| Chapter 10 |

Central European Reality of Labor Law—A Comparative Chapter Fundamentals of Labor Law

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The myriad of employment relationships, as mentioned above, poses a challenge to legislatures and legal policy. In this context, the questions were: how is the regulation of the new employment relationships in Central Europe evolving? The question is also how, with all these changes, the place of labor law in the legal system, the concept of the employment relationship, the employment contract and the collective agreement will evolve in Central Europe? What is the relationship between labor law and civil law in the countries under study? What were the arrangements that were introduced in the spirit of flexicurity? How did the COVID epidemic shape labor law? How is collective bargaining coverage shaped to measure the state of collective consciousness?

We provided insight into the specifics of the development of national (collective) labor law and collective agreements in Central Europe and reflected the outstanding problems of their transformation and recent position by the relevant Central European literature worked up by Mišič, Štefko, Barański, Strban, Dudás, Jašarević, Dolobáč, Vinković, Vallasek, based on the thoughts of Florek, Tintić, Tičar, Končar, Vodovnik, Lubarda, Stefański, Kresal, Senčur Peček, Kavšek, Wyka, Musiała, Gersdorf, etc., on issues that have long been present in Western European discourses and are accessible to all.

Labor law is independent, because due to historical traditions, the effectiveness and clarity of legal regulation of the specific range of social relationships which it regulates, it needs a separate (own) code form, but at the same time it can exist without it as a scientific field.[1] However, the definition of labor law as a separate branch of law does not mean that it should exist independently, in isolation and without functional links to other parts of the legal system.

1 Štefko, 7.

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This book has focused on the fundamentals of labor law: the rules on employment contracts and collective agreements and their power to shape employment relationships. In labor law the essential building block of this cornerstone is the individual employment contract and the collective agreement. L. Florek notes that 'the legal regulation of individual employment relationships is not based only on statutory provisions, but also on autonomous sources of law created by the parties to collective employment relationships.'[2] It is an essential instrument of trade union influence on the content of individual employment relationships. As Florek adds, 'This applies especially to collective labor agreements, which are an institution of both individual and collective labor law.'[3] According to Tintić, the employment contract 'is traditionally a central category of labor law.'[4] It is: 'the basis for establishing a labor relationship; the form of regulating labor relationship; a basic means of scheduling the workforce; a means of regulating the intensity of work and harmonizing the interests of each worker with social interests as well as collective interests.' Its essential features are voluntariness and consensuality. When it comes to its content, it expresses elements of onerosity, bilaterality, and exchange.[5] Tintić's views that collective agreements are 'at the crossroads between private and public law,' which is why it is rightly said that they are 'legal chameleons in the world of legal beings.'[6] According to Lubarda, 'The right to collective bargaining is a special expression of the philosophy of dialogue in general, that is, the philosophy of social dialogue.'[7] For us, after him, collective bargaining is a kind of negotiating mechanism or 'negotiating machinery,' as a subsystem within the national economic and social system, directly including negotiating parties, social partners—unions and employers' associations from the enterprise level, across the branch into the cross-border level at the national level (both centralized and decentralized).'[8] Vinković says since in the process of transformation of employment relationships and fragmentation of the labor market certain institutions of labor law become particularly important, the legitimate question arises not only about the influence of trade unions on the relevant processes, but also about their ability to assert themselves as generators of social dialogue focused on vulnerable groups of workers and consolidation of membership. Collective bargaining, as Davidov points out, has two democratic characteristics: one that concerns the employment relationship and subjects employers to the rule of law by limiting their arbitrariness and establishing rules for the treatment of workers; and the other that allows workers or their representatives to express their attitudes, views, and demands and to realize, to some extent, a kind of self-government of the workplace.[9]

2 Florek, 2007, p. 18.
3 Ibid.
4 Tintić, 1972, p. 165.
5 Ibid.
6 Cited in Fahlbeck, 1987, p. 268; Jašarević, 1992, p. 11.
7 Lubarda, 2012, p. 874.
8 Lubarda, 2012, p. 877.
9 Davidov, 2016, p. 87.

Vinković says we believe that the importance of the emancipation of labor law and its decades-long traditional function as a distinct and separate branch of civil law [10] is particularly evident in the context of protecting the rights of workers employed by small employers who are not covered by a collective agreement. Collective agreements have an indirect effect on the employment relationship, as they provide the framework for the conclusion of employment contracts, and a direct effect, when some issues are not regulated at all in the employment contract (the duration of paid annual leave, notice periods, the duration of a normal working day or week, basic salary and salary supplements, etc.), or when the provisions of the employment contract are less favorable to the worker, so that the application of the principle *in favorem laboratoris* leads to the direct application of a more favorable and applicable collective agreement. This direct and indirect effect confirms the normative or regulative effect of the collective agreement.[11] However, this effect bypasses those to whom no collective agreement applies, and the employment contract and the framework established by mandatory rules (*ius cogens*) remain the source of rights and obligations. In this respect, it is to be feared that employers will be willing to provide only minimum protection, i.e., the rights deriving from general regulations, and to conclude contracts that are quite meagre in content, or even ready-made forms of simple contracts purchased in bookstores and stationery stores.

Tičar notes that it is not only lawmakers from countries belonging to the continental but also from countries belonging to common law traditions that have posed increased limitations to parties' private autonomy concerning the content or rights and obligations stemming from employment contracts. Heteronomous statutory provisions, following the general trend from *contract* to *status*, are drafted with the aim of offering a higher level of protection to employees as weaker contractual parties, thus bringing the employment contract closer to a somewhat declaratory legal act, merely marking the conclusion of an employment relationship.[12] Končar, who notes that workers today commonly possess better education and expertise, are more autonomous and creative and commonly no longer require several detailed instructions from their employers.[13]

Vinković also highlights the fragmentation of the labor market, as a phenomenon that has been present in its functional and substantive substrate for a long time, is accompanied by a weakening of the influence of trade unions and the emergence of vulnerable groups in the labor market, employment by agencies, 'zero-hour contracts,' but also engaging self-employed persons, the challenges of establishing and proving the existence of a *de facto* employment relationship and, finally, the need to understand the importance and role of an individual employment contract as a 'benchmark' of rights guaranteed to workers.[14] Pandemic has undoubtedly imposed

10 Tucak and Vinković, 2021, pp. 1086–1089.
11 Bilić, 2021, pp. 406–407.
12 Ibid., pp. 55–56.
13 Končar, 2016, p. 261.
14 Albin and Prassl, 2016, pp. 213–216.

the need to discuss open issues in national labor law, highlighted a review of legal solutions related to work outside the premises of an employer (i.e., work at an alternative workplace), but also drew attention to the complete lack of a normative framework regulating platform work. We believe that these issues have a reversible impact on national trade unions—due to the potential areas to which they can extend their influence and increase the number of their members, but also because of the risks for them, resulting from the lack of a normative framework for individual entities, and the risk that such legislative shortcomings and inadequate solutions would further undermine the existing positions *pro futuro*. Trade unions have been established to counterbalance the weaker position of employees against employers.[15] In this context, W. Sanetra emphasizes that the functional dependence of collective labor law on individual labor law speaks against its autonomization and shaping it as a separate branch of law.[16] The institutions, which mainly contribute to flexibility and testify to the gradual but obviously stronger development of nonstandard forms of employment, pose a significant challenge both to the national labor inspectorate and to the ordinary courts, and finally, and perhaps most of all, to trade unions, which need to reflect on their appropriate treatment in *pro futuro* collective agreements.

1. Systematic Placement of Labor Law

In Slovenia according to Vodovnik et al., labor law represents an independent branch of the Slovene legal system, a characteristic confirmed by the fact that it possesses its own particular structure of regulation with its own principles and the fact that individual rights, stemming from the particular branch of labor law, enjoy protection under a special branch of the court system. Labor law regulation's inextricable link to social security law, placing labor law in the wider field of social law, has already been discussed. Even if sharing a profound connection to social security law as a discipline of public law, labor law has generally developed from civil law, an element that is according to Vodovnik et al. still visible in the current regulation of the employment contract. According to the authors, the link is also or even most visible in cases when civil law provisions directly regulate parts of labor law, e.g., the liability for damages from the employment relationship. However, in general terms, Slovene labor law could be considered as, on the one hand, falling within the realm of social law as a special discipline of public law, and, on the other hand, sharing a profound link to civil law regarding parties' private autonomy both in the field of individual as well as collective labor law. In that sense, civil law characteristics take over once a minimum level of protection, offered by public law provisions, is in place. In his theoretical systematization of major legal disciplines, Pavčnik describes labor law through its gradual separation from civil law, next to the then developing discipline

15 Florek, 2007, p. 17.
16 Fahlbeck, p. 42.

of social security law. According to Pavčnik, the liberal 19th century state first regulated work through civil law contracts, stemming from the then applicable Civil Code (Germ. *Bürgerliches Gesetzbuch*), however, with gradual development, increasingly heteronomous (state) legal rules begun to limit party autonomy as to offer a wider set of rights to workers (employees). Slovene employment law, commonly considered as a notion wider than labor law, corresponds to the theoretical paradigm of monism. Employment relationships of civil servants fall under the same regulatory framework as private-sector employee relationships. Put differently, general labor law provisions are applicable for both private as well as public-sector employees who are employed with state bodies, public agencies, funds or institutions, self-governing local communities, etc.[17]

In the scholarly literature on Romanian labor law, while there are divergent opinions as to which law can be considered the first true labor law, there is consensus on the autonomy of labor law as a legal discipline. The solution of regulating employment contracts within the Civil Code is alien to the tradition of Romanian labor law, and the unanimous position of the domestic scholarly literature is in line with the idea of the autonomy of labor law. There are also isolated views that labor law developed in parallel with civil law, and that the individual employment contract itself cannot be derived from any type of contract regulated by the Civil Code, since its roots are to be found in the contracts used by guilds. Most Romanian legal scholars, however, are of the opposite opinion, and take the view that the regulation of the employment contract has its roots in the succinct articles 1412 and 1470 of the 1864 Romanian Labor Code, which settled the issue of *locatio operarum* until they were repealed by the 1950 Labor Code. Subsequently, and under the 1972 Labor Code, the possibility that a contract of employment could be governed by a law other than the Labor Code, the primary source of labor law, was not even considered.[18]

According to Czech legal theory (and historical tradition), labor law is not distinguished from private law (in the sense of being a legal branch of private law). Private law is conceived as the body of laws regulating ordinary private matters, distinct from laws regulating business relationships, family relationships or relationships arising from the performance of dependent work. Labor law is comprised of provisions regulating the legal relationship between employer (old-fashioned 'master') and employee ('servant'). The nature of an employment relationship is that an employee 'sells labor' to an employer. The theory names the employee's work as 'the performance of dependent work.'[19]

In Poland, labor law is currently an independent branch of law (within a uniform legal system), separate inter alia from civil law and administrative law. The subject of labor law does not include social insurance, although there are close relationships between labor law and social insurance law. At the same time, it should be stressed

17 Strban and Mišič, Chapter 4.
18 Vallasek, Chapter 3.
19 Štefko, Chapter 6.

that labor law has quite strong relationships with civil law, from which it is partly derived. Labor law represents a key branch of law in Serbia and Hungary. However, as Jašarević and Dudás note, it seems it does not always receive the necessary attention from the state. Legislative solutions are often belated in the light of the needs of practice. In addition, the state does not take sufficient care of the effective application of labor law, which is why regulations are often circumvented in practice.[20]

2. Flexibility and Security

COVID-19 reshaped the way we are to think of work organization, especially within particular service industries, where telework became the new norm, of course with all of its benefits and drawbacks, posing challenging questions of employee's autonomy, health and safety (at the home office), supervision and privacy, work-life balance, etc. In the field of social security, countless measures concerning either new social security benefits or the amendment of the existing conditions were taken.

Recently, despite the constitutional protection laid down the Slovenian Constitution the Slovene Parliament introduced new grounds for dismissal, possibly considered as less favorable and unjustified unequal treatment of employees on the grounds of old age. Even if bound by the ILO Convention No. 158 concerning the termination of employment at the initiative of the employer and the European Social Charter (ESL), Parliament introduced a new cause of dismissal by which an employer can one-sidedly terminate an employment contract if the employee fulfills old-age retirement criteria. No genuine reason for dismissal, either on side of the employee or the employer, e.g., a business reason, must be established. The Slovene Constitutional Court has suspended the use of the said amendment of the ERA until it reaches a substantive decision in the case put forward by the trade unions on the grounds of unlawful age discrimination. One the one hand, the amendment that was introduced by emergency coronavirus legislation is said to have followed the legitimate or public interest aim of securing employers' existence during the COVID-19 crisis. However, from this perspective, the traditional business reason should have sufficed. On the other hand, the amendment was also supposed to have enabled enhanced employment of younger people instead of the old, who already enjoy social security (for old age), even if this legitimate aim of the labor market seems unrelated to the general aims of emergency coronavirus legislation. Even so, in cases of such dismissals, employment of younger persons was not required by law, making the amendment inadequate in following the said legitimate aim. Since ERA already regulates the common business reason for dismissal, the part of the amendment relating to the legitimate aim of keeping businesses afloat during and after the health crisis, is to be considered not inadequate but unnecessary. From this perspective, both measures fail the proportionality test even before subject to its final step, the balancing of individual rights or constitutionally

20 Barański, Chapter 7; Jašarević and Dudás, Chapter 5.

safeguarded values. According to Vodovnik et al., the ERA from 2002,[21] amended in 2013, represents the basis of contemporary employment law in Slovenia. The 2013 ERA, which also represents the central piece of domestic legislation governing individual labor relationships, introduced several new labor law institutions, like the economically dependent person, i.e., a self-employed person, providing the majority of his or her services for a single client, thus enjoying a limited scope of labor law protection. It also amended the regulation of the employment contract, probationary employment, fixed-term employment, and other flexible forms of work.[22]

In Romania, the most significant of the amendments to the Labor Act in terms of making labor law more flexible is Law 40 of 2011, the new legislation introduced substantial changes to the provisions on temporary agency work, fixed-term contracts, working time, and probationary periods, but also covered several other issues. Overall, it can be concluded that the amendments were necessary in many respects because of shortcomings that could be identified in the previous legislation, without weakening the protection of workers. However, as pointed out in the literature, there remain several questions whose interpretation is not clear. Such is the case of the termination of an employment contract due to the fulfillment of retirement conditions, which was only one in a series of amendments. But the new legislation also affects certain cases of termination of an employment contract by the employer and the rules on termination by the employee, and the ban on trade union leaders for two years after their mandate has been lifted, which is a significant change in prohibitions on termination.[23]

In Croatia, Grgurev and Vukorepa emphasize that complex and fragmented labor law norms contribute to legal uncertainty, and the seasonal characteristics of the Croatian economy contribute to the use of fixed-term and temporary agency work, as well as student work. In addition, they estimate that flexibility has increased since 2014 with the new Labor Act, which no longer requires objective justification for entering into a fixed-term contract, although it still considers it an exception. The first such contract may be concluded by the employee for a period of more than three years with possible exceptions based on the replacement of a temporarily absent employee, or on specific legal or collective agreement provisions, and successive employment contracts may be concluded for much longer than the maximum period of three years limited by the general rule. The use of part-time employment has traditionally been low in Croatia, but the regulation of temporary agency work has opened up space for concluding numerous open-ended or fixed-term employment contracts, and the possibility of working in an alternative workplace proved, according to some authors, rigid and inflexible in practice. Furthermore, contracts are often concluded in Croatia outside the scope of labor law, i.e., contracts in the field of the law of obligations, to perform a whole range of tasks, but also to disguise the actual employment relationship and, to some extent, the grey economy. A special law of 2012 introduced a

21 Official Gazette of the RS, from No. 42/02 to 21/13.
22 Strban and Mišič, Chapter 4.
23 Vallasek, Chapter 3.

voucher system of work in agriculture for a maximum period of 90 days in a calendar year, which has often been criticized, but it should *pro futuro* be considered how it could be extended, but also expanded to other jobs (home help, care for the elderly, babysitting, etc.). These institutions, which mainly contribute to flexibility and testify to the gradual but obviously stronger development of nonstandard forms of employment, pose a significant challenge both to the national labor inspectorate and to the ordinary courts, and finally, and perhaps most of all, to trade unions, which need to reflect on their appropriate treatment in *pro futuro* collective agreements. According to many of the institutions mentioned above, which should contribute to flexibility, national jurisprudence is more than modest, and referrals to the Court of Justice of the European Union are, as far as we know, nonexistent.[24]

If we perceive the flexibility of Labor Law as a lowering of the protection of employees from the termination of a labor relation, it is necessary to mention that the Czech Labor Code has not adopted this principle yet. Czech labor law still prohibits an employer from dismissing his/her employees without a fair reason. The only exception is when a probation clause is contained within the employment contract. Even a collective agreement cannot exempt an employee from protection against accidental or wrongful termination. Nor can a higher-level collective agreement provide for an exception. Thus, the only real blanket exception to the protection against termination of the employment relationship through an agreement is provided for in the Labor Code for agreements on work performed outside the employment relationship. Nevertheless, where the significant changes are visible in longer period are: fixed-term contracts and temporary agency work.[25]

The Labor Code in Serbia specifies that apart from the employment contract, the following types of contracts may be concluded as well: temporary or occasional work contract, special service contract, contract on apprenticeship or professional development, additional work contract.[26]

The Hungarian Labor Code included quite several personal employment relationships in chapter XV of the Labor Code. In addition to fixed-term and various forms of part-time employment, teleworking, employment, simplified employment, employment with a public employer, a managerial employee, temporary agency work and incapacitated employees are also included in the protection scheme. Each of these employment relationships defines itself in relation to the general rules of the employment contract, highlighting the differences from typical employment under a normal employment contract in the content of the employment contract, instructions, supervision, cost bearing, remuneration, etc. The recent telework regulation shows greatly the flexibility and security issue responding to the practice (like Telework Act in Romania).[27]

24 Vinković, Chapter 8.
25 Štefko, Chapter 6.
26 Jašarević and Dudás, Chapter 5.
27 Jakab, Chapter 9.

3. The Employment Relationship

In Slovenia the ERA consists of a definition of an employment relationship. Art. 4 defines it relationship as a relationship between employee and employer, in which the employee voluntarily enters an *organized work process* within which he *personally* and for *remuneration* carries out continuous work in line with *employer's instructions* and under his *supervision*. Which means there is a promise in the employment relationship for the long term.[28]

In Slovakia opinions of legal science consider the subject of labor law to be the legal regulation of *dependent work.* According to the valid legislation, the Labor Code defines dependent work as work performed under a relationship of superiority of the employer and the subordination of the employee, personally by the employee for the employer, according to the employer's instructions, on its behalf, during working hours determined by the employer.[29]

Similar to Tičar, Kresal and Senčur Peček mention several possible tests like the *control* or *subordination and control test,* accompanied by the more up to date *business* and *integration test*. Due to new patterns of work organization, also the *mixed test,* merging criteria from other tests, and the *risk test* have gained importance. The definition of an employment relationship, stipulated in art. 4, means that in theory, every civil or other legal relationship in which indicators of an employment relationship appear should be considered as such and that an employment contract, possibly of an indefinite duration, should be concluded. Even more so, art. 18 of the ERA provides for a legal presumption according to which the existence of defining elements of an employment relationship determines the existence of an employment relationship. The indicator of subordination of course cannot be considered as full loss of autonomy by the employee, especially in cases of aforementioned highly skilled professionals and modern forms of work organization, nor as constant and direct employer's oversight and control. It should be looked at more as a general context of dependence and subordination in which work is carried out. At this point the role of labor inspection is also an interesting issue, because it might goes against the free will of the parties. The concept of Slovakian labor law also prescribes the prohibition of performing dependent work in a relationship other than employment with the regulation of labor law. This means that if the subject of their agreement is the performance of dependent work as defined by the Labor Code, the contracting parties must also submit to labor law regulation, even against their own will.[30]

In Slovakia an original definition of dependent work included a total of ten features and their number became their most serious shortcoming. The practice of employers, and it should be added that this was also helped by the interpretation of

28 Strban and Mišič, Chapter 4.
29 See Dolobáč, Chapter 3.
30 Strban and Mišič, Chapter 4.

the relevant labor inspectors, required a cumulative interpretation of the features of dependent work. A failure to fulfill even one of the many features of dependent work, often fictitious and simulated, made it possible to undesirably contract dependent work under civil or commercial law contracts. The weakest link in the definition chain appeared to be the conceptual feature of the performance of work using the employer's means of production. Ad absurdum, it was sufficient if the employee used their own tools in the course of their work, and thus the employers argued that due to the non-fulfillment of all legal definitions, it could not be seen as the performance of dependent work. Another controversy was caused by the defining feature of work performance at the responsibility of the employer, which appeared to be more of a consequence of work performance in personal dependence. For this reason, gradual amendments to the Labor Code reduced the conceptual features of dependent work. The relative mandatory nature is expressed by the provisions of Section 1 par. 6 of the Slovakian Labor Code In employment relationships, the terms and conditions of employment and working conditions of an employee may be regulated more advantageously than this law or other labor law regulation provides, unless this law or other labor law regulation expressly prohibits it or unless it follows from the nature of their provisions that they cannot be deviated from. In accordance with its protective function, the Labor Code allows for dispositive agreements regarding the employment conditions and working conditions in one direction only—to the advantage of the employee. Kavšek follows the presumption of an existing employment contract from art. 5 of the Prevention of Undeclared Work and Employment Act, according to which a worker, who did not conclude an employment contract or whom his or her employer did not register within or deregistered from all mandatory social insurance branches, is presumed to have obtained a full-time employment contract of an indefinite duration. Finally, yet importantly, ERA predicts a full-time employment contract of an indefinite duration as the general rule. If the employment contract does not stipulate the duration of the employment relationship, it is presumed, under art. 12(2), that a contract of an indefinite duration has been concluded. According to art. 54 and 55, a fixed-term employment contract can be concluded as an exception only, under special conditions provided by the law, e.g., in cases of project work, season work, temporarily increased work demand, absent worker replacement. However, as made clear by a recent extensive study on precarious work in Slovenia, fixed-term employment, even in cases of steady, long-term demand for work, seems to be the new (unlawful) norm. [31]

In Romania labor law in its entirety only covers legal relationships based on individual employment contracts, but Romanian law also regulates numerous other employment relationships, which are covered to a greater or lesser extent by labor law. However, situations of employment that remain outside this regulatory area are also present, such as those that can be observed in the gig economy or platform-based employment, leaving the workers completely unprotected by labor law. Art. 10 of the

31 See Dolobáč, Chapter 2.

Labor Law defines a contract of employment as a contract under which a natural person, the employee, undertakes to work for the benefit and under the direction of a natural or legal person employer in return for remuneration called wages. The concept of *employee* is not defined in the Romanian Labor Code, which in its art. 13 only deals with the conditions of capacity to work. Based on the definitions in the literature, an employee is considered to be a person who makes his or her own labor available for the benefit of the employer and for which he or she is paid wages by the employer in return. The definition of the term *employer* in the Labor Code is also rather general, the normative text emphasizes the conditions of legal capacity, but in the first paragraph of art. 14 it states that 'an employer within the meaning of the present Code is a natural or legal person who is entitled to employ workers under a contract of employment pursuant to the law.' The definition in the literature follows the legal definition, generally listing slightly more characteristics, meaning that an employer is defined as a natural or legal person who provides a workplace for the employee, ensures working conditions and pays the employee in return for working in a subordinate position.[32]

In Serbia, in the case law, the number of cases rises when it is necessary to determine whether there is an employment or another contract, which is in line with the growing practice of simulating some contractual obligations (usually contract for work) with content that unequivocally implies an employment contract. In assessing whether it is an employment contract or another contract of the law of obligations, the courts are generally guided by the doctrine of *primacy of facts,* irrespective of the 'labelling' the parties gave to the contract. In other words, it has been noticed lately that simulated contracts are being concluded for occasional and temporary work, fixed-term contracts, contracts for the recruitment of workers through work agencies and other contracts of general law of obligations. In the assessment whether an employment relationship exists, the courts are mainly guided by the 'true nature' of the contract, i.e., they consider the essential components of the work performed by the employer (type of the work, its duration, the contractor's relation to the employer). This is the main reason is a civil law contract or 'sham flexible work contract' between the employer and the contractor forbidden, when the services or work to be performed coincide in essence with the characteristics of an employment relationship or fall within the employer's regular scope of business. It is quite unusual that the legislature did not regulate the notion of the employment contract (neither the notion of the collective agreement). There is no definition in the LC, neither in the LO. The LC only indirectly defines employment contract as a contract by which an employment relationship is established. This provision of the LC applies only to private sector, public companies, and services. As we said, civil servants are, however, appointed and enter into employment relationship by an act called 'decision.' One of the most prominent Serbian scholars of labor law today, Lubarda, points out that the *subject matter* of the employment contract must be a work conducted for the benefit of

32 Vallasek, Chapter 3.

another person that is not prohibited. He asserts that the general rules of the law of obligations must be applied, in the sense that the subject matter of the contract must be *determined* or *determinable*, consisting of: 1) defined work, 2) remuneration and 3) subordination If after the conclusion of the employment contract is established that there is a disagreement on some irrelevant element, the employment contract remains in force. The general rule of contract law shall be applied subsidiarily in this case, according to which this point will be determined by the court, if it may be inferred that the parties would have concluded a contract even without reaching an agreement on that specific point.[33]

Czech labor law is codified. Most provisions of the Labor Code of 2006 set forth conditions of the employment relationship and only a few concern rules for employment contracts. Hence, the second important concept in Czech labor law is that of employment relationships. The relationship is understood as a legal relation between two different individuals who are subject to rights and duties arising from that relationship. The noun adjunct 'employment' means that it is labor law which governs the relation in question.[34]

In Poland, according to art. 22 §1 KP, 'By establishing an employment relationship, an employee undertakes to perform work of a specified type for the benefit of an employer and under his supervision, in a place and at the times specified by the employer; the employer undertakes to employ the employee in return for remuneration.' It is accepted in the literature that labor law is a set of legal norms governing subordinate employment relationships and other legal relationships inherent in them. This specific obligatory relationship, which is the employment relationship, is a central concept in labor law. It is precisely the criterion of the subject of regulation that makes it possible to distinguish labor law as a separate branch of law. It is common in both jurisprudence and literature to contrast employment relationships with other workers' work. The employment relationship, as a legal relationship governed by labor law, has a specific legal character which distinguishes it, for example, from civil law relationships, administrative law relationships (work relationships in which officers of militarized formations remain in connection with the performance of a specific service), and criminal law relationships (work under conditions of compulsion). In the Supreme Court's view, the work does not must be of an employee nature. According to K.W. Baran, 'non-employment work includes all non-incidental provision of work except for classically conceived employment of a legal-employee nature.' The structural features of an employment relationship are voluntary commitment, the need to perform work personally, the aforementioned employee subordination, the employer's risk, the remuneration of work and continuity of work. The priviledge of the employee is a concept in the examined countries: the most important consequence of qualifying a collective labor agreement as a provision of labor law is applying to the provisions of such an agreement, defining the rights and obligations

33 Jašarević and Dudás, Chapter 5.
34 Štefko, Chapter 6.

of the parties to the employment relationship, of the special mechanism resulting from art. 18 KP. The Polish Labor Code establishes in this provision the principle of privilege of the employee, according to which the provisions of employment contracts and other acts based on which an employment relationship is established may not disadvantage an employee more than the provisions of labor law (art. 18 §1 KP). Any provisions of these contracts and acts defined that are less favorable to an employee than the provisions of labor law are invalid; the appropriate provisions of labor law will apply instead (art. 18 §2 KP). The principle of privilege of the employee sets limits on the parties' freedom to the employment relationship to shape their mutual rights and obligations. In its judgment of 5 October 2016, The Supreme Court indicated that the essence of the regulation of art. 18 §1 and 2 KP is to ensure that the employment contract does not violate the standards arising from the provisions of the labor law, while at the same time the parties are free to shape the terms and conditions of employment in the contract in a manner more favorable to the employee. These more favorable contractual provisions 'may introduce into the employment relationship employee rights to an extent greater than that provided for by the labor law, but they may also establish a right to benefits not provided for by those provisions'[35]. On the other hand, the principle of privilege of the employee cannot be reduced to a simple relation to resolving doubts in favor of the employee because a principle of this content cannot be derived from labor law provisions.[36]

4. Civil Law and Labor law

As far as good practices are concerned, for the sake of security the amended Slovenian Act on Labor Inspection deals with the role of labor inspection in determining 'false civil law contracts' when it comes to employment relationship. If the labor inspector established that a contract of general law of obligations has been concluded, which is contrary to the rule of the Labor Code prescribing that if there are elements of employment relationship, the work cannot be performed based on such contracts. In that case the inspector orders the employer to provide the contractor a written employment contract within three working days of delivery of the decision. The written contract must correspond to the actual situation arising from the decision (regarding the type and scope of the work performed), the salary must be comparable to the salary prescribed for the same work by the collective agreement and general acts binding on the employer (whereby the contributions to obligatory social insurance and tax obligations are also taken into consideration). If the employer fails to offer the contractor an employment contract, he has a right to resort to court within 30 days. Similarly, the solution of the Croatian Labor Code may also be qualified as progressive. If the employer concludes a contract with the employee for the performance

35 Judgment of the Supreme Court of 5 October 2016, II PK 205/15, LEX no. 2165563.
36 Barański, Chapter 7.

of work which, given the nature and type of work and the employer's authority, has the characteristics of the job for which the employment relationship is established, according to the Croatian Labor Code it shall be considered that an employment contract has been concluded, unless the employer proves otherwise. Furthermore, the Croatian Labor Code specifies that if there is an assignment of an employee to conduct work by a linked company, the former shall be considered employer in terms of the duty to apply the provisions of the Labor Code and other statutes and regulations governing safety and health at work (so-called linked employer). It would strengthen the protection of employees if a similar rule could be adopted in Serbia as well. In Slovenia, Kresal and Senčur Peček consider the employment contract as a special and autonomous contract of labor law, regulated next to general civil law provisions. According to the authors, the placement and definition of the employment contract as either an independent labor law contract or a specific civil law contract is left to the discretion of national legislatures and thus cannot be governed by neither international nor EU law. Under Slovene legislation, if there is an an absence of particular labor law rules, civil law rules thus *mutatis mutandis* apply regarding the conclusion, validity, termination, and other elements of the employment contract. Civil law rules concerning the conclusion of an employment contract apply, for example, to parties' capacity and consent, consideration and grounds for conclusion, contract form, etc. Regarding some institutions, like liability for damages or absolute and relative nullity, the ERA even directly refers to the application of civil law rules. Nullity of an employment contract for example leads to restitution claims on the side of both the employee and the employer, concerning salaries for example. However, if for example the employer is recognized by the court as a fraudulent party to the employment contract, the latter can deny his or her claim for restitution, considering the unlawful conduct of (possibly) both parties and the status of the violated legally protected categories or values.[37]

In Slovakia the legislature thus regulated the relationship between the Labor Code as a *lex specialis* and the Civil Code as a *lex generalis* in the form of subsidiarity, but only to a very limited extent. 'General provisions' is the title of the first part of the Civil Code. Subsidiarity thus applies to general issues such as the definition of a natural person, a legal person, legal acts, the method of concluding a contract, etc. *subsidiarity applies only to Part 1 of the Civil Code, but not to the part governing obligations*. In practice, such a narrowly defined subsidiarity, together with a closed system of contract types, seriously affects several areas of problems. There are several typical civil law elements that would also find application in labor law, but since they are not regulated in the Labor Code and at the same time subsidiarity is not allowed, their application is excluded. A typical example is the set-off of mutual claims or the assertion of the right to payment of statutory interest on arrears, which is still disputed in labor law. The set-off of mutual claims is thus not possible either from a substantive or procedural point of view, while the justification lies precisely in the absent

37 Strban and Mišič, Chapter 4.

possibility of subsidiary application of the Civil Code. On the other hand, the right to be awarded statutory penalty default interest in employment relationships is not at all unequivocal. At present, the Labor Code does not contain any regulation concerning default interest if there is a failure to pay in a proper and timely manner However, the majority case law recognizes and awards penalty interest for late payment, referring precisely to the Civil Code without examining in more detail the reasons for the lack of subsidiarity. In Slovakia it is pointed out: analogy is necessary in labor law, because otherwise we would not be able to objectively cover all situations that occur in labor relationships. But where do we set the boundaries? When is the analogy of the law for contractual obligations permissible and when does it become an illegal application? The basic boundaries between the allowed and prohibited use of the analogy of the law can be largely set out intuitively. Simply put, the analogy of the elements of the Civil Code will be allowed where law enforcement authorities *will have no other choice,* i.e., in cases where labor law is so insufficient that without the use of a special part of the Civil Code or without the use of other civil law regulations, its provisions will be obsolete. According to Judgment of the Regional Court in Žilina the analogy of the law and the use of the elements of the special part of the Civil Code will be inadmissible in cases where it would result in the application of such provisions of the Civil Code or special regulations that clearly conflict with the protective function of labor law, i.e., the protection of the weaker party.[38]

In Romania the Labor Code makes it clear in art. 278 that civil law is to be applied in a complementary manner, provided that the provisions in question are not in conflict with the specific characteristics of employment relationships.[39]

In Serbian law, Tintić's (and Jašarević-Dudás's) conclusion is that by being classified as a concept of labor law, collective agreements gain an environment corresponding to their importance and role in the practice of employment relationships, which enables their unhindered development. Civil law regulations on contracts provide often only a narrow framework for collective agreements. This does not mean that the numerous rules of the general law of obligations cannot be applied here either, especially when it comes to the legal and contractual capacity of the contracting parties (and their representatives) to conclude the contract, the form, interpretation, termination, and nullity of the contract.[40]

In Croatia, based on the contractual nature of the employment relationship, the general provisions of contract law shall apply to all issues related to the conclusion, validity and termination of an employment contract, a collective agreement or an agreement concluded between the works council and the employer, as well as to all other issues not regulated by the Labor Act or any other law, depending on the nature of such contracts. In Croatian law, an interesting aspect has been outlined. According to the provisions of Croatian labor law, a collective agreement may terminate by

38 See Dolobáč, Chapter 2.
39 Vallasek, Chapter 3.
40 Jašarević and Dudás, Chapter 5.

the expiration of the term specified therein, by the conclusion of a new collective agreement between the same parties, or by termination (in the case of fixed-term agreements, which may be concluded *nota bene* for a maximum term of five years; termination is possible only if such a circumstance is provided for in the collective agreement). In the latter case, the collective agreements must contain provisions on the grounds for termination and notice periods, and if these were not included in the collective agreement, the provisions of the law of obligations on the amendment or termination of a contract due to changed circumstances must be applied. However, the reason for the review of constitutionality was related to the fact that certain provisions of the collective agreement for civil servants were overridden by the *lex specialis* provisions. In the specific proceedings, the Constitutional Court took the position that these were privileges of part of civil servants and public service employees, which are by their nature not an integral part of the salary in the sense of the constitutional provisions, and that by adopting these provisions, the government 'did not exceed the limits of its powers to such an extent that this could be qualified as an abuse of the constitutional power to propose legislation.' The Constitutional Court had in mind the ILO practice which clearly shows that economic difficulties cannot justify disrespect for freedom of association and collective bargaining, i.e., that interventions in collective agreements by the authorities should be preceded by dialogue and negotiations between contracting parties (stakeholders), but also by the fact that circumstances have arisen which could not have been foreseen at the time of the conclusion of the agreement, and which imply the application of the *rebus sic stantibus* clause of the law of obligations with regard to possible amendments to or judicial termination of the agreement affected by such circumstances. Croatian labor law theory clearly states that the *rebus sic stantibus* clause as a general rule of the law of obligations cannot be subsidiary to an employment contract, because this matter is regulated *expressis verbis* by the provisions of the Labor Act on the termination of the employment contract. In this sense, in view of the changed circumstances, the Labor Act is a kind of *lex specialis* with respect to the Civil Obligations Act. However, the relevant clause may be applied to the termination of a collective agreement as an exception to the principle of *pacta sunt servanda* of the law of obligations, due to the explicit reference of the aforementioned provisions of the Labor Act to the application of the general rules of the law of obligations in that specific case, and provided that the circumstances have objectively changed since the conclusion of the collective agreement. An objective change of circumstances in each specific case and based on the long-standing judicial interpretation and practice of established tests is ultimately assessed by the court when initiating court proceedings.[41]

In the Czech Republic during the preparation of the Labor Code of 2006, the legislation was forced to deal with several theoretical problems. One of them was how to manage the relationship between civil law and labor law, or more particularly, the scope of the Civil Code and the scope of new Labor Code of 2006. Because the Civil Code

41 Vinković, Chapter 8.

contains many general rules which may be used in labor law, it seemed to be useless to rewrite and repeat such rules in the new Labor Code of 2006 as it did the Labor Code of 1965. Experts considered the two main approaches available—the concept of subsidiarity or the concept of limited application through express reference (delegation). The former means that the Civil Code would have applied as more general law in cases where the Labor Code of 2006 did not contain a specific regulation. On the contrary, the latter prescribes that it is the Labor Code that must enumerate which provisions of the Civil Code shall apply in labor law. The Civil Code must not be applied unless there is an express provision of the Labor Code that calls for the application of civil law. The legislature chose the delegation approach at the end. Therefore, the Labor Code of 2006 referred to almost 150 provisions of the Civil Code which, in accordance with Section 4 of the Labor Code of 2006, ought to apply to labor relationships. The same provision contained an interpretation rule that the Civil Code shall not be applied if the Labor Code of 2006 does not explicitly refer to a provision of the Civil Code. These referred provisions of the Civil Code are considered parts of the Labor Code of 2006 and, therefore, are governed by the general principles set forth in the Labor Code of 2006. However, such a legislative technique led to several problems regarding the application of 'Civil Code's provisions' in labor law. For example, the legislature made also reference to provisions which are inapplicable to labor relationships, and worse, to provisions which are contrary to ILO international treaties ratified by the Czech Republic and its predecessors (only some of these treaties enjoy direct applicability in Czech law). Additionally, it forgot to enumerate certain provisions of the Civil Code that are necessary for just application of the referred provisions. Large problems arose because of the invalidity of these legal acts. Both laws in question are based on different concepts concerning the invalidity of legal acts. Which of them shall apply in labor law? At the end, the Labor Code of 2006 was tearing out certain provisions of the Civil Code that the legislature envisioned to apply together. Therefore, due to legal uncertainty, the relevant provisions were finally annulled by the Constitutional Court in its judgment of 12 March 2008. The decision was published under No 116/2008 Collection.[42]

In Poland, in accordance with art. 300 KP, 'In cases not regulated by the provisions of labor law, the provisions of the Civil Code apply accordingly to an employment relationship, provided they are not contrary to the principles of labor law.'[43]

The Hungarian Labor Code seems to be pursuing a policy of social policy based on the prominent role of the social partners and social dialogue, and employment policy objectives aimed at strengthening competitiveness and raising employment levels, or at least their dominance can be observed. Thus, Hungarian labor law has a market corrective and market stimulating function, going beyond the market restricting function defined by Deakin, i.e., the protection of dependent subject. This is essentially in line with the changes also taking place in Europe. The subjects

42 Štefko, Chapter 6.
43 Barański, Chapter 7.

of labor law regulation are increasingly excluded from labor law protection, they take mutual risks, and thus the civil law regulatory nature of the labor law regulation is strengthened, the freedom of contract and decision of the parties comes to the fore, the parties move from a subordinate position to a more side-by-side (but not fully side-by-side) position. The reduction in protection is in the spirit of mutual risk-taking, if we accept that the employer now has the means to determine working conditions. However, the limits to contractual freedom are imposed by the provisions of the cogens, the individual relative dispositive labor law rules, where deviations to the detriment of the employee are limited or unlimited, and the employment contract may deviate from the collective agreement only based on the welfare principle. The codification of labor law took place in the way that the rules of Civil Code which can be utilized from the point of view of Labor Code have been incorporated into the Labor Code and the Civil Code was considered as an additional legal act.[44]

5. Collective Labor Law

In 2018, Vodovnik et al. noted that no independent trade unions of atypical workers existed. However, the Precarious Workers Trade Union, established in 2016 as an internal organizational unit of the Association of Free Trade Unions of Slovenia, is the one most dedicated to reducing the number of precarious forms of work, the active inclusion of precarious workers, the improvement of their social status and legal certainty, etc. In Slovenia there is a Collective Agreement Act regulating all important matters regarding collective agreements. Art. 22 of the ERA for example stipulates that the employee, concluding an employment contract, must fulfill statutory or other conditions, prescribed by a collective agreement or employer's general act. Art. 55(4) for example provides that *project work*, representing lawful grounds for concluding a fixed-term employment contract, is defined within a collective agreement, concluded at the level of the industry. According to art. 59(3), an industry-level collective agreement may provide for a higher percentage of posted workers performing work for a single user undertaking. The three brief examples point to cases in which autonomous legislation may stipulate additional rights and obligations. If it does, the latter apply next to statutory provisions. The examples also show a vivid interplay between statutory legislation or the normative power of the general legislature and autonomous legislation or the normative power of both the employer and employees' and employers' organizations. All the examples also point into the direction of the overriding, but not absolute *in favorem laboratoris* principle of Slovene labor law, securing a higher level of labor law protection for the employee as the commonly weaker party to the employment contract. The relationship between labor law regulation, more precisely, the relationship between the ERA and

44 Jakab, Chapter 9.

collective agreements, from which the limits of the *in favorem laboratoris* principle can be derived, is governed both by the ERA itself in art. 9 and the CAA (Collective Agreement Act) in art. 4.[45]

In Slovakia, legislation does not define a collective agreement, leaving its definition to legal science, which defines a collective agreement as a bilateral legal act that acts as an instrument of social reconciliation between employees and employers or as a political, legal, economic, and social document governing the relationships of relevant entities and their content. However, it has—among others—the characteristics of a contract of a private law nature (even though the state may be a party), to which all relevant provisions of the Civil Code on the process of concluding contracts and their invalidity, as well as special procedural rules under the Collective Bargaining Act, apply.[46] In Slovakia, there is an imaginary pyramid. At its peak is the law, which regulates the minimum protection of the employee, followed by a higher level collective agreement, which is to guarantee greater protection of rights than the law, followed by a company collective agreement, which must provide a greater range of rights for employees than the law as well as a higher level collective agreement (otherwise it is invalid in that part) and finally the widest protection is to be provided by an employment contract, which must guarantee the widest protection of rights, otherwise it is invalid. There is an interesting finding of the Constitutional Court of the Slovak Republic, which ruled on the possibility of asserting claims in favor of an employee even from an invalid collective agreement. Put simply, the essence of the proceedings consisted of a claim by which an employee sought increased severance pay based on a collective agreement. In the meantime, in different proceedings, it was legally decided that the collective agreement was invalid because it was not signed by the authorized persons. The employer refused to pay the severance pay because it considered the collective agreement to be invalid and any performance of in relation to Law 62 of 2011, in its Decision 574/2011, it took the position that the State has discretion to organize the rules of collective bargaining. The new legislation abolished national collective bargaining, resulting in the fact that collective bargaining coverage fell to around 36% in a single year, according to union statistics, and remained low thereafter as well.[47]

In Romania the essence of the relationship between individual and collective employment contracts is described in art. 11 of the Labor Code, which states that an employment contract may not contain provisions on a lower level of rights, nor provisions that are contrary to those laid down by law or collective agreements. A similar provision is contained in art. 132 of the Law concerning Social Dialogue. Based on the two provisions above, the provisions on employees' rights must comply with the following rules: an individual employment contract may not set a lower level of rights than that provided for in the collective agreement or in a statutory provision;

45 Strban and Mišič, Chapter 4.
46 Act no. 2/1991 Coll. on collective bargaining, as amended.
47 Štefko, Chapter 6.

a collective agreement may not set a lower level of rights than that provided for in a piece of legislation. Consequently, in the context of Romanian labor law, it is not possible to deviate from the legal level to the detriment of workers, either through individual or collective bargaining. In relation to Law 62 of 2011, in its Decision 574/2011, Romanian Constitutional Court took the position that the State has discretion to organize the rules of collective bargaining. The new legislation abolished national collective bargaining, resulting in the fact that collective bargaining coverage fell to around 36% in a single year, according to union statistics, and remained low thereafter as well. Thus, Romanian labor law does not allow for the possibility, which has seeped into the labor law practice of some Western European countries that collective agreements may limit the benefits and rights of employees compared to those provided for by law.[48]

The Serbian Labor Code also regulates the *temporal validity* of a collective agreement which is a good sign of collective consciousness. It can be concluded for a maximum of three years. After the expiration of that period, the agreement ceases, unless the participants agree otherwise, no later than 30 days before the expiration of its validity. Several provisions of the LC however tackle the relationship between individual employment contracts and collective agreements. The LC clearly gives priority to collective agreements. It stipulates that the rights, obligations, and responsibilities from the employment relationship, in addition to that law and special laws, are regulated by the collective agreement and the employment contract. However, the significance of the individual contract is relativized in the LC—specifically, in the continuation of the same provision, it is stated that the employment relationship can be regulated by the labor rulebook and the employment contract only when the LC so provides. Thus, if there is a collective agreement, it has primacy. The priority of collective agreement is also confirmed by a rule stipulating those certain provisions of the employment contract determining less favorable working conditions than the conditions determined by law and the general act of the employer (which include collective agreement and the labor rulebook) are (automatically) null and void. In practice, in collective agreements are often merely repeated the rules of the statutes, with few genuine legal solutions. In general, they represent a significant additional legal source on which employment contracts are based when it comes to topics such as salaries, benefits, salary supplements, other benefits, leave, severance pay, redundancy selection rules, additional social insurance. Collective agreements have been concluded in almost all areas and public sector enterprises, while they are quite rare in the private sector. Therefore, in the private sector, the impact of collective agreements on employment contracts is almost negligible.[49]

In Croatia the substantive structure and nomotechnical architecture of all labor acts adopted and applied since 1995 confirm both the importance of the relationship

48 Vallasek, Chapter 3.
49 Jašarević and Dudás, Chapter 5.

between individual and collective legal entities in the employment relationship and the causal relationship and interdependence of individual and collective labor law. Collective agreements are mentioned in several places in the Labor Act, because the function of law is to provide workers with a minimum set of rights, but also the possibility of independently regulating more favorable working conditions through employment contracts, work regulations and collective agreements. However, collective agreements cannot contract contractual liberty rights that are explicitly prescribed by law as *ius cogens* (even if they are more favorable to workers), but they can contain legal rules that enter the realm of peaceful settlement of individual labor disputes based on explicit legislative authorization.[50]

In Poland according to the hierarchy of autonomous sources of labor law established in the Labor Code the provisions of regulations and statutes may not disadvantage employees more than the provisions of collective labor agreements and collective agreements (art. 9 §2 KP). The provisions of regulations and statutes may not disadvantage employees more than the provisions of collective labor agreements and collective agreements (art. 9 §3 KP). As of 2018 collective bargaining in Poland can only be described as 'being in its death throes: it plays a marginal role, both in terms of the volume of collective agreements and the number of employees covered.' A report by the European Trade Union Institute (ETUI) shows that the number of employees covered by collective labor agreements in Poland is among the lowest in the European Union. In 2018, only 18% of employees were covered by collective labor agreements. In the thematic scope of the relationship between the individual and collective labor law, however, it is impossible to overlook the fact that essentially the entire Act of 5 July 2018 amending the Act on trade unions and certain other acts, which is the implementation of the Constitutional Court's judgment of 2 June 2015, entered into force on 1 January 2019. The amendment mentioned above brought about a significant (even fundamental) change in right of association in trade unions. At present in Poland, according to art. 2(1) of the Act of 23 May 1991 on trade unions, the right to create and join trade unions is granted to persons performing paid work. By a person performing paid work legislature means an employee or a person performing paid work on a basis other than employment relationship, if he does not hire other persons for such work, regardless of the basis of work, and has such rights and interests related to the performance of work that may be represented and defended by a trade union (art. 11 points tp 1 UZZ). Thus, in principle, also persons working under civil law contracts and the self-employed gained the full right of association. In the judgement mentioned above, the Constitutional Tribunal stated that the obligation on the legislature to implement the freedom of association in trade unions must consist of granting the possibility to establish unions and join them to all persons who, on constitutional grounds, may be classified as workers (in the broad sense). At the stage of public consultations of the draft of the amendments mentioned above, it was emphasized that granting the status of a trade union to an

50 Vinković, Chapter 8.

organization that does not associate any employee does not consider the specific nature of labor law. However, it should be stressed that the attribute of a trade union organization, although related to the scope of individual labor law, does not prejudge the exclusivity of the tasks carried out by trade unions under labor law. At the same time, it is rightly argued in the literature that although the expansion of the right of coalition on the grounds of collective labor law was necessary, the specific regulatory solutions raise a lot of interpretative doubts. B. Mądrzycki rightly notes that the main problem is that 'the legislature still does not take any real steps to organize the forms of employment.'[51]

Section 13 of the Hungarian Labor Code (Mt.) also establishes a hierarchy of rules governing the employment relationship, which hierarchy is broken by the principle of a rule more favorable to the employee, which in civil law means clausually cogent and clausibly dispositive rules. At the same time, the regulatory technique of the Labor Code clearly demonstrates respect for the principle of freedom of contract and the promotion of individual and collective self-government. Proof of this is that the Labor Code has made absolute dispositivity the main rule compared to the relative dispositive rule of the old Mt. Part II of Mt. (individual labor law) is relatively dispositive regarding the employment contract. The parties may otherwise agree on any matter which is not a mandatory provision. According to the Commentary this solution considers the traditional feature of the world of work, where there is no equilibrium between the parties at the level of individual agreements, which is the legal policy reason for the rule of disposition in the traditional system of private law. Regarding the employment contract, therefore, the Mt. and the collective agreement set minimum standards from which the agreement of the parties may deviate in a positive direction in favor of the employee. Parts II (individual labor law) and III (collective labor law) of the Labor Code is dispositive about the collective agreement. Deviation to the detriment of the employee is possible if permitted by the Mt. The aim is to increase the role of the collective agreement as a source of contractual law. The same is the case for a normative agreement of the work council. An exception to this is wage bargaining, i.e., the remuneration of work. Deviations can only be made if the derogation is expressly permitted by law. One-sided deviation, relative dispositivity (claudication cogency) is also common when it is only possible to deviate in favor of the employee. The rules for liability for damages are typically such. Limited bilateral dispositivity, to the detriment of the employee, allows only a certain degree of deviation. Extraordinary working hours are limited to 250 hours per year, from which a collective agreement may deviate, but may not exceed 300 hours per year. Exceptions to the general rule of absolute dispositivity can be found under the heading Derogation agreement at the end of each chapter.[52]

51 Barański, Chapter 7.
52 Jakab, Chapter 9.

6. Values

According to a study by the European Parliament,[53] in some Member States of the European Union (Romania, but also Slovakia), up to more than 60% of the workforce is expected to lose their jobs in the coming decades due to the introduction of information and communication technologies. On the other hand, other research sees the future of work in the short term largely positively; based on a wide global survey, most employers expect automation and digitalization to increase employment. Eighty-three percent of employers intend to maintain or increase the number of employees and increase their qualifications in the next two years. Only 12% of employers, according to their own statements, plan to reduce due to automation.[54] The institutions, which mainly contribute to flexibility and testify to the gradual but obviously stronger development of nonstandard forms of employment, pose a significant challenge both to the national labor inspectorate and to the ordinary courts, and finally, and perhaps most of all, to trade unions, which need to reflect on their appropriate treatment in *pro futuro* collective agreements.

This brings us to the core issue according to Marcel Dolobáč. How should labor law deal with new forms of work, characterized by a high degree of freedom and liberty? We believe that labor law must ask itself two basic questions:[55]

1. Is the ambition of labor law to regulate such performance of work legitimate?
2. If we answer the first question in the affirmative, by what methods and to what extent should it regulate the performance of such work, which is in its very essence significantly different from standard dependent work?

We are convinced that labor law must answer the first question in the affirmative, as it is a desirable and necessary ambition of labor law to cover with its own legislation the new forms of work that arise or will arise from the expansion of new technologies and procedures in recruiting and using labor. The essential content of labor law, its principles, and values, as well as its position in the legal system, is the result of a historical awareness of the need to protect the economically weaker. This imbalance will not disappear with new forms of work performance; on the contrary, there is a real risk that it will become deeper. If labor law were to ultimately abandon the regulation and protection of new forms of employment, over time the pressure to reduce social protection would also seep into the typical performance of dependent work.

Employment contracts and other autonomous legal acts, either passed by the employer or concluded within social dialogue processes, must respect minimum labor law standards as determined by international law, the constitution, and basic statutory

53 Dachs, 2018.

54 These are the results of a presentation by ManpowerGroup based on a survey of 18,000 employers in 43 different countries which examined the impact of automation on employment in the future (Rezlerová, 2017).

55 See Dolobáč, Chapter 2.

legislation. In Slovenia, for example, collective agreements or other autonomous legal acts namely cannot depart from what Kresal Šoltes considers as the Slovene *social public order* or set of central binding provisions of labor law.[56] The notion, further developed by judge-made-law, comprises basic rights and basic constitutional and other principles of labor law regulation like equal treatment, freedom of work, dignity and health and safety at work, the aforementioned *in favorem* principle, different means of employees' participation, as well as due process of law concerning labor disputes.[57]

If we embark on the path of liberalization of labor law, one of the options is to fully legalize the admissibility of atypical contracts in labor law. A legal guarantee against possible abuse of the freedom of types of contracts in labor law could be, as in civil law, a provision according to which an innominate contract should not contradict the content and purpose of the Labor Code, especially its basic principles. If such an atypical (innominate) contract were in conflict with the content and purpose of the Labor Code, it would be absolutely invalid, same as other acts under labor law according to the Labor Code. Another way, in an effort not to abuse the open contract system, is to identify legal elements that cannot be changed other than for the benefit of the employee, although we must add that the current restriction of changing the 'working conditions' and 'employment conditions' only for the benefit of the employee it is too broad, vague, and ultimately legally incorrect.

Applying the current regulation of labor law to new forms of employment such as strategic employee sharing, temporary management, mobile work based on information technology, work based on vouchers, portfolio work, platform work or collaborative self-employment is impossible. Labor law should focus on the minimum standards that it will apply to such work. We consider the following to be fundamental:

a) responsibility of the contracting party and the person benefiting economically from work for safety and health at work,
b) maximum range of working time together with regulations for minimum breaks at work, including rules on their scheduling, and
c) a ban on the transfer of financial risk of the business to the persons performing work.[58]

We are aware that such a scope appears to be minimal and insufficient, but let us consider it to be the basis that should apply to many people working in new forms of employment, even if this work is presented as self-employed. If we identify the work done under new forms of employment as dependent work, there is no reason to abandon the applicable legislation and standard employee protection.

We consider the values presented here the pillar for security in times of need for flexible working solutions. This seems to be the reality of labor law not only in Central Europe but in the world of work.

56 Ibid.
57 Ibid.
58 Ibid.

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