

VOLUNTARY ERRORS AS CAUSES OF CHALLENGE IN THE EMPLOYMENT RELATIONSHIP

GYÖRGY NÁDAS – TAMÁS PRUGBERGER

associate professor, habil.

Department of Agricultural and Environmental Law and Labour Law, Faculty of Law,
University of Debrecen, Hungary
nadas.gyorgy@law.unideb.hu

professor emeritus, DSc.

Department of Environmental Law and Labor Law, Faculty of Law,
University of Debrecen, Hungary

Abstract: The study covers two main topics. The first part of the study deals with the avoidance of the statement on commitment relating to relating to employment. Thus, the Hungarian Labour Code, in contrast to the provisions of the Hungarian Civil Code, assures a quite short period for the avoidance of the statement, in case of coercion, threat, mistake or mislead. In the opinion of the author, this special, shorter period is not justified. In the second part of the study, the author proposes to handle employment-related legal acts similarly to consumer contracts, since labour contracts are mostly concluded by using contract form. Moreover, the author suggests extending the application of collective action (*actio popularis*) to these labour contracts.

Keywords: *labour law and civil law statement, divergent regulation, avoidance, subjective and objective time limit, consumer, consumer contract, contract form, collective action*

Labour law is a fundamental representative of the vast field of civil law, a branch of law in its own right, which regulates at its very core one of the fundamental systems of human relations, both economically and socially decisive: the employment relationship.

A fundamental feature of the civil law system is that two subsystems, similar in many respects but with significant differences, are, so to speak, separate, coexist, and operate side by side: the area of non-contractual relations and the area of contractual relations.

A fundamental feature of labour law is that it does not consider contractual and non-contractual sharing. Logically, the division between contractual and non-contractual is not the governing principle of labour law, since labour law itself is a specialised branch of law where everything starts with a contract. The employment relationship is inherently contractual and the whole system of employment law can therefore only think in terms of contractual relationships.

The fundamental characteristic of contractual relations is their adversarial and synallagmatic nature. With rare exceptions, contractual relations are created by the mutual will of the parties, their content and changes to their content are created or changed by the mutual will of the parties and in most cases, contracts are terminated upon performance following the mutual will of the parties. In most cases, where a party has the unilateral power to modify the content of a contract, this is not inherent in the contract, but is a right given to the party concerned by the common will of the parties.

However, the specific approach to labour law stems from the claudicatory conception of law that pervades labour law as a whole. The employment law obligation is synallagmatic, but its essential characteristic – which in itself also implies the need for special regulation – is that it is a relationship between parties who are not in equal positions. Accordingly, employment law is a regulation that constantly seeks to eliminate this inequality of opportunity.

In the wave of codification that followed the change of government in 2010, a new labour code was drafted. The current Labour Code, i.e. *Act I of 2012* (hereinafter Labour Code or LC) entered into force on 1st July 2012. The Labour Code has brought about a paradigm shift in the regulation of several legal institutions compared to the old, 1992 adopted Labour Code. (Trenyisán, 2017)

The LC in force is the first Hungarian labour law code that was truly born in civilian conditions. It is incomparably closer to real conditions and legal solutions to real problems than any of its predecessors, and it provides greater legal certainty than any other labour law code, for both employees and employers. *'The employment relationship is also a contractual, private legal relationship, created by two parties of equal legal status by mutual consent. However, legally equal parties are rarely in the same bargaining position. The employment relationship is characterised by the superior position of the employer, who dominates the legal relationship at the time of the conclusion of the contract and throughout its duration.'* (Kártyás, 2014)

It is a necessary and constitutional aspiration of labour law to 'push back' this natural and unavoidable positional difference towards natural equality by its unilaterally (claudication) cogent regulation, including the asymmetric regulation of the liability regime described above. In this endeavour, labour law seeks to ensure real equality of opportunity for the employee within the framework of a legal relationship that is only formally equal.

The existence of this specificity makes the specificity of labour law examined in the present study explicitly uninterpretable, according to which in many respects it provides the parties, and both parties, with a much more limited and narrow legal remedy than civil law, and thus the rules concerned put already disadvantaged, lay, even vulnerable workers in a position where they cannot effectively exercise their rights and assert their interests sufficiently.

A specific feature of contracts is that in many cases the parties may later disagree on the content of the contract and how it is implemented.

It is a well-accepted legal institution that a party who recognises that 'this is not the horse I wanted' can challenge the contract and thus enforce his rights.

The possibility of challenging contracts is therefore a necessary, even indispensable, element of civil law contract law, but it obviously cannot give rise to legal uncertainty.

The two basic means of avoiding legal uncertainty are, on the one hand, the time limit for challenging contracts, which substantially reduces the possibility of abusive law enforcement between the parties and reduces the number and seriousness of the legal situations that may arise, and, on the other hand, the exhaustive definition of the grounds for challenge, which precludes the possibility of challenging agreements based on unfounded or untrue grounds, which would be likely to succeed on the merits.

Taking into account the fact that labour law is a branch of law based entirely on the existence of a contractual legal relationship, it is reasonable to expect that the possibility of challenging contracts should also be given adequate scope in the LC.

Of course, the legal regulation has been done, and Article 28 of the LC contains the necessary regulation, but, as *Tamás Prugberger* states in his research, the provisions on nullity and challengeability in the current Labour Code are identical to the relevant provisions of *Act V of 2013 on Civil Code* (hereinafter Civil Code or CC), except for the shorter time limits for the challenge. (Prugberger, 2002)

Behind the author's conclusion is the fact that while Article 6:89 of the CC sets a one-year-long time limit for the contestation, which is sufficiently long but at the same time, for legal security aspects it is satisfactory as well, Article 28(7) of the LC sets a subjective time limit of only thirty days, commencing upon recognition of the error or upon cessation of duress, and which is also limited by a quasi-objective time limit of six months.

Tamás Prugberger draws an eloquent analogy between the two major areas of civil law. It is a fact that in the case of labour law, one party, the employee, is typically in a more vulnerable position than his contractual partner, the employer. However, in the field of civil law, there are also contracts, namely consumer contracts, that are actually concluded by parties in different positions. (Prugberger, 2021)

Moreover, Tamás Prugberger effectively demonstrates, by simple means, that while civil law provides explicit protection for the vulnerable consumer side in challenging contracts, labour law does not provide any preferential treatment in this respect.

It is indisputable that labour law gives a healthy advantage to employees in terms of liability for damages in substantive law, but this advantage is not at all noticeable in procedural law.

The employer's liability is governed by Articles 166–167 of the LC. The employer's liability for damages has objective nature and is extremely strict, even the consent of the aggrieved party is only a saving circumstance if it was 'unavoidable conduct'. Nevertheless, the employer even has to protect the employee on his/her own in the course of his/her working activity.

The level of compensation is also very strict, but employers have more excuses here.

It can be concluded that the liability regime for employers under labour law is significantly closer to the regime of civil law liability for damages caused by the breach of contract than to the rules of non-contractual liability, although, in the case

of issues regulated in labour law, provisions of the CC (Art. 6:518–534 CC) are not applicable.

This proximity is already evident from the fact that civil law also gives priority to the rules on damages caused by the breach of contract over the rules on compensation for non-contractual damages, and we have already established that liability for damages in labour law itself is essentially a system of rules specialised for a legal situation arising from a contractual relationship.

It can also be seen that the liability of employers for damages is much stricter than the rules of civil law for damages caused by the breach of contract, with the only exception that labour law allows the exemption from the liability ‘in exceptional circumstances’ [cf. Art. 166(2) LC], which is rarely possible.

It is generally accepted that two (or more) contracting parties to a contract are always subject to the same liability rules, but the liability of employees is completely different from that of employers.

The general rules on the liability of the employee are set out in Article 179 of the LC. In the cited Article, there is no reference to objective liability, and the regulation clearly approaches the rules of compensation for non-contractual damages in civil law by applying the doctrines of general liability and the possibility of excuse.

Employee liability is, therefore, a special type of liability where it is equally difficult to get into the position of a tortfeasor, but the possibility of an excuse is the widest possible, within the framework of the rule of law. It can be seen that in quite unusual way, all the burden of proof rests on the employer. The scope of the possibilities for exculpation is much wider than the possibilities for exculpation from liability in case of a breach of contract and, uniquely in contractual relations, since there is no possibility of reducing damages ‘based on exceptional circumstances’. The four-month absence allowance as a limit is also very interesting because it is not a kind of ‘employer’s contribution’, since the limit has nothing to do with the extent of the damage, but is an objective limit, completely independent of the damage.

This provision also leads to the quite unusual situation that the amount of liability is based on the income of the tortfeasor, so that in the case of two identical but unrelated damages and two identical tortfeasors, one tortfeasor will almost certainly pay a higher amount of compensation than the other.

An interesting example might be the following: two employees, a pharmaceutical researcher, and a mechanic are asked to close the window in their office before they leave. They both independently close the window carelessly, causing the two rooms to get wet during the night in a significant but not force majeure rainfall. Both premises contain a substantial stock of IT equipment which is destroyed as a result of the negligent but not grossly negligent conduct of the employees, the damage being estimated at 3,000,000 HUF per office. The monthly absence allowance for the technician is 120,000 HUF and 400,000 HUF for the medical researcher. In this case, the mechanic, who obviously knows more about windows than the medical researcher, pays 480,000 HUF, while the medical researcher, who is not a practice-oriented person but obviously should be able to close a window, pays 1,600,000 HUF. The burden of 3,920,000 HUF remains on the completely blameless employer.

Of course, these specific rules have their social, economic, and legal background, but at the same time, as far as procedural rules and time limits are concerned, workers do not benefit from any preferential treatment and are subject to the same very strict subjective and objective time limits as employers.

There is no doubt that the subjective and objective time limits, which are much stricter than those applied in civil law, go far beyond the requirements of legal certainty, and, at the same, restrict the possibilities of enforcement of rights in an unjustified manner, and even without justification in the reasoning of the law, make the situation of the employees' side more difficult in the first place and put the more vulnerable party in an even more difficult, sometimes hopeless situation.

In any case, we believe that the following cornerstones should be taken into account for enforcement and redress:

- the employee is basically in a vulnerable position, unable to set the internal rules of the game,
- the employee's ability to prove the contract is extremely difficult, especially in proving the parties' contractual intent,
- all these disadvantages should be offset by legislative means,
- there is such an economic inequality between the worker and the employer that the application of unnecessarily strict redress rules could ruin the worker's life.

At the same time, Tamás Prugberger proposes a simple but effective solution, when he notes that 'the specific provisions on this issue could be completely removed from the Labour Code, if only because there is no justification for the time limit for challenging a labour law case to be shorter (6 months) than in civil law (1 year)'. (Prugberger, 2021)

In support of the above position, but also slightly supplementing it, it should be added that a further difference is that, unlike in the CC, the gross disproportion in value does not appear as a ground for the challenge in labour law.

In our opinion, this discrepancy is also not negligible and in any case weakens the employee's side, since it is the employee who is not aware of the circumstances of the contract or at least is significantly less aware of them than the employer.

The legal harmonisation proposal of Prugberger could also be a suitable way to eliminate the regrettable lack of value proportionality, which would, so to speak, solve the Gordian knot in one fell swoop.

A further problem is that the possibility to enforce the remedy itself is available in different ways in the two major areas of civil law.

According to the quoted provision of CC, '*[t]he right of avoidance may be exercised within one year of the conclusion of the contract by a declaration addressed to the other party or by direct action before a court*'. (Art. 6:89 CC)

This solution obviously provides a more favourable option for the party asserting the claim, not only about the time limit, than the relevant provision of the LC, which provides that '*[t]he other party shall be notified in writing regarding the execution of a legal statement for contestation within the time limit specified in Subsection (7)*'. [Art. 28(8) LC]

There is no doubt that the workers' side will suffer any undue hardship, be it in terms of deadlines or procedures.

Obviously, it would be easier for a worker to walk into the court's complaints office promptly and tell the court about his or her problem than to address it directly, at short notice, to the employer on whom his or her livelihood is most likely to depend at that moment.

These rules are not a problem for an employer, who is in a dominant position to communicate with his/her employee, is usually experienced in dealing with such situations, and even has a professional HR specialist or labour lawyer at his/her disposal to help him/her deal with such situations.

It is undeniable that, in many cases, rigid rules explicitly prevent workers, who are often inexperienced and almost always vulnerable, from asserting their interests.

It can be concluded that *'the employment relationship is also a contractual, private legal relationship, created by two parties of equal legal status, by mutual consent. However, legally equal parties are rarely in the same bargaining position. The employment relationship is characterised by the superior position of the employer, who dominates the legal relationship both at the time of the conclusion of the contract and throughout its duration.'* (Kártyás, 2014)

This dominance is particularly true in disputes where the employer necessarily has a substantive communicative advantage (e.g. he invites the employee in because he wants to talk to him or, in the case of a reverse initiative, he is the one who receives the other party).

The dominance of employers should be reduced at the legislative level, as the claudication of labour law does in many areas, but it is jurisprudence and a sufficiently mature application of the law that can provide meaningful help to the legislature.

Unfortunately, domestic court practice does not necessarily provide the necessary and justified assistance to the employee side.

Unfortunately, the case law in many cases ignores the help that workers, who are vulnerable in many respects, should expect.

The legitimate allocation of the burden of proof must be enforced seriously and consistently, by the law. However, in our view, the fact that the employee's means of proof are very limited does not require any particular explanation, since

- in the vast majority of cases, their private relationships may not be affected by workplace circumstances,
- often cannot even report them because of confidentiality obligations,
- their colleagues, concerning the exception, in many cases do not dare to tell the truth, and even if they do not necessarily lie, they shamelessly conceal facts and circumstances that are really disadvantageous for the employer,
- in contrast, many on the employer's side are eager to testify,
- the documents are fully available to the employer, while the employee usually does not have them,

- in most cases, it is not a problem for the employer to use a private consultant, whose own experts can provide occasional assistance,
- while in most cases the employee is not only financially unable to hire a private expert, but the employer often does not even provide the opportunity for the possible expert to be examined.

The courts would be able to accept these difficulties within the framework of the law and provide legal assistance to the workers' side, but unfortunately in many cases, they tend to interpret even the law more weakly, to the disadvantage of the workers.

To summarise the above thoughts, it can be said that the rules on legal remedies and enforcement of interests, in contrast to the substantive labour law rules, do not sufficiently facilitate the exercise of rights by employees, not only falling short of the general legal concept of labour law, but also falling short of the rules protecting the weaker party in similar areas of civil law.

REFERENCES

- [1] Kártyás G. (2014). *A munkavállaló beleegyezése – nem tesz mindent jogszerűvé!* (2014. november 5.) Available at: <https://ado.hu/munkaugyek/a-munkavallalo-beleegyezese-nem-tesz-mindent-jogszeruve/>. (Accessed 5 October 2022).
- [2] Prugberger T. (2002). A kiszolgáltatottabb fél védelmének kérdése az új magyar Polgári Törvénykönyv Konceptiójának kötelmi jogi részében. *Polgári Jogi Kodifikáció*, Vol. 4, No. 3, pp. 36–41.
- [3] Prugberger T. (2021). Az akarati hiba miatti jognyilatkozat és az általános szerződési feltétel, valamint az annak alapján kötött munkaszerződés megtámadását érintő munkajogi szabályozás problémája. *Miskolci Jogi Szemle*, Vol. 16, No. 3, (No. 2. special issue), pp. 136–144.
<https://doi.org/10.32980/MJSz.2021.3.1024>
- [4] Trenyisán M. (2017). Jogértelmezési kérdések a munkáltatói kárfelelősség köréből. *Magyar Munkajog* (E-periodica), Vol. 2017, No. 1. Available at: https://hllj.hu/letolt/2017_1/M_04_Trenyisan_hllj_uj_2017_1.pdf (Accessed 5 October 2022).