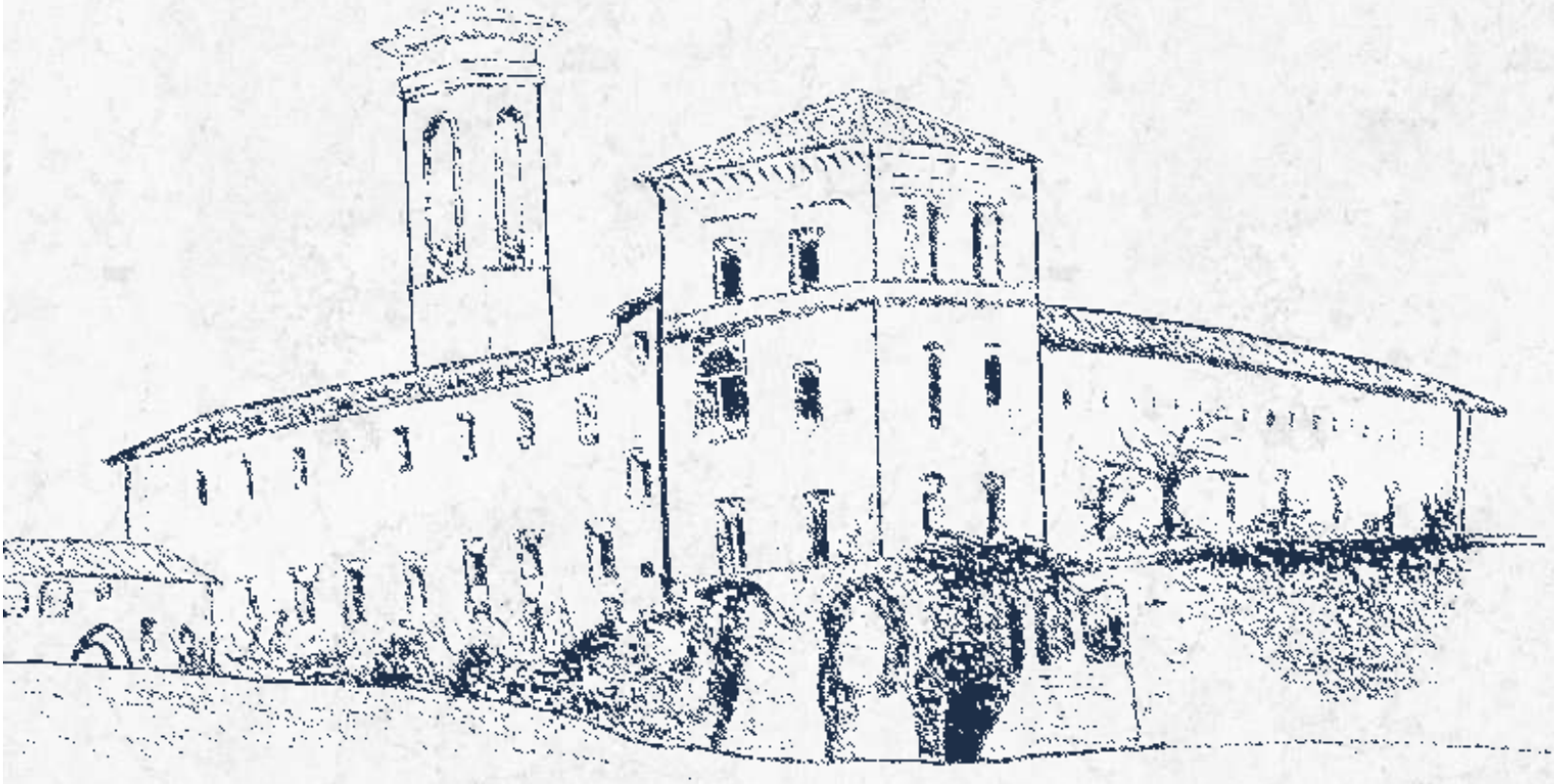
OPEN ACCESS
ISSN 2280-4056

E-Journal of International and Comparative

LABOUR STUDIES

Volume 12 No. 03/2023



ADAPT
www.adapt.it
UNIVERSITY PRESS

E-Journal of International and Comparative **LABOUR STUDIES**

ADAPT *International School of Higher Education in Labour and Industrial Relations*

Managing Editor

Valeria Filì *(University of Udine)*

Board of Directors

Alexis Bugada *(Aix-Marseille University)*, Valeria Filì *(University of Udine)*, Anthony Forsyth *(RMIT University)*, József Hajdu *(University of Szeged)*, Shinya Ouchi *(Kobe University)*, Daiva Petrylaite *(Vilnius University)*, Valeria Pulignano (*KU Leuven University)*, Michele Tiraboschi *(Founding Editor - University of Modena and Reggio Emilia)*, Anja Zbyszewska *(Carleton University).*

Editorial Board

Labour Law: Emanuele Dagnino *(University of Modena and Reggio Emilia)*; Tammy Katsabian *(College of Management Academic Studies)*; Attila Kun *(Károli Gáspár University)*; Adrian Todolì *(University of Valencia)*; Caroline Vanuls *(Aix-Marseille University).* **Industrial Relations:** Valentina Franca *(University of Ljubljana)*; Giuseppe Antonio Recchia *(University of Bari Aldo Moro)*; Paolo Tomassetti *(Aix-Marseille University and University of Milan)*; Joanna Unterschutz *(University of Business Administration in Gdynia).* **Labour Market Law:** Lilli Casano *(University of Insubria)*; Silvia Spattini *(ADAPT Senior Research Fellow).* **Social Security Law:** Claudia Carchio *(University of Bologna)*; Carmela Garofalo *(University of Bari)*; Ana Teresa Ribeiro *(Catholic University of Portugal – Porto)*; Alma Elena Rueda Rodriguez *(National Autonomous University of Mexico).* **Anti-discrimination Law and Human Rights:** Helga Hejny (Anglia Ruskin University); Erica Howard *(Middlesex University)* Anna Zilli *(University of Udine).* **Labour Issues:** Josua Grabener *(Grenoble Institute of Political Studies)*; Habtamu Legas *(Ethiopian Civil Service University)*; Francesco Seghezzi (*ADAPT Senior Research Fellow*).

Language Editor

Pietro Manzella *(University of Udine).*

Book Review Editors

Peter Norlander *(Loyola University Chicago).*

Scientific Committee of Reviewers

Maurizio Del Conte (Bocconi University), Juan Raso Delgue *(University of the Republic)*; Richard Hyman (*LSE*); Maarten Keune *(University of Amsterdam)*; Felicity Lamm *(Auckland University of Technology)*; Nicole Maggi-Germain *(Pantheon-Sorbonne University)*; Merle Erikson *(University of Tartu)*; John Opute (*London South Bank University*); Michael Quinlan *(University of New South Wales)*; Jean Michel Servais *(Honorary President of ISLLSS and Former Director of International Labour Office)*; Anil Verma *(University of Toronto).*

E-Journal of International and Comparative

LABOUR STUDIES

Volume 12 No. 03/2023

ADAPT UNIVERSITY PRESS
www.adapt.it

@ 2023 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2023 ADAPT University Press.**

Trapped by the Ghost of the Past: Amortization and Problems concerning the Collective Dimension in Hungarian Labour Law

István Horváth [*]

Abstract. Following a summary of the changes in the Hungarian political and labour law systems, this study reviews the changes in the regulation of the important collective labour law provisions codified in connection with the new social system. This paper shows how the joint presence of the trade union and the works council at the employer level causes functional confusion and problems of conflict of interest.

Keywords: *labour law regime; collective labour law institutions; social market economy; interest reconciliation;*

1. Political and labour law regime change (1988-1992)

The growing need for economic and social reform in the labour market at the end of the 1980s brought about a number of changes in the labour market. The law on business companies was passed in 1988, establishing the market economy and freedom of enterprise. Privatization was introduced, which eventually resulted in the majority of large Hungarian companies being foreign-owned. In 1992, after the political regime

[*] Head of Department, Eötvös Loránd University, Department of Labour and Social Law (Hungary). Email address: horvath.istvan@ajk.elte.hu.

@ 2023 ADAPT University Press - ISSN 2280-4056

change, labour law was recodified - socialist legislation was transformed to the requirements of a social market economy. However, before that some labour law-related reforms were also undertaken, such as the establishment of the National Interest Conciliation Council in 1989, the Strike Law and the Law on the Right of Association in 1989. The latter legalized trade union pluralism.[1]

Under socialism, there were no real labour relations at national, sectoral or employer level. It was not only a monolithic system in politics (one-party system), and as a consequence also in the field of employee's representative organization. There was one trade union at national level (the National Council of Trade Unions), and all sectoral and employer-level trade unions were part of it. To sum up, the system is well–described by the quote from Lenin in my trade union membership book, which I took over in 1987 (!): "The Trade Unions are the most capable and collaborators of the state power whose entire political and economic activity is led by the self-conscious vanguard of the working class, the Communist Party".

The concept of labour relations in Hungary in the late 1980s and 1990s. This concept, which encompasses the actors of the world of work which is aimed at maintaining cooperation, resolving conflicts and resolving prevention and resolution of conflicts that have arisen. The former Labour Code (former LC), which entered into force in 1992 following the social and political changes to the system, contains general rights relating to labour relations: in the interest of protection of employees' social and economic interests and of maintaining peace in labor relations, this Act shall govern the relations between employees and employers, and their interest representation organizations. Within such framework, it shall guarantee the freedom of organization and the employees' participation in the formation of work conditions, furthermore, it shall govern the order of collective bargaining negotiations, as well as the procedures for the prevention and resolution of labor conflicts.[2]

2. Interest Reconciliation on a National Level - the tripartite industrial relations body from the political regime change to 2011

One of the consequences of the economic and political regime change was the emergence of tripartism in national industrial relations. In

[1] Gy. Kiss: *Munkajog (Labour Law)*; Dialóg Campus, Budapest, 2020, 57-58.
[2] Section 14, former LC

@ 2023 ADAPT University Press

addition to the social partners, the state directly (specific employer), or indirectly (as regulator of bipartite relations and national conciliation forums actor/negotiator) engaged in industrial relations.[3]

The change of political regime was prepared by the last two Hungarian governments of socialism, under clear political pressure. As part of this, the institutionalization of national interest reconciliation in Hungary began in 1988, when the Grósz government[4] decided to establish the National Interest Reconciliation Council. It was finally established at the end of 1989, under the government of Prime Minister Miklós Németh.[5] After the political regime change, the first government - the Antall government[6] - significantly transformed the system of interest reconciliation, and in August 1990 the Interest Reconciliation Council (IRC) was established. Six national trade union federations and nine national employers' organizations were members of the IRC.

There was a real tripartism in IRC. The former LC codified the rights of the IRC. According to this the government, with the agreement of the IRC could

a) establish the provisions, in derogation from the former LC, concerning the termination of employment due to economic reasons affecting large numbers of employees, in the interests of preserving jobs;

b) regulate on the amount of the minimum wage and provisions on labour inspection;

c) submit recommendations to define the maximum duration of daily work time and to determine official holidays.[7]

The first substantial "disenfranchisement" in 17 years took place in 2009: on the proposal of the government, Parliament abolished the right of agreement of the tripartite body, which had been called the National Interest Reconciliation Council (NIRC).

---

[3] J. Lux: *Érdekegyeztetés makroszinten (Reconciliation of interests at macro level),* 2017, 2., http://polhist.hu/wp-content/uploads/2017/11/lux_erdekegyeztetes_makro_1989utan.pdf; accessed May 17, 2023.

[4] The Grósz government was the Council of Ministers of the Hungarian People's Republic from 25 June 1987 to 24 November 1988.

[55] The Németh government was the last government of the Hungarian People's Republic, in office from 24 November 1988 to 23 May 1990. It was during the Németh government that Parliament passed the laws essential to the regime change, which ensured a peaceful and, as far as possible, smooth transition.

[6] The government of József Antall is the first freely elected Christian-democratic, so-called centre-right government in Hungary after the regime change.

[7] Section 17.; former LC

For example, the government only needed to consult on the amount of the minimum wage for next year but did not need the agreement of the employee's and employer's sides of NIRC. After the consultation, the government was free to decide. The background: in the aftermath of the global financial and economic crisis that began in 2008, the government wanted to give itself more space for manoeuvre - including in the world of work. Finally, in 2011, on the proposal of the government - which is still in power after four national elections - the Parliament abolished the NIRC by amending the former LC. The body that had provided the framework for the tripartism was abolished.

3. The legislator's changed approach -The end of tripartite real national reconciliation of interests

In parallel with the abolition of the NIRC, a law was passed on the National Economic and Social Council (NESC)[8]. The NESC is not a tripartite organization. The members of the NESC are – in addition to the employers' and employees' interest representation associations – the national chambers of commerce, civil organizations active in the field of national politics, the churches, the Hungarian representatives of science and art in Hungary and abroad.[9] In addition, the NESC has no substantive rights. The NESC has only consultative, opinion-forming and proposal-making powers, such as giving its opinion on planned government measures that directly affect business, employment or society at large, participating in the impact assessment of legislation and government decisions, or consulting on strategic issues relating to the European Union. The law explicitly states that the government is only obliged to consider the proposals and opinions of the NESC. [10]However, consideration does not mean a joint decision, the opinion is not binding on the government.

Alongside the NESC, the government set up the Permanent Consultative Forum of the Competitive sector and Government (PCFCG) in 2012. The PCFCG is not provided for by law and therefore has no codified rights. The government has invited three employers' and three workers' associations to the PCFCG. The government consults these bodies - for example on the minimum wage for next year. But it is only consulting, and no compromise is needed to reach a decision. A joint decision is not

[8] Act XCIII of 2011 on the National Economic and Social Council

[9] Para (2) Section 2. Act XCIII of 2011.

[10] Para (1) and (3) Section 3. Act XCIII of 2011.

@ 2023 ADAPT University Press

just a matter of formality. For example, when raising the minimum wage, the ability of all employers to bear the burden must be taken into account. Because there is a big difference between the capacity of small and medium-sized enterprises and that of multinational companies. That is why it was an economic reality that the government had to get the agreement of the nine national employers' federations representing the whole economy in NERC, alongside the trade unions, to set the minimum wage for the new year.

The abolition of tripartism was accompanied by a change in the approach to labour legislation. After the political-economic regime change, the approach to legislation was consensual. The government has sought to submit labour bills to Parliament with the consensus of the social partners. This approach has changed radically. Labour legislation has become essentially authoritarian rather than compromise oriented. This is assisted by the trade unions, which cannot exert any real pressure.

Overall, the role of national labour relations has become more formalized. Two decades after the political regime change, statutory tripartism was abolished. This is a step backwards into the framework of a different system, one that was thought to have disappeared. After more than two decades, the ghost of the past has returned and has been here ever since...

And, as a literature review concludes, in Hungary after 2011, social dialogue and reconciliation of interests a structural and qualitative transformation has taken place. There has been a reduction in the number of national and sectoral the weight of national and sectoral interest reconciliation, the organization and bargaining power of trade unions has weakened, and the content of consultation.[11]

4. Sectoral social dialogue - Collective bargaining without a real role

Although sectoral social dialogue is regulated by law, [12]the role of this social dialogue is limited and there are hardly any sectoral collective agreements in Hungary. Regardless of state legislation, a negative legacy of socialist labour legislation lives on. Because after more than three decades, it seems that the spirit of the past is still present in the sectoral bargaining

[11] I. Képesné Szabó: *A magyar érdekegyeztetés átalakulásának főbb mozzanatai 2010 és 2015 között (The main moments of the transformation of the Hungarian reconciliation of interests between 2010 and 2015,)* Pécsi Munkajogi Közlemények (Pécs Labour Law Publications), 2016/1. 13-28.

[12] Act LXXIV of 2009 on Sectoral Dialogue Committees and certain aspects of intermediate social dialogue

between employers and trade unions. Or rather, the lack of it is proof of this.

The legal regulatory context - the impact of which goes beyond the legal framework. Act II of 1967 on the Labour Code (socialist LC) only allowed the conclusion of collective agreements covering one employer.[13] Collective agreements covering several employers or (sub)sectors could not be concluded. Preparing for systemic change in labour law: the amendment of the socialist LC in 1989. The new legal instrument was a collective framework agreement, which could be concluded between an employers' representative organization or several employers on the one hand and a trade union on the other.[14] In other words, the socialist LC already gave the social partners a "break-out" in terms of collective bargaining and negotiation. The opportunity remains mostly an opportunity to this day.

This legacy has overwhelmingly not been gotten rid of. One negative consequence of this is that there is no collective protection for workers in small and medium-sized enterprises, where there are predominantly no trade unions. The lower the number of employees in a workplace, the less likely it is that trade unions will be present.

Presented in international perspective, based on the fact that the dominant level of wage bargaining in a given country, EU Member States can be divided into four groups:

1. mainly decentralized, company-level (Lithuania, Hungary, Malta, Slovakia, Romania, Croatia, Greece),
2. sectoral/sub-sectoral and company-level agreements coexist, but neither type is dominant (Slovakia, Bulgaria, Croatia, Greece);
3. sectoral/ or higher level negotiation is dominant (Germany, Netherlands, Belgium, Finland, Austria, Italy);
4. fragmented sectoral and company-level agreements co-exist, with a high level of sectoral

(Denmark, Slovenia, Sweden, France).[15]

In the V4 countries (Poland, the Czech Republic, Slovakia, Hungary), instead of the national or sectoral level of interest conciliation that is more common in Western Europe, the collective agreements are dominant. As summarized in the literature: in Hungary after 2011, social dialogue and reconciliation of interests structural and qualitative transformation took

[13] Para (2) Section 8., socialist LC

[14] Section 9/A. socialist LC

[15] https://www.eurofound.europa.eu/en/blog/2020/new-impetus-collective-bargaining-insights-ecs

place after 2011. There has been a reduction in the number of national and sectoral the weight of national and sectoral interest reconciliation, the organization and bargaining power of trade unions has weakened, and the content of consultation.[16] Sectoral collective agreements and the number of workers covered by such agreements is low. This is a persistent weakness of the Hungarian social dialogue. There are currently three sectoral collective agreements are in force.[17]
And entering the field of practice. The small number of sectoral collective agreements and the limited scope is an advantage for employers. Most employers do not have any external constraints in their employment practices, the company from the market regulation function of a collective agreement at a higher level does not expect anything.[18]

5. The regulatory role of collective agreements

This topic is related to the previous title (*Sectoral social dialogue - Collective bargaining without a real role*). Given that there are hardly any sectoral collective agreements, the majority of workers are not covered by collective agreements. It is not decisive that the regulatory character of the collective agreement is absolute dispositive, so that the Labour Code may deviate from the rules of the employment relationship - as a general provision - to the detriment of the employee. The reason: the rules of the Labour Code are so flexible (e.g., the organization of working time) that most employers are not motivated to conclude a collective agreement.
Around two thirds of workers in EU countries are covered by some form of collective agreement. According to the Hungarian Central Statistical Office, 18.5% of employees worked in such jobs, where there is a collective agreement in force (at sectoral or company level) this. figure was 20.6%.[19]

---

[16] I. Képesné Szabó: opt. cit. *A magyar érdekegyeztetés átalakulásának főbb mozzanatai 2010 és 2015 között (The main moments of the transformation of the Hungarian reconciliation of interests between 2010 and 2015)*

[17] https://www.parlament.hu/documents/10181/39233854/Infojegyzet_2021_56_bertargyalasok.pdf/7a6514da-ce92-d27c-bc12-8626d1020594?t=1631605536593; accessed 22 May 2023

[18] L. Neumann: *Decentralizált kollektív alku Magyarországon (Decentralised collective bargaining in Hungary)* http://econ.core.hu/kiadvany/csopak/2.pdf; accessed 20 May 2023

[19] *Wage negotiations*, Parliament's Office; Info Note, 56/2021., /https://www.parlament.hu/documents/10181/39233854/Infojegyzet_2021_56_bertargyalasok.pdf/7a6514da-ce92-d27c-bc12-8626d1020594?t=1631605536593,, accessed 03 May 2023

What lies behind the statistics. The Hungarian wage setting system is extremely individualized by Western European standards and decentralized. In other words, the decisive factor in wage formation is the role of individual bargaining, essentially the labour market supply and demand of the labour market. The role of collective bargaining is secondary, and within its structure, there is a relatively weak link between national and sectoral agreements, whereas, at least in one at least within a narrow group of companies, the impact of company-level collective the regulatory role of company-level collective agreements. This assessment is based on the classical Anglo-Saxon industrial relations tradition that the fundamental purpose of collective bargaining is to the individual employment relationships of employers (wages, working hours and terms and conditions of employment) of individual of employment, working time and working conditions and the terms and conditions of employment collective bargaining.[20]

6. A codification problem – trade union and works council together at the employer

Employee participation can be seen as the so-called cooperative aspect of industrial relations, as opposed to the conflictual, confrontational branch based on coalition rights, trade union activity and collective bargaining.[21] Under Hungarian labour law, participation rights are exercised by the works council. It was codified in the former LC, following the German model.

The legislator may have assumed, after the political-social regime change, that the trade unions' scope of action would go beyond the employer's framework. This did not happen.

Twenty years after Act I of 2012 on the Labor Code (LC), the legislature did not react to this circumstance. The current LC retains the legal institution of the works council.[22] Act CXXX of 2010 on legislation requires a prior impact assessment to be carried out.[23] This impact

[20] R. Bispinck: *Wage-Setting System – an Analysis of Differentiation, Decentralisation and Deregulation of Sectoral Collective Agreements*. In: Hoffman–Jacobi–Keller– Weiss (eds.): *The German Model of Industrial Relations between Adaptation and Erosion*. Hans Böckler Stiftung, Düsseldorf; 1998.

[21] Gy. Kiss: op. cit. *Munkajog (Labour Law),* 315.

[22] Chapter XX. LC

[23] Para 1 Section 17.

@ 2023 ADAPT University Press

assessment would at least have questioned the legitimacy of the works council in the workplace. The fact that the employer is the main place where trade unions operate and that the works council is elected in the company means that the exercise of the rights of protection of employees' interests and right to_participation are inappropriately mixed at the same level. The works council is elected by the employees of the employer. There is no conflict of interest rule, so a member or even the president of a trade union in the workplace can be elected as a member of the works council. The president of the trade union can even be the president of the works council. So under the regulations, there is a chance that the employer's management does not know who they are negotiating with! The trade union, which also has the right to strike, or the works council, which is obliged to collaborate. The different rights of the works council and the trade union can be merged and mixed up precisely in the persons exercising these rights.

Moreover, with two exceptions, the works council's participatory rights are weak. The employer and the works council shall collectively decide concerning the appropriation of welfare funds.[24]

In addition, the employer is not obliged to reach a joint decision with the works council on any other measures. The works council's right to give an opinion does not bind the employer in its decision-making.

In another right, the LC strengthened the works council to the detriment of the union. This is the works agreement. According to Hungarian literature, the normative works agreement is a highly controversial legal institution. The legal background: Subject to the exception set out in Chapter XII (Remuneration for Work), the works agreement may contain provisions to govern the rights and obligations arising out of or in connection with employment relationships. Such agreements may be concluded on condition that the employer is not covered by the collective agreement it has concluded, or there is no trade union at the employer with entitlement to conclude a collective agreement.[25] A trade union shall be entitled to conclude a collective agreement if its membership of employees at the employer reaches ten per cent of all employees employed by the employer.[26] According to Hungarian literature, the normative scope of a normative agreement entails a number of risks. This legal option is ultimately

[24] Section 263 LC
[25] Para 1 Section 268.
[26] Para (2) Section 276.

undermine the idea of collective bargaining and the role of trade unions. The legally and de facto determined position of works councils makes them incapable of engaging in real, meaningful, balanced collective bargaining with employers. Their role is essentially cooperative and impartial, they are not independent legal entities, their members are not protected by labour law (only the president), they are financially and organizationally. dependent - at least indirectly - on the employer, having the power to exert pressure and influence potential is minimal. For all these reasons, there is a chance that negotiations with the works council will be disproportionately dominated by the employer. In the case of collective bargaining by the union, the risk of this happening is much greater. [27]

7. Two factors outside the legal framework - Economic dependence and the lack of solidarity

Both circumstances have an impact on employment conditions. The consequence of the regime change is the gradual dominance of foreign-owned employers, which makes them interested in preserving the conditions that motivate investment. Hungarian economic policy is essentially written abroad. The largest domestic employers are Hungarian subsidiaries of foreign companies (multinationals). A prime example is the car industry: the Hungarian factories of Audi, BMW, Mercedes or Suzuki. Multinationals invest in Hungary because they get skilled workers for low wages. When looking at EU Member States, only Bulgaria has a lower monthly median wage than Hungary. (In the headquarters of the three German car factories, this amount is more than three times higher than in Hungary.) [28]

Reducing or eliminating the wage differential would remove the economic interest of multinationals in running Hungarian subsidiaries. The absence of sectoral collective agreements, including sectoral wage agreements, is a guarantee that the wage gap will persist in the longer term.

Domestically owned companies produce only half of the value added. This is also very low at international level, with only Ireland, home to the

[27] G. Kártyás: *Üzemi tanács – A normatív hatályú üzemi megállapodás kritikája (Works council - A critique of the normative works agreement)*; Munkajog (Labour Law); In Tamás Gyulavári ELTE Eötvös. Budapest, 2016. 459–460.

[28] List of European countries by average wage, https://en.wikipedia.org/wiki/List_of_European_countries_by_average_wage, accessed 05 May 2023

@ 2023 ADAPT University Press

European headquarters and tax optimization activities of US technology firms, having a smaller role of local firms in the national economy in Europe than Hungary. One of the reasons why this can be a problem is that foreign companies usually transfer the profits they make in our country abroad, to the country of the parent company. Thus, the use of profits does not stimulate the Hungarian economy and does not increase prosperity. Overall, the vulnerability of the domestic economy to the world's largest companies is very high, and the role of the domestic economy is low.[29]

Another factor is the significant lack of solidarity. The number of trade unions and their members in Hungary is also steadily declining. In Hungary, about 4,580,000 thousand people were classified as employed (total population about 9.7. million). Last year, the number of trade union members decreased to 275,600 (approx. 5 % of all employees). One of the main reasons for this is the lack of solidarity at social or professional level. In my opinion, this is also a continuation of the ghost of the past. It was the slogan of the Kádár regime[30] that reversed the former communist approach: 'Those who are not with us are against us' was replaced by the new slogan: 'Those who are not against us are with us'. This meant that he who lived as a petty bourgeois had no criticism of the authorities, no problem with the regime. Self-exploitation could create an existence that forced passivity in community life. Although the political system has changed, this passive dominant approach has not.

The value structure of Hungarian society is one of the most frequently quoted by researchers, as being rational but closed thinking, the relative weakness of the importance attached to democracy, mistrust, lack of tolerance, paternalism and the need for paternalism and etatism. Paternalism and the dominant role of the state is one of the main characteristics of the socialist system before the regime change. Following the change of regime, the transition to a market economy and the privatization period, to avoid social insecurity. The general lack of trust in Hungarian society is also negative because it hinders the development of fundamental social values such as tolerance and solidarity. Research shows that Hungarians see an important role for the state in job creation and

[29] P. Bucsky: *Nem enyhült a magyar gazdaság függése a multiktól (The Hungarian economy's dependence on multinationals has not eased);* Közélet, vállalat (Public life, company); 24.02.2022.; https://g7.hu/kozelet/20220224/hiaba-a-nemzeti-tokes-szoveg-nem-enyhult-a-magyar-gazdasag-fuggese-a-multiktol/, accessed 10 May 2023

[30] The 1956-1989 period in Hungary, also known as the Kádár era, when János Kádár led the country as leader of the Hungarian Socialist Workers' Party.

social security. As the literature shows, compared to the opportunity to have a say in politics and the various freedoms, Hungarian voters are more concerned with security of livelihood, material well-being and the promise of job security.[31]
Lack of solidarity has consequences in the world of work. Many of the institutions of collective labour law that compensate workers for their vulnerability are ineffective or inefficient. In many employers, trade unions do not play their role as interest representatives and, in the absence of collective agreements, the employer essentially sets the terms and conditions of employment alongside legislation setting minimum standards.

8. The ghost of the present - The challenges of digitization

The increasing role of forms of employment as a result of digitization, in addition to existing problems, poses new challenges for collective labour law and employee protection. Will the unions leave these groups of workers alone? Do they have the capacity to organize themselves?
But there is a role for collective bargaining, for the effective presence of trade unions. Some examples:
a) *Teleworking*: this is an atypical employment relationship under the LC, which means that teleworkers have all individual and collective rights. In 2022, the definition of telework was significantly amended. Before the amendment, LC was compliant with the European Telework Framework Agreement: 'Teleworking' shall mean activities performed on a regular basis at a place other than the employer's facilities, using computing equipment, where the end product is delivered by way of electronic means. The new definition: teleworking means that the employee works part or all of the time at a place separate from the employer's premises.[32]
This unduly broadens the definition of telework. Teleworkers can work with any work equipment. At the same time, the change affects guarantee issues in which employees cannot effectively assert their rights as individuals. Trade unionism would be important.
Such a key working condition is working time and rest periods. Most teleworkers work - for example in their homes – according to the flexible working arrangement. The consequence, according to LC, is that the

[31] A. Bíró, A. Nagy, D. Dobsza, T. Kadlót, A. König: *Rendszerváltás, demokrácia és a magyar társadalom (Regime change, democracy and Hungarian society)*; Friedrich-Ebert-Stiftung, Budapest, 2016., 3-5.
[32] Para (1) Section 196.

@ 2023 ADAPT University Press

employer does not have to apply the rule of records of working time and rest periods.[33] This possibility can be very open to abuse by the employer. The employer gives the teleworker many more tasks than can be performed during the working hours of the labour contract, but will not pay overtime. In the absence of collective action, workers individually have very little chance of asserting their rights. Another problem of working time:
the LC – in line with a number of national regulations – is also not in line with the legislative initiative voted by the European Parliament in January 2021. Hungarian law does not contain the right to disconnect a teleworker. Of course, there would be no need to wait for EU or national legislation. A collective agreement would be an excellent instrument to regulate the right to disconnect. If the sociological conditions for this existed in Hungary...
b) *Application/platform-based work* According to the authors, the lack of legislation could be a particular problem in application-based work (platform-based work). There is usually no reliable data on its volume. Together, the lack of accurate statistics and the diversity of digital platforms make it significantly more difficult for legislation to respond appropriately to this phenomenon. Although internet work websites are mostly not in Eastern and Central Europe (except Estonia), legislation should prevent problems, and not react when the problem – in the absence of legislation – becomes huge.[34] Because the type of contract is also unclear on this issue, legislation is absolutely necessary. In its absence, platform workers cannot expect any collective protection under Hungarian conditions. But for example, as private entrepreneurs (self-employed workers) they would not even be able to form a trade union under the law.
c) *Automation and robotics* There are approximately 730,000 employees in Hungary whose work could be performed entirely or predominantly by robots. That's about a fifth of all employees. Occupations that do not require skills can easily be automated. At least two-thirds of the jobs in this group can be performed by robots. The automation potential in

[33] Section 96. LC
[34] T. Gyulavári: '*Hakni gazdaság a láthatáron: az internetes munka fogalma és sajátosságai' [Gig economy on the horizon: the concept and peculiarities of Internet work];* Iustum Aequum Salutare, 2019. 42–43. https://ias.jak.ppke.hu/hir/ias/20191sz/02_Gyulavari_IAS_2019_1.pdf, accessed 10 August 2021.

Hungary even exceeds that of Western European countries. Presumably, because most companies moved production from Western European states abroad due to the expensive labour force. Labour is relatively cheap in Hungary. Still, it would be worthwhile for companies to automate because robots, especially their types that work with humans, are the so-called cobots (collaborative robots) that increase corporate productivity. Therefore, the role of re-education training is particularly important. The digital generation of employees will only replace the entire workforce in decades.[35]

Legislation must also respond to this process. The LC does not contain a rule at all on the employer's training task. Automation and robotization can result in termination of employment relationships by the employer. According to the LC, an employee may be dismissed – among other reasons – in connection with the employer's operations[36]. The reason for robotization is the employer's operations. In addition, the reason for termination in the case of automation may also be the employee's professional ability, or its absence to be precise.

According to my opinion, the proposed amendment to the LC would prevent redundancies in two ways, at least in part. On the one hand, by introducing the employer's obligation to provide re-education in jobs related to automation and robotics; on the other hand, the employment relationship may be terminated in connection with the employees' professional ability or for reasons in connection with the employer's operations if the employer has no vacant position available, which is suitable for the employee or if the employee refuses the offer made for his/her employment in that job. This amendment would provide a protection function for labour law in the light of current technological changes. All this should be considered even at the level of international regulation.[37]

---

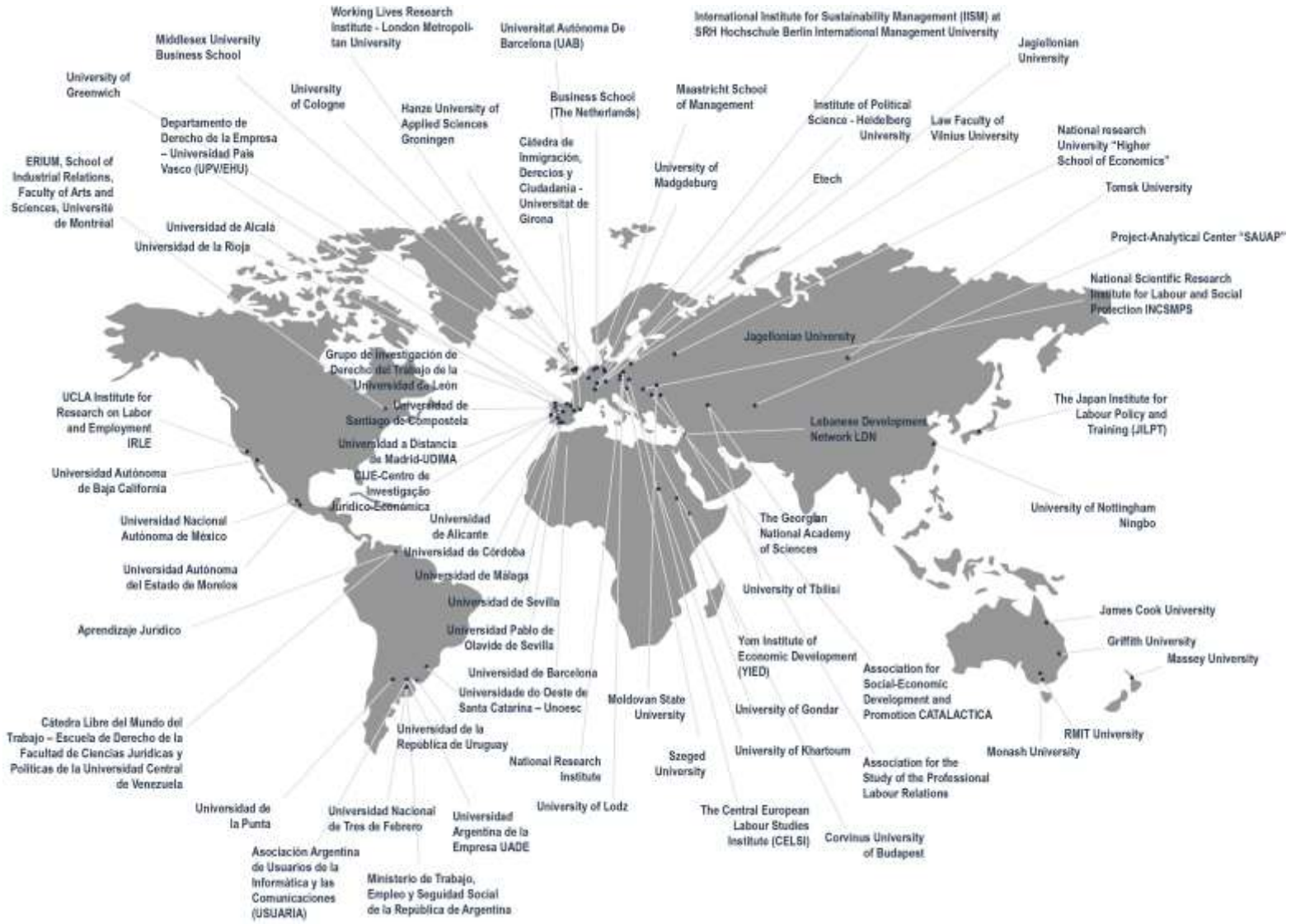
[35] Zs. Balázs, *A hazai munkavállalók ötödétől már most elvehetnék a munkát a robotok' [Robots can already take the jobs from one-fifth of domestic workers]* Qubit, 04.12.2019. https://qubit.hu/2019/12/04/gvi-a-hazai-munkavallalok-otodetol-mar-most-elvehetnek-a-munkat-a-robotok, accessed 11 August 2021.

[36] Para (2) Section 62 LC

[37] I. Horváth – D. Pérez del Prado – Z. Petrovics – A. Sitzia: *The Role of Digitisation in Employment and Its New Challenges for Labour Law Regulation - The Hungarian, Italian and Spanish Solutions, Comparison, and Criticism*; ELTE Law Journal; 2021/2.; https://ojs.elte.hu/eltelj/article/view/5254, accessed 11 May 2023.

But this time, the unions should also not wait for state legislation. Vocational training could be regulated in a collective agreement - adapted to local specialties - to protect workers - especially unskilled workers - from the negative effects of automation and robotization. This would require trust in solidarity and the power of workers' solidarity. Because not much can be done alone.

ADAPT International Network



ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at *www.adapt.it*.

For more information about the E-journal and to submit a paper, please send a mail to *LS@adapt.it*.

DEAL Centre for International and Comparative Studies Law Economics Environment Work
THE MARCO BIAGI DEPARTMENT OF ECONOMICS
UNIVERSITY OF MODENA AND REGGIO EMILIA

ADAPT International.it
Building the Future of Work