

University Doctoral (PhD) Dissertation Abstract

The Collective Agreement - A Legal Institution of Private Law

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1. Problem Statement and Reasons for Choosing the Topic

Collective agreements constitute an essential part of the Hungarian and European collective labor law, and they are also unique products of labor relations and interest reconciliation models that vary significantly country by country. As the path to the conclusion of collective agreements shows a different picture from one national regulation to another, and their regulatory function prevails in several different ways, the comparative analysis of the issue can serve as a lesson for domestic legal regulation and practice. In general, a collective agreement is also considered as a specific agreement of private law, but it has a normative content and therefore, has a public law character at the same time. This specificity was gradually formed during its historical development, since although the turn of the 19th-20th collective agreements got recognized worldwide mainly as private law agreements, which also meant that they were determined under the general dogmatic regulations of contract law and obligations.

Later, however, the content of the collective agreements was shaped or framed by statutory law through the interventions of the state, and, their status got far from private law compared to the original concept, especially through their transformative power and extension.. Accordingly, the recognition of the collective agreements as legal institutions of the private law is at the heart of an academic debate that has been ongoing for at least 150 years that conceals various anomalies that require a more extensive analysis of this issue. In this context, it should be emphasized that the collective agreement, due to its dual nature f, shows the characteristics of both a contract and a statutory law. This makes the contractual nature of the collective agreement *ad absurdum* doubtful, or at least specific. It is generally accepted in the legal literature that collective agreements do not constitute legislation in the formal sense, as their creation does not meet the conditions prescribed for legislation. However, the question is further complicated by whether a collective agreement can be regarded as a simple private law contract, that is to say, a civil law declaration dedicated to produce legal effects by two legal entities capable of concluding a contract. On the one hand, especially on the employee's side, there is a need to analyze , why the legislator established certain legal entities as suitable bodies for shaping the normative rules of labor market conditions, and it also required to perform a more in-depth analysis of coalition freedom and collective autonomy. The limited right to enter into a contract and the derivation of the authorization necessary for normative content are not without problems in any national regulation, nor is the means by which the

state allows or limits the personal scope of a collective agreement or intervenes in the enforcement of collective agreements. It is also required to analyze whether the authorization to conclude collective agreements extends to works councils that in principle exercise only participation rights, but are not established to advocate for workers' interests.

The content of the collective agreement also requires a more detailed dogmatic analysis, as, among other things, it shapes the employment relationship of third parties and employees, that is not at all characteristic of civil law contracts, although it shows some similarities with some specific private law legal institutions. It is also worth examining further that in the current Hungarian legal regulation there is a thin line between labor law and civil law agreements. For example, the Labor Code restricts the persons entitled to rescind a voidable contract compared to what is stipulated in the Civil Code, and most importantly: the legal consequences of invalidity are also different from civil law. While the reason for distinguishing between employment and civil law agreements may make sense for individual employment law agreements, in the case of collective agreements, it should be examined whether the application of different labor law rules is justified and whether it could serve as a source of relevant anomalies.

2. Research Objectives

The primary goal of the research is to define the place of collective agreements in the Hungarian private law system, with special regard to the specific regulatory hierarchy prevailing in labor law. Focusing on the private law perspective, it is important to draw a parallel with the (legal) declarations shaping the content of the employment relationship and the obligations shaping the rights prevailing in civil law with a special respect to the collective agreements. It is also important to analyze the authority to conclude collective agreements and to highlight the weak points of the domestic regulation by examining the constitutional background of collective autonomy, the anomalies of collective autonomy and the ability to conclude agreements, and to make a proposal to remedy the shortcomings of the legislation. During the writing of the dissertation, I acknowledged the assumption that the collective agreement is regarded to be a private law institution, but the aim of the dissertation is to bring light to the shortcomings of this approach, at the same time to propose how the current inconsistencies of the Hungarian legislation could be resolved.

3. Research Methodology

During the course of my research, I primarily used the methods of legal research, as the subject of the research basically requires a legal approach. The topic required the interpretation of the Hungarian legal environment and, especially during the dogmatic investigation, the relevant judicial practice, with an international perspective, during which I also relied on the relevant domestic and international legal literature. Due to the complex nature of collective labor law and labor relations, it was occasionally necessary to include economic and sociological analyzes related to the issues examined.

Due to international perspectives, the comparative method played a primary role in the research. Given that the labor law challenges of the 21st century affect the labor market globally, I examined the regulatory techniques used by a number of national legal systems to increase the significance of collective agreements, and whether these solutions should be transposed into Hungarian domestic regulation and practice. With the help of a comparative legal method focusing on the specificities of the legal systems, it is possible to answer the question, whether the role of collective autonomy has been justified, or whether it is justified to review and restructure the regulation in order to ensure a higher level of collective autonomy. In this context, I have paid special attention to the analysis of the German and Austrian labor law rules, on the one hand, because of their high standards when it comes to collective bargaining regulations, and on the other hand, due to the significant impact of the two legal systems on Hungarian regulations. I also analyzed the collective bargaining regulations of the United States and the United Kingdom in parallel. The reason for this is that, in addition to German-Austrian law, the case law of the United States, the findings of the Supreme Court of the United States, can also serve as a “cord measure” of dogmatic analyzes, despite the different structure of legal systems.

The dissertation also follows a chronological approach. The historical legal development concerning the collective agreement is presented in a separate chapter. The presentation of the international development is followed by the presentation of the path leading to the development of the regulation of Hungarian collective agreements.

The research is of a scientific nature, focusing on a complex dogmatic issue, however, due to the nature of the living field of labor law and the dynamism of jurisprudence in general, the achievements and legal development of judicial practice also play an important role. A complete picture of the operation of a legal system cannot be presented without analyzing the practical application of the regulations. Therefore, it is necessary to examine the most important court decisions made in each country, that reflect the impact of legislation. In my

dissertation, keeping in mind the practice-oriented examination, in addition to the domestic case law, I also analyze the relevant judgments of the courts of the examined nations, as well as the international, i.e., the Court of Justice of the European Union and the European Court of Human Rights.

In order to understand the of collective agreements in private law role and its further potential possibilities, as well as the incorporation and transferability of models outside the Hungarian regulations, I analyzed labor relations, advocacy models, trade unions and their practical implementation in all examined countries. The aim of the study was not to carry out a descriptive study, but to carry out a critical study of the shortcomings of the private law approach to collective agreements, to highlight the areas where there is a need for a legislative intervention.

4. Structure of the Dissertation

The dissertation is divided into ten chapters, including the first chapter on introductory provisions and the last chapter that contains my finalizing thoughts. In the second chapter, keeping in mind the traditions of legal research, I present the historical development of the topic. In the course of my research work - without claiming completeness – I have tried to give a comprehensive picture of the domestic and international development of collective bargaining regulation. The analysis facilitated the drawing of parallels between the regulations during the subsequent comparative analyses, and at the same time helped to understand the conclusions of Hungarian and international legal thinking.

With respect to the research objectives outlined above, I examined the issue of freedom of coalition and collective autonomy in the next, third chapter. A more detailed discussion of the issue of collective autonomy is essential for the examination of the collective agreement as a private law institution, at the same time, the structure of the dissertation is determined by the anomalies arising from the conflicts of fundamental rights affecting collective autonomy. This is because collective autonomy can be traced back to the issue of who can enter into a collective agreement, with what content, and which group of persons can exercise this power. Accordingly, the examination of collective autonomy predicts the further chapters of the dissertation, as the content, scope and (in)validity of the collective agreement, as well as the right of the works council to conclude a contract is also a special aspect of collective autonomy, that is discussed in a separate chapter.

It is essential to examine the place of the collective agreement in the Hungarian legal system. The fourth chapter focuses on the content of the collective agreement, and presents the current Hungarian regulations. The chapter focuses on the specific hierarchy of sources of law in Hungarian labor law, where collective agreements play a central role. After that, the structure of the chapter follows the widely recognized dual division of collective agreements, therefore I discuss the content of the obligation and the normative part separately, focusing on the possibilities of deviation and their dogmatic background. The analysis of the relationship of the collective agreement with other sources of law should not be left out of the chapter, therefore a more detailed analysis of the relationship between statutory law, other sources of labor law, e.g., legal statements, declarations and agreements will also take place here.

The fifth chapter of the dissertation examines one of the central topics of the research, the legal nature of the collective agreements. In addition to presenting the classic features of their bipolar, private-public law nature, I tried to compare special features of the collective agreements with other civil law obligations. I also examined the contractual nature of collective agreements from the direction of the consensus, that brought to a number of anomalies the surface that make the private law approach rather difficult to apply.

The sixth chapter of the dissertation examines the parties of the collective agreement. In this respect, the central question is which organizations can conclude collective agreements, and based on what sort of authorization. The focus is on a more detailed research of the Hungarian regulation, but in the framework of a comparative analysis I also present the conditions of the conclusion of German, Austrian, French, English and American collective agreements. In this chapter, in addition to the dogmatic examination, I also tried to explore the shortcomings of the Hungarian regulations.

The seventh chapter of the dissertation deals with the validity and invalidity of the collective agreement. This is the most practice-oriented chapter of the dissertation, as here several domestic court decisions were processed, especially regarding the invalidity of collective agreements.

The eighth chapter of the dissertation focuses on the most important issues related to the scope of the collective agreement. In addition to the personal, territorial temporal and material scope of the collective agreement, the chapter also examines the issue of termination and cancellation.

The ninth chapter of the dissertation examines the relationship between collective autonomy and works councils in relation to normative works agreements. The chapter focuses

not only on the works council, but also on the distinction between collective autonomy and participation rights.

At the end of each chapter of the dissertation, I formulated conclusions and partial conclusions that I summarized in the last, final chapter. These final thoughts made it possible to unravel the parallels between the conclusions, and at the same time formulate my opinion and the results of my research.

5. Results of the Research

5.1. The Place of a Collective Agreement in Private Law

At the beginning of the research, I set the goal of defining the place of the collective agreement in private law, keeping in mind the possible contradictions arising from this approach. Collective agreements can in any case be regarded as unique legal institutions of private law in the respect that they have a normative content with regard to the the employees that are not even signatory parties to the contract. As the extended scope of the collective agreements prevail in Hungary, it affects the employment relationship of the employees who are not even members of the trade union that concluded the CBA. However, it is my firm opinion that just because the collective agreement affects the legal relationship of persons not party to the contract, it cannot be regarded as legislative act, not even as a regulatory instrument under public law. In private law, as far as other legal institutions are concerned, contractual freedom is sometimes limited by law, which is either derived from the contractual freedom itself or the parties frame it, thus restrict their own freedom with their obligations (e.g., pre-emption rights, call option, extension option, restrictive "cartel" agreements, etc.).

It is not extraordinary in the law of obligations that contracts regulating the same subject-matter affect each other, intentionally or unintentionally. In the case of legislation, the content of exercising the right is determined by law, but in the case of a collective agreement, the legislation is abstract, its actual content is determined by the collective agreement itself, similarly to a private law contract, however, within a rigid framework compared to the contractual freedom otherwise generally characteristic of private law. On the one hand, like the employment contract, the collective agreement limits the employer's right to unilaterally determine the performance of the employment, therefore, it can be considered as the employer's contractual self-limitation, but on the other hand, it is the minimum content of the employer's and employee's individual contractual freedom.

neither is it a feature of private law contracts that the conclusion of a contract with a content contrary to the collective agreement would not constitute a breach of contract in relation to the parties to the contract. Due to the normative nature of the collective agreement, any provisions of the third-party employment contract that are contrary to what is stipulated in it will result in absolute invalidity. This solution is contrary to the dogmatics of the relative structure of private law institutions of contract law, however, this contradiction can be justified in the individual relations of the employees with respect to employee interest protection, the same way as in consumer regulations, on the other hand, it can be refined by applying the rules of civil law or settling the rules of breach of contract with regard to the provisions on obligations in the future.

It is worth emphasizing that the collective agreement is also binding on the employer, i.e., the normative provisions of the collective agreements apply not only to the employees but also to the employer with absolute power. The collective agreement may also affect the content of the employment relationship already concluded by the employer, and with whomever the employer concludes a new employment contract, the collective agreement provisions shall not be unilaterally set aside, or its legal consequences in individual relations are invalid.

Concerning the legal nature and the private law nature of the collective agreement, it can be stated that this institution does not contain the criteria by which it could be classified as a legislative act, but there can be no doubt about its contractual nature, and it does not offer much novelty compared to some features of the private law. In my firm view, a collective agreement is a *sui generis* legal institution of private law that can clearly be regarded as a private law contract. In addition to the concluding parties, the contract is most distinguished from other private law institutions by its special subject matter, as it can only be interpreted in relation to individual or collective dependent work and in the dimensions of the necessarily unbalanced relationship. The “modern age” interpretation of the collective agreement, and therefore its content, is most torn apart by the fact that nowadays, the boundaries of dependent work have been blurred.

5.2. The Dogmatic Contradictions of Private Collective Law Regulation in Hungary

In the course of my research, dogmatic contradictions of the Hungarian legal regulation have come to the surface, that shed light on the regulatory errors of legislation, especially the Labor Code, regarding collective labor law. I have examined the nature of the collective

agreement from the perspective of the law on employment agreements, the issue of its invalidity and validity. From this, I came to the conclusion that it raises dogmatic and interpretive difficulties in many cases, especially with regards to the applicable legal consequences. The decisions of the Curia examined in the context of the invalidity of collective agreements are contradictory, which can be traced, at least in part, back to the dogmatic issues arising from the legislation. However, in addition to clarifying the legislation, the case law needs to be reviewed, especially with regard to the non-existent or invalid collective agreement, and a resolution clarifying the case law is required.

The general rules on the agreements of the employment are difficult to apply to this special legal institution. I find it problematic that the Labor Code does not clarify the applicability of the general rules of legal declarations and agreements of the employment to collective agreements. In case of a civil law contract, it goes without saying that in matters not regulated by the contract, the Civil Code shall prevail. Also, the provisions of the Labor Code shall be applied in the case of any agreements of employment in the absence of a separate provision. However, the assessment of the collective agreement is not so clear, as it is not only a legal statement under the Labor Code, but it is also regarded as an 'employment regulation' that prevails just as legislation. In this context, a fundamental question is also how the part of the Labor Code regulating legal statements and agreements, that is based on adjusted to the individual legal relationship, shall be applied to the collective agreements. In my opinion, the dogmatics of collective agreements need to be clarified by a more extensive amendment of the Labor Code, moreover, the application of the rules of the Civil Code on obligations would also lead to clearer dogmatic relations. In my view, a collective agreement is, in principle, an agreement between balanced parties, usually an employer acting as a corporate law entity and a trade union acting as a civil law association. The less detailed and more general rules of civil law are dogmatically closer to the collective agreement than the rules of the Labor Code that are basically adjusted to the individual employment relationship.

It is worth emphasizing that the breach of contract or its legal consequences is not at all regulated with regard to the collective agreement in the Labor Code. The right of withdrawal, termination or withholding of performance is not provided by law, the lack of any compensation rules arising from the breach of contract is also a fundamental shortcoming of our current regulations. In my view, in the case of a legal institution of a private law nature, the issue of breach of contract and compensation should not remain unregulated. For this reason, it would be an obvious solution to formulate separate labor law provisions for collective agreements. However, in addition to strengthening the *sui generis* nature of the

agreement, this could be regarded as a step towards the autonomy of labor law rather than a step forward to the private law approximation of labor and employment law. Alternatively, in my view, the introduction of a right of termination and withdrawal as a legal consequence of a breach of contract should be considered, with reference to the rules of the Civil Code, a right to termination with a shorter notice period and a detailed reasoning. In this case, the sanctional termination of the agreement would provide for legal consequences of a specific nature (e.g., in the event of termination due to breach of contract by the employer, the provisions of the collective agreement favorable to the employer should be maintained for another year, etc.).

The normative content of the collective agreement is based on the collective autonomy, the authority provided to the trade union and the employer, and their representative organizations to conclude a collective agreement. One of the central issues of collective autonomy is the transformative power and the extensive effect, in connection with which the objective of restricting individual freedom of contract by collective agreements can be justified. In this context, it should be noted that, on the one hand, in the absence of a transformative force and the extensive effect, collective self-determination (autonomy) deriving from national constitutions and conventions would be meaningless, as it would be possible to conclude individual agreements contrary to the working conditions. On the other hand, without recognizing the transformative power and the extensive effect, while in the case of trade union workers, the contractual effect of the collective agreement can be explained by the membership itself, the general requirement of equal treatment shall be applied to non-member workers. Therefore, the all the benefits provided through the provisions of a collective agreements, even in the absence of an extensive effect, shall not lead to direct or indirect discrimination against non-unionized workers. For this reason, in Germany or the Netherlands, although collective agreements do not have general binding effect (extensive effect), its provisions also apply to the employment of non-member workers by individual contracts or citing equal treatment.

In practice, Hungarian collective agreements do not perform the regulatory function assigned to them by the legislator in the Hungarian labor market. In my opinion, the declining role is partly due to regulatory errors. In the dissertation, I have expressed my firm view that I consider the solution of the Labor Code that allows the collective agreements to formulate provisions that are less/not beneficial to the employees to be a regulatory error. On the one hand, the network of mandatory, dispositive and relative dispositive rules of labor law, the relationship of legal sources is difficult to apply in practice. If the parties want to deviate from

the law with a collective agreement, especially if the content of the legal relationship is shaped by a multi-level collective bargaining system, unilateral statements and regulatory policies of the employers and other sectoral legislation, it is not at all clear whether and in what direction they can do so. In order to make collective agreements more effective, I think it would be appropriate to return to the solution that the Labor Code sets a regulatory minimum level and that the collective agreement can only deviate from for the benefit of workers. This would make regulation more transparent, the regulatory scope for collective agreements and the general legal minimum of labor would be clear to everyone.

5.3. Critical Thoughts and Proposals *de lege ferenda* Regarding the Hungarian Regulation of Collective Agreements

Regarding the scope of collective autonomy, one of the main lessons learned from the legal literature on the subject and the judgments examined by the European Court of Human Rights is that the higher the statutory level of minimum standards, the more weightless is the collective autonomy and, ultimately, the content of the collective agreement. High levels of state influence or intervention have a significant impact on collective bargaining coverage (e.g., by extending the scope of the collective bargaining agreement) while it limits the room for trade unions to maneuver. In this context, it should be noted that the Hungarian labor law system is explicitly based on the employee guarantees incorporated in the legislation, especially in the Labor Code, even if their level has decreased in 2012 compared to the previous Labor Code of 1992. The level of minimum standards set by law basically determines and influences the direction of collective autonomy. The Labor Law and the parallel social security legislation provide a relatively high level of protection for employees, at the same time, the tax and contribution burdens of employees and employers, that can be considered significant in Hungary in an European comparison, as well as the guarantees provided by the Labor Code, impose significant obligations and responsibilities on employers.

In summary, there seem to be two “painful” ways out of the currently stalled Hungarian regulation: a further reduction of legal guarantees, or letting the state take over the regulatory role instead of collective agreements. In this context, the possible way of intervention could be to strengthen the possibilities of regulation at the sectoral level, the extension of certain regulations to other relationships of employment (e.g., independent contractors, self-employed) or certain areas of these relationships that are outside of employment law, but require regulation (e.g., costs related to home office, labor protection, etc.). In my view, there

is no government that would dare to take on the political risk of reducing statutory guarantees, thus leaving room for collective bargaining, and there is strong doubt that trade unions and employers would be able to represent their rights effectively in a rather “flexible” regulatory framework.

The legislature has also made collective bargaining derogations unfavorable to employees possible, perhaps to offset the high level of employer obligations. Thus, a collective agreement can become “attractive,” because it can become a tool for further “flexibility” of the legal relationship, and the employer can adapt regulation to his needs. In my view, however, there is a logical contradiction in the rules allowing for provisions less beneficial to the employees. It is clearly not in the employee's interest to lose guarantees already provided by law. If it is worthwhile for employers to conclude a collective agreement because it is possible to deviate to the detriment of employees, it is no wonder that trust in trade unions is declining, as trade unions thus ultimately serve the interests of employers rather than employees through collective bargaining. If the legislator really wants to strengthen the role of trade unions and collective agreements, legislation should return to the concept that a collective agreement can only benefit workers, so that not only the regulation but also the trade union representation status will not be as controversial.

During the examination of the power to conclude a collective agreement, dogmatic contradictions have been found. One of the tangible proofs of this is that the legislator's will can be read from the rules of interest representation (representativeness) of the Labor Code (?). In this context, there are concerns as to whether the adoption of the “whoever modifies” principle could lead to further, dogmatically incorrect conclusions in future case law. It is by no means clear whether fluctuations in membership should be taken into account in relation to the scope of the collective agreement, or whether the scope of the collective agreement can be “revived” for a trade union which subsequently reaches a minimum membership. In connection with Section 276 (8) of the Labor Code, it is worth emphasizing that the fact that a trade union that has subsequently acquired the ability to enter into a contract “cannot exercise” this ability also raises private law issues. In my view, the current regulation, while creating an unnecessary obstacle to the dynamics of collective autonomy, is at the same time doubtful as to its compatibility with the principles of collective autonomy set out in Article XVII of the Basic Law. According to the Article, collective self-determination belongs primarily to the employees and their organizations, so the trade unions that later become significant cannot have a say in shaping working conditions, at the same time the coalition

coercion does not apply. In the case of the presence of several trade unions, it is only possible to conclude a (new) collective agreement together with all trade unions capable of concluding a contract. From a private law point of view, in my opinion, the acquisition of the ability to conclude a contract should be assessed as a specific case of legal succession, although I emphasize that I rather think lining membership rates to the power to conclude a contract is the source of the problem. In the case of e.g. elected unions, there would be less post-conclusion issues of collective bargaining capacity.

It is worth considering what effect the tightening of the conditions for the ability to conclude a collective agreement would have in relation to the already declining number of trade union membership rates, as the majority of Hungarian trade unions do not have e.g., the independent apparatus completely separate from the employer, which is typical of the United States, or with the professional support and financial assets typical of Germany or Sweden. Nor can the regulatory contradiction outlined in the previous chapters be ignored, that although the Labor Code and the parallel social security legislation in Hungary provide a relatively high level of protection for employees, at the same time, the high tax and contribution burdens and the guaranteed rules provided by law impose significant obligations and responsibilities on employers. A collective agreement in Hungary allows for an unfavorable deviation from the law contrary to other nations, where it is – at least, generally – only possible to benefit the workers. Thus, it can even be defined as a tool for the further “flexibility” of the legal relationship.

In my view, the role of trade unions - and with them, collective agreements - has changed due to regulatory inconsistencies. If the legislator really wishes to strengthen the role of trade unions and collective agreements, we should return to the concept that a collective agreement can only benefit workers, so that the trade unions' advocacy status will not be contradictory either. It would strengthen the more democratic foundation of the trade unions' advocacy activities and the clarification of their support if regular trade union – just as in France – and works councils elections – like in Germany – were introduced in Hungary. At the same time, this could also put an end to a long lasting practical and dogmatic debate regarding representation rights, changing membership numbers, the emergence of new unions, invalidity, the right to rescind, etc. It is also necessary to consider the extent to which collective agreements can in fact have a real reason to be (*raison d'être*) in a labor and employment law system where the guarantees are typically created by the state through direct

legislation. It should be added that if the guarantees are not provided at a sufficient level, the population views it as the responsibility of the state (government) rather than the unions.

As regards the prevalence of collective autonomy, it is typical of the national legislation that collective agreements have an *erga omnes* effect in terms of their personal scope, that is to say, they apply to all employees employed by the employer who concluded the agreement. In all the nations I have examined, various 'guarantees of representativeness' were detected that have been incorporated into national regulations in order to establish or question the contractual power of trade unions. Concludingly, one of the key issues in the exercise of collective autonomy is who, to what extent/ in what direction, and in what scope is entitled to exercise it. In my opinion, the Hungarian solution is unsatisfactory, the number of members of the trade unions does not in itself justify the ability of the unions to assert and represent employee interests. Compared to the Hungarian legal system, an additional system of objective criteria must be met in the examined national legal systems in order for a trade union to be a party to the collective agreement. It should be noted, however, that the ten percent membership rate prescribed in the Labor Code is relatively high, as some states do not have such a level of union organization nationwide (e.g., France). It is also conceivable what the effect of tightening the conditions for the ability to conclude a collective agreement would be in relation to the already declining number of domestic trade union members. The majority of Hungarian trade unions do not have, for example, an apparatus that is typical of the United States, separate from the employer, neither do they have assets and support typical of Germany or Sweden.

This could not only offer a possible and effective solution for the practical and dogmatic issues regarding the right of representation, the changing number of members, the emergence of new trade unions, invalidity, the right of appeal, etc., but could strengthen the importance of the trade unions, and with them, the significance of their collective agreements. The collective agreement itself is a tangible proof of the extent of the balance of power and the shift between the employer and the trade union concluding the contract, it also shows to what extent the trade union has been able to meet the needs of the employees through its advocacy activities. This requires the activities of trade unions to become nationally visible and go beyond the "interested" membership.

Last but not least, it is the question of collective autonomy whether the subsidiary function of works councils can be justified in the absence of a union capable of concluding a

contract. In this respect, the dissertation deals in detail with the different purposes of the two institutions, i.e., the union and the works council, and reflects on the anomalies related to the blurring of their functions. Employees whose interests can also be effectively represented and enforced by a works council through a works arrangement do not themselves have an interest in having these tasks taken over by a trade union over which, partly because of the insufficient regulation, they can exercise less control.

Ultimately, if a potent works council is present, neither the workers nor the works councils have an interest in supporting the activities of the unions, and this lack of interest stems from nothing but regulation. In practice, the solution to conflicts of interest is the blurring of competences, as trade unions have a significant influence on works councils, often the members of the works council are union officials, and in some cases, the union exercises the functions of the works council even without having the membership rate that would provide bargaining and contractual power. If it was not possible to conclude a normative works agreement or its regulatory possibilities were significantly limited by law compared to the collective agreement, all employees represented by both the employer and the trade unions would become interested in choosing a more flexible collective agreement with more regulatory options instead of a works agreement. Under the current rules, the employer may conclude a works agreement with the works council that provides employment conditions that are more favorable to the employer and not beneficial to the workers, that a trade union would possibly decline or argue, considering the experience, professional support, financial resources and therefore bargaining power they have.

I must emphasize that I do not see a problem in the ability of the works council or even another informal association to act on behalf of the employees at the enterprise level, but in this case, any distinction between the works council and the trade union is not at all justified, as both organizations actually represent and advocate for employee interests. Performing parallel local enterprise level advocacy activities, however, make no sense, so it should be clarified that local interest representation shall be performed by the works council. This clarification, on the other hand, would have a negative impact on the trade union organization, that would thus counteract the legislative efforts to strengthen the presence of trade unions and could be an obstacle to sectoral representations as well. The general legislative aim of providing greater collective autonomy to labor market actors may be hampered by the blurring of representation rights and advocacy functions. In the absence of a trade union with the ability to conclude a collective agreement, the works council exercises workers representation and employee interest advocacy functions with regard to the normative labor

agreement, especially during the negotiation and conclusion of the works agreement, that may cause conflicts of interest and loss of bargaining power against the employer if a trade union appears at the workplace.

The union has an interest in obtaining ten per cent membership that provides bargaining power, while the works council would like to maintain its position and the guarantees of the works agreement. In this context, a multi-directional conflict of legitimacy can be identified, as the trade union may not have the support of the majority of the workers, as having only ten percent of the employees as members provides collective bargaining power and at the same time it eliminates the power of the works council to conclude normative works agreements, in spite of the fact that it gets its power through works council elections therefore its majority support is without question. However, it is also not obvious that employees empowered the works council to exercise trade union rights as it is, in general, a body to exercise workers' participation rights only. Therefore, regardless of the extent to which the normative works agreement is present in practice, it would be worthwhile, in my view, to draw a sharper line between the functions of the union and the works council, and the content of the collective agreement and the works agreement, in order to avoid the anomalies outlined above, or the interests representation at the enterprise level should be entrusted exclusively to works councils, thus avoiding conflicts arising from parallel functions.



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List of publications related to the dissertation

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1. **Balogh, Á. P.:** A kedvezőbb eltérés elvének jogalkalmazási kérdései a szakképzési munkaviszony fényében.
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By the directives of HAS Committee on Legal and Political Sciences:

Publications in periodicals level „A”: 2, related to the dissertation: 2.

Publications in periodicals level „C”: 1, related to the dissertation: 1.

The Candidate's publication data submitted to the iDEa Tudóstér have been validated by DEENK on the basis of the Journal Citation Report (Impact Factor) database.

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