HUNGARIAN LABOUR LAW
E - J O U R N A L

Squaring the circle?

The labour law possibilities of "alt-labour" organisations in Hungary

Imre Szilárd Szabó*

Abstract

Workers' organisations – in Hungary as well – are experimenting with different forms of organisation according to the economic and social circumstances of the time, of which the media industry (including the Hollywood strike series in 2023) is a prime example. Trade unions and other alternative, flexible structures of interest representation are emerging with an innovative, open and network-like organisational logic. These phenomena are often referred to in labour law literature as 'alt-labour'. My study examines the challenges that collective labour law faces in this context.

Keywords: alt labour, trade unions, collective agreements

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"*.[1] This claim is true not only in the context of new, non-standard legal relationships, but also in respect of "conventional" legal relationships under civil law. In many cases, this dilemma follows from the classification 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

* Executive Vice-President, National Federation of Workers' Councils; lawyer; senior lecturer, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, Department of Labour Law and Social Security

1 Kun, Attila: A szakszervezeti szervezkedés szabadsága versenyjogi kontextusban [The Freedom of Trade Union Organisation in the Context of Competition Law]. In: Pál, Lajos – Petrovics, Zoltán (eds.): *Visegrád 17.0 – A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai* [Proceedings of the XVIIth Hungarian Labour Law Conference]. Budapest, Wolters Kluwer, 2020. 167–189.

be controversial. This study attempts to offer a summary – albeit subjective[2] – of the lessons learned from a protest[3] having taken place in autumn 2023 which received significant media attention, but it will do so strictly from the perspective of collective labour law, and will not seek to analyse the considerations concerning the classification of "work" itself.

The action that aimed to exert pressure, and which makes this paper highly topical, sheds light on the following problem: 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; that is, in addition to 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).[4] 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 (hereinafter: Labour Code) – in addition to the fulfilment of the conditions[5] of civil law – are vested in the trade union that is represented at the employer. The trade union that is represented at the employer is the one which – in accordance with its statutes – operates an organ entitled for representation or has such an officer at the employer [Paragraph (2) of Article 70 of the Labour Code]. The notion itself rests on the presumption that trade union activities take place predominantly in the framework of the employer organisation, as is reflected by the majority of trade union rights (bear in mind the institution of time-off granted for trade unions). 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

2 I acted as the legal representative of several film editors concerned during the negotiations.

3 Some of the professionals involved in editing stopped working on Monday morning (16 October 2023) due to their dissatisfaction with their working conditions. The Media1 portal reported (https://tinyurl.com/mt6ehsp5/) that workers of five or six production companies took part in the Monday protests mobilizing around 40 persons, which indicates the existence of systemic problems. Moreover, a few months earlier, internal RTL employees had also sent letters demanding better working conditions. They held a street demonstration in the area located in front of the headquarters of the TV channel in District XXII, asking for a "pay rise" and the settling of their situation. They came with flowers so as to express their willingness to reach an agreement with the media company. The demonstration was announced to the police by the President of the Trade Union of Hungarian Cinematographers (MMKSZ) as a private person.

4 Paragraphs (2) and (5).

5 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.

the absence of a specific power of representation (i.e. such a provision) in the statutes, 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.[6] 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 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.[7]

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.[8] 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").[9] 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 are in the same kind of (economically dependent) situation as employees (in the legal sense), so they should benefit from similar social and labour law protection.[10]

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.[11] 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

---

6 For more information, see Szabó, Imre Szilárd: A szakszervezet képviseleti jogosultságának feltételei [The Conditions of the Right of Representation of Trade Unions]. In: Pál, Lajos –Petrovics, Zoltán (eds.) *Visegrád 20.0.: A XX. Magyar Munkajogi Konferencia szerkesztett előadásai* [Visegrád 20.0.: Proceedings of the XXth Hungarian Labour Law Conference]. Budapest, Wolters Kluwer, 2023. 284–294.

7 Paragraph (1) of Article 277 of the Labour Code.

8 On novel types of work relations, see Szekeres, Bernadett: *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.; Gyulaváři, Tamás: *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.

9 Kun op. cit.

10 Kiss, György: Vázlat a munkát végző személyek védelméről [Outline on the Protection of Persons Performing Work]. *Miskolci Jogi Szemle,* Vol. 17, 2022/2. 213.

11 "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."See Halász, Nikolett: 148 nap után véget ért a hollywoodi írósztrájk. *Telex,* 2023. 09. 27. Source: https://tinyurl.com/42cv5wxx (Accessed on 22 October 2023)

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.[12] In Hungary, such organisational activities can be currently observed in two sectors: within the media industry[13] and the communities of delivery persons[14].

In my 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[15], the country that is often considered to be a "model" for Hungary. In this respect, a traditional example is Paragraph 12a of the German Act on Wage Agreements (Tarifvertragsgesetz, TVG), bearing the title "Arbeitnehmerähnliche Personen".[16] 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 the most part, or receive at least half of their income on average from this particular person.[17] Therefore, the TVG makes it possible for the interest representation organisations of such persons[18] to sign collective agreements with the representative bodies of principals or clients.[19]

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

---

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

13 Kiss, Soma Ábrahám: Az RTL-es dolgozók akciója rámutatott, hogy a hazai jogrendben nem lehet fellépni a kretív ipar bújtatott foglalkoztatása ellen. *Mérce,* 2023. október 17. https://tinyurl.com/2prjhnjp (Accessed on 23 October 2023)

14 Szadai, Levente: Szerveződni kezdtek a magyarországi futárok – több ezer fős szakszervezet a céljuk. *Mérce,* 2023. május 26. https://tinyurl.com/pjyfzpju/ (Accessed on 23 October 2023)

15 For more information, see Kiss, György: 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]. *Jogtudományi Közlöny,* 2013/1. 1–14.

16 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 in: Holger Brecht-Heitzmann – Otto Ernst Kempen – Jens Martin Schubert – Achim Seifert (eds.): *Tarifvertragsgesetz.* Frankfurt am Main, Bund Verlag, 2014. 1694.

17 Paragraph (1) of Article 12a of the TVG. 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.

18 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, György: A jogalkotó felelőssége a munkajog állapotáért [The Legislator's Responsibility for the Condition of Labour Law]. In Bankó, Zoltán – Berke, Gyula – Pál, Lajos – Petrovics, Zoltán (eds.): *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére* [Festschrift in Homage of the 70th Birthday of György Lőrincz]. Budapest, HVG-ORAC, 2019. 222.

19 For the moment, this provision is deemed significant especially in the media industry. See in: Brecht-Heitzmann–Kempen–Schubert–Seifert (eds.) op. cit. 1696.

"original" 2011 Draft Labour Code, but discarded in the end).[20] 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, it is 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[21] (as an exception to the so-called "prohibition of cartels"), or in other, so-called sectoral or professional laws. In my 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.[22]

The Court of Justice of the European Union (hereinafter: the "CJEU") has extensive case law on the collective bargain of the self-employed. The judicial practice of recent years – through the satisfaction of the *"Albany exceptions"*[23] – allows exemption from restrictions of competition law.[24] Accordingly, the wage-setting provided for in collective agreements must be agreed between the social partners (trade unions and employers), and secondly, it must contribute directly to the improvement of the working and employment conditions of workers. *"Pursuing the interpretation of this statement in the FNV-Kunsten case[25], the CJEU concluded that the 'Albany exception' can only be applied if working*

---

20 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."

21 Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.

22 Paragraph (2) of Article XVII of the Fundamental Law of Hungary stipulates that "employees, employers and their organisations shall have the right, as provided for by an Act, to negotiate with each other and conclude collective agreements".

23 Ildikó Rácz-Antal mentions the following court decisions: Case C-67/96 Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie ECLI:EU:C:1999:430; Case C-22/98 Criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV and Adia Interim NV ECLI:EU:C:1999:419 ; Case C-413/13 FNV Kunsten Informatie en Media contro Staat der Nederlanden ECLI:EU:C:2014:2411 . Joint cases C-180/98 – C-184/98 Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten ECLI:EU:C:2000:428. Rácz-Antal, Ildikó: Az önfoglalkoztatók kollektív szerződéskötése a Bizottság új Iránymutatása szerint [The Collective Agreements of the Self-Employed According to the New Guidelines of the European Commission]. In: Auer, Ádám – Bankó, Zoltán – Békési, Gábor – Berke, Gyula – Hazafi, Zoltán – Ludányi, Dávid (eds.): *Ünnepi tanulmányok Kiss György 70. születésnapjára: Clara pacta, boni amici* [Festschrift in Homage of the 70th Birthday of György Lőrincz: Clara pacta, boni amici]. Budapest, Wolters Kluwer Hungary, 2023. 590–596.

24 See also Fejes, Gábor: Munkavállalói önszerveződés, kollektív szerződések és munkáltatói megállapodások – a versenyjog górcsöve alatt [Workers' Self-Organisation, Collective Agreements and Employees' Agreement – From the Perspective of Competition Law]. In: Pál – Petrovics (eds., 2020) op. cit.

25 FNV Kunsten decision op. cit.

conditions are established for the 'false self-employed' (or to use a different terminology, workers whose independence is merely notional)."[26]

Moreover, it should be mentioned that gradually, the European Union is beginning to formulate a clear position in this matter.[27] 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 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". According to that, such a "comparable situation" may arise in three types of cases: (1) self-employed workers who are in an economically dependent situation, (2) self-employed workers who work "parallel" to employees, and (3) among self-employed individuals who work through digital platforms.

Finally, the third element of the "regulation challenge" (after the right to organise and the right to bargain collectively) is the right to strike (i.e. "guaranteeing" it as a fundamental right). Now this is a controversial issue all over Europe because according to the "traditional" view of labour law, the legal basis for "the stoppage of work" itself is called into question if it is initiated by persons who are not in an employment relationship or if such persons take part in it. However, the complete "denial" of the right to strike is difficult to interpret in the context of collective agreements, given that *"collective bargaining without the right to strike is collective begging"*.[28] It would be a drastic statement to make that as a principle, trade union activity among workers employed in a civil law relationship cannot be regarded as cartel activity, or that a strike does not constitute a quasi "boycott" – and yet, this is the only interpretation that I find acceptable for my part. If there exists the right to organise, then there must also be the right to bargain collectively, and if there is the right to bargain collectively, then the right to strike must also be guaranteed. Enacting the appropriate legal background to all of the above is then a matter of will. At the same time, the essential question remains whether we are capable of creating such a collective labour law framework in the current conditions that would guarantee freedom for those concerned (i.e. the improvement of their working conditions and especially of their remuneration) instead of reinforcing their captivity in many cases (i.e. remaining an entrepreneur for

26 Rácz-Antal (2023) op. cit. 593.

27 For more information, see: Rácz-Antal (2023) op. cit.

28 *"Without the right to strike, collective bargaining becomes collective begging."* Samuel Estreicher: Collective Bargaining or "Collective Begging"? Reflections on Antistrikebreaker Legislation. *Michigan Law Review,* 1994/3. 577–608. This factor is also underscored in a study by Tamás Gyulavári – Gábor Kártyás (eds.): *A kollektív szerződéses lefedettség csökkenése Magyarországon (2012–2023)* [The Diminution of Coverage by Collective Agreements in Hungary (2012–2023)] Budapest, Friedrich-Ebert-Stiftung, 2023. https://library.fes.de/pdf-files/bueros/budapest/20640.pdf – Accessed on 22 October 2023.

life by constraint rather than by choice). In light of the changes of the economy and the labour market, the challenge is becoming more and more pressing: this is what could transform the current “wishful thinking” into an operational regulatory framework.