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ON THE SIGNIFICANCE OF THE EMPLOYEE STATUS AND OF THE PERSONAL SCOPE OF LABOUR LAW REGULATION*

Abstract: *The essay focuses on the relevance of the labour law regulation's personal scope, what the holistic approach of employee status and its social part mean. There have been discussions in the European Union to which circle of working people shall the protection system of labour law apply, and how the security of employees can be guaranteed under the pressure of flexibility. The debates have been inspired by a changed economic and social environment in the XXth century.*

The essay presents the influence of the changing economic and social environment in the concept of employee status, and more closer in the Hungarian labour law regulation. The decision who is acknowledged to be an employee is made by the legislator. By making this decision the labour law regulation shows a tendency of withdrawal and moving forward in the last decades. The change of employment contract develops at the same time with the expansion of personal scope in Europe and shows a great variety. The legislation, judicial practice, legal practice and the collective bargaining influence the expansion of protection under labour law.

The changes of personal scope in the Labour Code of 1992 and 2012 are presented, how it is extended and in which direction. The personal scope is also applied to link the public and private sector by finding a common focal point: the characteristics of employment.

While coping with the employment relations on the labour market and trying to fit into the self-employed – employee-like person – employee categories, it is suggested to exceed the contractual framework by means of abstraction and using the concept of personal work relations.

* This paper was supported by the János Bolyai Research Scholarship of the Hungarian Academy of Sciences.

Employee status has social part; therefore the essay describes the social consequences of being employee and its relation to the employee status.

Keywords: *personal scope of the labour law regulation, extension in the Labour Code, link of the public and private sector, social part of the employee status.*

1 ON THE SIGNIFICANCE OF THE EMPLOYEE STATUS AND THE PERSONAL SCOPE OF LABOUR LAW REGULATION

The personal scope of a field of law points out the subjects, to whom the provisions shall apply. Labour law shows the tendency of withdrawal and moving forward in the last decades generating vivid professional debates in the European Union.¹ The following issues are challenged: ad1. To which circle of working people shall the protection system of labour law apply? Ad2. How can the security of employees be guaranteed under the pressure of flexibility?²

The debates have been inspired by a changed economic and social environment, in which new regulating technics are needed instead of the system based

¹ See more: European Commission 1998: Transformation of labour and future of labour law in Europe. Final Report, June 1998, http://www.metiseurope.eu/content/pdf/n8/15_supiotreport.pdf. (2014.06.24.)

A. Bronstein: *International and Comparative Labour Law*, Palgrave Macmillan, International Labour Organisation, 2009, 1-22.

S. Perniczka: Organizing the Self-Employed: Theoretical Considerations and Empirical Findings, *European Journal of Industrial Relations* (12) (2006) 2, 125-142.

Jobs, Jobs, Jobs Creating more employment in Europe, Report of the Employment Taskforce chaired by Wim Kok, November 2003, 8-9. (2014.06.23.)

Green Paper Modernising labour law to meet the challenges of the 21 st century, Brussels, 22.11.2006 COM(2006) 708 final, 3.; Frey Mária: Az Európai Unió foglalkoztatási stratégiája. http://econ.core.hu/doc/mt/2004/hun/Frey_I.pdf (2014.06.23.) 162-164.

Time to move up a Gear The European Commission's 2006 Annual Progress Report on Growth and Jobs, 6. See more: Council and Commission Joint Employment Report 2005/2006, 6, 12-13. [http://aei.pitt.edu/40091/1/COM_\(2006\)_30_3.pdf](http://aei.pitt.edu/40091/1/COM_(2006)_30_3.pdf) (2014.06.24.)

R. Blainpain– F. Hendricks (ed.): *Labour Law between Change and Tradition. Liber Amicorum Antoine Jacobs*. Kluwer Law International, The Netherlands, 2011.; R. Wank: Diversifying Employment Patterns – the Scope of Labor Law and the Notion of Employees., 137-143.

http://www.jil.go.jp/english/events_and_information/documents/clls04_wank2.pdf. (2014.01.30.)

² On the concept of flexicurity see more: Y. Stevenst – B van. Buggenhou: The Influence of Flexibility as a Motor of Changing Work Patterns on Occupational Pension as Part of Social Protection in Europe. *Comparative Labour Law & Policy Journal* 21. (1999-2000), 331-370.; K. V. W. Stone: Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in our Time, in: *Regulating Labour Law in the Wake of Globalisation. New Challenges, New Institutions* (B. Bercusson – C. Estlund (ed.), Hart Publishing, Oxford and Portland, Oregon, 2009, 115-136.; J. Michie – M. Sheehan: Labour 'flexibility' – securing management's right to manage badly? in: *Systems of Production, Markets, organisations and performance* (Brendan Burchel – Simon Deakin – Jonathan Michie – Jill Rubery ed.), Routledge, London and New-York, 2005, 178-191.

on instructions, orders and hierarchy, such as tax reduction of employees and self-employed, functioning of occupational pension schemes, employee's share, temporary subsidies for undertakings in the case of employing jobseekers.

New mechanisms of information and consultation are needed favouring the principle of partnership between the organizations of employee and employer. The human right movement and globalisation have also affected labour law since the XXth century.³ The fight against social inclusion and the integration policy refer to people being unable to participate on the open labour market. On the one hand the target groups of integration – like women, parents, young workers, and disabled people – require security and protection under labour law, meanwhile the industry calls for the decrease or elimination of strict labour law provisions.

The new employment methods in the XXIst century affect the personal scope of labour law, ie. who are entitled for the protection granted to the employee and who are excluded. The change of employment contract develops at the same time with the expansion of personal scope in Europe and shows a great variety. The legislation, judicial practice, legal practice and the collective bargaining influence the expansion of protection under labour law.

There are three ways pointing out the boarders of dependent work in the European Labour Law system: expansion of the definition of employee, the creation of the third type of working people (*tertium genus* referring to the employee-like-person⁴), and establishment of a sort of common law of working people including the expansion of some protective rights.⁵

Employment relationships change among the social and economic circumstances. What are the changes in labour law?⁶ People move jobs most frequently,

³ See more S. Jašarević, *Flexible Work – Right Solution or Fallacy*, *Novi Sad Faculty of Law Collected Papers*, 4 (2012), 174-178.

⁴ See: Prugberger, T.: *Az önfoglalkoztatás intézménye a nyugat-európai és a magyar munkajogban*, *Magyar Jog* 2 (2014), 68-69.

⁵ See: N. Countouris: *The Changing Law of the Employment Relationship. Comparative Analyses in the European Context*, Ashgate Publishing Company, Hampshire, Burlington, 2007, 57-59.

P. Davies – M. Freedland: *Labour Markets, Welfare and the Personal Scope of Employment Law*, *Comparative Labour Law & Policy Journal* 21 (1999-2000), 237-238.; A.C.L. Davies: *Perspectives on Labour Law*, Cambridge University Press, Cambridge, 2009, 77-96.

S. Deakin – G. S. Morris: *Labour Law*, Sixth Edition, Hart Publishing, Oxford and Portland, Oregon, 2012, 172-182.

S. Deakin: *The many Futures of the Employment Contract*. ESCR Centre for Business Research, University of Cambridge, Working Paper No. 191., 2000, 5-8.

On the definition of employee see: Mélypataki, G.: *A munkavállaló fogalma a magyar és a német jogban a munkáltató szempontjából*. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica Tomus*, Volume 30. Issue 2. Miskolc University Press, Miskolc, 2012. 521-540.

⁶ See more Collins, H., Ewing, K. D., McColgan, A. (2012) pp. 38-44; Rogowski, R., Salais, R., Whiteside, N. (2011) pp. 229-242.

often taking fixed-term appointments, temporary jobs, agency work and casual jobs. Many people have become self-employed. Hours of work have become subject to greater variability. The work to perform has become diversified. The changes in the form of work are described by the term “flexibilisation”.⁷ It is needed to establish such legislation that recognises that there are workers, who do not fall under the traditional employee-test, but still need the protection under labour law. What is the employee-test? It is obvious, that the employee status is described by the characteristics of the labour law, and the main features are dependency, subordination, and continuous work performance. If a person decides to work for somebody else, this will result in an employment relationship with the employer’s consent. However, workers are different. There are workers performing work personally, for consideration, regularly and permanently for the same person and other regular earning activity can not be expected in the course of fulfilment of the contract. This worker is economically dependent as employee, but usually is not entitled for the protection of labour law institutions⁸. Consequently, there are numerous questions arising in the case of employee-like-persons. How to handle these workers? Where to place this group dogmatically in labour law? Under which conditions will they be entitled to labour law protection?

Determination of personal scope of labour law regulation has become significant, and constituted a basic issue of the labour law theory as self-determination is realised by the subjects of the employment contract.

The employee’s and employer’s definition are strongly connected to each other.⁹ In the literature there is an approach which defines the characteristics of employment relationship through the definition of employee (labour law is the *Sonderrecht* of employees).¹⁰ Therefore the dogmatic issue of employee status and the personal scope are outstanding as they mean the realization of the labour law protection.

⁷ See more: Gyulavári, T., Hős, N. (2013), ‘The Road to Flexibility? Lessons from the New Hungarian Labour Code’, *European Labour Law Journal*, 4, pp. 253-270.

⁸ For protective legislation see for example Prugberger, T., Csák, Cs., Tóth, H. (2002), Hungarian legal regulation of workers guaranteed payments in cases of employer insolvency A review in the light of EC Directive 80/987, South-East Europe Review For Labour And Social Affairs, (5) 2. pp. 95-101.; Csák, Cs. (ed.) (2007), Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára, Miskolc: Novotni Alapítvány.

⁹ Kiss, Gy.: *Alapjogok kollíziója a munkajogban* Akadémiai Doktori Értekezés, Pécs, 2006, 249., 253., 258. oldalak. (The docotrate thesis was published in 2010: Kiss, Gy.: *Alapjogok kollíziója a munkajogban*, Justus Tanácsadó Bt. Kiadása, Pécs, 2010.; Kiss, Gy.: *Munkajog*, Osiris, Budapest, 2005, 104.

¹⁰ Gy. Kiss (2005), 116.

2 PERSONAL SCOPE AS A TOOL FOR CONNECTING THE PUBLIC AND PRIVATE SECTOR

The personal scope of the labour law regulation as a focal point of the applicability of labour law provisions can be presented by the subjects of the employment contract. Researches of Gábor Mélypataki in the public sector were amongst others carried out from the employee's point of view, and tried to determine a superior-employee definition. He worked out the issue of unification of the two sectors amongst others through the employee status, ie. the personal scope. This means that the research on the employee status exceeds the private sector, which I have examined earlier in the light of the labour market and social movements. Mélypataki's reasoning expands the debate horizontally in the *working relations*, and the working people are analysed from the employer's point of view. However, his recommendation for a superior employee definition can be only acceptable in the course of construction of the system of working relations including all types of work having personal and/or economic dependence. These relations are characterised by ordination, instruction, subordination, and control in a different scale. This conceptualization contains not also the working people of the private and public sector, but also the people in the grey zone such as contract workers, precarious workers, and commercial agents. This conceptualization is able to distinguish between the relations based on subordination and non-subordination, ie. partnership. I am convinced that the contractual frames are very narrow to describe the employment and working situation of today's world. Therefore, I suggest exceeding this framework and moving into the personal work relations concept (see later).¹¹

3 THE EMPLOYEE IN THE HUNGARIAN LABOUR CODE AND THE SIGNS OF EXPANSION

Generally speaking, employee carries out work for others, this is the difference between the employee and the self-employed (based on the binary divine).

¹¹ Mélypataki, G.: A közszolgálat egységesítésének elméleti és gyakorlati problémái, és kapcsolata a munka magánjogával. Deák Ferenc Állam-és Jogtudományi Doktori Iskola, Miskolc, 2016.; Mélypataki, G.: A nyílt és a zárt közszolgálati rendszerek összehasonlítása, *Miskolci Jogi Szemle: A Miskolci Egyetem Állam- és Jogtudományi Karának Folyóirata* 5. (2010), 156.; Mélypataki, G.: Outdoor or Indoor – The Place of the Civil Service Law in the Hungarian Legal System, in: *The Publications of the MultiScience – XXIX. microCAD International Multidisciplinary Scientific Conference* (szerk.: Kékesi Tamás). Konferencia helye, ideje: Miskolc, Magyarország, 2015.04.09-2015.04.10. Miskolc: University of Miskolc, 2015. m.a. (ISBN:978-963-358-061-5)

M. Freedland – N. Countouris: *The Legal Construction of Personal Work Relations*, Oxford University Press, Oxford, 2011.

The main feature of the employee status stems from the capacity for work¹² and not from the legal capacity.¹³ Employee status contains two aspects of the institution: the general and the special status. General status refers to the compliance with the legal provisions, and the special to the ability to perform the job.

The employee status was regulated differently in the Labour Code of 1992 (Act XXII. of 1992 on the Labour Code) and in the Labour Code of 2012 (Act I of 2012 on the Labour Code, furthermore referred to as *Mt.*). Between 1992–2012 the conditions of the employee status were the followings: fulfilment of the age 16, having at least partial legal capacity. The condition referring to legal capacity was problematic as not all people having capacity for work were able to participate on the labour market (see for example people with intellectual and psychosocial disability).

This provision changed in 2012, ie. § 34 of the Labour Code (*Mt.*) prescribed that employee was a natural person who performed work under an employment contract and fulfilled age 16. Legal capacity ceased to be a condition for the employee status.

Mt. lays down the definition of employment relation and employment contract. § 42 (1)–(2) prescribes: employment relations comes into being by the employment contract. According to the employment contract *a) the employee is obliged to perform work under the order and instruction of the employer,*

b) the employer is obliged to employ and pay wages.

Consequently, the work with personal and economic dependence remains within the borders of labour law regulation.

The *Mt.* has expanded its personal scope to relationships, in which the personal dependence has less intensity, such as the contract worker and tele-working. It means that a minimum level of personal dependence may establish labour relationship and may constitute the expansion of the personal scope of the protective system of labour law.

There is another paragraph which needs to be examined closer. § 212 of the *Mt.* lays down provisions on the work of incapacitated employee. This section refers to the right to work of people with intellectual and psychosocial disability. In principle, this group of people was deprived of the legal status under the Labour Code of 1992, now they can be subject of labour law. § 212 prescribes that employment relationship can be established with an incapacitated employee, if he/she is able to perform a work durably and continuously as a result of his/her health condition. The tasks carried out during the performance of work shall be detailed; the health assessment shall embrace it. The performance of work must be supervised

¹² On the freedom of contract of the independent undertaker see Gy. Kiss: (2006), 285–290.; see more: Gy. Kiss (2005), 116.

¹³ See more Gy. Kiss (2005), 104–105, 117., Gy. Kiss (2006), 255–261., Bankó, Z.: *Az atipikus munkajogviszonyok*, Dialóg Campus Kiadó, Budapest-Pécs, 2010, 182.

in a way which is in compliance with the safety and health instructions. The provisions of young workers shall apply except for the liability provisions.

Unfortunately, there are not any provisions regarding the rehabilitation, training, supporter at the workplace or collective rights. This requires a holistic approach of incapacitated employee's employment.

§ 51 of the Labour Code prescribes reasonable accommodation¹⁴ towards disabled people. Meaning of reasonable accommodation shall be outlined by the judicial practice. In spite of this after successful placement of the client the cooperation between the employer and the rehabilitation professionals would be essential to maintain the client's work and to adjust if necessary the workplace and work conditions. This cooperation is also crucial in the case of the employment of *incapacitated employee*. The term is rather questionable in the light of the full legal capacity theory of disabled people under Article 12 of the CRPD.¹⁵ Despite the term, the aim of the legislator is appreciated, i.e. establishment of the right to work of people living with intellectual and psychosocial disability. However, these people fall mainly out of the rehabilitation system as having no work-experience and no secured period in the social security system. The contradiction should be resolved within the rehabilitation regulation.

Nevertheless, the provisions of the incapacitated employee presented the expansion of personal cope of the labour law regulation with all its controversies.

In the course of integration into the labour law regulation and in the exclusion from it György Kiss differentiates between two methods: traditional and atypical methods, and the issue of the employee-like person.¹⁶ In my opinion the expansion of personal scope is behind both phenomena.

The Hungarian Draft Code contained the term "employee-like person"¹⁷, finally the Hungarian Labour Code did not include it. This is one shortage of the

¹⁴ On the regulation of reasonable accommodation see: Halmos, Sz.: Az ésszerű alkalmazkodás követelménye a magyar munkajogban, *Magyar Munkajog E-folyóirat* 1 (2014). 120-148

¹⁵ On full legal capacity see: Dhandu, A. Legal Capacity in the Disability Rights Convention: Stranglehold of the past or Lodestar for the future? *Syracuse J. Int'l L. & Com.*, 34, (2007.) 429-462.; Hoffman, I. – Könczei, Gy.: Legal Regulations Relating to the Passive and Active Legal Capacity of Persons with Intellectual and Psychosocial Disabilities in Light of the Convention on the Rights of Persons with Disabilities and the Impending Reform of the Hungarian Civil Code. *Loyola of Los Angeles International and Comparative Law Review*, 1 (2010) 143-172. LCCP No 119 Mentally incapacitated adults and Decision-Making: An Overview, London, HMSO 1991. paras. 2.30.-2.40., Hale, B. 1997. Mentally Incapacitated adults and Decision-Making: The English Perspective. *International Journal of Law and Psychiatry*, 1 (1997) 63.

¹⁶ Kiss, Gy.: A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében, *Jogtudományi Közöny* 1 (2013), 4-8.

¹⁷ On the Hungarian situation see: Kiss, Gy. (2013), 'A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében', *Jogtudományi Közöny*, 1. pp. 1-14.; Prugberger, T.: *Magyar munka- és közszolgálati reform nyugat-európai kitekintéssel*, Miskolc: Novotni Kiadó, 2013. Gyulavári, T.: 'Harmadik

Labour Code, because it did not count with the significant changes in the employment relationship in Europe.¹⁸

Regarding the draft provisions of the employee-like-person Kiss György laid down that the employee-like person did not become employee, some labour law institutions should have been applied in their case: holiday, liability, period of notice, severance pay, and minimum wages. Other regular earning activity could not be expected in their case. This was the main difference between the undertaker and the employee-like person.¹⁹ The draft provisions were highly debated by Tamás Prugberger, Tamás Gyulavári²⁰ and I.

In my opinion the Draft Code intended to make a distinction between the undertaker and the worker with economic dependence. This resulted in a narrow definition. The legislator could have applied the provisions of *Tarifvertragsgesetz* 12a (1) from the German legislation. It says: worker with economic dependence are those: who are in a dependent economic situation and require a social protection system similar to the employee; they perform work for another person personally and essentially without employing someone else under an undertaking contract; they perform work *predominantly for one person*; or *more than half of their income derives from one person*, if changes are not foreseeable in the course of their last six months activity, only if collective agreement does not prescribe otherwise.²¹

típusú jogviszonyok a munkajog átalakuló fogalomrendszerében', *Magyar Jog*, 1 (2011) pp. 23-34., Kenderes, Gy.: *A munkaszerződés hazai szabályozásának alapkérdései*, Miskolc: Novotni Kiadó, 2007.

¹⁸ On the employee-like person and the changes in labour law see more: Deakin, S., Morris, Gillian S.: *Labour Law*. Oxford and Portland, Oregon, Sixth Edition: Hart Publishing, 2012, 30-37. 131-190., Freedland, M., Countouris, N.: *The legal construction of personal work relations*, Oxford University Press, Oxford, 2011, pp. 88. 89.94. 104. 221. 269-390., ILO (1997) Contract Labour – Fifth item on the agenda Report V (1) to the International Labour Conference 86th Session 1998, Geneva.; Deakin, S, Wilkinson F.: *The Law of the Labour Market. Industrialisation. Employment and Legal Evolution*, Oxford, Oxford University Press, 2005, pp. 4-18. 105-109. 275-353.; Veneziani, B.: 'The Employment Relationship' in: Hepple, B., Veneziani, B. (eds.), *The Transformation of Labour Law in Europe. A Comparative Study of 15 Countries 1945-2004.* . Oxford and Portland, Oregon: Hart Publishing, 2009, pp. 99-128.; Deakin, S.: 'The Contribution of Labour Law to Economic and Human Development' in: Guy Davidov, G., Langille, B. (eds.), *The Idea of Labour law*, Oxford: Oxford University Press, 2011, pp. 156-178.

¹⁹ Prugberger T. has the same opinion. See: Prugberger (2014), 66-67. Prugberger, T.: A tartós kényszervállalkozási és megbízási szerződés. A munkaviszonyt leplező szerződések, *Cég és Jog* 7-8. (2003). Kenderes, Gy.: *A munkaszerződés hazai szabályozásának alapkérdései*, Novotni Kiadó, Miskolc, 2007, 159-172. I deal with the issue in the following monography: Jakab, N.: *A munkavállalói jogalanyiség munkajogi és szociális jogi kérdései, különös tekintettel a megváltozott munkaképességű és fogyatékos személyekre*, Miskolc, Bíbor, 2014.

²⁰ Prugberger (2014), 66-67.; Gyulavári, T.: A gazdaságilag függő munkavégzés szabályozása: Kényszer vagy lehetőség? *Magyar Munkajog E-folyóirat* 1 (2014), 17-20. See more: Gyulavári, T.: *A szürke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán*, Jogtudományi Monográfiák 6. Pázmány Press, Budapest, 2014.

²¹ On the protection of employee-like person in German law see: Szekeres, B.: *A szürke zóna védelme Németországban. „Jogalkotás és jogalkalmazás a XXI. század Európájában”* doktorandusz

The legislator was in a tough situation as it had to differentiate between the self-employed and self-employed like people. The determination of the protection level was also a crucial point. It should have been still motivating for the employee. A high level of protection might have made reluctant the employers to apply the provisions. The concept of the Draft Code would have established a third category (*tertium genus* like in Italy, Spain, and Germany). However, the provisions of the *Tarifvertragsgesetz* 12a (1) should have been applied. The work performance predominantly for one person illustrates the work profile of one person. The work profile consists of more working relations parallel.

4 IS THE CONTRACTUAL FRAMEWORK NARROW?

The labour law regulation reacted to the economic changes by legalizing atypical work as far as possible, ie. by normalization of the contract worker's relationship within labour law. Lower level of the personal dependence may constitute an employment and not an employee-like legal relationship. This may be seen in the change and lowering of traditional characteristics of labour law such as the right to order and control, and to integrate into the employer's organization. This phenomenon is likely to be the characteristics of the employee status and not of the employee-like person. There are debates – not only in the Hungarian literature – on the qualification of the legal relationships, such as commercial agent, contract worker, and security services resulting in the determination of being employee, self-employed or – where *tertium genus* exists – employee-like person. These two or three categories exist using the contractual framework for normalization. However, as labour law is strongly affected by the rapid economic and social changes I tend to feel the contractual framework insufficient to characterize all kind of employment or work relationships.²² It might be more feasible to think of personal work relations²³ in which the personal dependence, duration, regularity vary from

konferencia, Miskolci Egyetem Állam- és Jogtudományi Kar, 2016. március 11.; Szekeres, B.: A munkavállalóhoz hasonló jogállású személyek munkajogi és kötelmi jogi védelme a német jogrendszerben. Előadás; Tavasz Szél Konferencia, Állam- és Jogtudományi Szekció; Munkajog, agrárjog alszekció, Óbudai Egyetem, Budapest, 2016. április 15-17.; Szekeres Bernadett: A munkavégzési viszonyok változásai, in: *XI. Ph.D. – Konferencia előadásai* (szerk.: Koncz István, Szova Ilona), Konferencia helye, ideje: Budapest, Magyarország, 2015.10.30 Budapest: Professzorok az Európai Magyarországiért Egyesület, 2015, 78-85.; Szekeres, B.: Der Begriff der arbeitnehmerähnlichen Personen in Deutschland, in: *Doktoranduszok Fóruma: Állam- és Jogtudományi Kar Szekciókiadványa* (szerk.: Szabó Miklós), Konferencia helye, ideje: Miskolc, Magyarország, 2014.11.20.

²² See more Gyulavári, T.: A foglalkoztatási jogviszonyok új dimenziója, *Esély* 1 (2011), 3-22.

²³ Freedland, M. – Countouris, N.: The Legal Characterization of Personal Work Relations and the Idea of Labour Law. In: Guy Davidov – Brian Langille (eds.): *The Idea of Labour law*. Oxford University Press, Oxford, 2011.; Freedland, M. – Countouris, N.: *The Legal Construction of Personal Work Relations*. Oxford University Press, Oxford, 2011.

time to time, from one relationship to the other. Flexibility shall refer not only to the elements of the labour law relationship, but also to flexibility of the relationship in itself. The personal work relations' concept makes a higher level of abstraction possible, which might be suitable for handling employment relations. The differentiation within the personal work relations' theory might be more sufficient to normalize relationships as *secure work*, *autonomous or freestanding work*, and *precarious work* shall be more receptive categories to describe the variety of work relations.

5 WHAT DOES THE SOCIAL PART OF EMPLOYEE STATUS MEAN?

The social part of employee status can be defined from different point of views. Firstly, the social institutions belonging to the labour relation under the labour law regulation are concerned, such as the protection of pregnant employees, parents, elderly, young workers, blind employees etc.²⁴ As a matter of fact, the labour law in itself commands social norms in favour of more vulnerable party of the employment contract. Therefore, the social part of the employee status originally stems from the field of law itself.

However, as employment is not only a question of labour law but also of the employment as a whole, the social part of employee status refers to the vulnerable groups of work safety regulation.

It shall be laid down that the social part is not equal to the regulation of social law having a total different task in the legal system. Labour law refers to the labour market with restrictive, corrective or establishing aims.²⁵ Nevertheless the labour law relationship possesses social law's consequences, such as social security system, and employment policy's consequences such as subsidies of job seekers. These two fields belong to the social understanding of the employee status as a consequence of the labour law relationship.

Within the social security system rehabilitation forms a special part in becoming an employee. Rehabilitation process, that includes vocational rehabilitation and the assessment process are to be adjusted and accommodated to the changing economic and social environment. Paper based assessments are not sufficient; employment situations should be simulated. The assessor shall possess the trends on the labour market, which supposes the cooperation with the labour offices. Assessment shall apply a holistic approach; the client's feeling is to be integrated as disabled people have lower self-esteem. Security would be significant for the

²⁴ See more: P. Jovanović, Special Labour Protection of Certain Employee Categories, *Novi Sad Faculty of Law Collected Papers*, 4 (2015), 1459-1486

²⁵ See more: Deakin – Morris (2012), 30-37. 131-190.

rehabilitated individual, but the environment they wish to return is insecure and does not acquire emotional adjustment to the work.²⁶

Tension is to be found in rehabilitation in the XXIst century. Rehabilitation has to accommodate to the changing employer's structure, employee's attitude, forms of employment, while the individuals of rehabilitation, i.e. disabled people seem to be incapable to compete. Rehabilitation services shall adjust to the changing economic and social environment; meanwhile disabled people are in need of special services. Rehabilitation is to take into considerations both interests. Enabling the labour market integration by connecting placement of the client with the rehabilitation process is very important. This connection seems to be realized by the employment policy measures and labour market services. This should be an essential part of the assessor's and rehabilitation professional's duties outlined by a detailed regulation. The work related assessment should be combined with the placement's crucial factors: employability, compliance with the employers' expectations and the correspondence of the work and qualification.²⁷

6 CLOSING REMARKS

Surely it is the difficult lesson of these times, that precisely at the moment when alternative modes of securing employees' interests become more important, they simultaneously become less likely to be pragmatically available. The dogmatic concept of "employee" is changing, and the employee status consists of much more

²⁶ Murray, B. – Heron, R.: *Placement Of Job-Seekers With Disabilities. Elements of an Effective Service*. International Labour Organisation, 2003, 5. See also: *Achieving Equal Employment Opportunities for People with Disabilities through Legislation Guidelines*. International Labour Organization, 2007.

²⁷ Murray, B. – Heron, R (2003), 30-32. *Achieving Equal Employment Opportunities for People with Disabilities through Legislation Guidelines*, International Labour Organization, 2007.51-56.

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than being entitled for concluding an employment contract. This change of concept challenges labour law emphasizing its dependency on social and employment policy.

The essay intended to describe the complexity of employee status. Becoming an employee exceeded the personal and economic dependence's concept of labour law. The paper tried to draw the attention to the shortages of contractual frames to describe the phenomenon of employee-like person, and the regulation of it in the Hungarian Draft Code. Abstraction was used to find a link to the unification of the private and public sector. Furthermore, the ways of expansion of the personal scope of labour law regulation were presented in the Hungarian Labour Code normalizing atypical work, and regulating the incapacitated employee's work. By exceeding the employee – employee-like person – self-employed categories the concept of personal work relations was suggested in order to describe the great variety of relations emerging on the labour market.

Obviously our thinking of the “employee” and “employee status” within the traditional labour law should be reviewed and the frameworks should be expanded to make the labour law's protection an inclusive regulation.

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Персонално поље примене радноправних норми и статус запосленог лица

Сажетак: У центру пажње овог рада налази се значај персоналног поља примене радноправне регулативе и то полазећи од холистичког приступа појму запосленог лица. Ово из разлога што је у Европској унији све актуелније питање, која радно ангажована лица би требало да буду обухваћена регулама радног законодавства у условима флексибилизације тржишта рада. Поменути дилема последица је значајно измењених економских и друштвених околности у XX веку, проузрокованих процесом глобализације.

Имајући у виду наведено, у раду се најпре говори о утицају нових економских и друштвених околности на статус запосленог лица, нарочито у радном праву Мађарске. Наиме, која ће то лица уживати статус запосленог, зависи од начина на који је овај појам одређен од стране законодавца. Но, у последњих неколико деценија, поред законодавца, битну улогу у одређивању персоналног поља примене радноправних регула има и судска пракса, и социјални партнери, а нарочито синдикални запослених, који кроз социјални дијалог настоје да нормама радног законодавства буде обухваћен што шири круг радно ангажованих лица. С тим у вези, у раду ће бити приказане промене персоналног поља примене радног законодавства у Мађарској од Закона о раду из 1992 до новог Закона о раду из 2012 године и то кроз кључне заједничке тачке – карактеристике радног односа.

На крају, како животи не престаје окончањем радног века, у раду се бавимо и нормама социјалног осигурања које своје ујориште налазе и у радном односу.

Кључне речи: персонално поље примене норми радног законодавства, проширење дејства Закона о раду, право социјалног осигурања.

Датум пријема рада: 05.10.2016.