CHANGES IN EXERCISING EMPLOYERS' RIGHTS DURING THE COURSE OF THE STATE OF DANGER

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Abstract

Among other factors, the state of danger (a verbatim translation of veszélyhelyzet in official documents) declared because of the pandemic has made life more difficult than before also for the parties involved employment relationships. The constantly changing legislative environment and the increased presence of COVID-19 have put employers and their employees in a difficult situation both from economic and human perspectives. In what follows, I intend to give an overview of the regulations related to working during the state of danger declared because of COVID-19 from the point of view of the employers' rights and authority, highlighting two important aspects: that of the institution of home office and that of the vaccinations.

Keywords: *employer's authority, labour law, state of danger, COVID-19, Hungarian Law, home office, vaccination.*

1. Introduction

COVID-19 has forced, and still continues to force, the emergence of political, economic and social responses also in the dimension of legal systems, which prove to be unprecedented in a lot of cases. We have seen that, in the past period, due to the difficulties generated by the pandemic, Hungarian legislature has also adopted a number of measures that sometimes tend to seem less than logical at first glance. In the following, I will review the government decrees for the "settlement" of the situation that has been around for more than two years, focusing mainly on the changes affecting the issue of employers' rights and authority. [1]

My hypothesis is that employers' rights have been expanded due to the provisions and measures prompted by the pandemic situation, but this expansion has not been followed by adequate guarantee protection implements either on the part of the employees or on the part of the employers in order to facilitate avoiding potential adverse consequences later. In my opinion, employers have acquired additional rights that also greatly influence the exercise of fundamental rights, whose legal application during a period of the normal or ordinary legal order can prove to be a real headache even for the bodies that fulfill the role of the state. However, these additional rights have been accompanied by extra obligations with unforeseeable consequences, for which the emergency

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[1] Tamás Gyulavári detailed the overview of the most relevant government regulations in his study. Tamás Gyulavári, *Covid-19 and Hungarian Labour Law: the 'State of Danger'*. "Hungarian Labour Law E-Journal", vol. 2020/1. http://hllj.hu/letolt/2020_1_a/06_TGyulavari_ENG_hllj_2020_1.pdf (last access 16.08.2022.).

legislation has failed to provide adequate means for protection from them.

The right tool for examining the above problem and, simultaneously, the purpose of this study, is to present a comparison between the scope of the regulations affecting employers' rights during the ordinary and extraordinary legal order, while pointing out the changes that have occurred in the meantime and emphasizing their potential effects on the future. Primarily, essential information related to the distinction between remote work and home office, which has also become the focus of academic interest during the pandemic as well as the consequently emerging employers' rights and obligations are to be highlighted. Then, despite the fact that the government decree requiring it is no longer in force, I will examine the impact of mandatory vaccination on the private sector. [2]

For the sake of completeness, I wish to point out that, despite the fact that the state of danger/emergency caused by COVID-19 has ended, the oftentimes adverse consequences caused by the legislation created during its existence continue to have an impact on the labor market today as well as in several years to come. In view of all of the above, this study, in addition to the fact that it mainly focuses on legislative measures and provisions that are no longer in force or effect, cannot be considered "outdated" from the point of view of the sometimes negative effects affecting the subjects of the employment relationship.

2. About employers' rights and authority in general

First and foremost, I wish to emphasize that the chief characteristic feature of traditional employment relationships is the employers' predominance, which is the result of subordination. This can be seen mainly in relation to the sub-rights on the employers' side, which can be classified into three groups: the right to instruct (manage), control and discipline. [3] These rights have formed the authority of the employer since the beginning of the employment relationships that are traditional nowadays. [4] The exercising of these extensive rights is coupled with broad protection on the part of the employees. Nevertheless, and despite this, certain employee interests and rights are often violated, which can only be remedied through court proceedings. [5]

The enforcement of the above "triad" in traditional employment relationships and during the time of "regular" legal order can be achieved relatively easily – yet covering a path paved with certain obstacles. [6] The

[2] See more about the employer's basic obligations in: Tivadar Miholics, *A munkáltató kötelezettségei a munkaviszonyban*. "Magyar Jog", vol. 2018/7-8., pp. 392-400.

[3] László Román, *A munkajog alapintézményei II. kötet.* Pécs, University Press, 1996., p. 210.

[4] In connection with the employer's authority as an essential element of the employment relationship, the most recent comprehensive research is attributed to László Román, who paid special attention to the employer's rights. In connection with the excess of power, see: László Román, *A munkajog alapintézményei I.* Pécs, Janus Pannonius Tudományegyetem, Állam – és Jogtudományi Kar, 1994.

[5] In connection with the rights existing in a traditional employment relationship, see more: György Kiss, *Alapjogok kollíziója a munkajogban.* Pécs, Justis, 2010.

[6] See more about the content and framework of the right of instruction and control: Réka Zambó, *A munkaviszony GPS-e: a munkáltató utasítási joga*. In: Lajos Pál – Zoltán Petrovics (ed.): *Visegrád 16.0 A XVI. Magyar Munkajogi Konferencia szerkesztett előadásai*, Budapest, Wolters Kluwer Hungary, 2019., pp.154-169., Péter Sipka – Márton Leó Zaccaria, *A munkáltató ellenőrzési joga a munkavállaló munkahelyi számítógépén tárolt magánadatai fölött*, Munkajog, vol. 2018/2. pp. 45-49.; Mária Kulisity, *A munkáltató jogellenes ellenőrzésével és adatkezelésével kapcsolatos bírói gyakorlat*, In: Zoltán Bankó – Gyula Berke – Erika Tálné Molnár (eds.): *QUID*

governing domestic and international legal provisions, as well as established judicial practice, mostly clarify the content of both the employers' right to instructions and the right to control. A specific and clear "scenario" has been developed for cases where the employer violates the rights of employees by crossing the limits already defined in principle in addition to the specific provisions in the legislation, be it an obligation to carry out an illegal instruction, a violation of the basic rights of the employee during the exercise of the right of control, or an unlawful termination of the employment relationship. [7]

First of all, it should be noted that there is no specific and determined concept regarding the issue of employers' rights and authority. [8] This is possible in view of the fact that, as a set of rights and obligations that pervade the employment relationship in general, this issue does not represent an itemized list of the totality of rights and obligations from the point of view of the individual content elements. With this in mind, I consider it necessary to emphasize that I am only highlighting aspects relevant to the present study regarding the employers' rights and authority. These include primarily the provisions of § 53 of Act I of 2012 on the Labor Code; namely, derogation from the employment contract, such as the possibility of employment different from the employment contract as the right of the employer, and the provision of a safe working environment that does not pose a risk to health as the employers' basic obligations. Nonetheless, it is important to note that, during the course of analyzing all these areas, we cannot draw a sharp line of demarcation between other rights and obligations, which are regulated as general behavioral requirements, among other things, since they are closely connected. [9]

Further on, I will examine the scope of the rights and obligations that make up employers' rights and authority, especially in the light of the legislation during the state of danger, with particular emphasis on the individual sub-areas mentioned above.

3. The labor code during the period of state of danger caused by COVID-19

As I have indicated in the introduction of this study, the labor law of emergency situations such as the state of danger is analyzed as a central element in order to find

JURIS? Ünnepi kötet a Munkaügyi Bírák Országos Egyesülete megalakulásának 20. évfordulójára, Budapest-Pécs, PTE-ÁJK– Munkaügyi Bírák Országos Egyesülete, 2018. pp. 235-257.

[7] I share the position of György Nádas in connection with the fact that the fundamental limitation of the employer's right to give instructions, in addition to the requirement of equal treatment, is fair consideration, as one of the great innovations of labor law regulations. Certain occupational health and safety regulations and the obligation to organize and ensure safe working conditions that do not endanger health can be mentioned as substantive legal limitations. György Nádas, *A munkáltatói utasítás – jog vagy kötelezettség?*, In: Lajos Pál – Zoltán Petrovics (eds.): *Visegrád 16.0 A XVI. Magyar Munkajogi Konferencia szerkesztett előadásai.* Budapest, Wolters Kluwer Hungary, 2019. pp. 23-37.

[8] György Nádas – Tamás Prugberger, *Európai és magyar összehasonlító munka- és közszolgálati jog*. Budapest, Wolters Kluwer Hungary, 2014. p. 85.

[9] These include the protection of the legitimate economic interests of the employer, the prohibition of the abuse of rights or the principle of good faith and honesty. In connection with the content and more detailed analysis of the legal principles, see more: Gyula Rátz, *A munkáltatói jogos érdek fogalma*. In: Lajos Pál – Zoltán Petrovics (ed.): *Visegrád 15.0 A XV. Magyar Munkajogi Konferencia szerkesztett előadásai*. Budapest, Wolters Kluwer Hungary, 2018. pp. 235-271.; Márton Leó Zaccaria, *A munkáltató jogos gazdasági érdekének védelme*, "Gazdaság és Jog", vol. 2014/2., pp. 18-23.; István Herdon – Márton Leó Zaccaria, *A Kúria munkaügyi határozatának megállapításai a joggal való visszaélés tilalmáról*, "Jogesetek magyarázata: JeMa", vol. 2020/3-4., pp. 43-51.; Tamás Tercsák, *A joggal való visszaélés - A joggal való visszaélés elmélete, bírói gyakorlata és munkajogi jelentősége*, Budapest, HVG-ORAC Lap – és Könyvkiadó, 2018.

answers to the questions posed. First of all, I wish to note that, due to the continuous legislative changes, I will only highlight here the aspects that were the cornerstones of the legislative provisions made during the pandemic, and along which the surplus – or, perhaps, disadvantage – that has affected the subjects of the employment relationship in recent years can be presented in an appropriate way.

3.1. The issue of working from home: is it a necessary innovation or a "tacit" form of employment hiding between the lines?

Modernization not only brings technological achievements and advances to life; it also affects the dynamics of labor relations. It is becoming more and more common and, for certain jobs, it is even expected by employees to be able to do their work flexibly, perhaps even from home, at a time that suits them. Based on all of these factors, it is not surprising that, during a global crisis that was triggered by a virus infection, the above needs, in addition to multiplying, can attract much more attention and acquire a prominent role, thus pushing both employers and employees out of the "traditional " framework of the employment relationship.[10]

From the point of view of this study, it is by all means necessary to point out one of the most frequently arising issues of employment during the state of danger, which is also of particular importance in connection with the above digitalization: home office or remote work? Although the relevant literature has been concerned with this problematic duality for a long time, [11] there are some difficulties to sort out right at the initial steps regarding this issue. The thing is that, while there is even a statutory definition of remote work(ing)/telework(ing) [*távmunka*] available, the same cannot be stated with such clarity in terms of definition in the context of the issue of "home office" [12]

According to the above, based on the legal concept, teleworking is an activity carried out on a regular basis at a location different and separate from the employers' premises, using an electronic or computer technology device and the results of which are transmitted electronically.[13] If we consider this concept as a point of departure, then, as a result of the comparison with the above, we can come to the conclusion that, although it is classified under this heading in a number of cases in everyday sense, it still cannot be considered teleworking if the employers allow the employees to work from home, as well as for them to use some kind of computer technology device during this process to keep in touch with their colleagues or superiors. [14]

The main guideline on the basis of which we can differentiate between the two is the dichotomy between regularity and

[10] According to the report of the Central Statistical Office (hereinafter: KSH), while the proportion of people working remotely or in a home office was constantly changing in line with the waves of the epidemic, it amounted to 8.6% for the whole of 2020, which was three times the 2.9 % of the previous ten years average. (https://www.ksh.hu/docs/hun/xftp/idoszaki/koronavirus-tavmunka/index.html (last access 09.08.2022.).

[11] Lajos Pál, *A szerződéses munkahely meghatározása – a „home office" és a távmunka.* "Munkajog", vol. 2018/2. pp. 56–59.

[12] István Herdon – Henriett Rab, *Megvalósítható-e jogszerűen a home office? A home office fogalmi ismérvei és munkajogi keretei,* "PRO FUTURO", vol.2020/3. p. 66.

[13] LC. 196-197.§.

[14] Zoltán Bankó, *A távmunkával kapcsolatos jogalkotási, jogalkalmazási és foglalkoztatáspolitikai tapasztalatok Magyarországon*, "Magyar Munkajog E-folyóirat", vol.2016/2. https://hllj.hu/letolt/2016_2/M_04_Banko_hllj_2016_2.pdf (last access 15.08.2022.).

irregularity.[15]Accordingly, teleworking is a regular activity. In the case of a home office arrangement – on the basis of a more detailed analysis – it can be established that, on the one hand, the "transfer" of the employers' unilateral rights related to the place of work to the employee can be realized, due to which – according to the provisions related to unilateral commitments contained in § 16 of the Labor Code – the employees become entitled to choose their home as their place of work.[16] On the other hand, however, we cannot forget about the possibility arising from the employers' authority, as an additional option, given that the employer – arising from § 53 of the Labor Code – can essentially unilaterally order employment that differs from the employment contract at any time regarding either the job title or the working conditions concerning location. Thus, especially during a state of emergency or danger, it can often happen that employers, acting in their discretionary powers, designate the employee's home as the workplace, which, in practice, may turn out to be mostly irregular, in contrast to the regularity that exists in the concept of teleworking above.[17]

Arising from the employers' authority, the above possibility was confirmed by the currently no longer effective Government Decree 47/2020 (III. 18.) on the immediate measures necessary to mitigate the impact of the coronavirus pandemic on the national economy. This decree introduced a relatively "surprising" provision. Based on this provision, the Labor Code must be applied for thirty days after the end of the emergency with the exception that the employer can unilaterally order the employee to work at home and to work remotely. In this regard, it is necessary to emphasize that the reason for these changes was to comply with the prohibitions and restrictions imposed for the duration of the emergency, so the new rules should and could only be applied for these purposes. Besides being limited to a purpose and applying for a fixed period of time, the government decree reshaped the hierarchy of legal sources related to labor law, [18] according to which the scope of agreement of the parties is relatively dispositive only with regard to the second part of the Labor Code, while the rest of the Labor Code is cogent.[19] Based on this, the Government Decree contradicted the basic requirement related to teleworking, according to which the parties in the employment contract must expressly agree if the employee is to be employed in the framework of teleworking. In this context, it can be seen that the employers' authority has been broadened, reducing the possibility of consensus. However, in my opinion, this does not infringe the interests of the employees, given that the provision indicated the above option as a right that can be exercised on the employers' part only for a specific period of time.

As a matter of course, the above difference can be examined from several

[15] See more: István Herdon: *A munkavégzés helyének megváltoztatása – távmunka, „home office". Mailáth György Tudományos Pályázat 2020: Díjazott Dolgozatok, Budapest, Országos Bírósági Hivatal*, 2021, pp. 650-706.

[16] Bence Molnár took this position in his study regarding the ordering of the home office. Bence Molnár, *Gondolatok a home office-ról általában és vírus idején.* "Magyar Munkajog E-folyóirat", vol.2020/1., p.40. http://ius.jak.ppke.hu/letolt/2020_1/03_MolnarB_M_hllj_2020_1.pdf (last access 15.08.2022.).

[17] Pál ibid. (2018) pp. 58-59.

[18] Tamás Gyulavári, *Munkajogi jogforrások*. In: Tamás Gyulavári (ed.): *Munkajog*, Budapest, ELTE Eötvös Kiadó Kft., 2019, pp. 47-56.

[19] In this context, Attila Kun expresses similar views in his study, 40/2022. (III.11.) in connection with the Government Decree. See more: Attila Kun, *Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről.* "*Glossa Iuridica*", vol.2020/VII. (Law and Virus Special Issue), p.146.

aspects. [20] These include the following: the work schedule, the working hours, the provision of work tools and the observance of certain occupational health and safety regulations. The justification for the latter is that it may still be questionable whether the employees have the appropriate equipment at home to perform their work, as well as whether the necessary tasks are performed in safe conditions, in accordance with occupational health and safety aspects performed on the premises. In this context, the employers must be particularly careful, given that they remain responsible for observing and ensuring the above regulations – regardless of where the work takes place geographically. In my opinion, if the employers act with due care and provide sufficient comprehensive information for the employees – either in a unilateral instruction or in a separate regulation – about how to maintain the conditions they require, it can definitely satisfy the basic requirements related to the above obligations.[21] However, the focus of this study is the examination of the scope and content of the employers' rights and authority. Consequently, in the following, without going into excessive detail regarding the individual sub-aspects, I will mainly highlight elements different from the traditional employment relationship in accordance with the hypothesis outlined in the first chapter.

It can be clearly seen that, as a result of the pandemic, certain legal institutions that had already existed before have come to the fore, but their importance has become unquestionable only now. Remote work/teleworking and home-office-type work can also be classified as two of these. These two specific forms of work have become part of the everyday life of labor law actors and, at the same time, the detailed and precise development of the related regulations have become the main task of the legislator.

The greatest challenge for the legislator at this point is to find a balance between economic rationality and the social nature of labor law. We agree with PÉTER ZOLTÁN SINKÓ, according to whom "the goal is to create more flexible working relationships, while at the same time ensuring a greater degree of protection for employees. This is not only justified for the reason of the proper management of emergency situations and state-of-danger conditions. Both at the national and the European Union levels, everything seems to indicate that, with the development of information technology tools, digitization as a phenomenon will take control in more and more areas." [22]

Based on all of this, the legislator had to strike a delicate balance in the regulation of the above legal relationships, with which it could simultaneously protect the interests of employees and facilitate the economic progress of employers.

In my opinion, two options are available to the legislator to achieve this goal. On the basis of the above – regulated as a separate atypical legal relationship – based on remote working, it can expand the range of legal relationships aimed at working, creating a special set of rules in

[20] See more in connection with working time rules during the state of emergency: Gábor Kártyás, *A munkaidő szabályok veszélyhelyzet idején. Megvéd vagy gúzsba köt?* "Magyar Munkajog E-Folyóirat", vol. 2020/1, pp. 47-62. https://hllj.hu/letolt/2020_1/04_KartyasG_M_hllj_2020_1.pdf (last access 16.08.2022.).

[21] Regarding employer regulations, see: Tamás Gyulavári – Attila Kun, *A munkáltatói szabályzat az új Munka Törvénykönyvében.* "Magyar Jog", vol.2013/9., pp. 556-567.

[22] Zoltán Péter Sinkó, *A digitalizáció hatása az atipikus munkavégzésre. A távmunka és a Home Office szabályozásának irányvonalai.* "Erdélyi Jogélet 2", vol. 2022/1., pp. 55-68. https://www.jogelet.ro/index.php/eje/article/view/191 (last access 09.08.2022.).

connection with the regulations applicable in the course of working from home (home office). Alternatively, by taking advantage of the high degree of similarity between the two legal institutions, it can amend the rules of remote working, so that the rules laid down therein are properly applied not only to work that can be done with electronic computing devices, but also to any other employment whatsoever. [23] In my view, the proposal I have put forward in the first place would be suitable for consideration, given that – of course, after proper integration into the labor Code – by applying this method, the characteristics that distinguish home-office work from remote work and mainly converge with typical, traditional employment would not be fragmented and would not merge into an already existing atypical legal relationship that differs in some aspects. Besides, employees and employers would get an additional option, which would be available to them as a potential opportunity to normalize the economic conditions generated by the pandemic. In addition, the second option mentioned above also has a "positive" side: by expanding the existing regulation, we can expect less risk, given that the principles developed by the jurisprudence regarding remote work can be considered mature. In addition, by analogy, they can thus become applicable in the context of settling disputes that arise related to home-office work subordinated to remote work. [24]

Recognizing the need for the amendment, the legislator put an end to the debate on the questionable situation that had been going on for several years by amending the Labor Code effective of June 1, 2022. The above amendment extended the rules of remote working and treated home office work as a subset, classifying it under the already existing provisions on atypical employment, choosing the simpler – and in some respects perhaps even safer – solution to end the problem. However, in view of the fact that the relevant legislative change is outside the immediate scope of this study, and also that the possible problems arising during the application of the law have not yet surfaced due to the novelty of the law amendment, we refrain from further analysis in this context. Nonetheless, as a part of a potential future research project, the interesting topic of the "survival" of this provision may easily come to the fore.

3.2. A few thoughts about another government decree no longer in effect: vaccinations at the workplace

As I have already mentioned in this study, one of the basic obligations of the employer is to ensure safe working conditions that do not pose any risk to health. [25] However, it is always necessary to examine individually what "safe working conditions" mean. During the virus situation that this study focuses on, in addition to reviewing the statistics based on general epidemiological data, it is also necessary to examine the given workplace and to take into account the health status of the

[23] In connection with the high degree of similarity between these two legal institutions, see more: Gábor Fodor T. – Kristóf Tóth, *Occam borotvája, avagy a "home office" mint a munkajog unikornisa*. "Munkajog", vol.2021/4., pp. 34-38.

[24] Csenge Kárpáti, *„Home office" napjainkban – Az otthoni munkavégzés jelensége, széles körű elterjedésének munkajogi vetületű problémái*, "Munkajog", vol. 2022/2., p. 30.

[25] Henriett Rab, *A versenyszektor foglalkoztatását ösztönző mechanizmusok bemutatása*, "JURA", vol. 2018/2., p.519.

personnel working there.[26] Thus, the employers' obligations regarding working conditions that do not endanger health have multiplied because, in addition to due diligence, they also had an obligation to provide additional information to the employees. Accordingly, the employers need to inform the employees about the potential risks of infection, as well as about the measures and work organization changes they have taken. I believe that it may still be legal for the employers to require that the employees should take and maintain certain precautions, be those about enhanced hand hygiene, keeping a safe distance or even the mandatory wearing of a mask. At the same time, it may be noted that, if the employers, exceeding their authority, order the retention of objectively unjustified measures at the workplace, or if these measures represent an excessive interference in the employee's private sphere, then, after communicating this to the employer – and if this should not lead to results – the employee also has the opportunity to bring the potential violation of rights to court in order to remedy the situation. [27]

The unilateral ordering of mandatory vaccinations is perhaps the most controversial area of employer measures contended by employees, which is regulated by Government Decree 598/2021 (X. 28.) on the protection of workplaces against the coronavirus. As I see it, this decree gave the employer extraordinary power even compared to the traditional subordination pattern existing in economic labor relations. In addition to the fact that it caused serious fundamental rights concerns for employees, it also did not offer employers, contrary to appearances, satisfactory guarantees when exercising the above rights. Considering that Government Decree 598/2021 (X. 28.) expired in March 2022, during its less than 6-month existence, it forced employers to make decisions at a level that they alone would have to face the possible consequences of at a later stage.

According to this government decree, in the absence of medical contraindications, vaccination can be prescribed as a general condition of employment for those employed by the employers on the basis of a unilateral decision. If the employee does not comply with the employers' call to receive the vaccination, the employer can make the employee take unpaid leave, after which the employer can terminate the employment relationship with immediate effect after one year has passed if there has not been any change in the vaccination status of the employee in the meanwhile. In this context, however, it is necessary to point out that, in contrast to a number of state-of-danger government decrees, the legislator did not exclude the application of the general rules in this decree, which in this case mostly represent the provisions of the Labor Code.[28] Pursuant to points a) and b) of paragraph (1) of § 78, of the Labor Code, the employer or the employee may terminate the employment relationship without notice if the other party willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship or otherwise engages in conduct that would render the employment relationship impossible. The

[26] Péter Sipka – Márton Leó Zaccaria, *Megújuló tájékoztatási kötelezettség a munkajogi viszonyokban és azokon túl*, "Munkajog", vol.2019/3., pp. 1-8.

[27] Dóra Takács – Márton Leó Zaccaria, *Hatékony és tényleges? Munkajogi irányelvek vizsgálata a Kúria joggyakorlatában, figyelemmel a munkavállalói igényérvényesítésre*, "Pro Futuro", vol. 2021/2., pp. 193–216.

[28] Gyula Berke also investigated the impact of emergency standards on labor law. See more: Gyula Berke, *Munkajog veszélyhelyzetben.* In: Lajos Pál – Zoltán Petrovics (eds.): *Visegrád 17.0 A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer Hungary, 2020. pp. 21–41.

termination without notice based on point a) can be justified according to the Labor Code at the same time as the failure to take the vaccination, regardless of the fact that, according to Section (9) § 2 of the Government Decree, the termination without notice after one year from the date of imposing the vaccination – in which case the employer can assign the employee to take unpaid leave – if the employee has not provided proof of vaccination for the employer by then. Based on all of the above, failure to receive the vaccination is a significant breach of obligations arising from the employment relationship, which justifies the immediate termination of employment on the part of the employer, which right – considering that it was not excluded by the legislator – can be exercised not only on the basis of the relevant government decree, but also on the basis of the Labor Code. This type of termination of the legal relationship – in addition to the employers' requiring of vaccination – raises certain fundamental rights concerns both on the part of the employee and the employer.

From the point of view of this study, the primarily relevant question is whether the state could authorize an employer "operating" in the private sector to unilaterally decide on requiring vaccination while significantly expanding its powers.[29] In order to answer this question, we first need to examine the limitation of the relevant fundamental right [30] – mainly the right of self-determination of employees – and the behavior that can be generally expected in the given situation from the point of view of judging the employers' behavior. In my opinion, the above question can be answered in the negative, given that, with regard to the specific case concerning vaccination – as it limits the employee's right to self-determination, which can be derived from the right to human dignity – only the state has such a level of monopoly regarding the restriction of certain basic rights. Thus, it cannot be outsourced to either a natural person or a legal entity, since even with the behavior generally expected in the given situation, there may be adverse consequences of the restriction of fundamental rights that are not only unforeseeable, but also unknown from the employers' point of view. When making decisions that restrict fundamental rights, the test of necessity and proportionality cannot be ignored, which is a formula limiting a fundamental right for which the state and not the private sector employer has the necessary information. [31] As co-authors ISTVÁN HERDON and HENRIETT RAB point out: "The employer does not have any data that would show the danger of jobs in

[29] Examining the conditions necessary to resolve the conflict between the obligations of the parties to the employment relationship can also raise an interesting question. In this context, Lajos Pál comes to the conclusion that, despite a lawful employer's instruction, the risk of fulfilling the employer's obligation to ensure healthy and safe working conditions cannot be transferred to the otherwise able-bodied employee, "therefore, the consequences of the lack of employment are not borne by the employee, but by the must be worn by the employer. The fact that the employer avoids employing the employee cannot be considered as an external and inescapable reason that would exempt him from the payment of compensation for downtime." Lajos Pál, *Munkajogi elvi kérdések: a foglalkoztatási és rendelkezésre állási kötelesség teljesítése a veszélyhelyzet tartama alatt*. "Glossa Iuridica", vol. 2020/VII., (Law and Virus Special Issue), p. 172.

[30] See more about the right to health self-determination and other patient rights: Judit Zákány, *Jogok és igényérvényesítési lehetőségek az egészségügyi ellátással összefüggésben I.* "MED ET JUR", vol. 2019/1., pp. 10-15., Judit Zákány, *Jogok és igényérvényesítési lehetőségek az egészségügyi ellátással összefüggésben II.,* "MED ET JUR" vol. 2019/2., pp. 10-15.

[31] Fruzsina Gárdos-Orosz, *Az alapjogok korlátozása*. In: András Jakab – Miklós Könczöl – Attila Menyhárd – Gábor Sulyok (eds.): "Internetes Jogtudományi Enciklopédia". (Constitutional law column, column editors: Eszter Bodnár, András Jakab) http://ijoten.hu/szocikk/az-alapjogok-korltozsa (last access 14.08.2022.).

such an epidemic situation, nor does it have any additional statistics that show the employees at risk. Likewise, the employer cannot assess the success of individual alternative therapies and is also not competent to judge the frequency and severity of complications caused by possible vaccinations." [32] Accepting the above point of view, we can come to the conclusion that employers need to consider imposing the vaccination for each employee individually. This, however, represents an extraordinary burden for the actors of the employment relationship, especially for the employers, since in addition to having to comply with the legal requirements, they cannot also endanger their own economic activity by dismissing too many employees or sanctioning them in other ways for not taking the vaccination. [33]

The outlines of the problems associated with imposing the mandatory use of vaccinations can already be seen, taking into account the constitutional court proceedings regarding the mandatory nature of vaccinations initiated by health workers or those employed in the public sector, as well as those involved in the economic employment relationship. All of these so far have been rejected without exception by the relevant judicial forum, because they did not establish a violation of fundamental rights in connection with the relevant legislation.

As it can be clearly seen from what has been said so far, employers – due to the task imposed on them by the state – can, in my opinion, experience problems on two levels when ordering or not ordering vaccinations for employees. On the one hand, there may be an employee claim for compensation for injuries and damage resulting from the imposing of the vaccination and the health risks that may arise in connection with the ordered and administered vaccination – due to a severe allergic reaction or the development of unknown complications. On the other hand, a claim for damages or compensation may arise on the part of the employees or their relatives when the employers, despite the fact that the law gave them the opportunity to do so, failed to impose the compulsory vaccination, so their employees later get infected with the virus, resulting in both material and personal damage.

With regard to claim enforcement, we agree with the position of co-authors ANNA KOZMA and LAJOS PÁL, according to which the employers' right of discretion regarding vaccinations falls within the framework of the relevant decree, so "the condition of its legality is that it is in accordance with the requirements of the law, i.e., the obligation to take the vaccination is for the sake of protecting health, and the means used must be adequate to achieve the desired goal. The employers' instruction is unlawful if it does not meet the conditions of the regulation." [34] The consequence of all this is that the legality of the employers' order imposing vaccination cannot be disputed in a court proceeding; however, the kind of sanction the employer applies based on the refusal of this order, and whether it is imposed in accordance with the law, can already serve as a sufficient basis for the

[32] István Herdon – Henriett Rab, *Hogyan írható elő kötelezően a védőoltás a gazdasági munkaviszonyokban?,* "Közjogi Szemle", vol. 2021/4., p. 3.

[33] See the cited decisions of the Constitutional Court regarding health care workers: Constitutional Court Decision no 3537/2021. (XII. 22.), in relation to those employed in the public sector: Constitutional Court Decision no 3128/2022. (IV. 1.); with regard to those involved in the economic employment relationship: Constitutional Court Decision no 3088/2022. (III. 10.).

[34] Anna Kozma – Lajos Pál, *A védőoltásra kötelezés feltételei a munkajogviszonyban.* "Munkajog", vol. 2021/4., p. 20.

employee in a lawsuit. I wish to note that, in such a legal dispute, the court may investigate the legality of the employers' instruction and the conduct of the appropriate consideration as a possible preliminary question, the burden of proof for which would be on the employer. [35]

4. Conclusions: the possible future labor-law-related consequences of the virus situation

In this study, I have primarily tried to point out, by comparison, the essential differences that affect the employers' rights and authority operating during the ordinary and the extraordinary legal order introduced because of the state of danger. In doing so, given that, in the past period, these two subjects have become the focus of interest in both everyday and academic life, I have highlighted the differences between the places of work in home office and remote working, examining the scope of the employers' rights in the given forms or arrangements of work.[36] Following this, I have analyzed the topic of mandatory vaccinations in economic employment relationships, which has also attracted a lot of attention, while the focus of my query has also been the employers' authority.

All in all, it can be concluded that the employers' authority was minimally broadened in some aspects compared to the general one during the state of danger/emergency. In this context, I need to highlight the now-out-of-force legal option, according to which the employer could unilaterally –and without the employee's consent – determine the place of work, which is otherwise an essential element of the employment contract, and which could even coincide with the employee's home. However, it is important to point out that, in my opinion, the employers' power is by no means unlimited, even during a state of danger/emergency, since the extended application of the rights that fall under the authority of the decree can only be applied with due care, without harming the interests and rights of the employees and the adequate occupational health and safety and liability frameworks provided by the employer. [37]

As regards the individual safety precautions – be them about the use of masks at work or the instruction to receive vaccinations – in a way similar to my opinion regarding the unilateral determination of the place of work, I wish to note that, although the employer has been granted the right by the legislator, there are still serious concerns about them that may affect the fundamental rights of both parties. [38] These concerns or problems affecting fundamental rights have either not surfaced, or have surfaced only to a lesser extent in economic labor relations. However, the legislator's decision, mainly related to vaccinations, according to which employees are obliged to receive vaccinations based on the employers' instructions, has created another dilemma

[35] György Nádas – Gergely Árpád Kiss, *A munkajogi perek átalakulása*. "PRO FUTURO", vol. 2021/2., p. 170.

[36] See more: Zoltán Bankó – Péter Sipka, *Otthoni munkavégzés, távmunka: A munkavégzés helyének munkajogi kérdései*. Budapest, Saldo, 2021.

[37] Péter Sipka, *A munkáltató felelőssége az otthoni munkavégzés során*. In: Lajos Pál – Zoltán Petrovics (eds.): *Visegrád 17.0 A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*. Budapest, Wolters Kluwer Hungary, 2020. pp.118-129.

[38] In this context, in addition to the right to self-determination, we also need to mention the right to work as a fundamental right under constitutional protection. See more Attila Kun, *A munkához való jog*. In: András Jakab – Miklós Könczöl – Attila Menyhárd – Gábor Sulyok (eds.): "Internetes Jogtudományi Enciklopédia", HVG-ORAC, 2021. p. 1., 6. and 21. https://ijoten.hu/uploads/a-munkahoz-valo-jog.pdf (last access 15. 08. 2022.).

and some tension between the parties involved in the employment relationship. In this regard, in accordance with my findings in part 2 of this study, I need to point out that the additional rights granted to the employer did not come with adequate guarantees either from the aspect of the employees or of the employers. In this context, given that employers had to terminate a considerable number of employment relationships due to refusal to take vaccinations, the number of court proceedings aimed at the enforcement of such claims may increase to a great extent, the center of which is the legality of the application of sanctions associated with the refusal of the employers' instructions.

Without taking a clear position in this regard, which is hindered by the lack of a uniformly developed practice in the literature and jurisprudence at the time of the conclusion of this study, I would predict, as a kind of speculation or as a potential future research topic, that an extremely sensitive and difficult substantiation procedure is supposed to be conducted during the course of court proceedings or litigation initiated due to claims related to refusal to take vaccination.[39] During the course of the latter, the employers would find themselves in a particularly difficult situation, given the fact that they are burdened with proving that the application of the contested sanction was not excessive. In this regard, a previously effective decree is available, which, however, without providing any other guarantee protection to either the employer or the employee, specified the possibilities of applying the legal consequences. Based on all of this, we can say that the hypothesis formulated in the introduction has been verified while, according to the contents of this study, we can come to the conclusion that the emergency employer authority is both a blessing and a curse for each and every one of the parties involved.

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[39] I share Anna Csorba's point of view regarding the fact that, in addition to the sanctions associated with the refusal of vaccination, among other things, wage reductions as a result of reduced working hours, compensation and compensation claims related to working in the home office may form the basis of the majority of labor lawsuits in the coming years. Anna Csorba, *Milyen típusú munkaügyi perek várhatóak a corona-vírus hatására?* "Magyar Munkajog E-Folyóirat", vol. 2020/1., https://hllj.hu/letolt/2020_1/02_CsorbaA_M_hllj_2020_1.pdf (last access 16.08.2022.).

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