NEW TRENDS IN EMPLOYMENT

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Abstract

Receantly, we have been hearing more and more about changes in the area of employment. All of these changes stem from one thing, namely digital change. In the world of work, technical progress has brought many changes that have a greater or lesser impact on labor law regulation and the employment relationship. These effects changed the work tools and the place to work and much more. Digital devices and the Internet allow for the global flow of labor, bridging geographical distances. Teleworking is an increasingly common form of work. The digital space has opened up many new opportunities in the labor market, which employers and employees are trying to exploit in a variety of ways. One of the most significant manifestations of this is the emergence of platform work forms and crowdwork. These new variants well reflect the tendency of the parties to create increasingly different forms of employment in the field of employment. It can be concluded, therefore, that we can see another wave of the fact that actors in the world of work are increasingly looking for atypical employment relationships both inside and outside labor law. In the present work, I want to map possible directions for the future of labor law. Among other things, I am looking for an answer to the question, what effect do new types of work have on labor law regulation? Is there a need for labor law renewal? What trends are expected in the future? Expanding the scope of atypical employment relationships, strengthening classical labor law, or possibly examining beyond it to take a closer look at the role of labor law embedded in the digital world. The nature of the regulation and the relationship between the parties is increasingly determined by the flexibility that has an impact the employee protected elements.

Keywords: *digitization, flexibility, atypical employment, platform work.*

1. Introduction

The advent of the internet has brought us nothing less than the 4th Industrial Revolution, we may witness it ourselves. With the recent industrial revolution in the Internet propulsion forward, the availability of not only humans but also machines to communicate with each other in the cyber-physical system.[1] It is beyond dispute that the spread of personal computers and the advent of the Internet has completely transformed our daily lives. Thanks to technological innovations, there may no longer be an area where their impact would not be felt. Modern agricultural production already uses intelligent machines that also communicate with each other, using the Internet as well as sensors to gather as much information for precision termination. Digital information education is also becoming more prevalent in education, further strengthens by the coronavirus epidemic. Testing of self-driving cars and convoy trucks is already in full swing. With the techniques used in industrial production and the digital devices that intertwine our daily lives, the line can be continued for a long time. In the few examples mentioned,

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[1] Nagy Judit: *Az ipar 4.0 fogalma, összetevői és hatása az értékláncra*, Budapesti Corvinus Egyetem Vállalatgazdaságtan Intézet, Műhelytanulmányok, 2017. p. 10.

the common point available is that the internet mediates or even lays the foundation for the technology that surrounds us. And just as internet impact to agriculture, industry, transportation, education, and many other areas have an important impact also on the area of law. It all follows from the fundamental item that the law regulates certain living conditions. So the law can do nothing but respond to new societal factors emerging on the horizon, such as the Internet and related technology. As we network all areas of our lives on the Internet, it is no exaggeration to say that it interweaves also all areas of law. Of course, there could be a long debate about which area of law the Internet and related technology has brought the most significant changes, but I would like to examine the field of labor law in the context of the present study. One can say for sure that the Internet has brought many changes in the world of labor law as well. Think of teleworking, the "home office" phenomenon, platform work[2], the emergence of the digital job market. These, in turn, raise several regulatory and many other issues in the field of labor law. The changes show a multifaceted and varied picture, but it is certain that the Internet and the issues it brings to life represent the future of labor law. Recently, a series of studies examining the future of work and labor law have appeared. All this is due to the further intensification of the effects that the new industrial revolution is generating around it. There is increasing pressure on the legislator to respond appropriately to each of the guidelines. And the recurring and well-known question is nothing more than the question of a person with a status similar to that of a employee.[3] One of the important issues today is in the labor law professional literature and the legal status of the platform works, or the legal status of the persons of such work. There have been several studies in the field regarding the classification of platform workers or why similar to the emloyee status.[4] In the context of the present study, I do not wish to address the issue of legal personality, but I undertake to examine possible directions for employment along the classification issues that arise during the platform work. In the wake of platform-based work, the emergence of a new work group has created a space deemed empty. As a result, it is difficult to choose the legal relations related to this type of work, to classify them dogmatically. This, in turn, causes some confusion, which almost demands and forces the renewal of labor law, in order to provide an explanation for the placement of these types in a specific system. In this context, it is important to wish to outline and examine the future of labor law as a function of platform-type work. In the course of my research, I examine the positions found in the literature, of which I describe the most decisive points of view.

[2] I intend to use the term platform-based work as a collection category in this study. In this category, I include, among other things, the forms of work in which the parties communicate with each other via online platforms. Employees usually perform tasks, provide services, work through a website or application, but in some cases the activity itself takes place only indirectly through the Internet interface.

[3] "Economically vulnerable work" or "economically dependent work" See: Az Európai Közösségek Bizottsága, Brüsszel, Zöld Könyv, 2006, A munkajog korszerűsítése szembenézve a XXI. század kihívásaival;

A munkavállalóhoz hasonló jogállású személy fogalmát lásd még: Gyulavári Tamás: A gazdaságilag függő munkavégzés szabályozása: Kényszer vagy lehetőség? Magyar Munkajog E–Folyóirat 2014/1, p. 1–25.

[4] See: Rácz Ildikó: *A digitalizáció hatása a munkajog egyes alapintézményeire,* PhD értekezés, Károli Gáspár Református Egyetem Állam– és Jogtudományi Doktori Iskola, 2020.

2. Challenges of labor law

The work initially meant meeting people's own needs, but even with the low standard of technology, was spread the working for others interests. One type of work is the production of a product for others interests and the provision of a service. Such work activities embody the relationship between people through the goods that appear in the market. In this case, autonomy includes a de jure independent appearance, both for the provider and the recipient of the service. The service provider - the contractor - appears in the legal transaction independently, under his own name, and the essence of the contractor is the production of some result (opus) for the other party - the customer. The other option is to do work for another person using one person's own workforce.[5] It is important to emphasize that labor law restricts the parties' freedom to choose the type. The parties have the possibility to establish within the legal framework that the given activity is performed within the framework of an employment contract or other civil law contract (enterprise, assignment). The most important of these constraints is the catalog of employment criteria. It can be reaffirmed that an employment contract or employment relationship can be established to carry out any kind of work activity, but it is not true the agency agreement.[6] This, in turn, leads us to the fact that labor law traditionally regulates the dependent work. It is worth emphasizing that in Hungarian and international labor law, the primary subject of regulation is the traditional typical or standard employment relationship. This vital employment contract of indefinite duration, full-time, the employment contract is concluded between one employer and one emloyee, and work is performed at the place and time specified by the employer, using the employer's assets.[7]

The advent of the Internet, the rapid development of technology, the conscious and almost violent coercion of innovation are inducing a rapidly changing environment. And in this system, the competition that is the engine of a market economy is intensifying and intensifying. Increasing economic competition for the implementation of globalization puts constant pressure on labor law regulations, which are later felt by weaker and stronger "erosion effects".[8] Actors in the world of work have therefore been forced to adapt. A prerequisite for them to stay in the market is to be able to compete and be able to use the changing market needs on a daily basis more quickly and efficiently. The current trend in labor law reflects exactly the processes mentioned above. Named atypical employment relationships[9] are gaining more and more prominence and growing in popularity. Workers and employers are increasingly seeking to take advantage of the opportunities offered by the legal relationship in order to be able to adapt as much as possible to sudden and rapidly changing circumstances. Employers are increasingly faced with "employability", which means nothing more than the ability to remain at a high level of work in the face of the ever-changing challenges of the world

[5] Kiss György: *Munkajog,* Dialóg Campus, Budapest, 2020, p. 20.
[6] Kiss György: *Munkajog,* Osiris, Budapest, 2005, p. 90–95.
[7] Ferencz Jácint: *Az atipikus munkaviszonyok komplex megközelítése*, Doktori értekezés, 2014. Győr, p. 12.
[8] Petrovics Zoltán: *A biztonság árnyékában, A munkajogviszony megszüntetésével szemben védelem alapkérdései*, Doktroi értekezés, Budapest, 2016. p. 56.
[9] Although other names have survived (e.g., flexible jobs or, as the first approach suggested: fragile, vulnerable jobs), the term "atypical" has become more common. In: Laky Teréz: *Az atipikus foglalkozásokról*. Struktúra Kiadó, Budapest, 2001. p. 16.

of work.[10] The subjects of the legal relationship are pushing the boundaries more and more, just think of flexible working hours,[11] the home office phenomenon, the use of shorter full-time working hours. It can also be observed that the broad right of command, control and control characteristic of the employer in the employment relationship is loosen.[12] Coupled with all this is the application of platform work, which allows for a global flow of labor. According to typical labor law doctrines, the service provider makes labor available to others for a fee, in return for which it receives wages.[13] Here I would like to note that the XXI. century, time became even more appreciated than in earlier eras. All this is clearly related to the rise of global economic processes. Closely related to this factor is the Internet as a basic condition for the development of the global labor market. Today's theories of labor law slip in part or in whole over the time factor, and an essential element of the employment relationship is that the person performing the work and providing the service provides not only his labor, but also his time. Nothing proves the legitimacy of the time factor in employment law better than the legal institution of on-call time. The time factor in the changed environment, on the one hand, leads to the issue of remuneration, ie wages, and, on the other hand, marks the fact that availability and the provision of (free) time are also the main features of the legal relationship, which seems to be appreciated.

I would definitely like to highlight a common feature of the elements listed. Namely, that there is flexibility behind each endeavor. All this can be attributed primarily to the changed economic environment around us.

As described above, Tamás Prugberger and Jácint Ferencz have a similar position. According to them, atypical working relationships are rooted in flexibility combined with efficiency and savings. Tamás Prugberger emphasizes that employers strive to share the risks arising from employment with employees. From a legal dogmatic point of view, these factors lead to that will be in the background dependent work, as opposed to work that of a more informal, looser controlled contract of employment.[14] Another factor that can be highlighted is that the sometimes slow response or resistance of labor law diverts the partyes into the world of non-labor law relations.[15]

One of the latest forms of employment that falls outside the scope of labor law is platform work, which in itself is a special phenomenon with plenty of interesting implications.[16] In my view, platform work is

[10] Szekeres Bernadett: *Munkajogon innen – munkaviszonyon túl*, A gazdaságilag függő önfoglalkoztatás és annak munkajogi védelme, PhD értekezés, 2019. Miskolc, p. 31.

[11] Increasing the sovereignty of workers 'working time is important for flexibility. In: ILO: Work for a brighter future global comission on the futureof work, p. 51.

[12] Jakab Nóra – Rab Henriett: *A munkajogi szabályozás foglalkoztatási viszonyokra gyakorolt hatása a szociális jogok és a munkaerőpiac kapcsolatának függvényében*, Pro Futuro, 2017/1, p. 26–40.

[13] Kiss György: *Munkajog,* Dialóg Campus, Budapest, 2020, p. 20.

[14] Prugberger Tamás: *Az atipikus szolgálati/munkaszerződések jogdogmatikai és rendszerezésbeli kérdései, különös hangsúllyal a munkaerőpiac legújabb igényeire*, Miskolci Jogi Szemle 15. évfolyam (2020) 2. szám, p. 44–66.

[15] Kiss, György: *A magyar munkajog megújulásának esélye az Európai Unió munkaügyi politikájának tükrében*, Pécsi Munkajogi Közlemények, 2008/1, p. 7–33.

[16] See details in: Tóth Hilda: *A munkajog új kihívásai: a "gig" gazdaság munkavállalói csoportjai*, In: Szikora Veronika – Török Éva (szerk.) Ünnepi tanulmányok Csécsy György 65. születésnapja tiszteletére. 396 p. Debrecen: Debreceni Egyetem Állam- és Jogtudományi Kar, 2017. p. 381-388.

forcing the renewal of labor law. As I have highlighted above, the fundamental - and recurring - problem in the field of labor law is caused by the addition of another group and type of workers who are excluded from labor law regulation. The specialty of the platform's employment relationship is, among other things, that it arises through a specific combination of labor law and civil law, which are inseparable. Thus, by examining the primary and secondary qualification protocols[17] applied in the field of labor law, we cannot work to classify them as employment or to establish that they do not qualify as such. However, the problem of a person with a similar legal status to an employeehas a much older history.[18]

One of the major dogmatic challenges of labor law has been the question of why, in some cases, work-related activity can be carried out in a civil law relationship and sometimes not.[19] This question was reflected - more or less - in the theory of economic dependence and then in the theory of personal dependence, followed by an increasingly rational explanation of the subject of the service. This is nothing more than whether or not the service is specifically defined within the legal relationship. In the case of an employment relationship, the service is de jure not a result (product) produced independently by the service provider, but the performance of work for the employer (not the customer) under its control.[20]

The essence of the problem is that while in one case labor law protects the party providing the service with many protective and guarantee rules, in the other case these additional protection rules are mostly lacking. And the difficulty of similarity and demarcation is mainly due to the private law roots of the employment contract. According to Prugberger, it is essentially situated between an employment contract and a business contract with an employment contract (service contract), which has two types in Western European law. One of the so-called “Free service contract,” while the other is the so-called “depending Work”.[21]

According to him, on the one hand, the employment contract is of the “facere” type, the obligation oriented to carry out an activity and does not work in the same way as the undertaking or the assignment. And the cyclically recurring theme, which can be called a classic, is the hidden business - free-form forms of freelance work - self-employed, platform workers, “gray zone” accessories - who are often forced to work and only formally work as entrepreneurs,

[17] 7001/2005. (MK 170.) FMM–PM együttes irányelv a munkavégzés alapjául szolgáló szerződések minősítése során figyelembe veendő szempontokról.

[18] The dual model distinguishes between work and self-employment, or dependent and independent work, and the triple model distinguishes between work, work-like employment and self-employment, i.e., dependent, quasi-dependent and independent work. In: Jakab Nóra: *Munkavégzők a munkavégzési viszonyok rendszerében*, Jogtudományi Közlöny, 2015. p. 421–432.

[19] As Zoltán Bankó points out, the basic problem - which does not only arise in connection with teleworking - is that if a given work activity can be performed in several legal relationships, then the freedom of the parties to conclude contracts can extend to choose between different types of contracts. In: Bankó Zoltán: *A távmunkával kapcsolatos jogalkotási, jogalkalmazási és foglalkoztatáspolitikai tapasztalatok Magyarországon*, Magyar Munkajog E–folyóirat 2016/2, p. 49–61.

[20] Kiss György: *Munkajog,* Dialóg Campus, Budapest, 2020, 20. p.

[21] Prugberger Tamás: *A kiszolgáltatottabb fél védelmének kérdése az új magyar Polgári Törvénykönyv Koncepciójának kötelmi jogi részében*, PJK, 2002/3., p. 36–41.

with the longest deadlines and full-time dependent work.[22]

After a brief overview of the platform workers and the self-employed problems, the question may rightly arise in us as to whether these tendencies endanger labor law? After all, it is evidenced by the processes that the partyes of the world of work can't to keep employment within the framework of the employment relationship. The basic premise remains that if the parties receive a cost reduction by choosing the type of contract, it is the normal and rational behavior of the labor market operator to turn to the cheapest type of contract.[23] In this case, is it only the reduction of costs and the fact that efficient operation is at the heart of the choice of legal relationship? Do the parties really want to get rid of the squeeze of labor law? In my view, we do not witness the escape from labor law, but we reached the point of the market economy where we further increase terminality and productivity with a high degree of flexibility. This flexibility is true of the activity to be performed, the qualities expected, as well as the regulation and the nature of the legal relationship.

From all this, it can be concluded that the practicing processes surrounding labor law require more for labor law to respond to these impulses. It follows that the need to renew labor law does arise. Hereinafter I looking for the answer to the question, what are the possible directions for the renewal of labor law?

3. Trends in future labor law

The lesson of the previous chapter is that flexible working activities presuppose flexible regulation and legal relations. As we have seen, a marked manifestation of this means that parties in the world of work are constantly looking for opportunities that they often find outside labor law. With regard to the future of labor law, the raison of labor law, or at least the retention of its traditional role, is increasingly being raised. All this is due to the fact that parties in the world of work are pushing the boundaries of labor law along the possibilities provided by technology, changed needs and freedom of contract.[24] In general, the question is whether or not labor law can retain its traditional role and relative autonomy? Of course, I would like to discuss much more nuanced issues and directions in this chapter.

I would like to state that, for my part, I am firmly of the view that there is a need for labor law regulation that has been apostrophized as traditional in the future as well. However, the currently labor law role needs to be new direction, in some respects need to be renewed. As part of this, its relationship with private law needs to be strengthened in some respects.

[22] Prugberger Tamás: *Az atipikus szolgálati/munkaszerződések jogdogmatikai és rendszerezésbeli kérdései, különös hangsúllyal a munkaerőpiac legújabb igényeire*, Miskolci Jogi Szemle 15. évfolyam (2020) 2. szám, p. 44–66.

[23] Gyulavári Tamás: A szürke állomány. A gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán, Pázmány Press, Budapest, 2014, p. 110.

[24] The enforcement of the contractual principle in civil law obligations requires the absence and passivity of state intervention, while in labor law the - adequate - state intervention is necessary for the same.

The principle of contractual freedom prevails in labor law, but specifically, at one level even more than at the level of collective self-determination. Indeed, collective agreements could play the full role of shaping the labor market as originally intended by the legislative idea, which would reduce Hungarian labour law regulation constrain which means that a state of equilibrium can emerge based on a market self-regulatory mechanism. In: Bodó László: A polgári jog és a munkajog összehasonlítása az alapelvek tükrében, Debreceni Jogi Műhely, 2012. évi (IX. évfolyam) 4. szám, p. 13–21.

According to György Kiss, we can distinguish three main ways in terms of possible future directions of labor law. One is to maintain the position of traditional labor law spiced up with a number of concessions and flexibility. The other option is based on almost complete freedom of employment and occupation. This includes the effects on labor law of “non-classical”, “atypical” employment methods. György Kiss also lists a third direction, which he analyzes in detail. This is nothing more than a return to classical contract principles using the specifics of an employment contract.[25] In the following, I intend to examine and supplement each option along the outlined division.

3.1. Maintaining the status quo

Regarding this line, György Kiss explains that the adherence to the values of the social space to be created in Europe in the 1970s can still be observed today, but he believes that the effects that break the framework of labor law based on artificial balance cannot be avoided. He believes that the covert tendency to go back to the institution of the contract instead of the employment contract should be discovered, but in his view, the established dogmas have not been sufficiently criticized to this day.[26] I have previously referred to the fact that the subject of labor law is dependent work. As György Kiss points out, labor law is primarily “the right” of those who do not have independence that would not require the use of their labor in other ways. Thus, labor law can only display a certain “debtor-creditor” position.[27] The basic mission of labor law, that contracts in a subordinate position in the employment relationship can be settled between the parties, compensates for the existing imbalance. This basic theorem thinks the future should also be the starting point for the legal relationship. However, over time, the rules that protect researchers define the employment relationship in such a way that it has generated a constraint that is important primarily to the employer. From this, the phenomenon already mentioned several times can be observed, namely, that employers “flee from labor law”.[28] In the special context of employment, this dilemma is attempted to be reflected in the concept of flexicurity, which seeks to combine the existential security of labor market law with the principle of economic and labor efficiency-seeking employment flexibility in neoliberal globalization.[29] The idea is especially welcome and the concept has brought several successful solutions. Nevertheless, it can be said that flexibility is usually not, or not as, associated with the security promised by the concept. Thus, in the legal relationship, only one element is usually realized by maintaining or, in some cases, exacerbating the hierarchical

[25] Kiss György: A foglalkoztatás rugalmassága és a munkavállalói jogállás védelme (Egy lehetséges megközelítés a munkajogviszony tartalmának vizsgálatához), Wolters Kluwer Hungary, Budapest, 2020, p. 29.

[26] Kiss György: A foglalkoztatás rugalmassága és a munkavállalói jogállás védelme (Egy lehetséges megközelítés a munkajogviszony tartalmának vizsgálatához), Wolters Kluwer Hungary, Budapest, 2020, p. 32.

[27] Kiss György: Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre, PJK, 2000/1., p. 3–17.

[28] Prugberger Tamás – Kenderes György – Mélypataki Gábor: A munka– és közszolgálati jog intézményrendszerének kritikai és összehasonlító elemzése, Egyetemi tankönyv, Novotni kiadó, Miskolc, 2012, p. 194.

[29] Prugberger Tamás – Kenderes György– Mélypataki Gábor: A munka– és közszolgálati jog intézményrendszerének kritikai és összehasonlító elemzése, Egyetemi tankönyv, Novotni kiadó, Miskolc, 2012, p. 194.

relationship.[30] Usually, safety refers to the permanence of a legal relationship, it includes guarantee elements related to its termination, such as notice period, dismissal, severance pay. However, little is said about material and existential security, another aspect of security. It is not just the legal relationship and the durability of the legal relationship that can be the only way to strengthen security. Security can be strengthened through remuneration, and thus through wages, at least more easily in line with flexibility. On this basis, I consider it conceivable to differentiate the rules of labor law in a way that allows a greater degree of flexibility in certain matters, which rests primarily on the will of the parties, but at the same time comes at a price that is embodied in the level of remuneration. With this, to make the labor law regulation even more multi-speed, to implement further differentiation within the regulation.

In addition to whether or not we agree with the strengthening of the so-called 'classic' role of labor law, another big question arises as to whether this is to be achieved globally through universal rights, or whether a national rule is needed. The first suggestion is that it is the solution that best facilitates the flow of free labor in the global labor market. On the other hand, there are indisputable differences at the national level in the field of labor law due to certain historical and cultural peculiarities, which are difficult for individual nations to overcome.

3.2. Strengthening non-classical employment methods

In this part, György Kiss primarily reflects on the problem of platform-based forms of work, which, in her opinion, annuls or can annul all institutions of labor law.[31]

In my view, the emergence of platform jobs and the ongoing work they trigger could jeopardize the existence of labor law, as the rise of flexible working activities and the weight of employment go beyond the framework of civil law to ensure a successful market presence. György Kiss distinguishes two possible directions of development in this field. One of these is that a form of work may emerge that is similar in several respects, or even identical with labor law, but operates outside labor law, beyond its limits. The other direction, that new forms are to be incorporated into labor law, which is included in its scope of regulation.[32]

In my view, this causes several more difficulties. The starting point is that civil law allows the parties, on the basis of the principle of freedom of choice, to determine the content of the contract freely, but also it also allows the parties to the contract to shape the content of the contract themselves. Derogation is not possible only if it is prohibited by law. Consequently, the parties may not only enter into the contracts specified in the Civil Code. but also contracts with the most varied content that best suit the market and traffic conditions can be created. Thus, it is possible to creation of mixed contracts in which the parties contain several new contracts and combine their content elements. These

[30] According to György Kiss, the two components of flexicurity - flexibility, which is related to the fundamental right of freedom of enterprise, and security, which is the existential interest of the worker - are difficult to combine. In: Kiss György: Koncepcióváltás a magyar munkajogban? Megjegyzések a 2012. évi I. törvényhez. Az új Munka Törvénykönyve dilemmái c. konferencia utókiadványa, p. 19.

[31] Kiss György: A foglalkoztatás rugalmassága és a munkavállalói jogállás védelme (Egy lehetséges megközelítés a munkajogviszony tartalmának vizsgálatához), Wolters Kluwer Hungary, Budapest, p. 2020, 33.

[32] Kiss György: A foglalkoztatás rugalmassága és a munkavállalói jogállás védelme (Egy lehetséges megközelítés a munkajogviszony tartalmának vizsgálatához), Wolters Kluwer Hungary, Budapest, 2020, p. 33.

restrictions are not necessary to be void because they either exist according to the content of the contract, which predominates in the content of the agreement (in the case of mixed contracts), or are governed by the general rules of civil law (not in the case of new contracts).[33] Although the platform work has labor law characteristics, but in my view, it cannot be such as to allow a break from the bond of civil law without any problems. Among other things, because of the principle of freedom of contract described above, I do not agree with the view that, in these cases, the correct legislative course of action would be to bring new types of work under the auspices of labor law. Furthermore, here I would like to draw a parallel between the situation of platform work and the quality of teleworking in self-employment. Based on the statement of Zoltán Bankó, the teleworker must meet two combined conditions (entrepreneur, agent) qualified as a self-employed person: a part of the working time and the definition of the job may be the possibility of a teleworker, and the existential condition: he must appear on the market independently.[34] In the case of platform workers, the right to schedule working hours belongs to the party performing the work activity. The party providing the platform merely orients the activity provider, but does not determine the working hours. The place of work are also predominantly decided by the platform worker. Thus, based on the above finding, we can conclude that platform workers perform their activities as self-employed workers.

For my part, I would add a possible third direction to the range of possible trends, with a focus on protecting the person doing the work. In the event that new forms of work are still treated on a civil law basis - and we want to avoid the dogmatic problems - I consider it feasible to reduce the vulnerability of employed groups in private law as in the case of consumer status.[35] At the same time, I am of the view that the duality of employment, which makes it possible to work within the framework of labor law and civil law, can continue to coexist in the future. However, the reform of labor law mentioned in the previous point, which focuses on increasing flexibility, is needed in order to maintain a balance between the two systems of relations. In addition, it is worth noting that the current Labor Code[36] has brought about a significant conceptual change, which also focuses on flexibility. I would like to point out that the current Mt. also provides the parties with more opportunities to flexibly shape the legal framework and the content of the employment contract, but parties often not avail this possibility. In this context, it is worth highlighting the example of teleworking. I am not thinking here of the transitional rules that have been put in place in connection with the pandemic, but only of the phenomenon that the legal conditions for the spread of telework were in place in the previous period. However, the epidemic, as a catalyst, has initiated this process and many employers, having faced the functionality of the system and found it effective, intend to continue to apply it in the future. Many other options and legal institutions are in similar shoes. The parties do not dare to change, they treat non-traditional agreements with reservations,

[33] Kiss György: Munkajog, Dialóg Campus, Budapest, 2020, p. 93.

[34] Bankó Zoltán: A távmunkával kapcsolatos jogalkotási, jogalkalmazási és foglalkoztatáspolitikai tapasztalatok Magyarországon, Magyar Munkajog E–folyóirat 2016/2, p. 49–61.

[35] See more: Rab Henriett: A munkavállalói státusz egyes kérdései, A fogyasztóvédelmi jogról másképpen – Előképek, közjogi és munkajogi vetületek, Debrecen, 2019. p. 121–138.

[36] A munka törvénykönyvéről szóló 2012. évi I. törvény (hereafter: Mt., Hungarian Labour Law Code).

although this can be a guarantee of competitiveness, if necessary. Learning from this, I definitely see the need for a wide range of information and education for employers and employees and for the opportunities offered by labor law to be “promoted”. Employers 'and employees' organizations must play a key role in this.

Linked to platform work, but going beyond this framework, in this subsection I would also like to talk about the solution that is related to labor law but to it through atypical legal relationships. In my view, in order to strengthen the position of labor law, it is necessary for the legislator to expand the scope of atypical employment relationships. This is based on the assumption that the contracting parties prefer finished and prefabricated types much more. Furthermore, in some cases, pre-production may be practical in order to make it easier to balance the legal relationship between the parties. To do all this, it is worth clarifying, first of all, where to draw the line between including certain forms in the framework of labor law and leaving others under the jurisdiction of civil law. This is based on defining and narrowing down the delimiting criteria of labor law[37] that can function as the organizing principle of typical and atypical employment relationships. In my opinion, among the essential and delimiting criteria of labor law, the broad right to give instructions and the obligation to be available are the two criteria along which delimitation is possible, yet provide a flexible framework for shaping the legal relationship.

In the light of the foregoing, the question must therefore be asked, what is the reason why the parties nevertheless choose employment within the framework of an employment relationship over other forms? The legislator may have several answers to this and several tools are available, of which either obligation or orientation can be considered. In my view, the future and competitiveness of labor law, as opposed to forms of employment based on civil law, can only be achieved in a system of labor law based on mutual benefits. This, in turn, involves a trade-off, as the employer's interest is only linked to the form of employment under employment law if it brings at least as many benefits to it as it entails an additional burden. This may therefore lead to a slight reduction in the level of protection of employees, but at the same time it can protect the employee with far more guarantee elements than in the case of work under other subordinate legal relationships.

3.3. Return to classical contract principles

This concept has also led us back to a well-known issue in the field of labor law. This is nothing more than a dilemma of strengthening in private or public law. The development history of labor law shows some cyclicality in terms of the impact of private and public law elements on labor law. Labor law has already reached both extremes in this regard. The starting point and one of the extremes is total contractual freedom based on private law. However, this complemented the principles of a market economy and led to an imbalance between the parties. The deterioration and exploitation of the labor situation has triggered the process of enriching labor law with public law elements. Then, in some countries, labor law regulation went the other sider, as labor law in socialist countries was determined by a high number of elements of public law. In the period following the change of regime, it also brought a strengthening of private law in the

[37] See:12. Footnote.

field of labor law, which continued in Hungary in the second code after the change of regime. And here we are in the XXI. in the fourth quarter of the twentieth century, when regulation seems to be too rigid, static and public law for actors in the world of work, as employment takes place before our eyes in the direction of civil law. This trend leads, among other things, to the following concept.

György Kiss mentions the peculiarities of the employment contract as a possible future way of labor law, the use of which returns to the principles of classical contracts. Central to this concept is the theory of relation contract, a term used in the contractual sphere of economic life. A relation contract presupposes a long-term, lasting legal relationship based on a mutual interest of the parties. Within the framework of the contract, a high degree of co-operation is realized, which ensures the long-term co-operation of the parties resulting from the development of each presumed contractual environment. All this in such a way that the legal relationship and the parties are able to react flexibly to unforeseen circumstances at the moment of conclusion. However, this creates a system based primarily on trust, which is based on the enforcement of internal "socio-economic" interests and presupposes continuous negotiation skills and cooperation between the parties.[38] Appropriate debate resolution techniques are also needed to maintain a lasting relationship. For my part, however, I can maximally identify with the theory, which gives the concept its strength, in a sense it also means its weak point. Namely, that the system of relations between the parties is based on a high level of cooperation and information obligation based on contractual principles. In my view, this requires a high degree of cooperation, which may not be appropriate for the parties in all circumstances. In this context, the legal culture, mostly determined by history, which determines the attitude of a given society to the law, cannot be neglected. These factors can greatly determine the successful operation of a design.

4. Conclusions

In today's changing economic environment, traditional flexicurity institutions operate less and less efficiently. The establishment of a new system of flexicurity institutions is absolutely necessary, but this requires a re-examination of the relationship between labor law and civil law, as well as the coherence of certain elements of labor law, without legal policy "emotions".[39] The contractual freedom of the parties and the right to form a high degree of contract provide a high degree of flexibility for the parties. All this can be a threat in the field of labor law, but there are also opportunities for further development. The dilemma is, in part, what the framework should be for the parties' contractual freedom in the field of employment.

Some see the solution in expanding the dimension of dependent and non-dependent work in labor law. The category of personal employment relationships reflects this, which covers a contractual relationship that focuses on the worker who works for other consideration.[40] This clearly broadens the

[38] Kiss György: A foglalkoztatás rugalmassága és a munkavállalói jogállás védelme (Egy lehetséges megközelítés a munkajogviszony tartalmának vizsgálatához), Wolters Kluwer Hungary, Budapest, 2020, p. 36.

[39] Kiss György: Foglalkoztatás gazdasági válság idején – a munkajogban rejlő lehetőségek a munkajogviszony tartalmának alakítására (jogdogmatikai alapok és jogpolitikai indokok), Állam– és jogtudomány, 2014, p. 36–76.

[40] Mark Freedland – Nicola Kountouris: The Legal Construction of Personal Work Relations, Oxford Monographs on Labour Law 2011. p. 304–308.

scope of labor law. The proposed classification is a typology consisting of flexible, loose legal categories. According to them, standing on the basis of the existing traditions, but exceeding them, the following categories are distinguished: secure work, autonomous or freestanding work and precarious work.

We could continue the line with other trends, such as the idea called Transnational Private Labor Regulation (TPLR). The focus is on creating a "regulatory space". Based on this, (transnational) labor law is not a well-defined right, but rather a complex, hybrid, experimental regulatory space, different variants - classic versus innovative, "hard" versus "soft" law, "state" versus "non- state ", etc. - filled by a cavalcade of control methods.[41]

But we could even mention the idea of the European Commission, which would increase safety and working in a wide range of legal relationships by creating a catalog of minimum rights.[42]

Pushing the boundaries of dependent work is closely linked to issues of classification and legal personality. According to some views, there are basically three ways in defining the boundaries of dependent work in the European labor law system: the first is the extension of the concept of emloyee, the second is the creation of new (third) type of worker (tertium genus), the third is the creation of extension of certain rights to certain broad categories.[43]

In conclusion, I wanted to shed more light on the fact that in addition to the main directions listed in the study, there are many other possible solutions. One thing is for sure, however, that labor law has reached another milestone.

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[43] Jakab Nóra: Európai és magyar munkajogi szabályozás a változó gazdasági viszonyok között, különös tekintettel a magyar munkajogi kodifikációra, Bíbor Kiadó, Miskolc, 2018, p. 30.

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