

AN ATYPICAL MARRIAGE IN LABOUR LAW – COUPLING ATYPICAL FORMS OF EMPLOYMENT WITH THE SPHERE OF LABOUR INSPECTIONS?*

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„In some areas of life, a strong weight toward similarity and against difference may work out fine. But creative work depends on exchanges across an expanse, on the coming together of strangers.”²

The above insight – coming from an inspiring writing of these days entitled Powers of Two – may seem surprisingly valuable in the world of labour law. Coupling atypical forms of employment with the sphere of labour inspections may at first glance seem unusual, it may however, reveal typical flaws of new forms of employment, and as is customary with good couples, labour inspections will contribute to the fulfillment of the imaginary ‘better half’; will ensure that these forms of employment differ only from the typical and not from their own selves; and will ensure that the festive bridal white would not turn into gray or black by any chance. Upon completing the inspection of the relationship we will hopefully not be let in any doubts that the peculiarity of this atypical marriage is not meant in the Mikszáthian sense of miseries of enforced marriages;³ and it may bear fruits for the entirety of labour law.

The atypical forms of employment constitute one of the most exciting issues in the world of labour law nowadays. The growth of these relationships is the outcome of multiple forces. It reflects changes in the world of work brought about by globalization and social change – such as the increased role of women in the world’s labour force – but also legislative changes,⁴ which characterises the Hungarian situation as well. The 1992 Labour Code regulated five atypical employment relationships: part-time employment, open-ended employment relationship, telework, temporary agency work and the employment relationship of executive employees. Furthermore, some other laws determined other forms of atypical employment (e.g. work from home, casual work). The new Labour Code, which came into effect on the 1st of July 2012,

* DOI 10.21868/PGnG.2017.1.4.

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²Shenk, J. W. (2014). *Powers of Two: Finding the Essence of Innovation in Creative Pairs*. London: Hodder And Stoughton Ltd. pp. 49.

³Kálmán Mikszáth (2008): *Különös házasság [A Strange Marriage]*. Budapest: Osiris.

⁴ ILO (2016). Non-standard employment around the world: Understanding challenges, shaping prospects. Geneva: International Labour Office. pp. 2-3. http://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm [accessed September 9, 2017]

expanded the list of atypical employment relationships:⁵

Chart 1

Attributes of typical employment relationship	Atypical employment which differs by such attribute
Open-ended employment relationship	Fixed term employment relationship
	Simplified employment
Full time employment	Part time employment
	On-call work
	Job sharing
Work at employer's premises	Telework
	Home work
Work for one employer	Temporary agency work
	Employment relationship with more employers

Source: Author

With this abundance of atypical forms in the new Labour Code, the legislator obviously strives towards the full regulation of employment relationships which may give some stability to the otherwise regularly changing provisions. What is more, there is an assumption that these forms may be the main generative force behind the “*one million new jobs*” in Hungary, as the employability of the disadvantaged groups of employees on the labour market – such as women with small children, young workers, elder workers some years before the pensionable age, workers whose employability has changed due to an accident etc. – could be enhanced by the extension of flexible forms of employment.⁶ However, some rules on atypical forms of employment, especially regarding on-call work, job sharing and joint employment, are excessively sketchy, therefore it is doubtful whether the adoption of these new forms will generate the expected employment effect.

The labour inspections in Hungary are carried out by the labour inspectors based on the Act LXXV. of 1996 on the Labour Inspection and the annually (until 20 February for the coming year) published controlling directives. These directives include the objectives, changes in regulations and employer-employee misdemeanours on which the inspections must focus during the given year. The directives emphasise the whitening of undeclared employment through the detailed inspection of single work contracts, companies' obligatory reporting about employment, and whether the employment keeps to the regulations concerning the employees' right to wages. According to the results of the inspections or changes in focus, the authority can order

⁵ Gyulavári, T. – Kártyás, G. (2015b). *Effects of the new Hungarian Labour Code: the most flexible labour market in the world? Lawyer Quarterly* 5(4): pp. 241.

⁶ Gyulavári, T. – Kártyás, G. (2015a). *The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy*. Budapest: Pázmány Press. pp. 42-43.

specific or ad hoc inspections during the year focused on undeclared employment in a specific field or sector of the labour market.⁷

There have been frequent and profound structural changes in Hungary's labour inspection system. As the National Labour Office (NMH) was closed on 1 January 2015, the Ministry of the National Economy took charge of, among others, employment and labour market-related activities, safety at work and overall labour inspection.

Labour inspectors can hold an inspection at any site, at any time without prior notification. The inspector has to announce cases when an employer breaches the obligation employment and set a fine. Another characteristic measure carried out by the Labour Inspectorate is to qualify the relationship between the parties. The type of the contract should be determined by taking into account all the circumstances of the case, not just the name of the contract. The delineation of labour relations governed by civil and labour code can only be done by case, taking into account the actual parts of legal relations.⁸

It is definitively concluded that labour inspections perform a key role in identifying and deterring undeclared work, however, the main obstacles are hidden in the fact that undeclared employment often does not appear in the scope of the inspections. Employers and employees working undeclared expect such inspections and are prepared with dummy work contracts and attendance sheets, etc., or are running off from the scene.⁹ Moreover, it is critical that labour inspectors are seen as facilitating compliance with legislation rather than obstacles to business activity.¹⁰ The effectiveness of labour inspections depends largely on the expertise of labour inspectors and their capacity to carry out these inspections,¹¹ therefore appropriate financial support is essential in their case.

⁷ Hajdú, J. (2011). *Labour Law in Hungary*. The Netherlands: Wolters Kluwer. pp. 75.

⁸ Rácz, Z. (2007). *Kritikai észrevételek a magyar munkaügyi ellenőrzés rendszeréhez [Critical analysis of the Hungarian labour inspection system]*. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica* 25(2): 707-717.

⁹ *Labour Inspectorate campaign, Hungary (2013)*. Tackling undeclared work in Europe. European Monitoring Centre on Change. <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/labour-inspectorate-campaign-hungary> [accessed September 10, 2017]

¹⁰ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020*. Brussels, 6.6.2014 COM (2014) 332 final. pp. 8 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0332> [accessed September 8, 2017]

¹¹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020*. Brussels, 6.6.2014 COM (2014) 332 final. pp. 9 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0332> [accessed September 8, 2017]

The parties under review have dual bonding: atypical forms of employment on the one hand strongly increase the body of forms to be inspected,¹² and on the other, true to their originally intended purpose, they join the mission of labour inspections by offering a realistic and at the same time legal alternative to undeclared employment amidst changing needs.¹³ After establishing this common ground, the thesis walks through the catalogue of legally regulated atypical forms of employment, emphasising the distinguishing features between typical and atypical, their specialties with respect to labour inspections; thereby unveiling their typical flaws and at the same time also their potential for labour inspections.

In sum, it stands to reason that examining the two features simultaneously, though unusual, is definitely not an enforced marriage. As a result of this peculiar coupling we get closer to the actual world of labour; uncovering typical flaws will facilitate the correction thereof while discovering several effective means of labour inspections. There is one more common point in their relationship, the mission of performing work in a more complete, colourful, free and safe way. As Apostle Peter tells Adam in Madách's *The Tragedy of Man*:

„Set your aim: Glory for the Lord,
Work for you. The individual is free
To bring out all that is within.”¹⁴

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¹³Forgács, T. (2008). *A távmunkában való foglalkoztatás háttere, jogi szabályozása és munkáltatói szempontok [Remote working: background, legislation and employer considerations]*. In: Bartos, K. (Ed.), *Érdekképviselet felsőfokon* (pp. 1-24). Budapest: Raabe.

¹⁴Madách, I. (1975). *Az ember tragédiája [The Tragedy of Man]*. Budapest: Szépirodalmi Könyvkiadó.

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