarian wage determination system is fairly decentralised and individualised if compared to the Western European standards. “Individual bargaining prevails and ‘supply and demand’ on the labour market is a crucial factor in setting wages. Little wonder sizeable wage differences across regions, industries and companies prevail. Contrary to western European experiences, decentralised bargaining does not mean that unions have a strong presence at the workplace; ‘job control’ unionism is alien to the Hungarian tradition”<sup>53</sup>. Furthermore, in corporate practice, “pay secrecy” seems to be the overriding trend, while “pay transparency” is an exception<sup>54</sup>. Implicit adjustment to inflation is a trend, but not an obligation. Frequencies of wage and price setting are not synchronized, at least not by explicit measures. Wages appear rather rigid, particularly base wages. They are reset on average once a year<sup>55</sup>.

One important way of “flexibilizing” the employment relationship is partly linked to a wage limit. Namely, pursuant to Section 208 of the Code, “executive employee” shall mean the employer’s director, and any other person under his direct supervision and authorized – in part or in whole – to act as the director’s deputy. Furthermore, employment contracts may invoke the provisions on executive employees if the employee is in a position considered to be of considerable importance from the point of view of the employer’s operations, or fills a post of trust, and his salary reaches seven times the mandatory minimum wage. As a consequence, by way of an employment contract, it is relatively easy to qualify any employee (with a salary reaching seven times the minimum wage) as executive employee, giving ground to literally full dispositivity in labour law. Accordingly, in case of the specific employment contract of executive employees (such as managers), parties contractual freedom is literally absolute: with some minor exceptions listed by the Code, the employment contract of executive employees may derogate from the provisions of Part Two of the Code in any direction<sup>56</sup>.

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<sup>51</sup> § 139, Section (2) of the LC.

<sup>52</sup> § 43 of the LC.

<sup>53</sup> Neumann L., Tóth A., *Hungarian unions under political and economic pressure*, in Lehndorff S., Dribbusch H., Schulten T. (eds.), *Rough waters – European trade unions in a time of crises*, 2017, 145.

<sup>54</sup> Cf. Környei M., *Titok-e a munkabér?*, 2017, <https://arsboni.hu/titok-e-munkaber/> (last access 10 October 2019).

<sup>55</sup> Kézdi G., Kónya I., (1), 25.

<sup>56</sup> § 209 of the LC.

Many wage-components are often regulated by employers' internal rules and policies. In fact, only the employee's (personal) base wage must be specified in the employment contract<sup>57</sup> (the base wage shall be specified on a time basis<sup>58</sup>). As for the wages above the base wage, and other benefits, the employer has the "only" obligation to inform the employee in writing within fifteen days at the latest from the date of commencement of the employment relationship<sup>59</sup>. In legal terms, internal rules and policies containing wage-related clauses can be qualified as "unilateral commitments." Under such "commitments", the carrying out of the commitments entered into may be demanded irrespectively of the beneficiary's acceptance (i.e. they are binding). The most important rule in terms of "unilateral commitments" relates to their withdrawal: a commitment may be amended to the beneficiary's detriment, or may be terminated immediately in the event of subsequent major changes in the circumstances of the person making the commitment whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship ("clausula rebus sic stantibus")<sup>60</sup>. Accordingly, the employer's withdrawal from such commitments must be meaningfully justified, and — at least in principle — it is not so easy (i.e. plain, routine business reasons are not enough).

### 3. Flexibility and Inflexibility in Wage-setting: Some Examples.

As we have already mentioned, the new LC significantly enhances the role of collective agreements in relation to the advancement of a more flexible, more reflexive, more autonomous system of employment regulation. In the new system, collective agreements may differ from the general rules implied in the LC, also to the detriment of employees (in other word, this is the fully dispositive, absolute permissive character of the Code, as a main rule; the Act lists only the cases in which such a deviation is not allowed<sup>61</sup>). As such, the LC strengthens the parties' contractual freedom, and – as a result – reduces the regulatory role of the State. For example, the following important – pay-related – rules are also absolutely dispositive in the LC (in relation to collective bargaining): severance pay<sup>62</sup>, legal consequences of wrongful termination<sup>63</sup>, wage supplements<sup>64</sup>, calculation of the "absentee fee"<sup>65</sup> (Berke calls absolute dispositive rules "tariff dispositive" rules<sup>66</sup>). As such, bargaining parties can fully "rewrite" these statutory roles.

Another aspect of flexibility<sup>67</sup> lies in the very nature of some labour law rules. In this regard, overtime payment is especially noteworthy to illustrate this statement. The LC

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<sup>57</sup> § 45, Section (1) of the LC.

<sup>58</sup> § 136, Section (12) of the LC.

<sup>59</sup> § 46 of the LC.

<sup>60</sup> § 16 of the LC.

<sup>61</sup> The structure of the Act is very difficult because of this complex system of derogations and because of the extensive use of cross-references.

<sup>62</sup> § 77 of the LC.

<sup>63</sup> §§ 82-83 of the LC (however, compensation liability cannot be excluded).

<sup>64</sup> §§ 139-145 of the LC.

<sup>65</sup> §§ 148-152 of the LC.

<sup>66</sup> Berke Gy., (38), 127.

<sup>67</sup> Gyulavári T., *Út a rugalmasságha*, in Attila K. (ed.), *Az új Munka Törvénykönyve dilemmái című tudományos konferencia utókiadványa*, 2013, 91–103.

regulates overtime payment<sup>68</sup>. In case of overtime work<sup>69</sup>, as a main rule, employees – in accordance with the relevant employment regulations or by agreement of the parties – shall be entitled to a fifty per cent wage supplement or to time off (the duration of time off may not be less than the overtime work ordered or the work performed, and shall be remunerated by a commensurate part of the base wage). Where overtime work is ordered on the scheduled weekly rest day (weekly rest period), a one hundred per cent wage supplement shall be paid. The wage supplement shall be fifty per cent if the employer provides another weekly rest day (weekly rest period). However, there are plenty of flexible possibilities in the LC, according to which such statutory overtime payment can be moderated (or even bypassed). The following regulatory examples are especially notable. First, collective agreements may deviate from this general rule in every way, without restrictions (both *in peius* and/or *in melius*). Second, by way of the application of reference periods, the employer can gain the possibility to balance more intensive and less intensive work periods during a longer period of time. The reference period (or ‘working time banking’ in line with Hungarian terminology<sup>70</sup>) is the central instrument of flexible working time management. It must be mentioned that from 1 January 2019, the maximum duration of working time banking fixed in the collective agreement in Hungary (justified by objective or technical reasons or reasons related to work organization) is thirty-six months<sup>71</sup>. This three-years maximum is not only extremely long, but it is heavily debated<sup>72</sup> in terms of its compliance with the EU’s Working Time Directive<sup>73</sup>. Third, in addition to the reference periods, the LC offers to the employer an interesting and unique possibility to manage working time scheduling in an extraordinarily flexible way. This is the so-called “payroll period”, according to which — apart from working time banking — “work may also be scheduled in such a way whereby the employee completes the weekly working time scheduled based on the daily working time and the standard work pattern over a longer period that the employer has determined, beginning on the given week.” There is no room here to analyze the “payroll period” in details, but it can be labelled — for the sake of simplicity — as a “peculiar”, quasi-endless reference-period, in which the weekly working time can be cumulated and rolled (each week, a new payroll period can be opened). At the end of the day, the employer can minimize its overtime payment via the use of payroll

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<sup>68</sup> § 143 of the LC.

<sup>69</sup> According to § 107 of the LC, “Overtime work” shall mean work performed: a) outside regular working hours; b) over and above the hours covered within the framework of working time banking; c) over and above the weekly working time covered by the payroll period, where applicable; and d) the duration of on-call duty.

<sup>70</sup> §§ 93-95 of the LC.

<sup>71</sup> § 94, Section (3) of the LC. It must be noted that the new legislation leaves the 48 hours/week work limit (maximum “scheduled weekly working time”) unchanged (in average, within a 12-months maximum period according to the collective agreement). See in details: § 99 of the LC. This rule guarantees the – at least – formal compliance with the EU Directive’s absolute maximum (12 months).

<sup>72</sup> See for example: Szabó I. Sz., Fodor T. G., *Soha nem elég? Avagy meddig rontható a munkajogi szabályozás?* 2018, <https://merce.hu/2018/11/25/soha-nem-eleg-avagy-meddig-ronthato-a-munkajogi-szabalyozas/> (last access 3 September 2019).

<sup>73</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. See especially: Article 19, according to which “Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons or reasons concerning the organisation of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months”.

periods. Again, the payroll period is not only overly flexible, but also a heavily debated issue<sup>74</sup> in terms of its compliance with the EU's Working Time Directive. Fourth, as a main rule, the employer shall communicate the work schedule for at least one week in writing, at least one hundred and sixty-eight hours in advance before the start of the scheduled daily working time. In the absence of such communication, the last work schedule shall remain in effect<sup>75</sup>. However, there is one important exception to this rule, with which the employer can, again, easily minimize its overtime payment: the employer may alter the communicated work schedule upon the occurrence of unexpected circumstances in its business or financial affairs, at least ninety-six hours in advance before the start of the scheduled daily working time. Furthermore, from 1 January 2019, the employer may alter the communicated work schedule also upon the employee's request made in writing<sup>76</sup>. It is self-evident that the "employee's request" is a very uncertain and risky legal base in labour law. All in all, the above-described regulatory solutions illustrate quite well, how flexible is the seemingly obvious and mandatory overtime payment.

As an example of "inflexibility", it is noteworthy to mention that there is one significant sectoral exception to the dominant rule of absolute dispositiveness of collective agreements described above: the Code severely limits the scope of collective autonomy and collective bargaining in the case of state/municipality owned companies<sup>77</sup>. These employers are covered mainly by public resources even if they fall within the scope of private labour law. In this sector, collective agreements must not deviate from the basic mandatory rules on notice period, severance pay, wages, some working time rules (e.g. daily breaks) and industrial relations issues (including union representatives' rights, legal protection, and time-off). This cogent regulatory concept reflects the governmental intention to safeguard public interests and to protect public budgetary money (in fact, all above mentioned restrictions are directly or indirectly pay-related). However, this harsh differentiation between public and private companies breaks with the traditionally sector-neutral nature of Hungarian labour law, and it has been heavily criticized by almost all affected stakeholders (trade unions and employers alike). This set of rules hit the unions at major public utility companies harshly and it has the capacity to undermine their organisational strength<sup>78</sup>. This cogent regulatory solution impedes these trade unions and the management of publicly owned companies to manage their labour relations on a creative way. As Berki warns, this regulatory solution – which narrows down the role of collective bargaining – can undermine the expected role of the state ("public") as a model/exemplary employer<sup>79</sup>.

When taking a further brief outlook from the private sector to the labour law of the public sector (public administration), three important features can be emphasized in terms of wage-setting for civil servants, all of them contributing to the ever-increasing flexibility of wage-setting. First, it is notable that in the civil service (public administration), the right to conclude

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<sup>74</sup> See for example: Fodor T. G., *A Munka Törvénykönyve munka- és pihenőidő szabályozásának uniós jogi megfelelőségéről*, in *Magyar Munkajog E-folyóirat*, 2, 2016, 21-36.

<sup>75</sup> § 97, Section (4) of the LC.

<sup>76</sup> § 97, Section (5) of the LC.

<sup>77</sup> §§ 205-207 of the LC ("Employment relationships with public employers").

<sup>78</sup> Tóth A., (10).

<sup>79</sup> Berki E., *Collective Agreements at Employers with Public Ownership*, in Kiss Gy. (ed.), *Trade unions and collective agreements in the new Labour Code*, 2015, 73.

collective bargaining agreements is not provided at all for trade unions (while in the case of public servants – such as teachers, doctors etc. – the possibility of concluding collective bargaining agreements is guaranteed<sup>80</sup>, but with a restricted force and content). Second, tripartite negotiations on pay are very weak in the public sector. OKÉT is the National Public Service Interest Reconciliation Council (Országos Közszolgálati Érdekegyeztető Tanács), the high-level tripartite social dialogue forum of the whole public sector (covering public servants, civil servants, policemen, defence force officers, members of the armed forces etc.). Besides the OKÉT, there are some specific interest reconciliation forums in various branches of the public sector. OKÉT was originally set up (in 2002) to deal with wage (salary) and employment policies and labour law related issues of the public sector in general, but today it serves the purposes of merely disseminating information rather than consultation. The influence of the OKÉT is considered to be limited. As Szabó observes it, OKÉT's influence on public sector wage setting has weakened substantially and continuously<sup>81</sup>. Third, there is recent shift in public administration from fixed wage-scales to more flexibility. Act CXCIX. of 2011 on Civil Servants (“Kttv.” in Hungarian) still had a rather traditional, fixed, principally seniority-based salary-structure. However, the new law, Act CXXV of 2018 on the Governmental Administration (“Kit” in Hungarian) gives the employer (i.e. the Government) a much wider discretion in determining the salary for the post (“álláshely” in Hungarian). Kit. has introduced a new salary system and is discontinuing a seniority-based salary-promotion system. Lower and upper salary limits are assigned to the various grade categories and it is within the discretion of the employer to determine the exact amount of the salary of a government official. Thus, the exact amount of the salary is not the result of a contractual agreement, but of the employer's decision, with the mere approval of the government official. While the provisions of the former Kttv. determined precisely what salary a government official is entitled to, under the new law (Kit.), this cannot be answered without knowing the employer-based criteria. There is only one limit to the employer's discretionary power – beyond the abstract right to pay and the very low guarantee of a guaranteed minimum wage – the rather vague principle of “professionalism”<sup>82</sup>, which stipulates that the salary of a government official shall be determined by the employer's authority on the basis of professional ability, education, experience and performance.

#### 4. Equal Pay for Equal Work.

While the former Constitution explicitly contained the equal pay for equal work principle (as of 1989)<sup>83</sup>, the new Constitution (Fundamental Law of 2011<sup>84</sup>) no longer contains it (only the general anti-discrimination clause of the Fundamental Law might be invoked in relation to wage discrimination). This legislative solution is more of a symbolic nature, as statutory provisions do still provide for the protection of the equal pay for equal value work principle, namely on two levels. First, the general Equal Treatment Act (hereinafter: ETA) – Act CXXV

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<sup>80</sup> Act XXIII. of 1992 on the Legal Status of Public Servants (“Kjt” in Hungarian).

<sup>81</sup> Szabo I., (40), 212.

<sup>82</sup> § 65, Section (3) of Kit.

<sup>83</sup> Act 20 of 1949 on the Constitution of the Hungarian Republic, § 70/B, Section (2).

<sup>84</sup> The Fundamental Law of Hungary (25 April 2011).



of 2003 on Equal Treatment and the Promotion of Equal Opportunities – lists the most typical situations in the field of employment during which a violation of the principle of equal treatment might particularly happen if the employer inflicts direct or indirect negative discrimination upon an employee. The issue of “establishing and providing wages” is expressly mentioned in this list<sup>85</sup>. Second, besides the ETA, the LC (§12) also contains a separate clause on equal treatment (as a basic principle of labour law), underlining particularly its pay-related dimension. In this context, the LC states that “in connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. Remedying the consequences of any breach of this requirement may not result in any violation of, or harm to, the rights of other employees”. Furthermore, for this purpose, the LC defines the notion of “wage” (which “shall mean any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship”), and circumscribes the parameters of “equal value of work”: “the equal value of work for the purposes of the principle of equal treatment shall be determined – in particular – based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labour market conditions”. Procedurally speaking, these criteria can have importance in the course of “exculpation” from the side of the employer; the employee does not need to refer to them and prove them (or even “make them probable”) in the claim. The employer needs to prove that there is no comparable situation<sup>86</sup>. It can be mentioned that “labour market condition” is a unique element in the above-mentioned list of parameters of equal value work, explicitly meant to restrict the scope of comparison. The aim of the legislator was to make it impossible for employees to take legal action against their employers based on regional pay differences (which happened before).

In sum, both the ETA and the LC refers to the essence of the equal pay for equal work principle, however, as Gyulavári and Kártyás also observe it<sup>87</sup>, the principle per se is now “absolutely missing from the Hungarian legal system”, which – as they note it – might send out an “unfortunate message” (since it was deleted from the Fundamental Law and it was not inserted – at least not word by word – neither into the ETA, nor the LC). Apart from these somewhat symbolic aspects, the LC’s definitions on “wage” and “equal value of work” are fully in line with the EU-law-based understanding of the principle.

It is fully confirmed by judicial practice that – in the Hungarian legal understanding – the violation of the equal pay principle is simply a special form of discrimination. For instance, the Curia (the highest court of Hungary) stated the following in 2018: the principle of equal pay for work of equal value must be interpreted within the framework of the requirements of equal treatment<sup>88</sup>. The Curia also confirmed that the worker must demonstrate that he has a protected characteristic which the employer discriminated against in a comparable position and paid him less wages. Subsequently, it is for the employer to prove, on the basis of the “exculpation”, that there is no causal link between the disadvantage and the protected characteristic. Accordingly, without denoting a protected characteristic and disadvantage by

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<sup>85</sup> § 21, Point f) of the ETA.

<sup>86</sup> See also: EBH 2015. M.24.

<sup>87</sup> Gyulavári T., Kártyás G., (26), 186.

<sup>88</sup> Curia of Hungary (24/2018. számú munkaügyi elvi határozat).

the employee in the claim, it is not at all possible to establish a violation of the principle of equal pay for equal work<sup>89</sup>. For instance, work experience gained during a long service with a particular employer enables the employee to perform his or her duties better, which may result in higher salaries. This does not violate the principle of equal pay for equal work<sup>90</sup>.

Naturally, there is a fundamental, unsurpassed clash between the equal pay for equal work principle and the – private law-based – legal provision by virtue of which the parties to an employment contract are free to agree on the amount of the employee’s salary. Since – as described above in details – salaries are usually determined as a result of an individual wage bargaining process (in the lack of strong collective bargaining procedures), and “pay secrecy” is a tendency in Hungary, the probability of breaches of the equal pay for equal work principle is especially high (and it must be noted, that the “freedom of contract” cannot serve as a legitimate ground for “exculpation” in itself<sup>91</sup>).

## 5. Summary and Conclusions – Through Reference to the EU’s Economic Governance.

The EU’s economic governance has had not much direct effect on the wage-setting mechanisms of Hungary. However, in the course of the Country Specific Recommendations-Commission Recommendations one can discover notable observations related to the labour market of Hungary (including its wage-setting mechanisms), which can also serve as an apt, expressive summary and conclusion to all what has been expressed throughout this paper. For instance, the Commission notes in general the following:

“The overall employment rate has improved significantly amid strong economic expansion but has not benefited all groups equally. The gaps in employment and wages between skills groups and men and women remain wide in comparison with the EU average. The gender employment gap is wide partly due to the limited supply of good quality childcare. Labour market outcomes for various vulnerable groups, including Roma and people with disabilities, are weak. Despite its reduction, the Public Works Scheme, which is not effective in leading participants to the jobs in the primary labour market, remains sizeable. Other policies to help unemployed or inactive people find work or training are insufficiently targeted. Developing digital skills could help improve employability. Recent measures are designed to get more retired workers back into jobs and to increase their number over time. Hungary’s overall poverty situation has been improving since 2013. The duration of unemployment benefits is the shortest in the EU, at a maximum of three months, which is well below the average time needed to find a job”<sup>92</sup>.

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<sup>89</sup> Curia of Hungary [4/2017. (XI.28.) KMK vélemény az egyenlő bánásmód követelményének megsértésével kapcsolatos munkaügyi perek egyes kérdéseiről].

<sup>90</sup> Curia of Hungary (24/2018. számú munkaügyi elvi határozat).

<sup>91</sup> See: Zaccaria M. L., *Egyenlő(tlen) munkáért egyenlő(tlen) bér – az egyenlő munkáért egyenlő bér elvről másként*, in *Munkajog*, 2, 2019, 1-8.

<sup>92</sup> European Commission (2019): Recommendation for a Council Recommendation on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary, Brussels, 5.6.2019, COM (2019) 517 final, Preamble 9.

Furthermore, as part of the recommendations, among others, the following issues are emphasized (in relation to the labour market): there is a need to “continue the labour market integration of the most vulnerable groups in particular by upskilling, and improve the adequacy of social assistance and unemployment benefits”, and to “improve the quality and transparency of the decision-making process through effective social dialogue and engagement with other stakeholders and through regular, appropriate impact assessments. Continue simplifying the tax system, while strengthening it against a risk of aggressive tax planning”<sup>93</sup>.

In sum, the European Semester also reveals and reiterates the well-known, long-standing, structural problems of the Hungarian labour market (including its wage-setting mechanisms), including the profound inequalities in income distribution (e. g. gender pay gap), insufficient inclusion of some vulnerable groups, concerns over the PW-scheme (such as the potential of in-work poverty), unsatisfactory attention on training/up-skilling, and last, but not least – and probably most importantly in relation to wage-setting as well – the insufficient promotion of effective social dialogue.

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