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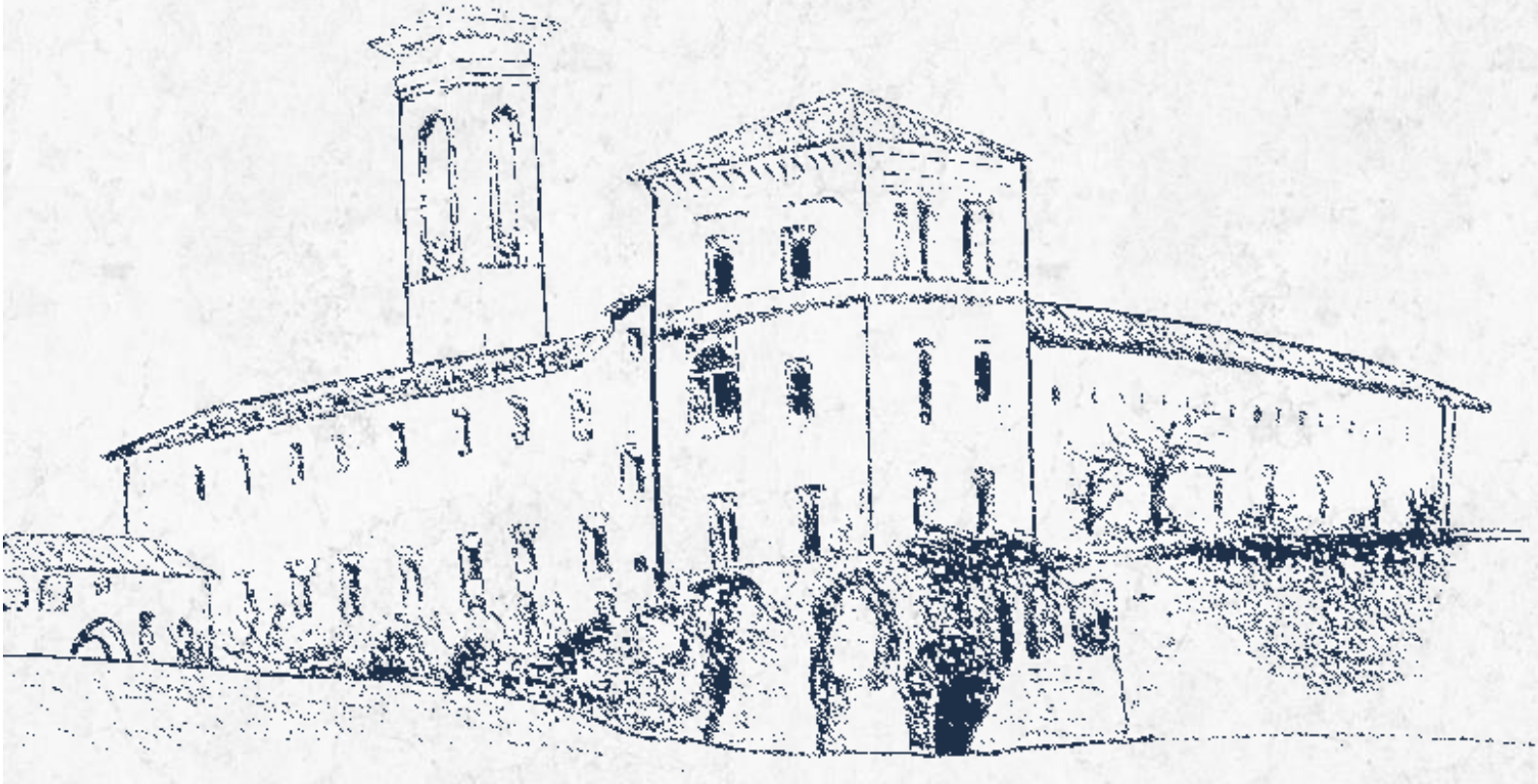

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Do Workers Want Security? Protection Against Dismissal in the 21st Century

Zoltán Petrovics *

Abstract. Job loss has a significant impact on individuals, irrespective of the legal classification of their employment. These circumstances result in the worker/employee[1] being deprived of their primary source of income, removing them from a fundamental aspect of life, endangering their possession of essential material, intellectual resources and daily livelihood. Today, most workers look for security and stability in their employment. However, these changes in the world of work are increasingly undermining the stability of employment relationships. This paper examines the potential theoretical basis for the regulation of protection against the termination of employment relationships by the employer. It is my contention that the right to protection against arbitrary termination should originate from the right to work and human dignity. To ensure all workers' protection, it is necessary to establish a framework grounded in human rights.

Keywords: *Dismissal; Job security; Employment relationship; Fundamental labour rights; Protection; Stability; Termination of employment.*

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[1] In this study, the terms "worker" and "employee" are used synonymously.

1. Introduction

It is challenging to ascertain others' aspirations. The most straightforward method is to inquire directly. However, in this instance, I will employ a theoretical approach to address the question in the title. I posit that the prevalent sentiment concerns the need for security among workers.

As Otto Kahn-Freund notes, the purpose of labour law is to rectify the imbalance in the bargaining power of the parties.[2] This can be achieved primarily through the provisions of labour law that protect employees. Nevertheless, it would be inaccurate to describe labour law as a set of rules solely designed to protect employees. To achieve a fair and balanced outcome, it is also necessary to consider the employers' interests. A similar approach should be taken considering the termination of employment's system. The primary issue is how labour law can reconcile the interests of the parties and rectify the imbalance of power between them when one party is no longer inclined to maintain the employment relationship. The termination of the employment relationship results in the loss of possession and enjoyment of basic material and intellectual assets for the employee, which may subsequently jeopardise their daily livelihood. In contrast, the employer is less likely to be affected. The consequences of termination may extend beyond the temporary vacancy of the position held by the departing employee, and in some instances, may even jeopardise the employer's continued existence. Clearly, the importance of retaining qualified personnel is becoming increasingly crucial in the contemporary era, and thus, employers value the stability of the employment relationship.

In the initial decades of the 21st century, several phenomena have emerged that accelerate the degradation of protection in traditional employment relationships and raise the need to expand protection in new employment relationships. These developments lead to two contradictory tendencies. On the one hand, they serve to expand the scope for managerial discretion on the employer's part. On the other, they seek to exert greater control over the exercise of that discretion. Despite their economic dependency, some workers remain outside the protective framework that safeguards against dismissal. Those in traditional employment relationships are also increasingly vulnerable. This is further reinforced by the sociological human ideal of the digital age: flexible,

[2] O. Kahn-Freund, *Labour and the Law*, Stevens and Sons, London, 1977, 6.

constantly on the move, seeking new challenges and not in need of those employment structures that 'lock them in'.

In the context of contemporary labour law, the capacity of regulation to respond effectively to the challenges posed by an increasingly competitive global economy is being subjected to persistent pressure.[3] Consequently, the current degree of job security may be diminished. In the context of economic crises, it is essential to reduce the regulations that protect workers and to have more flexible regulations regarding the termination of employment. Over the past five decades in Europe, beginning with the economic crisis of the 1970s, there has been a general tendency towards the freezing or gradual erosion of existing termination rules.[4] Since the 1980s, an increasing number of legal systems have sought to reduce the costs associated with termination of employment by either reducing the existing level of job security or by reducing the sanctions applicable to employers in the event of unlawful termination.[5] It appears that the "flexibility competition"[6] has become a pervasive phenomenon.[7]

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[3] See Cs. Lehoczkyné Kollonay, *Gazdasági érdek – szociális érdek: az érdekek összehangolása az Európai Unió Bíróságán*, in Z. Bankó, Gy. Berke, L. Pál & Z. Petrovics (eds.), *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére*, HVG-ORAC, Budapest, 2019, 258, https://munkajogilap.hu/wp-content/uploads/ebooks/Lorincz_70.pdf (accessed October 30, 2024).

[4] J. Howe, E. Sánchez & A. Stewart, *Job loss*, in M. W. Finkin & G. Mundlak (eds.), *Comparative Labor Law*, Edward Elgar Publishing, Cheltenham and Northampton, 2015, 268, B. Hepple, *Flexibility and Security of Employment*, in R. Blanpain & C. Engels (eds.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, Kluwer Law International, The Hague, London, Boston, 1998, 279, B. Hepple, *Dismissal Law in Context*, *European Labour Law Journal*, 2012, vol. 3, n. 3, 210, https://journals.sagepub.com/doi/abs/10.1177/201395251200300303 (accessed October 31, 2024).

[5] See e.g. Howe, Sánchez & Stewart, *op. cit.*, 274, 290, Hepple 2012, *op. cit.*, 211, R. Rebhahn, *Economic Dismissals – A Comparative Look with a Focus on Significant Changes Since 2006*, *European Labour Law Journal,* 2012, vol. 3, n. 3, 230–247, https://journals.sagepub.com/doi/10.1177/201395251200300305 (accessed October 31, 2024), J. Prassl, *Contingent crises, permanent reforms: rationalising labour market reforms in the European Union*, *European Labour Law Journal*, 2014, vol. 5, n. 3-4. 220–223, https://journals.sagepub.com/doi/abs/10.1177/201395251400500303 (accessed October 31, 2024), S. Laulom, *Dismissal law under challenge: new risk for workers.* Which securities for workers in time of crisis? CERCRID (UMR 5137) – ASTREES: Labour Law and Financial Crises: Contingent Responses? Conference paper, 2013, 4–21.

[6] In his analysis, Pierre Cahuc identifies that approximately half of the over 200 European reform measures implemented since the mid-1980s to address the issue of "Eurosclerosis" have been specifically designed to enhance the flexibility of labour markets [Pierre Cahuc, *For a Unified Contract. European Labour Law Journal.* 2012, vol. 3, n.

The most common argument against regulating or strengthening the termination of employment relationships is based on the liberal view that, under freedom of contract, workers are free to offer their labour on the market and anyone can 'purchase' it. This exchange is expressed in the contract of employment, which is a private contract that is irrelevant to public law and therefore has no constitutional basis for the state to interfere in the freely agreed relationship between the parties.[8] This understanding is predicated on the assumption that employers and employees are capable of managing their legal relationship in a manner that is optimal for them, even if they do not consistently select the most effective solution.[9]

In accordance with the arguments mentioned above, Richard A. Epstein posits the employment at will principle. The principle was established as a doctrine in the case law of the United States of America during the 18th and 19th centuries, and it remains the general rule in the majority of the Member States of the United States. The employment at will doctrine allows both the employer and the employee to terminate the employment relationship at any time without notice, either with or without just cause or without a morally defensible reason.[10] In defence of the principle, Epstein rejects the idea of limiting termination, arguing that the parties cannot foresee the future at the moment of the conclusion of the employment contract. Therefore, he proposes that the possibility of informal termination can be a solution to unforeseeable situations. Furthermore, Epstein posits that the protection of employees against arbitrary termination is unnecessary, since arbitrary employer behaviour is already subject to market forces. In fact, employers who act arbitrarily will be unable to attract and retain valuable labour, placing them at a

3, 191, https://journals.sagepub.com/doi/10.1177/201395251200300302 (accessed October 28, 2024)].

[7] See E. Kovács, *Individual dismissal law and the financial crisis: An evaluation of recent developments*. *European Labor Law Journal*, 2016, vol. 7, n. 3, 368–386, https://journals.sagepub.com/doi/abs/10.1177/201395251600700304 (accessed October 28, 2024).

[8] A. Takács, *A szociális jogok*, in G. Halmai & G. A. Tóth (eds.), *Emberi jogok*, Budapest, 2003, 838.

[9] H. Collins, *Theories of Rights as Justifications for Labour Law*, in G. Davidov & B. Langille (eds.), *The Idea of Labour Law*, Oxford University Press, Oxford, New York, 2011, 138.

[10] *Boyer v. Western Union Telegraph Company*, 124 F. 246 (C.C.D. Mo. 1903) http://www.forgottenbooks.com/readbook_text/Law_and_Business_v3_1000065605/277 (accessed October 28, 2024).

competitive disadvantage in the labour market.[11]

As posited by Richard A. Posner, the implementation of a requirement for legitimate or reasonable justification for the termination of employment is inherently ineffective due to the right to a remedy. The process is costly, whether conducted before a court or an arbitrator and the associated costs are ultimately borne by consumers through higher prices or reduced wages, which disadvantages workers.[12] Therefore, the rules protecting employees against unfair dismissal unduly impinge upon the relationship between the parties.[13]

Conversely, Simon Deakin and Wanjiru Njoya highlight that, while the concept of freedom of contract permits parties to negotiate job security provisions freely, in practice this may not be a realistic outcome due to the inherent imbalance between the parties involved. Usually, the employee cannot act as an equal negotiating partner in the conclusion of an employment contract.[14]

In instances of termination of employment by the employer, the employee assumes the financial and social risks associated with the employer's decision.[15] In contemporary societies, employment and the workplace have assumed a greater importance for the individual, as a substantial proportion of social goods (e.g. income, esteem, self-fulfilment and social relations) are provided by the workplace. The termination of employment results in the loss of these benefits, which can be challenging to regain. Considering this, it is essential to maintain reasonable limitations on the right of employers to terminate employment, while also protecting employees from arbitrary dismissal.[16]

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[11] R. A. Epstein, *In Defence of the Contract at Will*, *The University of Chicago Law Review*, 1984, vol. 51, n. 4, 947–948. https://www.jstor.org/stable/1599554 (accessed October 28, 2024).

[12] R. A. Posner, *Overcoming Law*, Harvard University Press, Cambridge, 1995, 308–310.

[13] Howe, Sánchez & Stewart, *op. cit.*, 285.

[14] S. Deakin & W. Njoya, *The legal framework of employment relations*, Centre for Business Research, University of Cambridge, Working Paper No. 349, September 2007, 10, https://www.jbs.cam.ac.uk/wp-content/uploads/2023/05/cbrwp349.pdf (accessed October 29, 2024)

[15] See Gy. Kiss, *Munkajog*. Osiris, Budapest, 2005, 257, *ILO Termination of Employment Digest*. International Labour Office, Geneva, 2000, 14.

[16] In this study, I consider as arbitrary those instances of termination of employment by the employer which lack reasonable grounds and for which it cannot be demonstrated that the employment relationship has become untenable. It is pertinent to note that the employer should be safeguarded against arbitrary termination of the employee; however, this matter is not within the purview of the present study. Regarding arbitrary termination see W. Njoya, *Property at Work: the employment relationship in the Anglo-American*

My hypothesis is that the right to protection against arbitrary dismissal is a human right that stems from the right to work and the inherent human dignity. Initially, the study will address the arguments against the protection. Then, it will present theories that support the necessity for the provision of protection, drawing upon the analogy between employment and property, as well as the theories of human dignity and personal autonomy. Finally, it will examine the justification for protection against arbitrary termination of employment as part of the right to work.

2. A New Human for a New Security?

It is notable that European reforms under the flexicurity banner have typically reduced worker security, often reduced benefits associated with termination of employment, reduced legal consequences of wrongful termination, but not increased unemployment benefits, nor, in most cases, have they introduced training requirements.[17] Maarten Keune and Maria Jepsen conclude that an increase in flexibility does not necessarily coincide with an increase in security. Allegedly, the traditional concept of security, exemplified by the notion of job security, must be superseded by a novel approach to security, with training emerging as a pivotal element in ensuring the employability of workers. The focus appears to be on flexibility. The demands of employers for flexibility are typically heeded, whereas those of workers, the unemployed, and the inactive are compelled to relinquish job and income security in exchange for lifelong learning and active labour market measures. Furthermore, the notion of 'new' security is also inherently fragile. While unemployment is less of a concern for those with higher skills, there is still no assurance of equal

firm, Ashgate Publishing, Aldershot and Burlington, 2007, 6, 62, 200, J. Sarkin & M. A. Koenig, *Developing the Right to Work: Intersecting and Dialoguing Human Rights and Economic Policy. Human Rights Quaterly*, 2011, vol. 33, n. 1, 19, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2123075 (accessed October 31, 2024), V. Mantouvalou, *Are Labour Rights Human Rights? European Labour Law Journal*, 2012, vol. 3, n. 2, 152, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2007535 (accessed October 31, 2024), M. Weiss, *Job security: a challenge for EU social policy*, in N. Countouris & M. Freedland (eds.), *Resocialising Europe in a Time of Crisis*, Cambridge University Press, New York, 2013, 279, G. Davidov & E. Eshet, *Intermediate Approaches to Unfair Dismissal Protection*, *Industrial Law Journal*, 2015, vol. 44, n. 2, 167–169, 175., 178., 181–182., 191–192. https://doi.org/10.1093/indlaw/dwv007 (accessed October 31, 2024).

[17] Laulom, *op. cit.*, 26.

access to education and training for all.[18]

Richard Sennet gives a remarkable characterisation of the 'new' security. He explains that in our globalised world, people's lives have become increasingly fragmented: their workplaces resemble 'railway stations' rather than 'villages'. The new 'icon' has become the perpetual 'wandering', and the need to 'move on', has become permanent. However, there are few who are able to cope with the precarious circumstances. Nowadays, people have fewer and fewer stable and secure social relations at their disposal and, therefore, are in a perpetual struggle with time: how to manage short-term relationships while moving from one task, job or place of residence to another. There is pressure to develop their skills, to exploit their talents, in a situation that encourages them to keep changing. The knowledge acquired is becoming obsolete time and again. The individual must learn how to move on from the past as quickly as possible, and just like a good consumer must always be looking for the new, treating the past as a consumer good that has served them, but discarding it when a more perfect opportunity appears. However, most people are not like this by nature.[19]

The new cultural ideal demands the human being who is flexible and capable of being burdened to the limit. The institutions that actually dismantle private and family life are presented as enabling them to be harmonised. Most people find it challenging to manage these expectations in the absence of enduring relationships and a sense of stability, as they possess an intrinsic need for security and predictability. Stability is a fundamental human need, including for those who work, even if it is not in line with the image of the person as outlined by the cultural ideal. Workers need and deserve relative stability.

It is evident that the emphasis on flexibility, the reduction of job security, the benefits linked to termination of employment, the alleviation of the legal consequences of unlawful termination, and the low level of unemployment benefits, collectively result in the individual and their environment bearing the burden of reduced security. Nevertheless, the

[18] M. Keune & M. Jepsen, *Not balanced and hardly new: the European Commission's quest for flexicurity*. European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) WP 2007.01. Brussels, 2007. 15. https://www.etui.org/sites/default/files/07%20European%20Commission%E2%80%99s%20quest%20for%20flexicurityWP%202007%201.pdf (accessed October 31, 2024).

[19] R. Sennet, *The Culture of the New* Capitalism, Yale University Press, New Haven – London, 2006, 3–5. https://www.jstor.org/stable/j.ctt1nq6wd (accessed October 31, 2024).

prominent discourse on flexicurity does not present a solution or the means to achieve this for those who lose security and exit the employment relationship. It can be concluded that flexicurity, at least in terms of the solutions it purports to offer, when implemented, clearly encourages a culture of self-reliance, whereby the primary responsibility for providing security lies with the individual. This approach is particularly problematic from a labour law perspective, as it undermines the very function and foundations of labour law, while marginalising its social function.

3. The Theoretical Foundation of Protection Against Dismissal

3.1. The Purpose of Employment and the Existential Need for Protection

The purpose of employment is a pivotal factor in the termination of an employment relationship. All cases leading to an end of the employment relationship presuppose the existence of circumstances in which the employment relationship is unable to fulfil its purpose. The fundamental objective of an employment relationship is to facilitate the employer's economic goals.[20] Also, it plays a prominent role in securing the employee's existential interests. Furthermore, the employment relationship has an existential and social function since it is of paramount importance not only for the individual but also for society in terms of meeting needs.[21] This function is nuanced by the personal nature of the employment relationship. In fact, the employment relationship assures to all employees meaningful human work, which may also contribute to the development of personality and thus ensure the economic and intellectual basis for the employee's autonomy.

In light of the aforementioned considerations, it becomes evident that the employment relationship serves multiple purposes. From the employer's perspective, establishing an employment relationship is clearly a strategic necessity. The employer's ability to perform tasks associated with its operational requirements hinges on the establishment and maintenance of contractual relationships. Essentially, these relationships are designed to facilitate the fulfilment of tasks. In most cases, the employer is unable to perform the tasks it wishes to carry out. Therefore, the services it provides

[20] Z. Bankó, Gy. Berke, E. Kajtár, Gy. Kiss & E. Kovács, *Kommentár a munka törvénykönyvéhez*, Wolters Kluwer, Budapest, 2014, 58.

[21] Howe, Sánchez & Andrew, *op. cit.*, 285.

and the goods it produces require the physical and mental capacities and labour of other individuals. Furthermore, employment relationships are particularly important for the economy and society, as employers are essential for meeting needs and maintaining the functioning of society.

The function of the employment relationship is elucidated by the theory of the dual structure of the employment contract. As Mark Freedland explains, while the employment contract primarily involves the obligation of the parties to perform work and pay remuneration, it also encompasses a mutual promise by the parties that the employer will continue to employ the employee and that the employee will continue to work for the employer.[22] Consequently, the essential element of the employment relationship is the need for stability. If stability is considered the fundamental aspect of the employment relationship, it can be argued that its purpose is undermined if the parties terminate it unilaterally in breach of their mutual promises regarding future employment and work. Therefore, in order for termination to be lawful and to not cause too much 'pain', there must be circumstances which make it justifiable and acceptable to the other party.

Conversely, Rachel Arnow-Richman highlights that in employment relationships today, the parties no longer promise each other long-term employment and work. The contemporary business environment has shifted away from a focus on long-term loyalty and emphasises a fervent commitment to the job instead. In return, they offer employees a wealth of experience and the development of marketable skills. Consequently, the employees' financial security is contingent upon their own 'external marketability' rather than the one of their current employer. Therefore, it is unreasonable to expect that the employment relationship with the employer will be permanent. However, the employee can reasonably expect to be able to find another similar and advantageous job when the employment relationship ends.[23]

Although Rachel Arnow-Richman's assertion may be factually accurate, since employability and marketability are especially relevant today, it is hard to ignore the fact that for most employees, a stable job is tantamount to existential security. In most cases the employee has a clear interest in maintaining the employment relationship. For the majority of people, the employment relationship represents one of the fundamental conditions for participation in society and for physical existence. The termination of

[22] M. Freedland, *The Contract of Employment*, Clarendon Press, Oxford, 1976, 20.

[23] R. Arnow-Richman, *Just Notice: Re-reforming Employment at Will. UCLA Law Review,* 2010, vol. 58, n. 1, 33.

the employment relationship by the employer causes temporary or permanent 'reproductive disruption'[24] in the employee's life. In addition to the obvious loss of income, the termination of employment can impact and potentially jeopardise an employee's living conditions. For the individual, job loss is often a traumatic event that can lead to a decline in well-being and financial stability.[25]

On the one hand, work is an essential factor of the individual's existence, self-determination, self-esteem, and the appreciation of the individual by others,[26] and on the other hand, it is an objectification that expresses their attachment to society. This entails that the community also has a significant interest in protecting the system of relations that provides the framework for work. Therefore, within the framework of the rule of law[27] this 'power' of the employer requires that it should be exercised responsibly and within limits.[28]

Consequently, in the event of job loss, the employee is entitled to an existential protection claim, which must be addressed by the legal system. As work is the material source of the individual's existence and human autonomy,[29] the existential need for protection in the event job loss arises indirectly from the need to defend human autonomy.[30] This need for protection can be met in various ways. One possibility is for the workers to provide the 'safety net' themselves and to bear the costs and damages incurred. The other option is that the employer, the primary cause of the

[24] O. Czúcz, *Szociális jog I.* Unió, Budapest, s.a., 10–11.

[25] B. Hepple, *European Rules on Dismissal Law?*, *Comparative Labour Law Journal*, 1997, vol. 18., n. 2, 204, Cf. F. Hendrickx, *Flexicurity and the EU Approach to the Law in Dismissal*, *Tilburg Law Review*, 2007, vol. 14, n. 1–2, 91., R. M. Bastress, *A synthesis and a proposal for reform of the employment at-will doctrine. West Virginia Law Review,* 1988, vol. 90, n. 2, 342, https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=2099&context=wvlr (accessed October 31, 2024), Davidov & Eshet, *op. cit.*, 172–173.

[26] See V. Mantouvalou, *Introduction*, in V. Mantouvalou (ed.), *The Right to Work: Legal and Philosophical Perspectives*, Hart Publishing, Oxford and Portland, Oregon, 2015, 1, H. Collins, *Is There a Human Right to Work?*, in V. Mantouvalou (ed.), *op. cit.*, 18.

[27] Bob Hepple links the importance of regulating protection against arbitrary and unlawful termination to the rule of law when he argues that in a state governed by the rule of law, the provision of protection against unlawful termination of employment is a necessary element of social justice (Hepple 1997, *op. cit.*, 206).

[28] Davidov & Eshet, *op. cit.*, 174.

[29] Decisions of the Hungarian Constitutional Court 8/2011. (II. 18.) and 29/2011. (IV. 7.).

[30] See H. Collins, *Justice in Dismissal, The Law of Termination of Employment*, Clarendon Press, Oxford, 1992, 9–21, A. C. L. Davies, Perspective on Labour Law, Cambridge University Press, Cambridge, 2004. 162–163.

termination, will be liable for the adverse consequences of the situation it has created. However, job loss is only one side of the coin for the individual; on the other side of the same coin, from society's point of view, is unemployment. Consequently, the third party in this scenario is the family, neighbourhood and society, which will inevitably bear certain costs, whether consciously or not.

3.2. An Analogy between Job and Property

Nowadays, the overwhelming majority of people lack the requisite quantity and quality of assets to meet their needs without employment.[31] An investible asset for the 'capitalist' is an intangible mix of individual skills, qualifications, competences and personal qualities that enable the worker to enter into a contract of employment and to cover their living costs through the employment relationship established. In the absence of significant material assets, the worker has no alternative but to take up a job. This is the origin of the '*new property*'[32]concept.

In his analysis of the relationship between the state and the individual, Charles A. Reich posits that the individual's property today is less and less a matter of tangible goods and more a matter of the rights and social status acquired by the individual, which have replaced the function of property in the traditional sense. Among others, Reich cites occupations

[31] Cf. R. L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State, Political Science* Quarterly, 1923, vol. 38, n. 3, 472–473, https://www.jstor.org/stable/2142367?seq=2 (accessed October 31, 2024).

[32] Cf. Gy. Kiss, *Alapjogok kollíziója a munkajogban*, Justis, Pécs, 2010, 114–115, https://real.mtak.hu/25691/1/alapjogok_kollizioja_a_munkajogban.pdf (accessed October 31, 2024). For a discussion of the 'new property', see also C. A. Reich, *The New Property After 25 Years*, *University of San Francisco Law Review,* 1990, vol. 24, n. 2, 223–272, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/2557/The_New_Property_after_25_years.pdf?sequence=2&isAllowed=y (accessed October 31, 2024), H. A. McDougall, *The New Property vs. the New Community*, *University of San Francisco Law Review,* 1990 Winter, vol. 24, 399–420, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2554810 (accessed October 31, 2024), R. A. Epstein, *No new property*, *Brooklyn Law Review,* 1990, vol. 56, n. 3, 747–769, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2331&context=journal_articles (accessed October 31, 2024), I. Holloway, *Natural Justice and the New Property*, *Monash University Law Review*, 1999, vol, 25, n. 1, 85–109, https://classic.austlii.edu.au/au/journals/MonashULawRw/1999/4.pdf (accessed October 31, 2024), D. A. Super, *A new new property*, *Columbia Law Review,* 2013, vol. 113, n. 7, 1773–1896, https://columbialawreview.org/wp-content/uploads/2016/04/Super.pdf (accessed October 31, 2024).

and employment (jobs) as examples of this phenomenon. In most cases, individuals may perceive these as more valuable than ownership of property or a bank account.[33] He concludes that acquired rights or status, such as a job, should be afforded protection similar to that of property.[34] Considering the concept of *new property* in the context of freedom, Reich also highlighted the necessity of economic security for the individual in order to achieve genuine freedom. Today, the majority of social goods that matter the most to the individual are derived from organisations or the state. Consequently, these goods are primarily dependent on these organisations,[35] which can result in a significant economic dependence. The individual's freedom is contingent upon this economic dependence, which must be maintained within reasonable limits.[36] In the contemporary era, individuals are able to sustain their livelihoods through their affiliation with organisations.[37] The changed relationship between worker and work is exemplified by the observation that, by entering into an employment relationship, workers place their work as well as part of their lives at the disposal of employers. Through the employment contract, the employers gain not only access to the services of workers but also to this part of their lives as social beings.[38] Job loss can result in the loss of existential security, including the erosion of social networks and the loss of social

[33] C. A. Reich, *The New Property*, *Yale Law Journal,* 1964, vol. 73, n. 5, 738.

[34] *Ibid.*, 785. Cf. C. W. Summers, *Individual Protection against Unjust Dismissal: Time for a Statute. Virginia Law Review, In Memoriam: Bernard Dunau: Contemporary Problems in Labor Law,* 1976, vol. 62, n. 3, 532, https://ia800704.us.archive.org/view_archive.php?archive=/24/items/wikipedia-scholarly-sources-corpus/10.2307%252F0.650.1.zip&file=10.2307%252F1072376.pdf (accessed October 31, 2024). It should be noted, however, that the concept of labour as property had appeared much earlier. John Locke was of the opinion that *"every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his."* See Locke, John, *The Second Treatise of Government* London, 1688. http://history.hanover.edu/texts/locke/j-l2-007.html (accessed October 29, 2024).

[35] C. A. Reich, *The liberty impact of the new property*, *William and Mary Law Review,* 1990, vol. 31, n. 2, 295, https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1963&context=wmlr (accessed October 31, 2024).

[36] *Ibid.*, 296.

[37] *Ibid.*, 297.

[38] F. Raday, *Individual and collective dismissal – a job security dichotomy*, *Comparative Labor Law & Policy Journal,* 1989, vol. 10. n. 2, 149.

position, directly impacting all members of the family.[39] This can be paralleled with the ideas of Amartya Sen, who posits that economic unfreedom threatens other human freedoms, which can easily fall victim to economic vulnerability.[40]

From this point of view, a parallel can be drawn with Abraham H. Maslow's theory of the hierarchy of needs. He theorises that lower human needs must be met before higher needs can act as motivators. In order for basic needs such as physiological (e.g. hunger, thirst), security (e.g. safety, stability, predictability) or affection (e.g. community belonging) needs (e.g. identity, personal relationships) to be met,[41] it is necessary that economic and social rights, including the right to work, are effectively obtained. It is notable that the possession of a job also plays a significant role in the satisfaction of the other levels of need identified by Maslow. Work is a central aspect of the fulfilment of the need for esteem, recognition and self-realisation,[42] as well as a source of livelihood and human autonomy. This suggests that a worker who loses their job can rapidly descend several levels of the hypothetical pyramid of needs, making it impossible to satisfy all of them. Conversely, the termination of an employment relationship that had previously provided a significant degree of accomplishment regarding the need for self-fulfilment at the pinnacle of the pyramid is likely to experience a sense of "I have lost everything".

Charles Reich posits that an existing job, which is one of the individual's most significant investments, should be afforded with a certain level of legal protection and procedural guarantees after a certain period of employment, because this investment can be destroyed overnight by an organisational decision.[43] Hugh Collins draws a parallel between termination by the employer and the exercise of the state's criminal power. He asserts that, in some cases, the effects of termination of employment are as or even more detrimental to the employee than

[39] Reich 1990, *op. cit.*, 301. Charles A. Reich refers to K. S. Newman, *Falling From Grace: The Experience of Downward Mobility in the American Middle Class*. Free Press, New York, 1988.

[40] S. Amartya, *Development as Freedom*, Alfred A. Knopf, New York, 2000, 8, https://archive.org/details/amartya-kumar-sen-development-as-freedom-alfred-a.-knopf-inc.-2000/page/n3/mode/2up (accessed October 31, 2024).

[41] A. H. Maslow, *A Theory of Human Motivation*, *Psychological Review,* 1943, vol. 50, n. 4, 370–381.

[42] *Ibid.*, 381–382.

[43] Reich 1990, *op. cit.*, 301.

criminal sanctions.[44] The capacity of organisations to exert control over jobs (and other 'new forms of property' such as social security or social benefits, occupational licences, public services)[45] can influence individual behaviour, and the increasing reliance on such control is contributing to the emergence of authoritarian regimes and eroding the foundations of democratic systems.[46]

In Reich's view, workers may be deprived of their jobs only in the event of an overriding public interest and only with adequate compensation.[47] In my view, the overriding public interest should be interpreted in a broad sense, encompassing all circumstances in which the employment relationship is unable to fulfil its purpose. Similarly, Otto Kahn-Freund draws a parallel with the constitutional requirements of expropriation in connection with the termination of employment by the employer. In addition, Otto Kahn-Freund highlights the fact that the obligation to pay compensation in the case of both expropriation and dismissal represents a socio-ethical requirement.[48]

Similarly, Frederic Meyers addresses the matter through the lens of the concept of *'ownership of jobs'*. He begins by assuming that employees do not typically view their employment as a legal relationship established through a contract between themselves and their employer. Instead, they tend to perceive it as an independent entity, often simply referring to it as "my job."[49] In this sense, the concept of 'job' has become a concept that exists independently of the concept of an employment relationship.[50] Meyers posits that if the employment relationship can be the subject of property rights, or at the very least, an analogous relationship between the employee and the job is assumed, then its unimpeded possession must

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[44] Collins 1992, *op. cit.*, 2. The criminal law analogy is also mentioned by Charles A. Reich (see Reich 1990, *op. cit.*, 302.).

[45] Reich 1964, *op. cit.*, 734-737.

[46] Reich 1990, *op. cit.* 305.

[47] Reich 1964, *op. cit.*, 785.

[48] O. Kahn-Freund, *Labour Law: Old Traditions and New Developments*, Clarke, Irwin & Company Limited, Toronto/Vancouver, 1968, 38, https://archive.org/details/labourlawoldtrad0000kahn (accessed October 31, 2024). Cf. Njoya, *op. cit.*, 2.

[49] F. Meyers, *Ownerships of Jobs: A Comparative Study*, Institute of Industrial Relations, University of California, Los Angeles, 1964, https://archive.org/details/ownershipofjobsc0000meye/page/n5/mode/2up (accessed October 31, 2024). This phenomenon is also referred to by Kathleen Kim, see K. Kim, *Beyond Coercion: Undocumented Workers and Workplace Immigration Enforcement*, *UCLA Law Review,* 2015, vol. 62, n. 6, 1567.

[50] Meyers, *op. cit.*, 98.

also be protected against arbitrary dismissal. In this context, Meyers refers to the Fifth Amendment to the Constitution of the United States of America, which provides that no person shall be deprived of, *inter alia*, their property without due process of law.[51]

Wanjiru Njoya also argues that the concepts of property rights and employment are interdependent,[52] and that employees may possess property rights in relation to their work. Although it is accurate to state that employees are unable to sell or purchase their employment, there are instances where such circumstances arise in the context of classical property rights, even when the individual in question possesses only the right of ownership. However, this does not imply that employees are entitled to retain their position indefinitely. Similarly, the right of ownership can be limited or revoked from the 'owner' under well-defined conditions.[53] Furthermore, the concept of property rights implies that compensation for loss of employment must be based on the actual value of the employment to the employee.[54]

The foregoing theories are unified by the concept of safeguarding individual freedom and personal autonomy, and the existential necessity for protection. If we accept that the objective is to establish a social order that serves the common good and the well-being of its citizens, and that provides them with the highest possible standard of living,[55] it is insufficient to focus solely on the abstract public interest or the needs and interests of the economy. Instead, we must consider the individuals themselves. Furthermore, the protection of employment as a form of property can be linked to the notion that, since the Enlightenment, the concepts of freedom and property have been closely intertwined.[56] As Walter Leisner notes, civil rights without the assurance of property remain 'useless freedoms'.[57] Individual freedom remains an empty phrase in the absence of safeguards to protect the employment relationship. If one accepts that property is a legal institution for the distribution of the

[51] Meyers, *op. cit.*, 1–2, 15. Cf. T. Gelb, Hepple 1998, *op. cit.*, 279–280.
[52] Njoya, *op. cit.*, 1–21.
[53] *Ibid.*, 1-2.
[54] Deakin & Njoya, *op. cit.*, 16.
[55] Reich, *op. cit.*, 786.
[56] A. Menyhárd, *A tulajdon alkotmányos védelme*, *Polgári Jogi Kodifikáció,* 2004, vol. 6, n. 5–6, 24.
[57] W. Leisner, *Eigentum*, in J. Isensee & P. Kirchhof, *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, *Band VI Freiheitsrechte*, C. F. Müller Juristischer Verlag, Heidelberg, 1989, 1024.

material basis of individual existence and self-expression,[58] then the status of job as a *'quasi-property'* which performs the same function in modern societies demands similar protection.

The concept of property in private law does not mean freedom without constraints. Property is associated with numerous constraints that are closely intertwined with the notion of freedom. It could be argued that "defining property as freedom is somewhat paradoxical",[59] given that property cannot be reduced to a mere absolute right,[60] nor can it be detached from its social context. The constraints associated with the concept of property are evident within the employment relationship. The legal framework imposes limitations on the autonomy of employers with regard to the utilisation of labour. This is achieved through the regulation of employment, which encompasses aspects such as working hours, rest periods, the regulation of safe and healthy working conditions, and the protection of wages. These constraints are also reflected in the International Labour Organisation's Decent Work Agenda.[61] From the employee's perspective, the concept of 'property' can also be interpreted within this context. In fact, the juxtaposition of the 'possession' of the job and the purpose of the employment relationship suggest that this 'possession' is also governed by the principle of 'property obliges', that is to say, the manner in which the employee is required to possess their job and be in line with its social purpose. The lawful termination of the employment relationship is only permitted in instances where the employment relationship has lost its purpose, or where the manner of 'possession' is not compatible with its purpose. For instance, this may occur in the case of dismissal based on the employee's misconduct.

Hugh Collins asserts that the property analogy is an inadequate basis for protection against termination by the employer. He argues that if these theories were consistently applied, the employment relationship could not be terminated. In his view, the employee cannot claim the protection of the job as 'property' because, in the interests of efficiency, the employer must be able to replace employees with inadequate skills with better-performing employees.[62] It is important to note that none of these theories asserts that the employee possesses literal ownership of the job.

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[58] Menyhárd, *op. cit.*, 27.
[59] *Ibid.*, 25.
[60] *Ibid.*, 27., Njoya, *op. cit.*, 3.
[61] See http://www.ilo.org/global/topics/decent-work/lang--en/index.htm (accessed October 29, 2024).
[62] Collins 1992, *op. cit.*, 10-12.

They merely suggest that the relationship between the employee and the job, or the 'possession' of the existing job, should be considered a right. As with property law, this right should be subject to appropriate sanctions in the event of infringement.

3.3. Human Dignity and Personal Autonomy as a Foundation For Protection Against Dismissal

It is evident that the employee's entire personality is implicated in the employment relationship. Dependent work and subordination inevitably result in a situation that renders the employee vulnerable in relation to the employer. Thus, it is incumbent upon the employment relationship to safeguard the individual's human dignity against the potential exploitation of the employer's superior position.[63]

As Hugo Sinzheimer posited, *„die Arbeit ist also der Mensch selbst"*.[64] The capacity to work constitutes the personal foundation of human existence, and the human being is, by definition, an entity endowed with human dignity.[65] Furthermore, work is regarded as a conduit through which human dignity and autonomy, can be actualised for the majority of workers.[66]

Hugh Collins posits that respect for human dignity and personal autonomy constitute the foundation for the protection against dismissal. He observes that the termination of employment by the employer may have significant consequences for the employee's livelihood. A lengthy period of unemployment may be the cause of the worker's impoverishment, leading to a loss of social status and self-esteem. Additionally, the dissolution of friendships and social ties may occur, and depending on the nature of the employment relationship, the employee may face difficulties in finding alternative intellectual or physical challenges. Furthermore, the arbitrary termination of employment, or the way it is conducted, may also have a detrimental impact on the employee's

[63] G. Kártyás, *XXI. század és munkajog: megőrizni vagy megreformálni?* in L. Pál & Z. Petrovics (eds.), *Visegrád 17.0 – A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer, Budapest, 2020, 42.

[64] *"The work is therefore the human being itself"*. See H. Sinzheimer, *Das Wesen des Arbeitsrechts*, in O. Kahn-Freund & T. Ramm (eds.), *Arbeitsrecht und Rechtsoziologie, Gesammelte Aufsätze und Reden*, Europäische Verlagsanstalt, Frankfurt, 1976, 108–110.

[65] Cf. H. Sinzheimer, *Grundzüge des Arbeitsrechts*, G. Fischer, Jena, 1927, 8.

[66] Hepple 1997, *op. cit.*, 204.

reputation within the community, potentially leading to social stigma. This could even result in an anomic state.[67]

These difficulties draw attention to two underlying personal rights that need protection. On the one hand, the dignity of the person, which is of intrinsic value, and on the other, personal autonomy, which requires respect for the individuals' right to imbue their life with meaning through work. The protection of human dignity and autonomy may justify the imposition of controls on the right of termination by the employer.[68]

Collins highlights that for a considerable number of individuals, work is not merely a necessity, but rather the conduit through which they can engage in meaningful human activity, pursuing intellectual and physical challenges that imbue their lives with purpose. It should be noted, however, that individuals may encounter such challenges outside of their professional lives and some individuals find work boring and unchallenging perceiving it as a mere source of income.

Drawing on Joseph Raz's ideas on autonomy,[69] Collins asserts that one of the fundamental responsibilities of society is to facilitate opportunities for individuals to pursue their personal objectives, thereby enhancing their autonomy. This concept also necessitates that the state should improve the well-being of individuals through measures that, while assuring equal opportunities, afford them the widest possible range of genuine options to enable them to flourish and thus imbue their lives with purpose.[70]

Furthermore, Collins posits that the degree of autonomy is not solely contingent on the number of available jobs, but also on their intrinsic quality. It is incumbent upon legislators to enact measures that reinforce the social structures that facilitate individuals' ability to lead increasingly meaningful and fulfilling lives through gainful employment. In labour market, Collins posits that this necessity is fulfilled by an employment relationship that provides a certain degree of security and promotes opportunities for professional advancement.[71]

Bob Hepple also places the protection against termination by the employer in a human rights context, underscoring the significance of the

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[67] Collins 1992, *op. cit.*, 15.

[68] *Ibid.*, 16. See also Howe, Sánchez & Stewart, *op. cit.*, 286.

[69] Collins 1992, *op. cit.*, 18, J. Raz, *The Morality of Freedom*, Oxford University Press, Oxford, 1986, 369–373.

[70] Neil M. Gorsuch quotes the theory of Joseph Raz, see N. M. Gorsuch, *The Future of Assisted Suicide and Euthanasia*, Princeton University Press, Princeton-Oxford, 2006, 86–87.

[71] Collins 1992, *op. cit.*, 18–19.

human dignity alongside that of equal treatment. He argues that the termination of employment by the employer, based on the freedom of property and enterprise, can only be exercised in accordance with legitimate economic considerations and without infringing the employee's human rights.[72]

The necessity of situating labour law within a human rights framework and the significance of human dignity and autonomy as potential foundations for labour law are underscored by Mark Freedland and Nicola Kountouris in their theory of *personality in work*.[73] The authors assume that autonomy entails both the capacity to make life decisions, including those pertaining to one's work, and the freedom from external constraints. Since human dignity is a fundamental right of the worker, regardless of the circumstances of their work performance,[74] and since the primary objective of labour law is to facilitate the fulfilment of human capabilities in the interests of human autonomy and equality, it follows that protection against unlawful termination should be derived from this. To achieve this, it is necessary for the law to impose strict limits on the contractual autonomy of the parties.[75]

It is important to note that the Capability Approach is also consistent with the said points. The Capability Approach, as advanced by Amartya Sen and further developed by Martha Nussbaum, can provide a significant contribution to the establishment of protection against arbitrary termination of employment. According to Amartya Sen,[76] the assessment of policies and institutions should be based on their ability to enhance individual capabilities. These are defined as degrees of substantive freedom that enable individuals to achieve their well-being. Individuals should be able to effectively fulfil their life plans, but in order to do so, they need capabilities. He argues that rather than focusing on directly providing people with what they want to achieve, society should work to ensure that its members have the capabilities to provide them.[77] Martha C.

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[72] Hepple 2012, *op. cit.*, 213.

[73] See M. Freedland & N. Kountouris, *The Legal Construction of Personal Work Relations*, Oxford University Press, Oxford, New York, 2011, 372–382.

[74] *Ibid.*, 374.

[75] *Ibid.*, 378.

[76] See Sen, *op. cit.*

[77] G. Davidov, *Platform Workers, Autonomy, and the Capability Approach,* Forthcoming in W. Chiaromonte & M. L, Vallauri (eds.), *Trasformazioni, Valori e Regole del Lavoro, Volume III – Scritti per Riccardo Del Punta*, Firenze University Press, Firenze, 2024. 2, https://www.academia.edu/114101513/Platform_Workers_Autonomy_and_the_Capability_Approach (accessed April 4, 2025).

Nussbaum[78] argues that policy should aim to achieve objectively defined development goals, and that the legal and other institutions of the state should be designed to ensure that a critical threshold level of well-being is within the reach of all citizens.[79]

This approach may serve to underscore the necessity for state intervention in instances of unequal power structures, such as those that may be observed within the context of employment relationships. Riccardo Del Punta posits that a Capability Approach has the potential to provide a solid foundation for labour law.[80] Labour law should not only protect workers from abusive employer power but should also provide them with freedom from such abuses.[81] In this regard, labour law regulation is not merely a right to protect vulnerable workers, but rather a tool to empower workers, thereby enhancing their autonomy, providing them more choice and increasing their freedom.[82] Furthermore, Del Punta's list of capabilities also includes the capacity for human respect and dignity,[83] which essentially means working conditions that are consistent with this. In my opinion, working conditions that respect human dignity must also encompass regulations pertaining to the termination of employment that are in alignment with this principle. This ultimately necessitates rules that provide protection against arbitrary dismissal.

These theories derive the protection against arbitrary and unlawful termination from the essence of the human being. The necessity for protection is derived from the individual's human dignity and from personal autonomy, which is fully consistent with the existential need for protection discussed earlier. Furthermore, the association of protection against arbitrary and unlawful termination with human dignity and the personal autonomy derived from it, signifies an acknowledgement that

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[78] See M. C. Nussbaum, *Women and Human Development. The Capabilities Approach*, Cambridge University Press, New York, 2000.

[79] M. C. Nussbaum, *Creating Capabilities. The Human Development Approach*, The Belknap Press of Harvard University Press, Cambridge, London, 2011, 38., G. Davidov, *The Capability Approach and Labour Law: Identifying the Areas of Fit*, The Hebrew University of Jerusalem Faculty of Law Mt. Scopus, Jerusalem 9765418 Israel, Hebrew University of Jerusalem Legal Studies Research Paper Series No. 19-17. Published in B. Langille (ed.), *The Capability Approach to Labour Law*, Oxford University Press, Oxford, 2019. 15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3422909 (accessed April 4, 2025).

[80] R. Del Punta, *Labour Law and the Capability Approach, International Journal of Comparative Labour Law and Industrial Relations*, 2016, vol. 32, n. 4, 383.

[81] *Ibid.*, 403., Davidov 2024, *op. cit.* 2.

[82] Davidov 2019, *op. cit.* 15.

[83] *Ibid.*, Del Punta, *op. cit.*

work constitutes a fundamental aspect of individual existence and a source of human autonomy. The establishment of protection on these foundations presents a compelling rationale for its designation as a human right.

4. Protection Against Arbitrary Termination of Employment Relationship as a Human Right

The aforesaid considerations indicate that the protection of an employment relationship from arbitrary dismissal is a fundamental human right that needs the implementation of regulations at the level of fundamental rights. It is my contention that the right to protection against arbitrary dismissal, which is a fundamental right of all workers/employees, can be derived directly from the right to work.

One potential interpretation of the right to work focuses exclusively on the limitations imposed by this right. This understanding of the right to work posits that the state is bound by the obligation to respect the right of every individual to freely choose their occupation. In this sense, the right to work is a freedom in the narrow sense of the term, and the state must refrain from interfering. The right to choose one's main source of livelihood is complemented by the prohibition of slavery or forced labour. This implies that individuals must be assured the right to choose their main source of livelihood and that they must also be prohibited from being forced to perform certain work against their will, whether or not for reward.[84]

The classical interpretation of the right to work is more expansive in its scope. Consequently, the right to work signifies the liberty to select and pursue a vocation, occupation, or profession.[85] In order to achieve this, it is sufficient for the state to maintain the necessary conditions to exercise this right. This includes the institutions of economic and employment policy, the education system, training and vocational training, which ensure the possibility to all workers of securing their livelihood through the occupation of their choice.[86] However, the right to free choice of

[84] G. Mundlak, *The right to work: Linking human rights and employment policy, International Labour Review*, 2007, Volume 146, Number 3-4, 192-193, https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1564-913X.2007.00013.x (accessed October 31, 2024), H. Collins, *Is there a Human Right to Work?,* in V. Mantouvalou (ed.), *op. cit.*, 21.

[85] Decision of the Hungarian Constitutional Court 21/1994 (IV. 16.), Takács, *op. cit.*, 846.

[86] Hepple 1998, *op. cit.,* 277.

employment and occupation does not imply that individuals may pursue their chosen occupation at will or without any constraints, nor that the state is obliged to provide work for all.[87] Rather, this understanding of the right to work recognises the individual subjective right to work as a right to free choice, free from coercion and discrimination.

Additionally, the right to work encompasses the safeguarding of existing employment. This approach suggests that the state's role is not merely to establish and operate a system that ensures the freedom to choose and exercise work. It also entails ensuring that individuals can retain their existing occupations without hindrance. This can be achieved primarily through the system of termination of employment and by preventing arbitrary termination of employment by employers.

The analogy between the right to work and the right to property leads to the conclusion that the positive content of the right to work does not entail that any individual can claim before the court to be placed in any job of their choice or otherwise to be assured a job. Similarly, the right to property does not entitle any individual to claim ownership of any object they desire, nor does it ensure ownership of property in general. The incongruity of this situation is readily apparent, yet it is curious that the definition of the right to property as a human right is seldom questioned.[88] These concerns appear to overlook the fact that neither 'property' nor 'work as property' can be considered a right in the sense that any individual can claim access to property or work through individual enforcement, whether administrative or judicial. Nevertheless, all these rights are enforceable in the sense that once a person has acquired and 'owned' a particular item of property, for example a job, that property cannot be taken away by a higher power, such as the state or an employer, except through due process. This process must be carried out in accordance with the relevant legislation and must include the following steps: the grounds for the action must be valid and justified, the reasons for the decision must be clearly stated in writing, the individual must be given the opportunity to be heard, the individual must be informed of the remedy available to them, they must receive adequate compensation, and

[87] A. Holló – Zs. Balogh (eds.), *Az értelmezett Alkotmány*. Magyar Hivatalos Közlönykiadó, Budapest, 2000. 684., Decision of the Hungarian Constitutional Court 327/B/1992. Bob Hepple, A Right to Work? *Industrial Law Journal.* 1981, vol. 10, 68.

[88] Cs. Lehoczkyné Kollonay, *Alkotmányos alapelvek a munkajogi szabályozásban*, in O. Czúcz & I. Szabó, *Munkaügyi igazgatás, munkaügyi bíráskodás. Radnay József 75. születésnapjára hálás munkatáraitól.* Szent István Társulat, Miskolc, 2002, 291–292.

they must have the right to request a judicial review of the decision.[89]
In this context, it is also appropriate to briefly refer to the functional relationship between the right to property and social rights, such as the right to work. From a functional standpoint, both work and property can be considered fundamental assurances of personal autonomy. The traditional material basis for the individual's autonomy of action, namely property, can be ensured directly by the object of property and indirectly by property rights or public law-based rights that assume the role of property. It thus follows that constitutional protection must also evolve in accordance with the changing role of property in society.[90] As previously outlined in the context of theoretical perspectives that have drawn an analogy between employment and property, the employment relationship has undergone a significant transformation, assuming an increasingly prominent role akin to that of classical property. As an activity that provides a regular source of income can also be subject to constitutional property protection,[91] this may also explain the property-like protection of the right to work outlined above.
In accordance with General Comment No. 18 on the right to work of the Committee on Economic, Social and Cultural Rights, the right to work extends beyond the prohibition of forced labour and the freedom to choose one's occupation. It also encompasses the right to protection against unlawful dismissal.[92] In accordance with the principles of human rights, the right to work imposes a threefold obligation on the state: to respect, protect and effectively fulfil the right. The obligation to respect the right to work entails that the state must refrain from interfering, directly or indirectly, with the enjoyment of this right. The obligation to ensure protection entails the state's duty to take active measures to prevent third parties from interfering with the enjoyment of the right.

[89] *Ibid.*, 292, Cs. Kollonay Lehoczky, *The Hungarian Constitutional Court and Social Protection*, in Cs. Kollonay-Lehoczky, & A. Aaron, *Scritti in onore di Gino Giugni: studi sul lavoro*, Vol. 1–2., Cacucci, Bari, 1999, 1471.
[90] T. Drinóczi, *A tulajdonhoz való jog a magyar Alkotmánybíróság gyakorlatában*, *Romániai Magyar Jogtudományi Közlöny*, 2004, vol. 2, n. 2, 51.
[91] Decision of the Hungarian Constitutional Court 40/1997 (VII. 1.), Drinóczi, *op. cit.*, 55, H. Rab, *A nyugdíjbiztosítási ellátások fenntarthatóságának jogi garanciái*, HVG-ORAC, Budapest, 2012, 83.
[92] *The right to work, General comment No. 18*, Committee on Economic, Social and Cultural Rights, adopted on 24 November 2005 Article 6 of the International Covenant on Economic, Social and Cultural Rights, Thirty-fifth session, Geneva, 7–25 November 2005, https://www.refworld.org/legal/general/cescr/2006/en/32433 (accessed on October 30, 2024).

Ultimately, to ensure the comprehensive realisation of the right, it is imperative that the state implements an array of suitable legislative, administrative, budgetary, judicial and other measures.[93]

In alignment with the principles mentioned above, the Committee on Economic, Social and Cultural Rights identifies a pivotal context wherein the right to work is elucidated as an indispensable tenet for the actualisation of other human rights. Moreover, it is postulated that this right is an inseparable and inherent part of human dignity. In fact, freely chosen or accepted work is a basic condition for a dignified human life. It is not only a certainty of the physical existence of individuals and their families, but it also contributes to the recognition of the individual within the community.[94] It is inconceivable that human dignity should be upheld without extending the dimension of the right to work in this direction. Work is one of the most important aspects of an individual's personal development and of their presence in society and the economy.[95]

The protection of individuals from arbitrary dismissal is not only a responsibility incumbent upon those engaged in economic activity, but also upon the state in its capacity as both regulator and employer. If the state fails to prevent arbitrary dismissals or engages in such practices itself, or if it fails to ensure the protection of individuals within its jurisdiction against arbitrary dismissal, including legislative measures, it also violates the right to work. As the Committee on Economic, Social and Cultural Rights observes, while states possess considerable discretion in determining the most appropriate measures to address their specific circumstances, they are obliged to take prompt action to ensure the protection of all individuals against unemployment as well as the provision of job security.[96] Furthermore, a failure by a state to establish a system of institutions to ensure protection constitutes a violation of the

[93] *Ibid.*, para. 22.

[94] *Ibid.*, para. 1, Sarkin & Koenig, *op. cit.*, 3, Collins 2015, *op. cit.*, 29, J. W. Nickel, *Is there a Human Right to Employment?*, *Philosophical Forum*, 1978–1979, Winter-Summer, vol. 10, n. 2–4, 149. https://www.researchgate.net/publication/327655500_Is_There_a_Human_Right_to_Employment_Philosophical_Forum_11_1980_149-170 (accessed October 31, 2024).

[95] *The right to work, General comment No. 18* para. 4. See also N. Gundt, *The Right to Work vesus the EU activation policy: Effects on national social benefits*, Which securities for workers in time of crisis? CERCRID (UMR 5137) – ASTREES: Labour Law and Financial Crises: Contingent Responses? Conference paper, 2013, 2, Sarkin & Koenig, *op. cit.*, 3.

[96] International Covenant on Economic, Social and Cultural Rights, Article 4(1). *The right to work, General comment No. 18,* para. 34–35 and 37.

prohibition of unfair dismissal.[97]

5. Conclusion

Considering the aforementioned factors, it is evident that workers seek stability and security in their employment relationships. In the context of termination of employment, it is not merely their will that is decisive. As has been demonstrated above, it is the explicit obligation of the state to establish institutions that provide protection against arbitrary and unlawful termination of employment. In examining the theoretical foundation of protection against arbitrary dismissal by the employer, it can be concluded that the immediate basis of protection is associated with the employee's necessity for existential protection. Given the theoretical justifications for this protection, it can be asserted that it constitutes a universal human right intrinsic to the human condition. The right to work, which is part of the right to protection against unlawful deprivation of employment, constitutes an integral aspect of human dignity in this context. Therefore, arbitrary dismissal without legal limits and without justification constitutes an affront to human dignity. The protection of individuals against arbitrary termination of employment constitutes an integral aspect of the state's obligation to safeguard human dignity. The protection of employees from arbitrary dismissal by their employers can be considered a fundamental human right, deriving from the broader rights to work and human dignity.

The circumstances and considerations described above have not changed in the 20th and 21st centuries. It is my contention that these remain valid. The contemporary era has witnessed the emergence of several novel phenomena, including new forms of subordinate work. However, given the precarious nature of these employment arrangements, the arguments presented above are, in my opinion, particularly pertinent. It follows that protection against termination should extend to all forms of subordinate employment, encompassing all individuals engaged in such roles, regardless of their categorisation. Therefore, the fundamental issue is not to determine whether a particular relationship constitutes an employment relationship, but rather to identify those who need protection.[98] A broad

[97] *The right to work, General comment No. 18,* para. 35.

[98] See E. Menegatti, *'On-demand Workers by Application – Autonomia o Subordinazione?',* in G. Z. Grandi & M. Biasi (eds), *Commentario breve allo statuto del lavoro autonomo e del lavoro agile [Short Commentary on the statute of self-employment and mart working]*, Wolters Kluwer Italia, Milano, 2018, 109. Cf. I. Horváth, D. P. del Prado, Z. Petrovics, & A. Sitzia, *The Role of*

interpretation of the concept of 'employment' would encompass any form of human income-generating activity, even in the context of the platform or gig economy. This would mean that the rules governing arbitrary dismissal by the employer should apply to such activities, rather than being limited to those that constitute an employment relationship. In other words, the protection of individuals against the arbitrary deprivation of their livelihood as a result of their employment status should be enshrined as a fundamental assurance of labour law.

Digitisation in Employment and Its New Challenges for Labour Law Regulation: The Hungarian, Italian and Spanish Solutions, Comparison, and Criticism, *ELTE Law Journal*, 2021, vol. 9, n. 2, 131, https://ojs.elte.hu/eltelj/article/view/5254/4274 (accessed October 29, 2024).

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