HUNGARIAN LABOUR LAW
E - J O U R N A L

Protection against dismissal in the digital age

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The study examines how the changes in the 21st century, including digitalisation and crises in Europe affects the regulation of protection against termination of employment by the employer. Digitalisation and the new forms of work that are emerging from it often exacerbate the erosion of stability in work. Digitalisation not only leaves some workers unprotected against dismissal, but it also leaves those in traditional employment relationships with increasingly fragile protection. My hypothesis is that the effects of digitalisation both accelerate the erosion of protection in traditional employment relationships and raise the need to extend protection to new forms of employment. This feeds two contradictory tendencies: on the one hand, it broadens the employer's margin for manoeuvre in traditional employment relationships, and, on the other hand, it tends to control the employer's power in non-standard relations. The study also tries to give an answer to the question: on what principle it is possible to bring the new forms of employment under the umbrella of protection against termination by the employer.

1. Introduction

Increasing the flexibility of labour law generally leads to a reduction in job security. The opportunities created by digitalisation are pushing labour flexibility into new dimensions and are calling for solutions that are outside the traditional employment relationship. As a result, the differences between atypical workers are increasing. This leads to an increasing segmentation of different groups of workers. As a result, despite their obvious economic vulnerability, a significant group of workers remain outside the scope of labour law regulation, even though they are economically dependent and socially vulnerable in relation to their employer. This means that, in relation to dismissal, there is a lack of uniformity

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in the protection against dismissal under labour law and a virtual absence of protection outside the employment relationship.

The loss of a job in a state of any kind of economic dependency, regardless of its legal classification, affects a person in several ways. It deprives the workers of their main source of income, removes them from a decisive element of their lives, threatens the possession of basic existential and intellectual goods, and jeopardises their daily livelihood.[1] For the majority of people, work is one of the most basic conditions for being in society and for being able to exist physically. As stated by the Hungarian Constitutional Court, "work is the material source of the individual's existence and human autonomy".[2] As the preamble of International Labour Organization Convention No. 168 on Employment Promotion and Protection against Unemployment states "the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them". Similarly, Hugh Collins argues that work is not only a prerequisite for the satisfaction of basic needs, but also the basis of self-esteem and the appreciation of the individual by others, which provides the individual with autonomous choice.[3]

2. Labour law: fragmented protection

Labour law is fragmented in almost all legal systems, so that it is only at the risk of over-generalisation to speak of 'labour law protection for workers' without differentiation. Within each group, there are significant differences not only in individual bargaining power and hence in the quality of employment and pay, but also in the capacity for collective bargaining and the organisation of workers,[4] which, in states where labour law legislation is particularly important, is accompanied by a distinction based on the rules laid down by the legislator.

Protection against dismissal can therefore be described as a segmented, tiered system of protection, reflecting the differences between so-called primary and secondary employment relationships.[5] In a somewhat simplistic way, primary employment relationships include those of indefinite duration (typical employment relationships) and secondary employment relationships include non-traditional,

1 Hugh Collins: *Justice in Dismissal. The Law of Termination of Employment.* Oxford, Oxford University Press, 1992. 1–2.

2 8/2011. (II. 18.) Decision of the Hungarian Constitutional Court, ABH 2011, 49., 29/2011. (IV. 7.) Decision of the Hungarian Constitutional Court, ABH 2011, 181.

3 Hugh Collins: Is There a Human Right to Work? In: Virginia Mantouvalou (ed.): *The Right to Work: Legal and Philosophical Perspectives.* Oxford–Portland (Oregon), Hart, 2015. 18. See also Virginia Mantouvalou: Introduction. In: Mantouvalou op. cit. 1.

4 Bob Hepple: Flexibility and Security of Employment. In: Roger Blanpain – Christian Engels (eds.): *Comparative Labour Law and Industrial Relations in Industrialized Market Economies.* The Hague–London–Boston, Kluwer Law International, 1998. 282.

5 Ibid. 282.; Collins (1992) op. cit. 262.; Bob Hepple: A Right to Work? *Industrial Law Journal,* 1981/10. 68.

atypical employment relationships.[6] While it cannot be said that all atypical employment relationships are less well protected than traditional employment relationships, it is noticeable that protection in this category is generally more easily eroded and more difficult to 'rebuild'. Moreover, within the secondary category there are also less 'fortunate' employment relationships that are even less well protected than others. This leads to a further segmentation of labour law protection, increasing the possibility of the emergence of third, fourth and more 'lines' of employment. [7] The security of those in the first group is greater than that of those in the second.[8] This often also means that strengthening the protection of the primary groups 'shifts' the employment structure towards the use of secondary groups.[9]

Fissures are not only evident in primary and secondary employment relationships, but also, for example, in so-called small enterprises. In some jurisdictions, the number of workers is not irrelevant for the purposes of dismissal protection.[10] However, workers employed by small enterprises should be particularly protected from dismissal because in this sector workers are most vulnerable to arbitrary employer action, partly because of the low trade union presence. This does not mean, however, that legislation should be insensitive to the specific circumstances, such as the increased importance of mutual trust or the specific features of interpersonal relations that characterise this scene.[11] Unlawful termination of employment often remains latent among these employers, and the regulation laid down by legislation or collective agreement is often superseded in practice by a kind of special underlying 'customary law' which is not necessarily in line with the 'law in books'. This sector has the lowest level of compliance and the most significant decent work deficit.[12]

It should be noted that during the preparation of the Hungarian Labour Code of 2012, it was also proposed to exempt 'small employers' from the obligation to provide reasons for dismissal, as they are typically not involved in reorganisation or layoffs, and therefore it is difficult to identify reasons related to the employer's business, and in return they should be obliged to pay compensation to the

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6 Sandrine Cazes – Alena Nesporova: *Munkaerő-piacok átalakulóban: rugalmasság és biztonság Közép- és Kelet-Európában.* Budapest, International Labour Office, 2003. 103.; Andrew Stewart: And (Industrial) Justice for All? Protecting Worker Against Unfair Dismissal. *Flinders Journal of Law Reform,* 1995–1997/1. 110–112.

7 In this connection, Bob Hepple cites Hugo Sinzheimer, who wrote in 1933 on the crisis of labour law: „Was hat das Arbeitsrecht für einen Sinn, wenn es höchstens nur noch ein Recht für eine Arbeiterelite ist, die das Glück hat, in Arbeit zu stehen, […]" See Hugo Sinzheimer: Die Krisis des Arbeitsrechts. In: Otto Kahn-Freund – Thilo Ramm (Hrsg.): *Arbeitsrecht und Rechtssoziologie. Gesammelte Aufsätze und Reden.* Band I. Frankfurt, Europäische Verlagsanstalt, 1976. 141.; quoted by Hepple (1998) op. cit. 282.

8 Pierre Cahuc: For a Unified Contract. *European Labour Law Journal,* 2012/3. 191.

9 Per Skedinger: Employment Consequences of Employment Protection Legislation. *IFN Working Paper,* 2011. 865., www.ifn.se/Wfiles/wp/wp865.pdf 26.

10 Guus Heerma van Voss – Beryl ter Haar: Common Ground in European Dismissal Law. *European Labour Law Journal,* 2012/3. 220.; Robert Rebhahn: Economic Dismissals – A Comparative Look with a Focus on Significant Changes Since 2006. *European Labour Law Journal,* 2012/3. 232.

11 Stewart op. cit. 107–108.; see also Hepple (1981) op. cit. 67.

12 Colin Fenwick – John Howe – Shelley Marshall – Ingrid Landau: *Labour and Labour-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches. SEED Working Paper,* No. 81, 2007. 9.

employee in accordance with the duration of the employment relationship. [13] Although this proposal was not implemented, it seems clear that even if the rarity of reasons based on the operation of "small employers" is true (although it cannot be excluded), dismissals based on personal reasons can be interpreted without problems for these employers. This proposal would have effectively merged the grounds for dismissal and deprived a large number of Hungarian workers of protection against arbitrary dismissal, which would have been a significant step backwards in any case.[14]

The drive for flexibility in contemporary Hungarian labour law provides many examples of the erosion of existing protections in the traditional employment relationship.

One example is the so-called 'public employment relationship', which aims, among other things, at integration or reintegration into the world of work, maintenance of work activity, work socialisation or 'poverty alleviation'.[15] However, a number of labour law rules do not apply to this special employment.[16] It is possible to pay the remuneration below the minimum wage,[17] there are some specific rules on termination of the relationship (e.g. lack of severance pay,[18] the decision of the authorities can exclude a person from public employment, which is a basis for the employer to terminate the relationship with immediate effect).[19]

The second example concerns cooperatives (school and public interest pensioners' cooperatives). Until 31 August 2016, the Hungarian Labour Code contained specific rules for the employment relationship between a so-called school cooperative and its members. Originally, these rules also placed pupils and students employed by a school cooperative in an 'outer circle' of employment protection, as the application of many provisions of the Labour Code were explicitly excluded.[20] However, as of 1 September 2016, the provisions of the Labour Code governing the employment relationship with a school cooperative were repealed. From that date, Act X of 2006 on cooperatives provided that a full-

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13 Berke, Gyula – Kiss, György – Lőrincz, György – Pál, Lajos – Pethő, Róbert – Horváth, István: Tézisek az új Munka Törvénykönyve szabályozási koncepciójához. *Pécsi Munkajogi Közlemények,* 2009/3. 154–155. The *Hungarian Labour Plan (Magyar Munka Terv)* is more cautious when it suggests that it is appropriate to examine whether the termination of employment should be less restricted for employers of small and medium-sized enterprises. However, it also pointed out that the decisions of the Constitutional Court in this area do not allow this (*Széll Kálmán Terv. Magyar Munka Terv.* http://mcdsz.hu/1_doksik/Nemzetimunkaterv.pdf 43., 49.).

14 On the dangers of differentiated regulation, see Kun, Attila – Homicskó, Árpád: A munkáltató „méretének" relevanciája a munkajogi szabályozásban a 41/2009 (III. 27.) AB határozat fényében. *De iurisprudentia et iure publico,* 2011/2. http://dieip.hu/wp-content/uploads/2011-2-07.pdf 8–10.

15 Koltai, Luca: Célok és értékek a közfoglalkoztatásban. *Fundamentum,* 2015/1. http://fundamentum.hu/sites/default/files/fundamentum-15-1-06koltai.pdf 68–69.

16 Section 2 of Act CVI of 2011 on public employment and amending other acts related to public employment. See Ferencz, Jácint: A közfoglalkoztatás mint atipikus munkaviszony. *Jog, Állam, Politika,* 2014/1., https://dfk-online.sze.hu/images/J%c3%81P/2014/2/ferencz.pdf 129–131.

17 See Government Decree No 170/2011 (VIII. 24.) establishing the public employment wage and the guaranteed public employment wage.

18 Section 2(5)(a)(ai) of Act CVI of 2011.

19 Section 2(5)(g) of Act CVI of 2011. On fundamental rights issues related to exclusion from public employment, see 30/2017. (XI. 14.) Decision of the Hungarian Constitutional Court. See also Bitskey, Botond: A közfoglalkoztatás alapjogi kérdései. In: Bankó, Zoltán – Berke, Gyula – Pál, Lajos – Petrovics, Zoltán (eds.): *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére.* Budapest, HVG-ORAC, 2019. 74–77.

20 See also Kártyás, Gábor: *A munkaerő-kölcsönzés és az iskolaszövetkezetek tagjainak munkaviszonya az Európai Unió irányelveinek tükrében.* Budapest, 2015. http://faydigitaliskonyvtar.hu/dokumentumok/121 52–63.

time student member of a school cooperative may also provide his or her personal contribution in the context of a service provided by the school cooperative to a third party. The 'personal contribution' corresponds to the work performed under the former employment relationship with the school cooperative, i.e. this specific legal relationship has essentially replaced the employment relationship without incorporating its essential guarantees, including, *inter alia*, protection against unlawful termination of the employment relationship. With effect from 1 July 2017, the statute introduced the category of public interest pension cooperative and, like the school cooperative, allowed a member of a pension cooperative receiving an old-age pension to make a personal contribution in the context of a service provided by the pension cooperative to a third party,[21] i.e. it allowed a lower level of protection of employment instead of employment.

However, if we take a closer look at the two legal relationships mentioned above, we can see that the content of the relationship is very similar to that of employment, since the recipient of the external service can directly instruct the person providing the service, and the right to instruct also includes the right to determine the manner, time and schedule of the performance of the task.[22] In this way, the legislator has created a legal relationship in which it can be shown that the recipient of the external service, in addition to its usual position as a client in civil law, has rights typical for the traditional employment relationship, since it exercises the broad right to give instructions. This essentially creates a subordination between the service recipient and the cooperative member. This is a solution 'that rejects the guarantee provisions of the employment relationship, but maintains the power of the employer, which comes from the same source'.[23] It could also be said that the legislator did not introduce an inappropriate element by breaking down the boundaries of the employment relationship, but created a new legal relationship in the form of a construct of the employment relationship and then banished it from the scope of labour law to an area where the protective provisions of labour law are not allowed to prevail.

In this context, it is appropriate to recall the legal relationship of a government official, some of its characteristics place it in the category of secondary employment. The possibility of unilateral modification of the appointment by the employer[24] puts government officials in a vulnerable position. As Gábor Kártyás points out, 'this unscrupulous employer power takes the Hungarian civil service back to the early days of manufacturing industry, without even attempting to justify it with any legitimate employer interest'.[25] There are almost no rules in the civil service that employers cannot circumvent by unilaterally changing appointments. This allows the employer to act arbitrarily with

21 Section29(1) of Act X of 2006.

22 Section 10/B(3), 29(3) of Act X of 2006.

23 Kártyás, Gábor: XXI. század és munkajog: megőrizni vagy megreformálni? In: Pál, Lajos – Petrovics, Zoltán (eds.): *Visegrád – 17.0 A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai.* Budapest, Wolters Kluwer Hungary, 2020. 49.

24 Section 89(1) of Act CXXV of 2018 on government administration.

25 Kártyás (2020) op. cit. 49.

the indirect aim of allowing the civil servant to apply for dismissal or, if not allowed by law,[26] to resign from the civil service.

Finally, it is worth mentioning that in Hungary in the spring of 2020, the 'pandemic legislation of COVID-19' created the possibility, albeit temporarily, for a significant number of workers who traditionally enjoyed a higher level of protection to be 'excluded' from the scope of labour law protection by agreement. In fact, Article 6(4) of Government Decree 47/2020 (III. 18.) on emergency measures to mitigate the effects of the coronavirus pandemic on the national economy allowed the employer and the worker to derogate, by agreement, from any provision of the Labour Code, including any provision guaranteeing protection to the worker in the event of termination of employment. In essence, this rule made all labour law rules absolutely disposable, thus returning the employment relationship to the realm of "unlimited contractual freedom".[27] The appropriateness of this provision is questionable, as is the reason why the legislator did not precisely define the provisions from which derogation is permitted, as this could even lead to the parties waiving the requirements of Hungarian labour law provided for by EU law (e.g. the rules on collective redundancies).

Typically, as Sylvaine Laulom points out, even the legislative measures implemented under the banner of flexicurity in European countries have eroded workers' security, as redundancy benefits have often been reduced, the legal consequences of unlawful dismissals have been eased, unemployment benefits have not been increased and, in most cases, training and retraining provisions have not changed in favour of workers.[28] Maarten Keune and Maria Jepsen conclude that increased flexibility as a result of flexicurity policies does not actually go hand in hand with increased security. The emphasis is still on flexibility, as shown by the fact that even social policy instruments have to be used to promote labour market flexibility. Employers' demands for flexibility are met, while workers are forced to give up job and income security in exchange for lifelong learning and active labour market policies.[29]

These phenomena are generally born in the cradle of employer-led flexicurity efforts. The crises that have hit Europe, and Hungary, are reasons, and sometimes pretexts, for the current drive for flexibility, which, as we have seen, is actually loosening the framework of the traditional employment relationship and, at the same time broadens the employer's margin for manoeuvre.

26 Section 89(2) of Act CXXV of 2018.

27 Gyulaváry, Tamás: Veszélyhelyzet a munkajogban: szerződési szabadság és munkáltatói hatalom. *Fundamentum,* 2020/1. 80. See also Berke, Gyula: Munkajog veszélyhelyzetben. In: Pál–Petrovics (2020) op. cit. 32.

28 Sylvaine Laulom: Dismissal law under challenge: new risk for workers. In: *Which securities for workers in time of crisis? CERCRID (UMR 5137) – ASTREES. Labour Law and Financial Crises: Contingent Responses? Conference paper.* 2013. 26.

29 Maarten Keune – Maria Jepsen: *Not balanced and hardly new: the European Commission's quest for flexicurity.* WP 2007.01. Brussels, ETUI-REHS, 2007. https://tinyurl.com/kne3drz7 15.

3. Gig economy – race for protection

The new forms of work that have emerged as a result of digitalisation[30] (gig economy, platform economy, application-based work, crowdwork) have rapidly become a central topic in labour law in recent years. This is no coincidence, given the growing number of people who participate in the world of work in this way.[31] The first question that usually arises in the case of these forms of work is where they should be placed: inside or outside the field of labour law. This dichotomy appears both simple and complex. It is simple because it suggests that the key is simply to find the right classification method, since once this question has been successfully answered, a position can be taken on whether or not the case falls within the protection of labour law. However, it is also difficult because, on the one hand, there are already many questions because the traditional structure and classification criteria of labour law do not easily apply to these legal relationships. In fact, the various forms of employment have the characteristics of both self-employment and employment.[32] On the other hand, the situation becomes particularly complicated when it is questioned whether the otherwise well-established classification of relationships is an appropriate instrument for dealing with the problem.[33]

From time to time, different solutions are proposed for new groups of workers, in the context of a certain extension of protection. One such proposal is that legislation should provide a certain level of 'labour law protection' to specific groups of workers, based on certain criteria, whether or not they are in a traditional employment relationship.[34]

An attempt to create an intermediate category was also included in the first draft of the Hungarian Labour Code, published in July 2011, which would have applied the provisions on dismissal and severance pay, among others, to persons with a legal status similar to that of an employee. They would also have been subject to the law's provisions on maximum working hours, minimum rest periods, holidays, liability for damages and minimum wages. However, the proposal was not included in the final law.[35] According to the draft, a person who does not perform work for another person on the basis of an employment contract, provided that he or she does so personally, for remuneration, regularly and continuously for the same person, and that he or she cannot be expected to continue another regular gainful activity while performing the contract, would, in all circumstances, be considered to have the status of a person treated as an employee. The draft would have excluded from this category persons

30 Kun, Attila: Munkaviszony és a digitalizáció – rendszerszintű kihívások és a kezdetleges európai uniós reakciók. In: Pál, Lajos – Petrovics, Zoltán (eds.): *Visegrád 15.0. A XV. Magyar Munkajogi Konferencia szerkesztett előadásai.* Budapest, Wolters Kluwer Hungary, 2018. 389–416.; Ferencz, Jácint: A technológiai fejlődés és a munkaviszonyok. In: Pál Lajos – Petrovics Zoltán (eds.): *Visegrád 16.0. A XVI. Magyar Munkajogi Konferencia szerkesztett előadásai.* Budapest, Wolters Kluwer Hungary, 2019. 211–212.; Rácz, Ildikó: A távmunkán túl – Munkavégzés az applikációk világában. In: Pál–Petrovics (2019) op. cit. 234–237.

31 See Rácz, Ildikó: *A digitalizáció hatása a munkajog egyes alapintézményeire.* Budapest, 2020. https://ajk.kre.hu/images/doc2021/doktori/dr_Racz_Ildiko_PhD_ertekezes_nyilvanos_vedesre_vegleges.pdf

32 See regarding difficulties of classification Rácz (2019) op. cit. 241–251.

33 Ibid. 241.

34 Kun, Attila: A szakszervezeti szervezkedés szabadsága versenyjogi kontextusban. In: Pál–Petrovics (2020) op. cit. 184–185.

35 A Munka Törvénykönyve. Proposal, 2011, July 18. Section 3(1).

whose regular monthly income from the contract in question exceeds five times the legal minimum wage in force at the time of the performance of the contract.[36]

Ultimately, the proposal of the European Union falls into this category. In December 2021, the European Commission published the Proposal for a Directive on improving working conditions in platform work.[37] The general objective of the proposal is 'to ensure that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights', 'to ensure fairness, transparency and accountability in algorithmic management in the platform work context;' and 'to enhance transparency, traceability and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.'[38]

One of the main problems with this approach is that the legislator would have to precisely define the category of workers who would benefit from these measures[39] and, while answering the question of where the boundary lies between traditional employment and these new forms of employment, distinguish between those who are protected and those who are not.

An alternative solution could be to apply protection to all forms of employment in subordination and to define the guaranteed rights and obligations that should apply generally to all workers. However, this solution is subject to the same problem: there will inevitably be a selection of certain categories of workers as 'deserving' of protection. In my view, this could be made easier by placing the issue in a human rights context, which would lead to the conclusion that the general guarantees should apply to all forms of employment, irrespective of their 'classification'.

It is often difficult to define accurately what an employment relationship is. However, the question is not 'what constitutes an employment relationship?' but 'Who needs protection? I do agree with Emanuele Menegatti: it is not a question of redefining subordination, but of rethinking the distribution of guarantees of protection.[40] In my opinion, this can be achieved by placing the problem in a human rights context, in line with the justification for the general recognition of universal labour rights and guarantees.[41] The essence of this is that universal guarantees must apply to all forms of work

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36 Ibid. 3(2) and (4). See Kiss, György: *A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében.* http://real.mtak.hu/25641/1/work1.pdf 18–20.; Gyulaváry, Tamás: A gazdaságilag függő munkavégzés szabályozása: kényszer vagy lehetőség? *Magyar Munkajog E-folyóirat,* 2014/1. http://hllj.hu/letolt/2014_1/01.pdf 17–24.

37 Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work. European Commission, Brussels, 2021.12.9. COM(2021) 762 final 2021/0414 (COD) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0762&from=en

38 Ibid. 3.

39 Kun (2020) op. cit. 185.

40 Emanuele Menegatti: On-demand Workers by Application: Autonomia o subordinazione? In: Gaetano Zilio Grandi – Marco Biasi, (eds.): *Commentario Breve allo Statuto del Lavoro Autonomo e del Lavoro Agile.* Padova, 2018. 109.

41 Kun (2018) op. cit. 406.; Rácz (2019) op. cit. 256–257.; Sipka, Péter – Zaccaria, Márton Leó: A tervezőasztal dilemmája a munkajogi jogalkotásban: várat építsünk vagy börtönt? Gondolatok a „munkaerő-szerződésekről" és a kiterjesztett „jogvédelmi magról". In: Auer, Ádám – Berke, Gyula – György, István – Hazafi, Zoltán (eds.): *Ünnepi kötet a 65 éves Kiss György tiszteletére. Liber Amicorum in honorem Georgii Kiss aetatis suae LXV.* Budapest, Dialóg Campus, 2018. 842.

performed by people, regardless of their classification or status. The concept of 'employment' has to be interpreted in a much broader way than in the past – any form of human income-generating activity (even in the gig economy) means work. The protection against arbitrary deprivation of the employment relationship as a source of livelihood should be considered as one such guarantee. It can therefore be seen that while digitalisation has created new forms of work, it has also triggered a new way of thinking about labour law, which requires a limitation of the power of employers to extend protection.

4. The basis for protection against termination of employment

Disconnection from the platform and 'deactivation' is equivalent to immediate termination of employment without justification. In a significant number of these cases, therefore, the same problems arise for workers as those arising from termination of a traditional employment by the employer.[42] The question arises: what is the basis for protection against termination of employment? In my view, protection against arbitrary and unlawful termination by the employer is a human right that requires regulation at the level of fundamental rights, regardless of whether the employee is in a traditional employment relationship or not.

Termination of employment by the employer causes a temporary or permanent 'reproductive disruption' in the life of the worker. In addition to the obvious loss of interest, dismissal can lead to a drastic change in the worker's living conditions, have a direct impact on his or her way of life and even jeopardise his or her livelihood. For the individual, the loss of a job is often a tragedy that can even lead to impoverishment and existential decline.[43] Work is an essential factor in an individual's existence, self-determination and self-esteem, but it is also an objectification that expresses his or her attachment to society. In addition, society has an important interest in protecting the systems of relationships that provide the framework for work. The 'power' exercised by employers within the framework of the rule of law[44] requires that it be exercised responsibly and within limits.[45] The need for existential protection in the event of loss of employment is indirectly linked to the need to protect human autonomy.[46]

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42 Rácz (2020) op. cit. 160.

43 Bob Hepple: European Rules on Dismissal Law? *Comparative Labour Law Journal,* 1996–1997/2. 204. See Frank Hendrickx: Flexicurity and the EU Approach to the Law in Dismissal. *Tilburg Law Review,* 2007–2008/1–2. 91.

44 In a state governed by the rule of law, protection against unlawful termination of employment is a necessary element of social justice. Hepple (1996–1997) op. cit. 206.

45 Guy Davidov – Edo Eshet: Intermediate Approaches to Unfair Dismissal Protection. *Industrial Law Journal,* 2015/2. 174.

46 See also Collins (1992) op. cit. 9–21.; Anne C. L. Davies: *Perspective on Labour Law.* Cambridge, Cambridge University Press, 2004. 162–163.

Today, the vast majority of people do not have the quantity and quality of goods and services to meet their needs without work.[47] For the 'capitalist', this is an investible asset, whereas for the worker it is an intangible mix of individual skills, qualifications, competences that enables him or her to enter into a contract of employment and to earn a living through the employment relationship thus established. In the absence of significant material assets, the worker is left with nothing but his job. This is the origin of the idea of new property.[48] Charles A. Reich, in his analysis of the relationship between the state and the individual, argued that the individual's wealth today is less and less a matter of tangible goods, but the rights and social status acquired by the individual, which have replaced the function of wealth in the traditional sense. Reich cites, among other things, jobs as examples, which in most cases can be perceived by the individual as being much more valuable than property of a bank account.[49] He concludes that acquired rights or statuses, such as a job, should be afforded the same protection as property rights.[50]

Reich, placing the idea of new property in the context of the idea of freedom, also pointed out that there can be no real freedom without the protection of the economic security of the individual. Today, most of the social goods that are valuable to the individual come from organisations or the state and are therefore primarily dependent on these organisations,[51] which can lead to a strong economic dependence, and the freedom of the individual therefore also depends on this economic dependence, which must be kept within reasonable limits.[52] In fact, in today's society, individuals are able to maintain their existence through their dependence on organisations, but are unable to do so independently or to the same extent.[53] Reich argues that an existing job, after a certain period of employment, requires substantive and procedural guarantees. According to him, a worker should only be dismissed if there is an overriding public interest in doing so, and then only with adequate compensation.[54] In my view, the overriding reasons of public interest referred to by Reich must be interpreted broadly to include all circumstances in which the employment relationship has effectively ceased to exist.[55] This can be contrasted with the ideas of Amartya Sen, who argues that economic unfreedom also threatens one's other freedoms, which can easily fall victim to economic vulnerability.[56]

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47 See Robert L. Hale: Coercion and Distribution in a Supposedly Non-Coercive State. *Political Science Quarterly,* 1923/3. 472–473.

48 See Kiss, György: *Alapjogok kollíziója a munkajogban*. Pécs, Justis, 2010. 114–115.

49 Charles A. Reich: The New Property. *Yale Law Journal,* Vol. 73, Iss. 5. (1964) 733–787., 738.

50 Ibid. 785. It should be noted, however, that the concept of labour as property appeared much earlier. John Locke took the view that man was the owner of his own person, his body and the labour of his hands. See John Locke: *The Second Treatise of Government.* London, 1688. http://history.hanover.edu/texts/locke/j-l2-007.html

51 Charles A. Reich: The liberty impact of the new property. *William and Mary Law Review,* 1989–1990/2. 295.

52 Ibid. 296.

53 Ibid. 297.

54 Reich (1964) op. cit. 785.

55 See also Charles A. Reich: The New Property After 25 Years. *University of San Francisco Law Review,* 1990/2. 223–272.

56 Amartya Sen: *Development as Freedom.* New York, Anchor Books, 2000. 8.

Frederic Meyers approaches the issue in a similar way to the above through the analogy of ownership of jobs. He starts from the premise that the employee generally does not see his job as a legal relationship created by the contract between him and his employer, but simply as his own (my job).[57] In this sense, the concept of 'job' has become independent of the concept of employment[58] and has taken on a life of its own. According to Meyers, if the employment relationship can be the subject of property rights – or at least an analogous relationship is assumed between the employee and the job – then its unfettered possession must also be protected against arbitrary dismissal.[59]

Since the worker is involved in the employment relationship with his whole personality, dependent work, subordination, necessarily leads to a situation which makes him easily vulnerable to the employer. In the employment relationship it is therefore necessary to protect the individual with human dignity against the power of the employer.[60] As Hugo Sinzheimer puts it: *"die Arbeit ist also der Mensch selbst"*.[61] The ability to work is the personal foundation of human existence, and man is by definition an entity with human dignity.[62] Bob Hepple also sees work as the means by which, for most workers, the essential element of human and social existence, human dignity and autonomy, can be expressed.[63] There is a primary link between work and human dignity. Work is the basis of human existence, and it is an integral part of human dignity, 'the possibility of working cannot be separated from the quality of human existence, and therefore without it we cannot speak of human dignity'.[64]

Hugh Collins sees the need for respect for human dignity and personal autonomy as a justification for protection against dismissal. For a significant proportion of people, work is not just a necessity but the medium of a meaningful human existence in which they find the intellectual and physical challenges that give meaning to their lives. The difficulties caused by losing one's job draw attention to two rights of the individual: the human dignity of the person as a person with intrinsic worth, and personal autonomy, which requires respect for the individual's ability to give meaning to his or her life through work. The duality of human dignity and autonomy may justify the employer's right to control the termination of employment.[65]

Hugh Collins does not claim that all termination of employment violates the right to human dignity. Indeed, to accept this would automatically imply that the worker cannot be deprived of his or her

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57 Frederic Meyers: *Ownerships of Jobs: A Comparative Study.* Los Angeles, Institute of Industrial Relations, University of California, 1964. 3.

58 Ibid. 98.

59 In this regard, Meyers cites the Fifth Amendment to the United States Constitution, which provides that no person shall be deprived of, among other things, his property without due process of law. Ibid. 1–2., 15. See Thomas Gelb: Non-statutory causes of action for an employer's termination of an „at will" employment relationship: a possible solution to the economic imbalance in the employer-employee relationship. *New York Law School Law Review,* 1979. 768–769.

60 Kártyás (2020) op. cit. 42.

61 "Work is man himself." Hugo Sinzheimer: Das Wesen des Arbeitsrechts. In: Kahn-Freund–Ramm op. cit. 108–110.

62 Vö. Hugo Sinzheimer: *Grundzüge des Arbeitsrecht. Eine Einführung.* Jena, Fischer. 1921. 8.; Kártyás (2020) op. cit. 42.

63 Hepple (1996–1997) op. cit.. 204.

64 Kardkovács, Kolos: Elmélkedések a munkáról. In: Bankó–Berke–Pál–Petrovics op. cit. 204.

65 Collins (1992) op. cit. 16.

job under any circumstances. If the employer's actions are not treated with the respect due to all human beings, he or she is simply treating the worker as a 'commodity' to be disposed of at any time when he or she no longer needs him.[66] According to Hugh Collins, if the reason for termination of employment is substantial, duly justified and consistent with the reasonable pursuit of the employer's economic objectives, it does not violate the human dignity of the worker. Accordingly, an employer may reasonably exercise the right to terminate the employment of an employee who is unfit to perform the job in accordance with its economic interests.[67]

5. Conclusion

Work is an essential part of the human, only human consciously works, and when one is unemployed, one often considers oneself superfluous, unworthy.[68] Consequently, work is an integral part of human, a basis of his or her self-definition, inseparable from his human dignity. In my view, protection against arbitrary termination should be derived from the right to work and human dignity, thus placing it on a solid human rights basis. The idea of protection for all those who work is supported by the existence of an existential need for protection that goes hand in hand with the loss of work, and by those theories that draw an analogy between employment and property, and by the idea that protection of these structures is also absolutely necessary because economic vulnerability and the lack of economic freedom (economic unfreedom) threaten human rights of the people.[69]

As I stated above, the moment the employment relationship is lost, the worker has an existential need for protection, triggered by the need to protect human dignity and autonomy. It is possible, but meaningless, to talk about human autonomy or human dignity without human existence. Human rights must protect the person – his or her physical, mental and social existence. This includes the right to work and the consequent protection against arbitrary dismissal. In the light of these considerations, the right to work, and within it the right to protection against arbitrary dismissal, must be regarded as a human right that expresses an urgent and compelling moral need and is universally applicable to all workers, whether or not they are in a traditional employment relationship.

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66 Ibid. 16. See Catherine Dupré: Az emberi méltóság a 2011-es magyar alaptörvényben. *Fundamentum,* 2011/4. 28.; 8/1990. (IV. 23.) Decision of the Hungarian Constitutional Court, ABH 1990, 42.

67 Collins (1992) op. cit. 17.

68 Kardos, Gábor: Üres kagylóhéj? *A szociális jogok nemzetközi jogi védelmének egyes kérdései.* Budapest, Gondolat, 2003. 144.

69 Sen op. cit. 8.