ARE WE SAYING THE SAME THING, BUT ACTUALLY SOMETHING DIFFERENT? - EXTRACTS FOR A THEORY OF LEGAL INTERPRETATION IN LABOUR LAW[1]

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Abstract

As a cross-cutting area of law, labour law presents many difficulties in interpretation. Although legal interpretation issues are essentially dealt with in legal theory, the specificities of labour law raise a number of issues that need to be treated specifically from a labour law perspective. One feature of labour law, which practitioners and the literature no longer dispute, is that it mixes private and public law norms, which can provide a number of novae for research into the methodology of interpretation. Labour law is a status law, which is meant that it seeks to regulate exclusively the organized work of the human being. The interpretative horizon of labour law is affected by the fact that this area of law is regulated at several levels. While the classical private law framework is dominated by national sources of law, labour law is also extensively influenced by the products of European Union law. There is no doubt that the private law roots of contract-based labour law are still dominant, but there is a growing trend towards the use of legal interpretation methods derived from EU law, which is devoid of private law doctrine. There is often a conflict of terminology and interpretative methods between domestic and international law, including EU law, which cannot be resolved by classical methods. In light of the above, my essay will focus on the legal interpretation methods of labour law, with particular attention to both theoretical and practical positions. Among the methods of interpretation, I will examine their relevance and prevalence at the EU and national level, and attempt to draw conclusions from these findings for the sustainability of labour law.

Keywords: *legal interpretation methods, European Union law, Hungarian Law, labour law, soft law.*

1. Introduction

Legal theory basically deals with methods of legal interpretation. This finding, although debatable, suggests that those dealing with individual areas of law often tend to ignore the methodological analysis of the interpretation performed by the legal practitioner. In my opinion, this is also true in the field of labour law, even though this is precisely the overarching legal field that contains a miscellany of many private and public law norms[1], as a result of which the research on the methodology of interpretation can provide many new academic findings. Recently, however, a number of valuable academic publications

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[1] Manfred Weiss, *The future of labour law in Europe, Rise or fall of the European social model?,"*European Labour Law Journal", Vol. 8/4, p. 346.; György Kiss, *Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre. (The new Civil Law Code and labor law regulations, with particular regard to individual employment contracts.)* "Polgári Jogi Kodifikáció", vol. 2000/1, p. 15.

have been published, which have refuted the idea of the exclusivity of legal application along the lines of classical hard law and outlined an interpretation based on principles that go beyond the textual positivist interpretation of individual codes or other legislation.[2] Labour law, academically proven to be [3] – at least relatively speaking –an independent field of law, can be an excellent breeding ground for the emergence of other legal norms, or extra-legal values, in the interpretation of individual norms in addition to hard law. Labour law is a status law[4], by which I mean that it strives for the exclusive arrangement of the organized work element of the human form of existence. I do not claim that all forms of organized work are regulated by labour law, but at the same time it can be stated that, due to the protection mechanisms, in some cases the aim is for it to be implemented in this form.[5]

The purpose of labour law is not only to conclude an employment contract and create an employment relationship based on this, but at the same time to take care of the employee beyond the payment of compensation.[6] The duty of care differs from one legal system to another, so it is not easy to identify even who is the object of care in an international context. Because of the previously described differentia specifica of labour law, targeted application of the law is required to examine and interpret individual written - or even unwritten - norms belonging to labour law through this lens. However, the application of labour law is not in an easy situation from several points of view, because at some levels - for example in the relationship between the European Union and the member states - the objects, goals and "recipients" of the application of the law are different from each other.[7] It should be

[2] See, for example, M. Antonio García-Muñoz Alhambra – Beryl ter Haar – Attila Kun, *Soft on the Inside, Hard on the Outside, An Analysis of the Legal Nature of New Forms of International Labour Law,* "International Journal of Comparative Labour Law and Industrial Relations" vol. 27/4, pp. 337 – 363.; Mario Vinković, *The Role of Soft Law Methods (CSR) in Labour Law.* https://mta-pte.ajk.pte.hu/downloads/mario_vinkovic.pdf (last access: 13.11.2022.); Attila Kun, *A puha jog (soft law) szerepe és hatékonysága a munkajogban − Az új Munka Törvénykönyve apropóján, ((The role and effectiveness of soft law in labor law - Concerning the new Labor Code)* "Pázmány Law Working Papers", vol. 2012/41.

[3] Nóra Jakab, *A munkajog és a polgári jog kapcsolata a jogpolitika tükrében, (The relationship between labor law and civil law in the light of legal policy),* "Magyar Jog", vol. 62/1, pp. 18-20.

[4] Zoltán Petrovics, *Munkajogviszony - kontraktustól a státusz felé? (Employment law relationship - from contract to status?),* In: Ádám Auer – Gyula Berke –István György –Zoltán Hazafi (eds.), *Ünnepi kötet a 65 éves Kiss György tiszteletére, (Festive volume in honor of 65-year-old György Kiss),* Dialóg Campus Kiadó, Budapest, 2018, pp. 749-757.

[5] Tamás Gyulavári, *A gazdaságilag függő munkavégzés szabályozása, kényszer vagy lehetőség? (Regulation of economically dependent work: constraint or opportunity?),* "Magyar Munkajog E-folyóirat", vol. 2014/1, pp. 1-25., https://hllj.hu/letolt/2014_1/01.pdf (last access: 19.12.2022.).

[6] Péter Sipka, *A munkáltatói gondoskodás a jelenlegi és jövőbeli munkajogi kihívások tükrében, (Employer care in the light of current and future labor law challenges),* In: Lajos Pál – Zoltán Petrovics (eds.), Visegrád 18.0, A XVIII. Magyar Munkajogi Konferencia szerkesztett előadásai, (The Edited Lectures of the 18 th Hungarian Labor Law Conference.), Wolters Kluwer Hungary, Budapest, 2021. pp. 211-212.; Laura Berényi, *Gondolatok a munkajog dogmatikai fejlődéséről, különös tekintettel a munkáltatói koncepció alakulására, (Thoughts on the dogmatic development of labor law, with particular regard to the evolution of the employer concept),* "Polgári Szemle", vol. 17/4–6, p. 426.

[7] It is interesting to note the CJEU's statement that "the nature of the employment relationship under national law is of no consequence as regards whether or not a person is a worker for the purposes of EU law". With this, the CJEU essentially does not express its disapproval of the fact that the national concept of employee differs; it merely declares that the EU definition is different due to the different purpose of EU law. See Emanuele Menegatti, *Taking*

noted, however, that even the same legal text and context, or even the same procedural environment, does not guarantee that the interpretation of individual norms will be the same, or that individual legal disputes will end with the same result.

In my opinion, the examination and research of legal interpretation in labour law is important because labour law is an extremely dynamically developing legal regulation of a mixed nature that is present at several levels. What is more, in addition to the previously mentioned responsibility of care, it encompasses several areas of law, such as sociology, statistics or economics.[8] These can have a significant role in the interpretation of labour law, so their investigation cannot be neglected. From my point of view, the analysis of legal philosophy research narrowed down to the analysis of legal interpretation methods should be used during the research of all areas of law; at the same time, it is already the task and responsibility of the given field of law to use the results of general legal theory in its own field and draw attention to its importance there, as well.

In this paper, my primary goal is to apply the general methods of legal interpretation already revealed by legal wisdom in relation to the field of labour law. In this context, I intend to point out that the possibilities of legal interpretation do not exist apart from the law, but are themselves part of the law, even if they do not belong to the scope of classic hard law. Furthermore, it should be pointed out that the legitimate interpretation of law does not qualify as a law created by a judge. In addition to all this, my aim is to show that labour law in the European Union exists on two levels in terms of legal interpretation, as a result of which, in some cases, there is a difference between the legal interpretation at the Member State level and the EU level. Finally, the aim of the paper is also to examine the sustainability of different methods of legal interpretation from the perspective of legal uncertainty. However, the purpose of my research is not to repeat the essential content elements of legal interpretation methods developed by legal wisdom, nor to examine the background and consequences of the different legal interpretations of the member state and the Court of Justice of the European Union (hereinafter: CJEU) from a public law perspective.

2. Additions to the concept of legal interpretation

In the most general approach, legal interpretation means that the legal practitioner explores the meaning and purpose of the legal norm for a certain specific case and applies it to that given case. In my view, in this approach, the legal practitioner should be understood not only as the courts, but all persons who have an interest in the interpretation of the law. In relation to a contractual provision - in the case of an employment contract, for example - the contracting parties must also be regarded as interpreters of the law. Citing the literature, some authors[9] state that the necessity of legal interpretation arises in the event that the nature or content of the legal norm is not clear. At the same time, in my opinion, legal interpretation is necessary in

EU labor law beyond the employment contract, The role played by the European Court of Justice, European Labor Law Journal, Volume 11, Issue 1, p. 9.

[8] Szilvia Halmos – Zoltán Petrovics, *Munkajog, (Labor law)*, Nemzeti Közszolgálati Egyetem Közigazgatás-tudományi Kar, Budapest, 2014., p. 15.

[9] Mihály Maczonkai, *A pragmatikus jogértelmezés és az Európai Bíróság gyakorlata. Ph.D. értekezés. (Pragmatic legal interpretation and the practice of the European Court. PhD thesis).* Pécs, 2004, p. 2.

every case, since judging the clarity of a legal norm also requires interpretation. Clarity refers not only to the generally accepted meaning of the words, but also to the fact that no other legitimate interpretation can really be attributed to the given legal norm in the given legal case. The question can be raised as to whether this is possible in this case in the absence of legal interpretation? In my opinion, the answer is no.

In many cases, legal interpretation appears in academic publications as an organizing principle outside or above the law, which seeks the essence of the applicable legal norms in the given case. In my opinion, this approach is debatable, and instead it is more appropriate to consider legal interpretation itself as part of the concrete, actual legal discourse. However, individual methods of legal interpretation can be part of hard law just as much as part of soft law. In relation to legal interpretation, Hungary's Basic Law already sets expectations, according to which the courts interpret the text of legislation primarily in accordance with its purpose and with the Basic Law when applying the law. It is important that the Basic Law also provides guidance on what the legal practitioner must take into account when determining the purpose of the legislation.[10] The interpretation guidelines laid down by the Basic Law are not unknown at the EU level, although only the Charter of Fundamental Rights of the European Union provides such a guide. The guide states that if the Charter contains rights that correspond to the rights provided for in the freedoms and protections contained in the relevant European Convention, then the content and scope of these rights shall be considered the same as those contained in the said Convention. Furthermore, the basic rights derived from the common constitutional tradition of the member states recognised by the Charter must be interpreted in accordance with the recognized common traditions of the member states.[11] In addition, EU law gives the CJEU a completely free hand to interpret EU law using the methodology it deems effective.[12]

It can be seen that, overall, both the Hungarian and EU legislators know or prefer certain methods of legal interpretation, but it is not laid down that the legal practitioner has the opportunity to interpret the given legal issue only within these frameworks.

In the light of the above, in my opinion, it is important that - if we take into account the constitutional requirement of the separation of powers - the legal practitioner is always obliged to interpret the law according to some method, and may also take into account a method of legal interpretation that was not prescribed for him by the legislator. Otherwise, the division of powers could not be fulfilled, because even if the applier of the law does not interpret, then he/ she applies an abstract legal norm created by the legislator in a specific case, with which at the same time the applier of the law would be the "representative" of the legislator; moreover, there must also be the possibility for a legal practitioner to apply a legal interpretation method not prescribed for him/her.

On the other hand, it should be mentioned here that the absolute limit of legal interpretation is the law created by the judge. Regarding the latter aspect, however, it should be emphasized that both the

[10] Magyarország Alaptörvénye 28. cikk (Article 28 of the Basic Law of Hungary).
[11] Article 52 of the Charter of Fundamental Rights of the European Union. Paragraphs (3)-(4).
[12] Koen Lenaerts-José A. Gutiérrez-Fons, *Az Európai Unió Bíróságának jogértelmezési módszerei, (The Legal interpretation methods of the Court of Justice of the European Union)*, HVG-ORAC, Budapest, 2022. p. 23.

decisions of the Hungarian courts and the decisions of the European Court of Justice are regularly based on a significant number of previous case decisions, which suggests that "judge-made law" may still play a role in some way. In connection with many decisions, it can be observed - regardless of the precedent system or the Hungarian limited precedent system - that the judgments are mostly organized around existing practice and non-legal norms. In general, it can therefore be stated that even legally established legal rules can lead to completely different results in the case of different interpretations.[13]

3. What should be interpreted in labour law?

Regarding labour law, it can be said that it is developing dynamically both at the national and EU level.[14] It can be considered a happy coincidence that, like national law enforcement, EU law also recognizes[15] the basic principle that labour law has its roots in private law - according to several academic points of view, it is an integral part of private law - and that labour law is a contractual area of law.[16] In my opinion, these two principles are in essence able to determine the framework within which legal interpretation is placed in relation to labour law. The point of view that, since labour law is part of private law, "in labour law, it is not the enforcement of private law principles, but in some areas, their absence which must be justified" is apt and to the point.[17] In this way it is clearly visible, that labour law interpretation must take into account the "rules" and principles of private law to a certain extent. Of course, it can be a subject of theoretical and practical debate as to what and to what extent the written norms or unwritten principles of private law can be applied in connection with labour law. Since labour law is part of private law[18], the other important conclusion can be made that the basic framework of labour law interpretation must be the legal declaration made by the party or parties. Because even according to those who otherwise take a position in favor of the primacy of the broader public law content of labour law and the greater disregard of private law principles, the subjects of labour law have the capacity to

[13] András Osztovits, *Bevezető gondolatok az Európai Szerződési Jogi Alapelvekről, (Introductory thoughts on the Basic Legal Principles of European Contractual Law),* "Európai Jog" (European Law), no. 3-4, vol. 2002/1. number 3-4.

[14] Bercusson Brian, *European Labour Law in Context, A Review of the Literature*. "European Law Journal", vol. 5/2, p. 97.

[15] See, Cavalier Georges – Robert Upex, *The concept of employment contract in European Union Private Law*. "International & Comparative Law Quarterly" vol. 55/3. 587-608.

[16] Kiss (2014), op. cit. 44-46.

[17] Kiss refers to this idea from the author Reinhard Richardi. György Kiss, *Foglalkoztatás gazdasági válság idején - a munkajogban rejlő lehetőségek a munkajogviszony tartalmának alakítására, (Employment in times of economic crisis - the opportunities inherent in labor law to shape the content of the employment relationship (legal dogmatic foundations and legal policy reasons),* "Állam- és Jogtudomány", vol. 2014 /1, p. 38,; Reinhard Richardi, Das Arbeitsrecht als Teil der sozialen Ordnung in Münchener Handbuch Arbeitsrecht (Munich, C.H. Beck 1992) 2. § 1 rdnr. 26; ed., "arbeitsrecht als sonderprivatrecht oder teil des allgemeinen zivilrechts" in Gebhard köbler [et al.] (ed.), FS für Alfred Söllner zum 70. Geburtstag (Munich, C. H. Beck 2000) 957–972.

[18] Kiss (2000), op.cit., p. 3.; György Kiss, *Néhány gondolat az alapjogok munkajogra gyakorolt hatásáról., Vertikális-horizontális, közvetett-közvetlen hatály, (Some thoughts on the impact of fundamental rights on labor law: Vertical-horizontal, indirect-direct effect),* In: Károly Tóth (ed.), *Tanulmányok dr. Nagy László egyetemi tanár születésének 90. évfordulójára, (Studies on the 90th anniversary of the birth of university professor Dr. László Nagy),* Szegedi Tudományegyetem, Szeged, 2004, p. 236.

form law.[19] On the other hand, it can be deduced from this that legal formation - i.e. the creation, termination or modification of a legal status or legal relationship - can include an element that serves as the basis of legal interpretation in the case of certain legal issues. During the interpretation of labour law, the so-called hard law and the underlying soft law must also be interpreted in this way, as well as the declaration of rights of the subjects of labour law.

4. Typical legal interpretation methods of labour law and their basic problems

As stated in the introduction, I do not wish to repeat the concept of interpretation methods developed by legal theory, and their main meanings, because this is what legal philosophy deals with. At the same time, I consider it important that the propositions worked out by legal theory can actually be applied in relation to labour law, so I will primarily deal with this issue in what follows.

Legal theory now refers to the five so-called classical methods of interpretation: literal (grammatical), logical, systematic, historical, and teleological (purpose-based) interpretations.[20] It is also not disputed that there are many subspecies of the five basically recognized methods of interpretation just cited, the general description of which exceeds the scope of this work. In addition to these basic methods of interpretation, there are several other methods that primarily emphasize interdisciplinarity, in connection with which the question can be raised as to whether there are actually independent methods of interpretation or whether they can be classified as a subtype of one of the five classic interpretation options already described. Such additional methods can include legal dogmatic, statistical, sociological or even economic interpretations, but in some cases it is also customary to refer to fundamental principle or fundamental law or constitutional interpretation methodologies.[21] The question may rightly arise as to where a legal practitioner gets to know about the methods of interpretation he or she can use to interpret the labour law norms, and what the interpretational rules actually are, and which are the interpretive methods that can lead to a "legitimate" end result in relation to a given legal issue. It is also not incidental to examine the extent to which legal entities can be expected to follow a legal norm, the multiple, legitimate interpretations of which can lead to multiple outcomes. In my opinion, it is true for few areas of law that the special mixing[22] of private law cogent-, private law dispositive-, and public law

[19] Tamás Gyulavári, *A szürke állomány, Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán, (Grey matter; economically dependent work on the border between employment and self-employment)*, Pázmány Press, Budapest, 2014, pp. 117-118.

[20] Zoltán Tóth J, *A dogmatikai és a jogirodalmi értelmezés a magyar felsőbírósági gyakorlatba*n, *(Dogmatic and legal literature interpretation in the practice of the Hungarian supreme court)*, In: Mátyás Bódig – Zsolt Ződi (eds.), *A jogtudomány helye, szerepe és haszna, Tudománytörténeti és tudományelméleti írások, (The Place, Role and Use of Legal Sciences: Writings on Scientific History and Theory)*, OPTEN Informatikai Kft., MTA Társadalomtudományi Kutatóközpont, Jogtudományi Intézet, Budapest, 2016.

[21] Viktor Botos, *A bírói jogértelmezés útjai a Legfelsőbb Bíróság gyakorlatában (munkajogi BH-k elemzése), (The paths of judicial legal interpretation in the practice of the Supreme Court (analysis of labor law Judicial Decisions))* "Jogelméleti Szemle", vol. 2000/3. http://jesz.ajk.elte.hu/botos3.html (last access: 19.12.2022.).

[22] It is important that, due to the content of the cogen, a norm is not certain to be classified as public law. See, Tibor Nochta, *A jogi személy létesítésének magánjogi és közjogi feltételeiről, (On the private and public law conditions for establishing a legal entity)*, Gazdaság és Jog, vol. 2017/10, pp. 3-4.

rules, and the interpretation of certain legal norms can also be carried out within a broad framework (this applies to labour law). Furthermore, in the case of classic economic labour law relations, the biggest problem is not the possible uncertainty, but the fact that the burden of this kind of interpretive uncertainty rests exclusively with "private parties".[23] In addition to this, the question may also arise as to whether individual methods of interpretation are above the legal norms, or whether they are actually implicit contents of the governing norms.

4.1. The relativization of the limits of labour law, or the scope of labour law

Based on Act I of 2012 on the Labour Code (hereinafter: the Labour Code), the personal scope of the Hungarian labour law rules includes, among others, the employer and the employee. As a result, the scope of Hungarian labour law can be imagined in relation to the person in the case of the above statuses.[24] At the same time, a careful analysis shows that this status can be secondary in certain cases, but not in all cases. Already from this point of view, it can be established that different methods of interpretation lead to different results regarding the scope of labour law. If we take the legal dogmatic interpretation as a basis, then the basic principles of contract theory and legal relations are emphasized. Based on this, the status of employer and employee is linked to a contractual obligation, according to which the two subjects of the employment contract are the employer and the employee. The employment relationship - which requires actual performance on the part of the subject - is established with an employment contract. So, in order for labour law rules to be applicable, from a legal dogmatic point of view, an existing employment contract must exist between the parties, even if it is not valid or effective.[25] The employment contract is the exclusive transactional causa on the basis of which we can define the parties as employer and employee. In my opinion, in addition to the legal dogmatic interpretation, we can reach the same conclusion based on the classical, literal, systematic and logical interpretation. On the other hand, with another method or methods of interpretation, we can reach the result that the possibility of establishing the status of employee or employer, as well as the employment relationship, exists in a sui generis manner without any form of employment contract having been established between the parties, or reference to the establishment of the contract being demonstrated.

In terms of methodology, there are, in my opinion, substantial differences in this field between EU law enforcement and national – in this case, Hungarian – law enforcement. In the training of the EU law enforcement officer, it is clear for the literature[26] that in such cases the CJEU

[23] György Kiss, *Alapjogok kollíziója a munkajogban, (The collision of fundamental rights in labor law),* Justis Bt, Pécs, 2010, 3, p. 125.

[24] Nóra Jakab, *A munkavállalói jogalanyiság és a személyi hatály jelentősége, (The importance of employee legal ownership and personal scope),* Publicationes Universitatis Miskolcinensis Sectio Juridica Et Politica, Miskolc, 2016, 211-214.

[25] Márton Leó Zaccaria, *Evidenciák és dilemmák a munkaszerződés és a munkaviszony jogi természete körül, (Evidence and dilemmas regarding the legal nature of the employment contract and the employment relationship),* In: Lajos Pál – Zoltán Petrovics (eds.), Visegrád 19.0 - A XIX. Magyar Munkajogi Konferencia szerkesztett előadásai, (Visegrád 19.0 - The Edited Lectures of the 20 th Hungarian Labor Law Conference), Wolters Kluwer, Budapest, 2022.

[26] Koen Lenaerts – José A. Gutiérrez-Fons, *Az Európai Unió Bíróságának jogértelmezési módszerei* (Legal Interpretation Methods of the Court of Justice of the European Union), HVG-ORAC, Budapest, 2022, p. 65.

carries out a teleological interpretation of law, based on which the purpose of the given EU legal provision - or the legislator with the provision - is, or was, that the employment guaranteed by the employment relationship protection should be available as widely as possible, so the employment relationship and employee status should be established, where applicable, independently of the contractual legal declarations, and even without national legal provisions that are not in line with this. On the other hand, in my opinion, the national legal practitioner in Hungary cannot legitimately refer to a purposive approach if it reaches a final result similar to that of the CJEU in the case of a specific legal dispute. Taking the national legal provisions into account, it can be established that, compared to the previously effective Labour Code, the currently effective Labour Code in principle provides a narrower framework - or, according to certain points of view, provides no guaranteed framework – for the establishment of an employment relationship and employee status based on the actual performance between the parties, rather than on a civil legal relationship.[27] It was recorded by the former Labour Code[28] that, regardless of the name given to the type of contract, all the circumstances of the case - including, in particular, the negotiations of the parties prior to the conclusion of the contract, the legal declarations made during the conclusion of the contract and during work, the nature of the actual work, and the rights and obligations of the parties - must be judged or established. While the old Labour Code allowed the circumstances of the performance of the contract - or rather the legal relationship - to be examined during the classification, the current regulations only deal with the issue of invalidity, which can only arise at the time of the conclusion of the contract, so the conditions of performance are irrelevant in this regard.[29]

It can be seen that the legislator's presumptive intention extends to the fixing of the conceptual boundaries of the employment relationship, or possibly its future narrowing, so basically it is not possible to use a teleological interpretation method to come to the conclusion that the legislator's goal was to broaden the scope of the employment relationship and the employee status. Section 14 of the Act CXLVII of 2012 on the itemized tax of low-tax enterprises and the small business tax, which is no longer in force, and which in principle was a legal fact that served as the basis of a classification under tax law, suggests the same. However, in practice it was also a reference in many cases in connection with the fact that the legal relationship established between the parties is of a civil law and not a labour law nature. Moreover, this referenced provision contained the point that the legal presumption relating to the existence of an employment relationship could easily be overturned by a person actually in an employment relationship.[30] By illustrating

[27] Gyulavári, *op.cit.*, p. 114.

[28] Mt. 75/A. § (2) bekezdés, (Labour Code 75/A § (paragraph 2).

[29] István Herdon – Márton Leó Zaccaria, *A Kúria munkaügyi határozatának megállapításai a munkaszerződés érvénytelensége és a foglalkoztatás jogellenessége közötti fogalmi eltérésről, Érvénytelenségi okok bekövetkezése a szerződéses jognyilatkozatok megtételét követően, (Findings of the Kúria's labor decision on the conceptual difference between the invalidity of the employment contract and the illegality of the employment: Occurrence of invalidity reasons after the contractual legal declarations have been made),* "Jogesetek Magyarázata", 13/1. pp. 44-46.

[30] Sipka Péter - Zaccaria Márton Leó, *Kísérlet a magyar munkaviszony-fogalom újragondolására az NMSZ 198. számú ajánlásának fényében, (An attempt to rethink the concept of the Hungarian employment relationship in the light of NMSZ recommendation No. 198),* "Miskolci Jogi Szemle", 2019/1, pp. 60-61.

the above, in addition to the teleological interpretation, it can also be rejected that the legislator conducts a literal, logical, systematic, legal dogmatic or even historical interpretation in the course of a qualified legal dispute. Furthermore, based on grammatical and dogmatic interpretation, the provisions of the effective Labour Code regarding the creation of the employment contract and the employment relationship, as well as the invalidity of the agreement, prove to be so clear that it may be necessary to apply an interpretation method that legitimizes the formally contra legem final result. In this context, the approach would not be rejected either, if the legal practitioner, from a constitutional point of view, referring to the primacy of EU law, reaches the conclusion in every case that a given legal relationship is classified as an employment relationship by examining the circumstances of its performance. This is because the national legal provisions in Hungary do not formally create an opportunity for this. In the case of reference to the primacy of EU law over national law, however, the acting legal practitioner legitimately takes into account binding CJEU practice and its justification - including even the sociological content - and accordingly can reach a conclusion that apparently goes against national law. However, from the point of view of systematic and dogmatic interpretation, one must proceed with caution in this context, since a legitimate argument is that labour law as a contractual area - the essential element of which is the freedom of contract[31] – is part of private law, and aslo that in the case of concrete claims, classic labour lawsuits can basically be classified as civil lawsuits, so the substantive and procedural rules of private law also have a well-founded claim to be placed here. In addition, despite the mandatory EU practice, there are areas where, in my opinion, legal harmonization is not even indirectly achieved, so excessive activism carries extreme legal uncertainty, even in addition to the different interpretation methods. However, the tendency of interpretation currently points in the direction that the scope of labour law should be interpreted as broadly as possible, so that, for example, based on international comparative interpretation, the wide scope of the employment relationship can be recognized.[32] Recent EU and international documents also point in this direction.[33]

4.2. Interpretation of rules within the scope of labour law

By interpretation under the scope of labour law, I mean that the relevance of the rules of labour law in the given case is not in question, since labour law must be applied in the given legal issue. In my opinion, this case should be treated separately from the interpretation of the concept of labour law,

[31] József Cséffán, *Az érvénytelenség munkajogi szabályozása, Melléklet az Érvénytelenség a munkaviszonyban című joggyakorlat-elemző csoport által készített véleményhez, (Labor law regulation of invalidity. Addendum to the opinion prepared by the legal practice analysis group entitled "Invalidity in the employment relationship"),* https,//kuria-birosag.hu/sites/default/files/joggyak/ervenytelenseg_a_munkaviszonyban_osszefoglalo_velemeny_am_0.pdf (last access: 27.12.2022.) pp. 67-68.

[32] Márton Leó Zaccaria, *A munkavállaló fogalmának dinamikus értelmezése, (The dynamic interpretation of the concept of an employee),* In: Lajos Pál – Zoltán Petrovics (eds.), Visegrád 16.0, A XVI. Magyar Munkajogi Konferencia szerkesztett előadása, (Visegrád 16.0: The Edited Lectures of the 16 th Hungarian Labor Law Conference.), Wolters Kluwer, Budapest, 2019, pp. 261–277.

[33] See, for example, NMSZ 198. számú ajánlása; Javaslat, az Európai Parlament és a Tanács irányelve a platformalapú munkavégzés munkakörülményeinek javításáról.

because completely different goals and methodologies come into play in this case. In the case of interpretation within labour law, the governing principle is definitely labour law, its additional norms, principles and practice. In this context, we can also talk about legal harmonization, according to which the EU legislator tries to bring the rules of individual member states closer to each other to some extent. The primary instrument of labour law harmonization is the directive.[34] Here, however, legal interpretation has an indisputable role, because even the national legislature is already burdened with the obligation of interpretation, since it is only after this has been carried out that there can be talk of effective transposition. Furthermore, in the areas affected by harmonization, the legal interpretation of the CJEU and that of the member states' law enforcement officers may be present in parallel.

A detailed analysis of all the aforementioned areas exceeds the scope of this paper, but some of them must be highlighted. Serious questions of legal interpretation often arise around the concepts of working time and rest time. In this context, the CJEU adheres to the purposive interpretation already described. A typical point of departure for the interpretation of EU law is that the aim of the directive is clearly to lay down certain minimum requirements, where applicable in a way that ensures more effective protection of the safety and health of employees at work by providing the latter with a minimum - especially daily and weekly - rest period, as well as providing adequate breaks, and setting an upper limit for the duration of weekly working hours.[35] The CJEU also notes that a restrictive interpretation in connection with the directives cannot be accepted, given that when the directive implements minimum harmonization, it essentially seeks to restrict itself.[36] The CJEU declares as a matter of principle that the concepts of "working time" and "rest time" are EU legal concepts, which must be defined based on objective characteristics, taking into account the system and purpose of the directive.[37]

It should be noted that the so-called objective characteristics just cited can certainly be a starting point, since in another decision the CJEU itself makes corrections among the characteristics said to be objective, and also states that, in certain cases, based on a careful judicial assessment of the circumstances of performance, it can be established that the given activity is classified as working time.[38]

On the other hand, the CJEU carries out a clear grammatical interpretation when it states that, according to the directive, "working time" is the period during which the employee works, is available to the employer, and performs his activity or task. The same directive defined the concept of "rest time" negatively, so it includes all periods that are not considered working time. Since these two concepts are mutually exclusive, the employee's on-call time must therefore be classified as either "working time" or "rest time" in his/her application,

[34] Tamás Prugberger, *A munkajog kialakulása és fejlődése a gazdaságszociológiai folyamatok tükrében, (The formation and development of labor law in the light of economic sociological processes),* "Competitio", vol. 4/1, p. 4.

[35] C-580/19. RJ kontra Stadt Offenbach am Main, paragraph 26.

[36] C-214/20 - MG kontra Dublin City Council, paragraph 37.

[37] See, for example, C-518/15. - Ville de Nivelles kontra Rudy Matzak, paragraph 62; C-580/19. RJ kontra Stadt Offenbach am Main, paragraph 32.

[38] C-214/20 - MG kontra Dublin City Council, paragraph 41.

since the directive does not provide for an intermediate category.[39]

Within labour law, a non-competition agreement can be interpreted as basically a contractual obligation under private law. Furthermore, the just-mentioned internality of labour law can also be interpreted literally, as the Hungarian Kúria also took the position that civil law legal institutions can only be applied in the governing labour law environment and in accordance with labour law rules, since the contractual form is only a framework, which the according to the norms of labour law, can and must be filled with content, taking into account the specific relationship between employer and employee.[40] In this regard, the literature[41] emphasizes that, in connection with the non-competition agreement, this clearly means the intention of creating labour rights.

In my view, the purposive interpretation within the rules of Hungarian labour law is very rare, this is also pointed out by previous researchers.[42] At the same time, there is a norm in the Labour Code in connection with which the literature calls attention to the importance of teleological interpretation. The employer regulations fixed by section 17 of the Labour Code are also the kind of legal institution which represents a special unilateral legal declaration. Since the unilateral declaration of rights is governed by the rules of the agreement according to the Labour Code - and not specifically of the employment contract -, therefore, in terms of grammar, system and dogma, deviations of the employer's regulations from the rules of the employment relationship are not allowed, even in favor of the employee.[43] On the other hand - as the literature notes -, consistent judicial practice[44] also recognizes that the legislator's goal in this field must be taken into account as on the basis of the interpretation of this rule, it is possible to arrive at the point where the regulation can deviate only in favor of the employee from the dispositive rules of the Labour Code and the provisions of the collective agreement.[45]

A more obvious example of teleological interpretation than the former can be the case of principled interpretation, when we interpret certain legal provisions from the point of view of the requirement of the proper exercise of law. The effective Labour Code does not establish this basic principle, but the prohibition of the abuse of rights, which is practically the "other side of the coin". The purpose of this general behavioral requirement is to ensure that certain legal provisions - from which a subject right arises - are interpreted in connection with their purpose and regulatory nature. It is particularly interesting that the legal practitioner came to the conclusion through a dogmatic interpretation of the law

[39] See, for example, C-344/19, - D. J. kontra Radiotelevizija Slovenija paragraph 29; C-107/19 - XR kontra Dopravní podnik hl. m. Prahy, a.s., paragraph 28; C-214/20 - MG kontra Dublin City Council, paragraph 35.

[40] EH 2013.07.M14, Kúria Mfv. II. 10.573/2012.

[41] Tamás Prugberger - Márton Leó Zaccaria, *A versenytilalmi megállapodás elméleti és gyakorlati problémái a megváltozott munkajogi környezetben, (Theoretical and practical problems of the non-competition agreement in the changed labor law environment),* "Jogtudományi Közlöny", vol. 2015/5, p. 255.

[42] György Kiss, *Új foglalkoztatási módszerek a munkajog határán – az atipikus foglalkoztatástól a szerződési típusválasztási kényszer versus típusválasztási szabadság problematikájáig, (New employment methods at the border of labor law - from atypical employment to the problem of the forced choice of contract type versus freedom of choice),* "Magyar Jog", vol. 2007/1, pp. 5-8.

[43] Tamás Gyulavári –Attila Kun, *A munkáltatói szabályzat az új Munka Törvénykönyvében, (The employer regulations in the new Labor Code),* "Magyar Jog", vol. 2013/9, pp. 559-560.

[44] BH 2001.10.494.

[45] Tamás Gyulavári –Attila Kun, *op.cit.*, p. 560.

that the abuse of labour law can only be invoked against a subject right.[46] At the same time, it must be seen that this principle as an independent fact ensures that a situation does not arise through a grammatical or dogmatic interpretation of subject rights by referring to this method of interpretation, in which the purpose of the law determined by the legislator is not realized. This may be the case when the legal entity employer notifies the employer's termination only about two years after the decision of the highest body authorized to make the decision, thus keeping the employee in an uncertain situation for a long time and thus not fulfilling the legislative requirement regarding the timeliness of the termination.[47] It is also not possible to issue a legal dismissal by the employer on the basis that the employee publishes professional criticism of the employer, which is later proven to have been correct.[48] In labour law, the employee's opinion cannot be restricted. But the employee, unlike the consumer in the Civil Code, does not lack information, but "lacks power" compared to the other party,[49] so, in my opinion, a professional opinion that is not public and does not violate or endanger personal rights and legitimate economic interests cannot be a legitimate reason for an employer's dismissal.

The corrective function of the general requirements of conduct, including the principle of good faith and honesty, is supported by the practice developed under the old Labour Code, according to which the procedure in which a fixed-term employment relationship is established many times in a row must be considered contrary to basic principles and therefore contrary to the law. Previously, this was mistakenly referred to as an abuse of rights, although in this context, since it is a contract, the subject right does not even arise.[50] With the currently effective Labour Code this is no longer a question of principle, as the law stipulates that the extension of a fixed-term employment relationship or the re-establishment of a fixed-term employment relationship within six months after the termination of a fixed-term employment relationship is only possible if there is a legitimate interest of the employer.

Based on the above examples, it can be established that the general behavioral requirements in Hungarian labour law are those that can legitimately provide the legal basis for teleological legal interpretation.

Apart from the interpretation according to the purpose of the norm, the other classic methods of legal interpretation already occur in greater numbers in Hungarian labour law. In my opinion, given the nature of the Labour Code, it is not necessary to separately justify the scope of the grammatical interpretation, since thanks to the conceptual explanations, this should be considered the basic method of interpretation. According to the point of view of the literature, the dogmatic or doctrinal method of interpretation is similar

[46] 5/2017.(XI.28.) KMK vélemény, *a joggal való visszaélés tilalmának megsértésével kapcsolatos munkaügyi perekben felmerült egyes kérdésekről (KMK opinion: concerning certain issues raised in labor lawsuits related to the violation of the prohibition of abuse of rights)*; Tercsák Tamás, *A joggal való visszaélés, (Abuse of the law), Budapest*, HVG-ORAC, 2018. pp. 512-513.

[47] EBH 2014.M.20.

[48] BH 2008.100.

[49] György Kenderes, *A munkajog jogági elhelyezkedésének problematikája, (The problem of the legal location of labor law)*, "Miskolci Jogi Szemle", vol. 9/2, pp. 9-10.

[50] István Herdon, *A joggal való visszaélés a munkaügyi bíróságok ítélkezési gyakorlatában, (Abuse of rights in the jurisprudence of the labor courts),* In: Országos Bírósági Hivatal (ed.), Mailáth György Tudományos Pályázat 2019, Díjazott dolgozatok. Országos Bírósági Hivatal, Budapest, 2020., pp. 564-569.

to grammatical interpretation. According to this, dogmatic interpretation uses the special legal meaning of words, unanimously accepted and recognized by lawyers, to solve the interpretation problem raised in a specific case.[51] Based on a dogmatic interpretation, we can come to the conclusion that if, like a civil law contract, we wish to invoke invalidity in connection with an employment law agreement, the reference to invalidity can only be justified if the circumstance referred to already existed at the time of the agreeing of the contract.[52]

In Hungarian labour law, the Labour Code is considered a legal source, which means that it establishes the basic rules of employment in the framework of economic employment relationships based on a specific system. The system can be divided in several ways, so we can usually distinguish the chapters themselves, or instead we can talk about distinctions according to their content. This could be the relationship between the so-called "first part" that does not allow deviations and the rest of the Labour Code, or the system of provisions regarding individual and collective labour law, or perhaps the relationship between typical and atypical forms of work within individual labour law. When the systematic method is used as a basis for interpretation, it is necessary to see, for example, the above connections. The legal practitioner took such an interpretation as a basis when it recorded that the court of second instance, based on the systematic and grammatical interpretation of section 124.(3) of the Labour Code concluded that the application of this provision is not an obligation for the employer, but only an option that the defendant did not use in the case at trial.[53] Based on a systematic interpretation, we can also come to the conclusion that the stipulation of punitive damages by the parties is only allowed in the context of non-competition agreements and study contracts in Hungarian labour law.[54]

5. Legal interpretation as soft law

There is no generally accepted concept of soft law. According to established practice, the reference to soft law means that the given legal norm is not binding, but still contains content that does (or does not) meet a normative demand, i.e. soft law legal sources have a quasi-legal relevance.[55] In several cases, the listed methods of interpretation have content that enables them to be categorised as soft law. This is least true of the five basic methods of interpretation - literal (grammatical), logical, systematic, historical, and teleological (purposeful) interpretation - but at the same time, it is very relevant in the case of, for example, human rights, sociological, and economic interpretations, among others. In these cases, the interpretation is made in the light of a written or unwritten, mandatory or soft norm. It is important that, in my opinion, the norm does

[51] Zoltán Tóth J, *A dogmatikai és a jogirodalmi értelmezés a magyar felsőbírósági gyakorlatba*n, *(Dogmatic and legal interpretation in the practice of the Hungarian Supreme Court)*, In: Mátyás Bódig – Zsolt Ződi (eds.), *A jogtudomány helye, szerepe és haszna, Tudománytörténeti és tudományelméleti írások, (The Place, Role and Use of Legal Sciences: Writings on Scientific History and Theory)*, OPTEN Informatikai Kft., MTA Társadalomtudományi Kutatóközpont, Jogtudományi Intézet, Budapest, 2016. p. 225.

[52] BH2021.6.173.

[53] BH2020.3.84.

[54] Zoltán Petrovics, *A polgári jog egyes rendelkezéseinek alkalmazása a munkaviszonyban, különös tekintettel a kötbérre, (The civil law the application of its provisions in the employment relationship, with particular regard to penalty payments)*, "Munkajog", vol. 2019/4, p. 19-20.

[55] Kun(2012), op. cit. 1.

not necessarily have to be soft - see, for example, the principled interpretation, whose principles are binding - but in fact the subject of soft law here is why the interpretation took place in the light of the given norm. By way of example, why is the presumed subordination between the employee and the employer the core of the interpretation instead of the employer's distressed economic situation? The question may be relevant, because as Szalai notes,[56] Armen A. Alchian and Harold Demsetz "attack the concept of hierarchy precisely because, according to them, there is nothing special about the employment relationship: according to their claim, the employee is not more "vulnerable", nor more strongly "subordinated" than the service provider who is "vulnerable" to the customer". This is the circumstance that can cause uncertainty and unpredictability in many cases. Here, the difficulty is not finding the hard or soft norms and values of labour law, but the organizing principle that states which one should be brought out, or rather prioritized, in which legal issue.[57] Legal interpretation can therefore be considered not only a part of law, but in many cases a part of soft law. Most of the classic five methods of legal interpretation can also be listed here, but – as mentioned – there are some, such as the purposive interpretation according to the Basic Law, which enjoy priority through a hard legal norm. It can be said that soft law is not only a guide for the interpretation of hard law[58], but also the method of interpretation itself is soft law.

6. Sustainability of labour law

Based on the above dilemmas, it is easy to draw the conclusion that the scope of labour law as a field of law is not crystal clear, and many different methods of legal interpretation have gained ground in connection with the practical applicability of labour law. It is not possible to clearly say how far the boundaries of labour law extend; they primarily change within a short time and dynamically, depending on the legal interpretation methods used. Due to the above, it is not only in recent years, but rather since the dynamic development of the 1990s that the issue of the sustainability of labour law has been constantly in the spotlight. It is important that in this context, by sustainability, I am not referring to the topic of social security and employee welfare, but rather to the sustainability issues of the labour law itself, whether soft or hard, as substantive legal provisions. Most academic literature[59] primarily deals with social and societal aspects of labour law and employment - such as fair remuneration, equal treatment, the balance between work and private life, and environmentally friendly working methods. At the same time, it cannot be overlooked that the topics just mentioned are already primarily - but, taking into account certain human rights and constitutional norms, not exclusively - valid

[56] Ákos Szalai, *A gazdasági szervezetek jogáról és közgazdaságtanáról, (On the law and economics of economic organizations),* "Pázmány Law Working Papers", vol. 2018/17, p. 55.

[57] László Blutman, *Egy empirikus jogértelmezéstan szükségessége,* "Jogtudományi Közlöny", *(The necessity of an empirical legal interpretation),* vol. 63/1, p. 9.

[58] Anne Peters – Isabella Pagotto, *Soft Law as a New Mode of Governance,* A Legal Perspective. University of Basel, 2006, p. 23.

[59] See, Joachim Gschwinder, *Sustainability and labour law*. In: 6. FEB International Scientific Conference, Challenges in Economics and Business in the Post-COVID Times, 16–20 May 2022, Maribor, Slovenia, proceedings. University of Maribor University Press, Maribor, 2022. pp. 207-216.; Neha Vya, *'Gender inequality-now available on digital platform', an interplay between gender equality and the gig economy in the European Union. "*European Labour Law Journal", vol. 12/1, p. 46.

within labour law, the framework of which has not been clear for a long time, even within jurisprudence. One of the basic pillars of sustainability is precisely that the frameworks of cogent legal regulations, both international and domestic, are also sufficiently clarified in many cases. In relation to sustainability, it is necessary to formulate arguments, primarily in relation to the sustainability of the regulatory structure. The question may arise as to when we can talk about sustainable labour law standards based on the above. Following Prugberger, the literature[60] examines in this context "whether the current and known future labour law regulations related to the place of work meet the requirement of sustainability, that they create work conditions for employees that are predictable in terms of content and combine flexibility with safety".

Due to market processes and technological innovation, labour law, which initially proved to be tough, was forced to relax - through atypical forms of work - as the subjects were clearly looking for flexibility in it. The earlier sustainability of labour law was made possible by serving this desire for flexibility, so the protective umbrella of labour law was able to survive by fulfilling the needs of the subject of labour law.[61]

The current trends[62] show, however, that the previous flexibility was only suitable to dampen market sentiments for a short period of time. Currently, digital employment, which is so often at the center of literature and practice, and the related "smart solutions" force us to re-evaluate the way of defining the group of employees to be protected. It is certainly to be welcomed that labour law tries to follow economic changes, but at the same time it can be stated that this process has not been completed even after many years. The potential subjects of labour law are not indifferent to the outcome of these issues, because the classic labour law framework also includes public law obligations that both the employer and the employee must be aware of.[63]

Since the results of legal interpretation presented above, which in many cases are completely different, can lead to legal uncertainty, it can be concluded that the current regulatory structure of labour law is not sustainable in general. Here, the first step is not to assess the content and goals of the substantive legal provisions of labour law, but whether the substantive legal provision itself can be properly calculated, transparent, and understood. In my opinion, legal norms that increase uncertainty are not suitable for promoting voluntary legal compliance, a point which is otherwise supported[64] by the results of labour (employment supervision) inspections and the related data reported in

[60] Bernadett Szekeres, *Távolodás a stabil munkajogtól – gondolatok a munkavégzés helyéhez köthető bizonytalan szabályozás kérdéseiről, (Moving away from stable labor law – thoughts on the issues of uncertain regulation related to the place of work),* "Miskolci Jogi Szemle", vol. 17/2, p. 393.

[61] Zoltán Bankó, *Az atipikus munkajogviszonyok. A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon, (Atypical labor law relations. Different forms of the employment relationship in the European Union and Hungary),* Pécs, 2008, p. 15.

[62] Tamás Prugberger – Bernadett Szekeres, *Az új típusú foglalkoztatási formák és azok kihatása a tevékenységgel összefüggő szerződések dogmatikájára, (New types of employment and their impact on the dogmatics of activity-related contracts),* "Állam- és Jogtudomány", vol. 2022/2, pp. 76-79.

[63] Karl E. Klare, *Public/private distinction in labor law*. "University of Pennsylvania Law Review", vol. 130/6, p. 1363.

[64] Attila Kun, *Az új munka törvénykönyve, (The new labor code),* In: András Jakab – György Gajduschek (eds.), A magyar jogrendszer állapota, (The state of the Hungarian legal system), MTA Társadalomtudományi Kutatóközpont, Jogtudományi Intézet, Budapest, 2016, p. 411.

the literature. At the same time, in addition to the aforementioned sensitization and awareness, transparent regulation should also play a more significant role in this context, because economic actors cannot be expected to take a meaningful role in the day-to-day academic and labour law discussions, or at least only follow them.

7. Final thoughts

Several conclusions can be drawn from the above research. One of the first things to mention is that, in my opinion, the legal interpretation of labour law carries many more sources of problems than the classic civil law interpretation present in civil law. The basis for this can be found in the legal location of labour law. Although, according to the prevailing jurisprudential positions, labour law is a part of private law, it is becoming more and more obvious that a significant change of direction has been noticeable for quite some time at the level of legal interpretation. Some people attribute this to the larger number of cogent provisions present in labour law, but we should not ignore the fact that, in addition to cogent provisions, public law elements have also appeared in labour law, at least at the level of legal interpretation.

While cogency merely prohibits deviations from the legal norm, the public law elements of labour law create the norm itself, so that labour law fulfills a certain function intended by the legislator. Although it is an interesting question which legislator's goals - the EU or the national one - are the ones that are being followed by the current trends, it is certain that due to the development of EU law and the deepening of harmonization, the examination of this issue is currently relevant. The implementation of the directive ensuring the balance of work and private life is also a legislative product that can definitively drive a wedge between classical private law and labour law. Regardless of all this, the main problem, in my opinion, is not the content of the normative text contained in the substantive law, but whether this content can be interpreted in an excessively broad spectrum. In this context, however, I do not consider the public law approach to be particularly advantageous, because while the state is at least on one side in the case of public law legal relations, in the current situation, in the classic economic employment relationship, two private parties are involved, who are obliged to tolerate the anomalies and uncertainties associated with the interpretation of the law . In my view, EU and national labour law provisions that exist on multiple levels and between different systems of considerations cannot be effectively enforced in the event that legal interpretation requires such an effort from the legal entities that there is no realistic chance of doing so. Although the legal literature enables many academic discourses in the current situation, it can also be said that the judicial path cannot be avoided during interpretation, so there will be no realistic possibility to resolve legal disputes "before the law".

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