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SUMMARY OF DOCTORAL DISSERTATION

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IN THE SHADOW OF SECURITY
FUNDAMENTAL ISSUES RELATED TO THE PROTECTION AGAINST UNJUST AND ARBITRARY DISMISSAL

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I. BRIEF SUMMARY OF THE RESEARCH PROJECT

1. Subject and Purpose of the Research

“Termination of an employment is one of the most controversial issues of labor law.”¹ The system how an employment relation could be terminated or ceased showcases the essence and dilemmas of labor law, and in the same time it sheds light to its most important function. As Hugh Collins notably phrases the problem: “this tail wags the whole dog of the employment relation.”²

This dissertation focuses on the issues related to protective measures against termination by employers. Termination on one hand rips away employees from their most vital source of income and deprives them from the possession of basic material and intellectual benefits; and – on the other hand – termination also withdraws employees from the participation in one of the most important communities. Termination could potentially also jeopardize the subsistence of employees and also of their close families.³ Due to the highly different situation of the parties of an employment relation and to the function of employment law, it is the employee who requires higher level of protection in case of termination.⁴ This increased protection is required from the standpoint of an individual employee, but it is also desirable for the society as a whole and for the restoration of the integrity of violated norms. With regard to the above stated, the dissertation was chiefly focused on the examination of existing (or at least) desired employment security on one hand; and on the other hand areas where instead of security only its shadow could be identified were also scrutinized.

The core part of the dissertation deals with the protection against arbitrary and unjust dismissal by employers. Rather importantly, a distinction between the notions of ‘arbitrary’ and ‘unjust’ shall be made. Even though these terms are closely connected to each other and sometimes are used as synonyms, important differences in their meanings have to be pointed out. Unjust dismissal covers all circumstances which are violating positive law, meaning all kinds of declarations or other actions of an employer which are aiming to and resulting in the termination of an employment relationship, and are not fulfilling substantial or formal requirements of the law applicable to the termination.

Arbitrary dismissal in relation to unjust termination highlights that under specific circumstances protective measures could be overridden even in the absence of formal violation of positive law. Therefore special emphasis was given to the notion of arbitrary dismissal.⁵

¹ KISS, György: Munkajog 228.
³ COLLINS, Hugh: Justice in Dismissal. 1-2.
Literature on termination does not provide a generally accepted definition for arbitrary dismissal. Thus, as part of the dissertation this notion is specified by the author as follows. A dismissal becomes arbitrary in the absence of adequate reasoning and subsequently when it cannot be proven that the employment relation is not fulfilling its designated function any more, regardless whether an employer is obliged to demonstrate the above according to the law applicable to the termination. The notions of unjust and arbitrary dismissals are sometimes overlapping, as arbitrary dismissal is at the same time often unjust, especially in those legal systems where it is obligatory for an employer to provide reasoning for a dismissal. For example when reasoning is required on the employers’ side and an employer does not provide any reasoning for the dismissal, the dismissal will be arbitrary and unjust. However, when an employer dismisses an employee with immediate effect due to a disciplinary issue, but violates relevant procedural rules by having failed to observe the time limit, the dismissal is ‘only’ unjust, but not arbitrary. In legal systems where reasoning is not required a dismissal will be arbitrary if an employer fails to demonstrate that the employment relation has lost its designated function. In case when the applicable law requires an employer to justify a dismissal and the dismissal document contains reasoning which superficially meets the legal criteria but there is no evidence proving that the employment relationship does not fulfill its intended purpose any more, the termination could be considered arbitrary as well. A termination becomes arbitrary in case of abuse of rights or when it constitutes a violation of the equality principle; these latter examples combine the elements of unjust and arbitrary termination.

Due to its subject matter, the research did not cover the issues of termination by a unilateral will of an employee, cases of mutual agreement of parties, or collective dismissals; the research did not aim to thoroughly analyze substantial law of various legal systems, but occasionally demonstrates results of comparative studies of the author.

The research chiefly focuses on the theoretical and doctrinal foundations of protective measures against the unilateral termination by employers. Even though these elements are present both in private sector employment law and public service matters, this dissertation primarily deals with issues of private sector employment law and does not scrutinize public service. However, in order to demonstrate the duality of approach in the subject matter, it is

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necessary to provide a general overview on the branch of law governing labor law, and also to define the relation between private sector employment and public service.

This dissertation does not intend to serve as a commentary to the Hungarian labor regime in force; however it does provide a glimpse on its elements of arbitrary and unjust dismissal, mostly as a part of the historical overview.

2. Hypothesis

The doctoral dissertation intends to prove the following research hypothesis.

H1 PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL REQUIRE THE EXISTENCE OF AN EVOLUTION OF EMPLOYMENT RELATIONS FROM CONTRACT TOWARD STATUS.

From historical point of view a development of employment relationship could be described as a flow of transformation from status to contract at first, then back from contract to status. The doctoral dissertation argues that in order to provide adequate protection from arbitrary and unjust dismissal, it is necessary to return to an interpretation where employment relationship could be seen as status.

H2 DUE TO CONTEMPORARY CHANGES IN THE RELATION TOWARD EMPLOYMENT, PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL BE DERIVED FROM THE RIGHT TO WORK AND FROM THE RIGHT TO DIGNITY, AND THEREFORE SHALL BE INTERPRETED AND SHALL BE PROTECTED AS A HUMAN RIGHT.

In the 21st century the relation toward employment relation has been changed. Individuals could maintain their existential interest by being related to an organization, job security has become more important, as jobs could secure access to important public goods, such as income, respect, self-fulfillment, and social relations. Consequently, job loss could mean that if these sources are cut these public goods are in jeopardy; and as a result individuals could potentially lose social status and face existential crisis. It is necessary therefore to provide employees with adequate protection against arbitrary and unjust dismissal. The dissertation primarily seeks for the grounds of protection in legal theory and legal doctrines, and it aims to justify the hypothesis that protection against arbitrary and unjust dismissal has human right nature, which is derived from the right to work and the right to dignity.

H3 PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL BE GUARANTEED AT MOST BY THE OBLIGATION OF EMPLOYER TO JUSTIFY THE DISMISSAL, BY EFFECTIVE LEGAL ENFORCEMENT, AND BY ADEQUATE LEGAL SANCTIONS.

Provided that protection against arbitrary and unjust dismissal is a human right, it should be examined what are the most effective remedies in case of violation of that right. With other words, it should be analyzed what are the minimum standards in a legal system which guarantee that such right is effectively protected. The dissertation argues that one of the most important guarantees is the obligation of employers to justify the termination by providing adequate reasoning to limit the unilateral will of an employer. Other crucial measures are the effective legal enforcements and satisfactory legal sanction. Thus, these elements together are safeguarding the protection in a complex manner.
II. STRUCTURE AND METHODOLOGY

The structure of the dissertation is as follows. A brief introduction to the subject matter is followed by the analysis of the independence of labor law within the branches of law and of its function of employment relation in the framework of termination. This part examines the doctrinal basis of dismissal from the point of view of the function of an employment relation. Remedies for unjust dismissal and their doctrinal foundations are also examined in this part (Part I. Function of Employment Relation and Dismissal of Employment). Part two (Part II. General Findings On Dismissal) demonstrates the dilemmas related to dismissal. The first is the controversy of theories concerning protection and denial of protection present in common law and continental law systems, as well as the aspects of flexicurity. This part examines the issue of primary and secondary employment relation together with the evolution of employment relations from status to contract. The third part (Part III. Roots of protective measures against arbitrary and unjust dismissal) analyzes theories and justification concerning the right to be protected against arbitrary and unjust dismissal. Firstly the necessity to safeguard the existential interest of employees is demonstrated; secondly the concept of property rights in employment relations is discussed; then issues of dignity, autonomy and the concept of industrial citizenship is examined. The intermediate finding of Part III is that protection against arbitrary and unjust dismissal is a human right; this argument is supported by relevant international human rights instruments together with decisions of the Hungarian Constitutional Court. The fourth part (Part IV. Development of the theory of protection against arbitrary and unjust dismissal in Hungary) scrutinizes the evolution of protective measures against arbitrary and unjust dismissal in Hungarian statutory law starting from the 19th century. The last part (Part V. Conclusions) contains the summary of intermediate findings and the justification of the above discussed hypothesis.

The current dissertation compiles the findings of a long-lasting and scattered research project. The first part of the research was completed during the doctorate studies of the author at Eötvös Loránd University of Sciences, Faculty of Law and Political Sciences from 2004 to 2007. Due to an international research grant the author spent one semester at University of New Mexico in Albuquerque (NM, USA). After finishing his doctorate studies the author worked first at the Hungarian Ministry of Social and Labor Affairs then at the Ministry of Economy, where he gained first-hand experience in legislation of labor law related regulations as well as in implementation of European law. The author had a brief experience as a trainee lawyer between 2011 and 2012, which allowed him to better understand labor law related litigation. These experiences have provided relevant practical knowledge, complementing the rich theoretical foundation. Research related to the current dissertation was picked up again in 2014 when the author participated in a research project at the Curia (successor of the Supreme Court of Hungary) concerning dismissal. Relevant studies were related to dismissal and dismissal with immediate effect (2013), to the judicial control of the resolution of the Arbitrary Board of Public Servants (2014), and to the remedies for unjust dismissal in the Hungarian case law (2015).

For the research primary sources were used from national and international law in combination with secondary sources, including academic articles, books, monographs and commentaries. Materials used for the research were not restricted to the field of law and legal theory, the author relied on findings of economics and sociology as well. The current dissertation does not constitute a commentary to national statutory law in effect, however, it aims to provide an overview of history of law relevant to the subject matter and of explanatory remarks on law in effect.
Regarding methodology, historical-generic methodology was used for parts dealing with the history of protective measure against arbitrary and unjust dismissal, while topical issues were examined by systematic and comparative methods. Comparative studies were made on issues where terminological differences affect the research of same or similar legal instruments. Polemic-critical methods were used to discuss controversial or ambiguous matters. A logical standpoint was used for creating definitions, while doctrinal methods were found useful for examining legal theories and terminology.

III. SUMMARY OF FINDINGS AND SIGNIFICANCE

1. Function of Labor Law and the Dismissal of Employment Relation

According to Otto Kahn-Freund, the purpose of labor law is to balance out the bargaining inequalities of parties. The function of labor law is to frame unlimited contractual freedom where due to the inequalities in power or social and economic constraints this contractual liberty of the weaker party is hindered. In order to understand until what extent dismissal of an employment relation is different from termination in civil law, it was necessary to examine the nature of employment law as a branch of law. As a preliminary question it was also indispensable to determine the definitive criteria of a branch of law. This distinction was important to see the common denominators of private sector employment and public service as well, even though public sector related issues do not constitute a significant part of the current dissertation.

1.1. Labor Law as an Autonomous Branch of Law

While examining the nature of labor law as a branch of law, it was found that such distinction primarily matters only in continental law context; however, the importance of such categorization has been diminishing in the past decades. Distinctions between branches of law could be made based on the different functions or different subject matters, as well as on other considerations, such as special doctrinal aspects, various techniques and aspects of legal regulations, quantitative matters, interdisciplinary issues, traditions, or subjectivity of

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8 See also: LEHOCZYK NYE KOLLONAY Csilla: Génnmanipulált újszülött – Új munkatörvény az autoriter és neoliberalis munkajogi rendszerek határán. 31.
9 See also: KUN Attila – PETROVICS Zoltán: A köszolgálati jog önálló jogági fejlődésének kérdéséről. 2-40., KUN Attila – PETROVICS Zoltán: The development of civil service law into an independent branch of law. 91-134.
10 SZABÓ Miklós: Jogi alapfogalmak. 37.
lawmaker. Distinctions between branches of law are not a priori, differentiation primarily has a functional role.\textsuperscript{14}

Labor law has both private and public nature. In a narrow sense labor law could be understood as private sector labor law, which is derived from civil law.\textsuperscript{16} In a broad sense labor law contains private sector employment law and public service as well.\textsuperscript{17} Elements in the latter interpretation are interconnected by their subject matters and regulatory techniques. Both of them have a dependent nature, and both areas combine norms of cogent and dispositive nature.\textsuperscript{19} Other elements also demonstrate that private sector employment and public service share the same roots, for example their established case law is closely connected, their internal regulatory structure and logic are quite similar, as well as their terminology. Public service could be considered as an autonomous part within labor law.\textsuperscript{20}

The dissertation refers to labor law as a notion comprising both private sector employment and public service. This also means that if protection against arbitrary and unjust dismissal is required, this protection has to be enforceable in both private sector employment and in public service.

1.2. Doctrinal Basis of Termination

Starting points for the examination of dismissal were the concept of loss of function of an employment relation and the contract law basis of termination. Generally, an employment relation could be ceased when it does not fulfill its designated function.\textsuperscript{21} However, this function is many folded: on employers’ side it is the economic functioning of an economic entity and related employment, whereas on employees’ side functioning covers economic, social and intellectual role of individual autonomy and self-realization. From the aspects of society functioning of an employment relation contains its social function. To this point, termination by employer could be based on economic dismissal (due to economic, technological or organizational issues) or personal dismissal (due to personal traits or skills of an employee);\textsuperscript{22} while termination by employee has various, mostly subjective reasons.

Due to contract law principles regulations related to termination must respect the autonomy of parties, and must ensure that if certain conditions are met, any of the parties could be liberated.

\textsuperscript{14} JAKAB András: A szocializmus jogdogmatikai hagyatékának néhány eleméről. 212.
\textsuperscript{15} KISS György: Munkajog. 15
\textsuperscript{17} KISS György: Munkajog. 23.
\textsuperscript{18} Ibid 22-23.
\textsuperscript{19} KISS György: A munka világ szabályozásának egy lehetséges változata. 263.
\textsuperscript{20} MELYPATAKI Gábor: Változó közszolgálati dogmatika az új közszolgálati törvény fényében. 64., KUN Attila – PETROVICS Zoltán: A közszolgálati jog önálló jogági fejlődésének kérdéséről. 40.
\textsuperscript{22} See: HEPPLE, Bob: European Rules on Dismissal Law? 226.
from the contractual obligations. Regulations related to termination of an employment relation are not significantly different from those of governing the legal basis of civil law contracts, however due to doctrinal and policy issues concerning the social purposes of labor law, the contractual freedom of employers is limited. Consequently, regarding civil law contracts reasoning for termination is not required and only notice period has to be given, concerning employment relation, a unilateral termination by employer must always have justification.

Titles of unilateral termination are related to occasions when loss of function of an employment relation is occurring at only one of the parties. Concerning this issue, differences between termination and withdrawal were examined. Termination is a unilateral declaration which cease a contract with an *ex nunc* effect, while withdrawal has an *ex tunc* effect, meaning that obligations are not imposed on parties from the time when the contract was concluded. Due to the permanent nature of employment relation, the right to withdrawal could be exercised only with strict limitations. Types of termination could be different whether there is a notice period or it is effective immediately. Usually titles are different in these two cases. While dismissal with a notice is usually given in case an employer is dissatisfied with an employee’s performance or personality traits, or in case of economic constraints on an employer’s side, dismissal with immediate effect is more common in cases of disciplinary issues, or when conditions which make impossible to uphold an employment relation occur.

1.3. System of Sanctions Applied in case of Unjust Dismissal

Thorough analysis of the system of sanctions was necessary, as it is argued that the system of sanction has even more importance than legal regulations concerning unjust dismissal. Protection against unjust or arbitrary dismissal could be only effective through an adequate enforcement system. Thus, regulations and their enforcement are closely connected.

Traditionally, sanctions related to unjust or arbitrary dismissal of an employment relation are different from those of governing invalidity in contract law. The dissertation argues that sanctions penalizing unjust or arbitrary dismissal must fulfill the principle of equity. Therefore, principles of equity in this case had to be also examined. Starting from the purpose of sanctions related to unjust and arbitrary dismissal, a penalty must effectively serve the needs of employees related to existence and the right to work, and must enforce the right to protection against unjust and arbitrary dismissal. Moreover, sanctions must provide adequate reparation for employees who lost their job and also they have to be dissuasive for employers to withhold him from consecutive future infringements. Sanctions should serve other purposes as well: they have to promote voluntary compliance with law, they have to be suitable to minimize unjust dismissals and the number of related legal disputes, and at the same time they have to demonstrate social disapproval and facilitate the restoration of the integrity of rule of law.

24 Weltner Andor: Az érvénytelenség és orvoslása a munkajogban. 43., Kiss György: *Munkajog*. 228.
25 Kiss György: *Munkajog*. 228
In general there are four different instruments in various legal systems. The first one is *in integrum restitutio* or reinstatement, which serves job security the most. The second one is compensation, which provides financial remedies for a job loss and serves as damages. The third one is punitive sanction, which is used usually in addition to compensation, which reflects to the infringement of the legal system and to the harm caused to society. The fourth one aims to support employees and encourage their reintegration to the labor market as fast as possible. In order to best serve the above purposes, a combination of these instruments has to be implemented. It has to be noted though that protection is not the strongest in regimes where financial compensation is the highest, but in systems where employees are the least exposed to unjust and arbitrary dismissal.

### 2. General Findings Related to Dismissal

#### 2.1. To protect or not to protect – that is the question

Globalization has put increased pressure on labor law eroding its protective function. This process necessarily affects the system of termination, questioning whether protection is needed at all, and if so, until what extent. Responses to this pressure given by lawmakers – which are often inconsistent – are reducing job security and level of protection is often being lowered at the same time. However, there is no empirical evidence that protective measures are affecting competitiveness or unemployment rate. Most significantly these phenomena

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27 See also Prugberger Tamás: *Munkajog a polgári jogban a globalizálódó gazdasági viszonyok között (Tanulmánygyűjtemény)*, Clrk, G. de N.: Remedies for Unfair Dismissal: A European Comparison. 410–412., Williams, Kevin: Job security and unfair dismissal., Bankó Zoltán: A jogellenes jogviszony-megszüntetés következményei – lehetséges megoldások és modellek. 2-3


30 Lőrincz György: *A jogellenes munkaviszony megszüntetésének jogkövetkezménye. 5.*


are affected by taxes and allowances related to employment, the stability of the legal system, and to rule of law.\textsuperscript{34}

It is often argued in classic liberal (or neo-conservative) views that there is a lack of constitutional basis for states to interfere with contractual freedom of private parties.\textsuperscript{35} These arguments construct the backbone of the employment-at-will theories\textsuperscript{36} present in common law systems. According to this theory, employment relation could be terminated by any reasons or with no reasons at all, even without giving notice period. However, this argument is unnecessarily simplifies the background of termination, not paying any attention to the different economic and social reasons of dismissal and their effect on the social status of employees and related social costs, or to the principles of prohibition of unjust and arbitrary dismissal.\textsuperscript{37}

Traditionally continental legal systems put more emphasis on protection against unjust and arbitrary dismissal than common law regimes, however there are signs that the differences between the two systems are gradually being reduced due to the lowered job security in continental systems accompanied by the slow erosion of the employment-at-will theory in common law systems.\textsuperscript{38} However, there are important structural differences between the two legal regimes. In continental law systems the protection against arbitrary and unjust dismissal is chiefly effected by lawmakers; this protection is rooted both in the principle of job security and in the right to protection against unjust and arbitrary dismissal. In comparison, in common law systems the protection is arising from collective agreements\textsuperscript{39} and derogations created either by statutory law or by case law, but without the general recognition of the right to be protected from unjust and arbitrary dismissal. It is especially important in the light of job security which is guaranteed by collective agreements, with other words, this protection is nothing more but protection “purchased” by trade unions.\textsuperscript{40}

Even when statutory law provides for the protection against arbitrary and unjust dismissal, it does not constitute the recognition of such right of an employee.
In continental legal systems the protection is not only lowered, but in some cases it is completely abolished. Unfortunately it is Hungary that provides an illustrative example of this phenomenon. In this case the eradication of protection was paired with the explicit denial of the right to protection against arbitrary dismissal. The abolishment of the obligation of employers to provide reasoning of dismissal was introduced with a fake justification provided by the lawmaker. Notwithstanding these regulations were introduced in the public sector, where job security has crucial importance for the independent, professional operation of central administration. The regulations in question were eventually declared not to be in compliance with the Constitution by the Constitutional Court of Hungary.

In connection with the dilemmas related to the concept of ‘to protect or not to protect’ flexicurity was examined. Flexicurity has gained extreme popularity in a relatively short time and despite of encountering a slowdown due to the economic and financial crisis, still obtains a leading position in the employment policy of the European Union. Flexicurity aims to balance social interests and flexibility to create more jobs. Therefore, instead of job security it strives for employment security, and therefore suggests a lower level of protection against dismissal. However, employment security by itself is not sufficient to solve the problems of employment. Increased flexibility and reduced job security have to be accompanied by security of income level and employability, which constitute a significant impact on budgets. Flexicurity could be achieved by direct income transfers and employment creation. These interconnected factors are often overlooked by advocates of flexicurity. Social partners also play an important role for flexicurity. Notwithstanding, in countries where social dialogue does not have traditions it is arguable whether flexicurity could be implemented at all. To summarize, the concept of flexicurity does not deal with theoretical issues of protection against unjust and arbitrary dismissal, and reforms implemented under the umbrella of flexicurity were clearly reduced the level of employee protection. The toolkit of flexicurity does not contain new elements, it could be considered rather as a repackaging of existing instruments to attract more “consumers” from EU Member States.

Scrutinizing flexicurity measures developed and implemented in the EU, it could be argued that typically level of employee protection has been reduced while unemployment allowances were not increased, and in most cases regulations related to learning programs were not amended either. Thus, increased flexibility was not accompanied by increased security. The ideal employee benefitting from flexicurity is the one who manages short term relations well, constantly changing workplaces, relentlessly educate himself gaining rather superficial

44 Viebrock, Elke – Clasen, Jochen: Flexicurity – aktuális helyzetjelentések. 34
knowledge in each area because it is permanently haunted by the pressure to change. This kind of security requires an attitude which is inherently alien from the nature of society.\textsuperscript{46}

The dissertation argues that in order to replace job security with employment security, income security must be also provided to safeguard individuals’ existence. One solution suggested – though with loopholes – is that employers terminating employment relation would be obliged to contribute to a ‘termination fund’, supporting its former employees who become unemployed with direct cash transfers. It would be also important to examine the possibilities of the creation of a ‘mobility network’ to cover larger geographical areas.

2.2. ‘All animals are equal, but some animals are more equal than others.’

It was found that regulatory regimes concerning dismissal do not provide equal level of protection for different groups of employees. For instance regarding certain types of atypical employment or in case of employees of SMEs\textsuperscript{47} the different level of protection is not arising from collective agreement or individual contract, but from statutory law. Therefore, protection against unjust or arbitrary dismissal is segmented and different layers of protection could be identified. These systems signify that the lawmaker differentiate between employment relations of primary and secondary (and so on) importance.\textsuperscript{48} This type of termination system continuously reproduces inequalities, as sustainability is embedded in the system: as the protection of primary groups is increased, demand of employers to employ more people in the secondary poorly protected groups is growing.\textsuperscript{49}

2.3. From Contract to Status?

The above statements have strong connection to the dilemma concerning the backlash of evolution of employment relation from contract back to status. In the 21\textsuperscript{st} century it seems that the evolutionary curve described by Henry Sumner Maine takes a reverse direction.\textsuperscript{50} Labor law regulations, especially dismissal rules are once again dominated by the idea of status.\textsuperscript{51}

The notion of status in the context of this dissertation refers to the combination of objective circumstances of legal, economical and social forces and any other conditions which are determining the societal position of an individual (an employee). Therefore, in this context

\textsuperscript{46} Sennet, Richard: The Culture of the New Capitalism. 3–5., Njaya, Wanjiru: Job Security in a Flexible Labour Market: Challenges and Possibilities for Worker Voice. 465


\textsuperscript{49} Skedingier, Per: Employment Consequences of Employment Protection Legislation. 26.

\textsuperscript{50} Maine, Henry Sumner: Ancient Law. Its connection with the early history of Society and its relation to modern ideas. 151.

\textsuperscript{51} I am aware of the fact that Maine refers to status as the aggregate power, rights and burdens inherited by and forced on individuals by society, despite of their will, solely based on birth status. Therefore rights and obligations arising from statutory law are not in line with notion of status created by Maine. (Kahn-Freund, Otto: A Note on Status and Contract in British Labour Law. 636.).
status includes norms provided for by law. The status of employee (especially in continental legal regimes) is chiefly defined by statutory law and collective agreements. The autonomy of contractual will of parties still exists, but its significance has been increasingly limited by regulations. Therefore, employees’ legal standing could be understood as status. Employee status is forced on individuals regardless of their will and projected on them by society through legal regulation; this status is given to an individual solely by the fact that an employment contract is concluded. The framework relevant to the legal environment of this status is fairly similar in the various types of employment relation. This status typically remains unchanged, employees are ‘stuck’ in their position. The content defining function of employment contract is overshadowed by its function of establishing an employment relation.

However, it is argued that from the viewpoint of protection against unjust and arbitrary dismissal, this ‘backlash’ in the evolution shall be welcomed. It is necessary that protection is related to status, as it would be highly impossible to provide for protection on contractual level. Due to the unequal position of contracting parties, statutory law could not provide for sufficient level of protection, and protection level guaranteed by collective agreements seems to be less stable to that of statutory law. However, status is present in a meaning given to it by Maine – and this phenomenon is certainly less desirable in the 21st century. For example in Hungary the position of public workers, temporary agency workers and public servants have different and increasingly segmented regulatory systems. Accordingly, the first hypothesis of the current dissertation – PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL REQUIRE THE EXISTENCE OF AN EVOLUTION OF EMPLOYMENT RELATIONS FROM CONTRACT TOWARD STATUS, (H1) – is proven.

3. Roots of Protective Measures against Arbitrary and Unjust Dismissal

3.1. The Need for Protection of Existential Interest of Employees and Related Measures

While examining the nature of protection against unjust and arbitrary dismissal, the starting point was the function of an employment relation from employee’s perspective. The roots of protection are directly related to the need for protection of existential interest of employees. Job loss in most cases leads to some kind of ‘reproduction disorder’\(^{52}\) in employees’ life, either on a short or on a long term. Job loss could lead to radically detrimental changes in existing living conditions, and could jeopardize subsistence of employees.\(^{53}\) Through this detriment the income sources for fulfilling one’s personal autonomy are ceased;\(^{54}\) and at the same time employees are deprived from an environment which used to serve as platform for self-realization and determined their social status as well. Therefore, when losing a job, a need for the protection for existential interest is arisen on employees’ side. This need is also connected to the need for protection of individual autonomy.

\(^{52}\) CZÚCZ, Ottó: Szociális jog I. 10–11.
3.2. Theoretical Foundation of Protection against Dismissal

The theoretical foundation of protection against unjust and arbitrary dismissal was thoroughly scrutinized in the dissertation. First the concept of property rights in employment was discussed. Theory of new property argues that one’s property has been progressively more composed by non-material items, and the function of property has been fulfilled by social status and acquired rights. Likewise, one’s relation to job and employment has also changed. Nowadays individuals maintain their existential interest by being connected to organizations. Therefore employment and the right to works have been increasingly more valued, because employment and the related organizational bonds supply the necessary connections to income, self-realization, respect and social relations. However, this could lead to overly strong bond to organizations, which are restricting the economic freedom of employees. There is no genuine freedom without economic freedom of individuals, and at the same time the lack of economic freedom could jeopardize political freedom too. Therefore it is necessary to circumvent dismissal rights of employers and provide protection for employees against unjust and arbitrary dismissal. Similar consequences are derived by the concept of ownership of jobs. This theory argues that there is a property-like relation between employees and their jobs, reflected by a property mindset in employees (‘my job’). Therefore uninterrupted possession of jobs has to be secured.

These theories argue that jobs, as ‘property’ or ‘wealth’ of employees have to be protected, and the deprivation must only be possible in due process, for reasons of substantial public interest, with adequate compensation, and with the possibility of judicial review. To complete the analogy, the way of possession ought to meet criteria that of property rights, in other words it has to meet the requirements related to the function of employment. If these conditions are not met, termination has a valid ground.

Concepts arguing that employment is closely connected to dignity and personal autonomy are commonly stating that jobs have core importance in providing a meaningful environment where individuals could find physical and mental challenges fulfilling their life goals. For self-realization it is necessary to have a job which completes one’s life. But only those jobs could meet this criterion which are secured and being protected against unjust and arbitrary dismissal. A termination of employment, which is arbitrary and does not have adequate reasons are fundamentally threatening dignity, personal autonomy and freedom of will, and are leading to insecurity and vulnerability. To safeguard personal autonomy social structures which secure the fulfillment of self-realization through employment should be supported.

56 REICH, Charles A.: The liberty impact of the new property. 295.
57 SEN, Amartya: Development as Freedom. 8
The required employment relations are those which provide reasonable protection against arbitrary and unjust dismissal.\textsuperscript{63}

Theories advocating ‘citizenship’ in employment argue that rights and obligations deriving from statutory law or collective agreements are imposed on employees because they are part of certain communities. This connection is similar to citizenship bonding employers and employees; therefore it is referred to as ‘\textit{industrial citizenship}\textsuperscript{.64}’ The core concept is that a state must provide adequate conditions to all its citizens to lead a meaningful, dignified and free life.\textsuperscript{65} This is only possible, however, if employees are protected against unfair, discriminative and arbitrary dismissal.\textsuperscript{66} Therefore, the right of employer to dismiss employees has to be limited, as dismissal is at the same time a loss of ‘citizenship’, and that is strongly detrimental to social and economic rights. The dissertation argues that industrial citizenship cannot be a sole theoretical foundation for the protection against arbitrary and unjust dismissal, because it is rather a consequence of this protection. This concept does not bring any novelty to protection theories, only underlines the already existing obligation of states to provide sufficient protection for employees against arbitrary and unjust dismissal.

3.3. The Right to be Protected against Unjust and Arbitrary Dismissal as a Human Right

The above cited theories justify that protection against unjust and arbitrary dismissal must cover all employees. The dissertation examines whether this protection signifies a right which is related to humanity, existing without external recognition, and generally recognized, therefore could constitute a human right. A preliminary assumption to this matter was that not all labor rights are qualified as human rights, however there are overlapping elements.

Positivist legal theories argue that a right could be regarded as human right if an international human right instrument recognizes it as such. This approach is rather formal, disregards the concept of universality of human rights. Moreover they raise the issue of “parallel realities” concerning the scope of states bound by these obligations.\textsuperscript{67} Instrumentalist approaches focus on protection mechanisms, emphasizing the differences in political, and economic and social rights, based on negative or positive obligations of states.\textsuperscript{68} Among these two theories the normative approach is the one which offers a more accurate solution, as its starting point is the notion of human right. According to the normative approach, human rights are coercive, universal, timeless, and their core contents are definitive.\textsuperscript{69}

\textsuperscript{63} COLLINS, Hugh: \textit{Justice in Dismissal. The Law of Termination of Employment}. 18–19.
\textsuperscript{67} MANTOUVALOU, Virginia: Are Labour Rights Human Rights? 151–152., 156.
\textsuperscript{68} KOLBEN, Kevin: Labor Rights as Human Rights? 468–474.
When examining whether the right to work constitutes a human right, the first step was to determine its core content. One of the approaches focuses on the negative side of right to work. Accordingly, a state has negative obligation in the aspect and has to respect individuals’ freedom to choose their profession and sources of income. Another related concept goes somewhat further and argues that a state also has an obligation to provide a necessary framework which allows individuals to enjoy right to freely choose occupation. Positive right theories argue that a state has a positive obligation to create full employment by providing employment opportunities to everyone. The combination of positive and negative obligation theories are supporting the property concept in employment, arguing that apart from refraining from interfering with individual freedom of choice concerning occupation, states ought to provide sufficient framework which guarantees the full enjoyment of such freedom. This obligation could chiefly be fulfilled through job security, therefore protection against arbitrary dismissal has to be secured.

Labor right are recognized as human rights by the Committee on Economic, Social and Cultural Rights in general comment No. 18 related to the right to work. The right to work as a part of individual dignity is expressed through the freedom of the individual regarding the choice to work. Also it emphasizes the importance of work for personal development as well as for social and economic inclusion. The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. A core part of right to work is the protection against arbitrary dismissal, and these two elements are connected by the need for protection of dignity.

The right to work is consisted of several rights and obligations, including the right to freely chosen occupation, the prohibition of slavery, forced or compulsory work together with positive obligations of states to operate a sufficient framework guaranteeing the full enjoyment of the above rights and protecting employees from unjust and arbitrary dismissal. As discussed, the content of right to work could be clearly defined, it is morally coercive due to the need for protection of existential interest, and therefore it could be argued that the right to work is a human right.

International human rights instrument recognizing the right to be protected against unjust and arbitrary termination do further justify the human right nature of the right to work. Though Convention No. 158 of ILO provides for certain derogations concerning the scope of protected employees, it clearly sets the obligation to protect employees against unjust and arbitrary dismissal, as well as regulates the framework of remedies and judicial review.

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73 LEHOCZKY KOLLONAY Csilla: Alkotmányos alapelvek a munkajogi szabályozásban. 292., KOLLONAY LEHOCZKY, Csilla: The Hungarian Constitutional Court and Social Protection. 1471.
74 See Article 6 of International Covenant on Economic, Social and Cultural Rights.
75 Committee on Economic, Social and Cultural Rights: The right to work, General comment No. 18. Uo. 4. bekezdés, GUNDT, Nicola: The Right to Work versus the EU activation policy: Effects on national social benefits. 2.
Article 30 of the Charter of Fundamental Rights of the European Union provides for the protection against unjust and arbitrary dismissal, however the Charter’s scope of application is limited by Article 51 stating that the Charter is addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. Article 24 of the (Revised) European Social Charter states the obligation of employers to provide reasoning for dismissal, the right to appeal and provides provisions related to sanctions.

Therefore, the protection against unjust and arbitrary dismissal is a part of right to work, which is a recognized human right. Thus, the second hypothesis of this dissertation – DUE TO CONTEMPORARY CHANGES IN THE RELATION TOWARD EMPLOYMENT, PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL BE DERIVED FROM THE RIGHT TO WORK AND FROM THE RIGHT TO DIGNITY, AND THEREFORE SHALL BE INTERPRETED AND SHALL BE PROTECTED AS A HUMAN RIGHT. (H2) – is justified.

3.4. Protection against Arbitrary and Unjust Dismissal in the Practice of the Hungarian Constitutional Court

The Hungarian Constitutional Court interpreted the right to work as a constitutional right with a dual nature. On one hand it could be seen as a social right and in this context it contains the obligation of the state to provide necessary institutional framework, on the other hand it could be interpreted as a right to freely chosen occupation and a freedom to entrepreneurship. However, the standpoint of the Constitutional Court regarding the protection against unjust and arbitrary dismissal is not free from controversy. Concerning private sector employment the Constitutional Court stated that there is no fundamental right to protection, employers must enjoy the right to dismissal and the obligation to provide the reasoning of termination is an additional benefit of employees (“positive action”) without constitutional entitlement. The thesis argues that this standpoint is not acceptable. The purpose of labor law is to provide protection due to the inequalities of bargaining power of parties and to limit their contractual freedom and the employers’ right to dismissal. The different circumstances regarding contractual relationship in civil law could justify unlimited contractual freedom, however in labor law the obligation to provide reasoning for dismissal is a must.

With regard to public service the Constitutional Court denies the freedom of dismissal. It is argued that in public service relations the obligation to provide reasoning is not an additional benefit as in private sector employment, but a guarantee derived from the nature of public

81 Termination of employment digest: A legislative review., Termination of employment relationships. Legal situation in the following Member States of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia., KISS György: A Domnica Petersen ügy tanulságai a kor szerinti diszkrimináció versus igazolt nem egyenlő bánásmód körében – hazai összefüggésekkel. 115–116.
service and which has a constitutional value. Thus, protection against arbitrary dismissal in this context is a part of the right to work and shall be covered by the state’s obligation to provide sufficient institutional protection system.

The dissertation argues that such distinction made by the Constitutional Court based on the types of employment is not accurate. As the Constitutional Court rightly stated elsewhere, employment provides the primary source of income which is fundamental for individual existence and autonomy, and statutory law shall guarantee protection for employees. Such protection is much needed due to the inequalities in bargaining power, which could lead to vulnerability of employees. According to the Constitutional Court one of these guarantees is the protection against unjust and arbitrary dismissal. The Constitutional Court has also referred to the European legal environment which recognizes the protection against unjust and arbitrary dismissal. It is not clear therefore, why the Constitutional Court derived the conclusion that the Hungarian regulatory system is allowed to make distinction between different types of employment from the point of view of protection against arbitrary dismissal. Especially that Hungary is also bound by the Convention of Economic, Social and Cultural rights, and Article 6 of the Convention does cover all forms of dependent work.

One of the most crucial elements of protection against unjust and arbitrary dismissal is effective legal protection mechanism. The Constitutional Court took a narrow interpretation and applied this principle only to public service, however it is commonly accepted that no distinctions should be made based on the form of work. The Constitutional Court argues that legal protection is effective if courts could make decision regarding the substance of the argued rights. Therefore the lack of obligation to provide reasoning of dismissal constitutes a disproportionate obstacle related to the right to judicial review. If employers are not obliged by law to provide reasons for dismissal, the court is not able to decide in substance whether the dismissal was just and fair, and this has fundamental influence on the effectiveness of judicial protection.

The Constitutional Court also argued that protection against unjust and arbitrary dismissal is connected to dignity; however this argument was limited to public service. In case of arbitrary and unjust dismissal, dignity is jeopardized, as basic supply for subsistence of individual becomes rather unpredictable, and this uncertainty leads increased vulnerability and subordination. Individuals cannot be degraded and treated as mere problem solving tools by their employer (or in case of public servants, the state), as such practice affronts human dignity. However the dissertation argues that these statements shall be valid not only for public service but also for private sector employment. If it is argued that a state’s practice of dismissing public servants without proper legal limitations concerning reasoning of dismissal affronts dignity, then employers’ practice leading to arbitrary dismissal must also be an infringement of dignity. That leads to an intermediate conclusion that protection against unjust and arbitrary dismissal is not only a positive obligation of states which should be available to both private sector employees and public servants, but this protection must be

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82 44/B/1993. Constitutional Court decision, ABH 1994., 575
considered as an element of protection of dignity, which is another positive obligation of states.

3.5. Measures of Effective Legal Protection against Arbitrary and Unjust Dismissal

Effective protection against arbitrary and unjust dismissal requires a combination of substantial, formal and procedural measures. Firstly, it is a must to have provisions stating clearly the possible reasons for dismissal in a form which could be reiterated. Secondly, there must be an independent and impartial forum which decided whether the dismissal was just and fair, and the appropriateness of a dismissal should be proven by employers.88 Thirdly, if a dismissal in unjust and/or arbitrary, adequate reparation must be provided for employees, either in a form of monetary compensation or by restoration of an employment relation.89

4. Evolution of Protection against Unjust and Arbitrary Dismissal in Hungary

4.1. Historical Overview on of Regulatory Measures from the 19th Century until the Second World War

Examining the evolution of regulatory measures against unjust and arbitrary dismissal in a historical context was necessary to see whether the obligation for reasoning and its substantial and formal requirements, as well as legal protection including remedies were present in Hungary. The historical analysis turned out to be important for further conclusions as well.

The Hungarian regulatory system before the Second World War was rather complicated and multi-layered. The state as a regulatory actor appeared first in the middle of the 18th century and its presence gained increased importance till the 1910s. Statutory law differentiated between forms and types of employment by economic sectors and by professions as well; however this scattered regulation90 was only the surface. In fact these employment relations together with informal work had a rather strong common basis rooted in private autonomy, customary law and in case law. In certain cases regulations were relative dispositive (for example in case of notice period) and courts widened the scope of legal protection by creative interpretation (like protection against arbitrary dismissal91). However contract based “employment law” was not sufficient in providing effective protection against unjust and arbitrary dismissal.92 Unilaterally formed employment contracts which were usually tacitly agreed by employees, service codes, and agreements of parties were all eroding the protective measures.

90 RADNAY József: Munkajog. 24.
92 See also VINCENZI Gusztáv: A munka magánjogi szabályai. 8–9., 28., BALLA Ignác: Magánjogtan. 171., KREUTZER Lipót: A munkaviszony a kereskedelemben. Könyv a magántisztviselőkről. 1912. 93.
Paradoxically terms and conditions laid down in contract increased the subordination of employees, as social position of employees in bargaining was rather status-determined in the era, and everything which was a result of bargaining weakened the protection of employees. The ideal picture of parties with balanced bargaining power empowered by absolute freedom of contract was blurred by the fact that employees’ position, which was utterly dependant and subordinated was determined by their status. Notwithstanding the regulatory regime of the era was characterized by feudal elements, especially with regard to servants, agricultural workers and partially to factory workers as well.\(^\text{93}\)

Protection against dismissal was present in statutory law, however this presence was scattered and provided different level of protection in different economic sectors and for different occupations. In general legal regulations did not contain obligation for reasoning, therefore protection against arbitrary dismissal was not proved by them. Exceptions were termination with immediate effect and disciplinary dismissal. In certain cases it was possible for employers to dismiss employees in situation s when employees would have required increased protection, putting them is an ever vulnerable and insecure situation. However, some of the reasons justifying termination with immediate effect are meeting contemporary requirements. Formalities, such as a written letter of notice were required for termination with immediate effect by statutory law; and in certain other cases by customary law or by case law.\(^\text{94}\)

It could be concluded that protection against arbitrary and unjust dismissal before the Second World War in Hungary was not sufficient. Regulations concerning procedural and the remedial issues did not provide adequate protection for employees. Even though the rule of thumb was that remedies were provided by general court, large number of cases (like workers employed in mining, industry, commerce, agriculture or domestic work) was exempted, and in these cases remedies were provided by an administrative and not by a judicial forum.\(^\text{95}\) Administrative forums were inadequate, as the equality of arms did not apply, and these forums usually made their decisions in summary procedures.

\textit{In integrum restitutio} as a remedy against unjust and arbitrary dismissal was unknown in the era, instead employers were required to pay damages according to general civil law rules\(^\text{96}\) or general compensation was paid for employees. These sanctions were not meeting the requirements of effective legal protection, as they did not promote voluntary compliance with law, they were not suitable to minimize unjust dismissals and the number of related legal disputes, and they did not demonstrate social disapproval and did not facilitate the restoration of the integrity of rule of law.

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\(^{93}\) Lőrinz Ernő: \textit{A munkaviszonyok szabályozása Magyarországon a kapitalizmus kezdetétől az első világháború végéig. 1840-1918.} 40.

\(^{94}\) Vincenti Gusztáv: \textit{A munka magánjogi szabályai.} 216.

\(^{95}\) Ibid. 294.

\(^{96}\) Ibid. 218., 246., 273.
4.2 Dismissal Rules during State Socialism

Labor law during state socialism was characterized by cogent regulations with an administrative law nature. Reception of Soviet labor law resulted in a regulatory regime completely alien to the Hungarian civil law system. Different types of employment were uniformly regulated and the same rules were applied for both private sector employment and public service. Regulations went through a complete normative, doctrinal and terminological transformation to eliminate discrepancy between traditional civil law instruments and Soviet regulatory techniques. The relation between employers (state companies) and employees (workers) was built on the subordination of workers and workers had a status-like position. However, continuity and stability could also be detected especially in the application of law and instruments fundamentally alien from national traditions were sooner or later eliminated.97

In the first three decades of state socialism judicial review was not possible in labor law disputes, it was introduced only in the 1980s and back then only in second instance concerning termination. The reasons were rather ideological: in state socialism workers and employers were not considered as two parties with contradicting interests, therefore, it was argued that internal grievance procedures at companies were sufficient for dispute resolution.98 This approach overlooked that existential interest of individuals are independent from political or ideological issues, and effective protection against unjust and arbitrary dismissal could only be provided by an independent and impartial forum.

Regarding remedies for unjust dismissal new instruments were introduced. Apart from damages at the beginning restoration then in integrum restitutio could be applied. At least in theory these new sanction were taking into consideration the need of workers for protection of their existential interest. However, the absence of punitive sanctions it is arguable until what extent these sanctions were able to demonstrate social disapproval.

Nevertheless it is important to highlight that positive obligations of the state related to the right to work, such as state’s obligation related to employment was much emphasized during state socialism. Working – therefore being reemployed after dismissal – was not only a right but also a duty of employees. The state’s primary obligation was to provide employment opportunities, thus protection against dismissal was not overly emphasized. This shift in regulatory approach led to the introduction of several additional auxiliary punishments99 for employees other than disciplinary dismissal, as job loss could not withhold employees from violation of disciplinary rules at workplaces.

Labor codes during state socialism contained detailed regulations for dismissal; they provided for the obligation of a clear reasoning – justifiable reasons were related to personality traits or performance of employees, and to economic reasons of employers – and required a notice to be in written format. Instruments for prohibition or limitation of termination were also introduced. These instruments applied together were indicating that protection against unjust and arbitrary dismissal is partially present in the legal system. The above mentioned continuity in application of law signified some kind of stability in case law, and overall changes were not so drastic concerning judicial practice in dismissal cases. Principle of

97 See for example 38/1973. (XII. 27.) Decree of Ministerial Committee.
98 FAZEKAS József: Munkajogunk fejlődése a felszabadulástól a Munka Törvénykönyvég. 106.
prohibition of abuse of right was often referred to in cases when reasoning was not justified or dismissal was otherwise arbitrary.  

4.3. Regulations Concerning Unjust and Arbitrary Dismissal after the Political Transition

Regulations after the political transition from state socialism were characterized by the need for a regulatory regime respecting the autonomy of parties. \(^{101}\) State intervention in employment relation was sharply reduced and the number of cogent regulations was decreased. A complete abolition of the soviet legal regime did not occur though, and some of the instruments remained in use in renewed forms. A further sign of denial of the past and of return to pre-war system was that employment relations were once again differentiated, and separate regulations were applicable to private sector employment and to public service. \(^{102}\) Terminology and some of the instruments were reinstalled.

Protection against unjust and arbitrary dismissal was guaranteed by obligation of providing clear, valid and reasonable reasoning, \(^{103}\) by prohibition and limitation of dismissal, and by the prohibition of abuse of rights. Even though contracts started to play a more important role than before, protection against termination was still dominated by legal regulations. Therefore, protection has become more like status-based again, the bargaining power of parties has been less important. The intention of lawmaker and the quality of regulations has had a more important role in defining the framework for protection.

However, there are many elements in contemporary legal regulations concerning protection against unjust and arbitrary dismissal which could be subject of criticism. One of the most important issues is the above discussed differentiation in the concept of the Hungarian Constitutional Court segmenting the scope of protection. The standpoint of ‘unlimited and full right to dismiss’ of employers is not acceptable and has to be revised.

Another important consideration is that even though the requirements of justified reasoning include that the reasoning of dismissal should be logical, in courts’ interpretation all dismissals are reasonable by definition. \(^{104}\) Therefore a revision for courts’ practice would be needed, and new aspects should be introduced to examine whether the reasoning of dismissal by employers is sound and solid, and whether the employment relation has indeed lost its function.

The framework of protection against arbitrary and unjust dismissal introduced by the Labor Code of 1992 has been significantly eroded regarding regulations of temporary agency work. By the considerably lower level of protection offered to temporary agency workers the lawmaker created an impression that the value of these workers has secondary importance. Some of these unfair regulations were corrected by the latest Labor Code entering into force in 2012. However, one of the most crucial issues concerning the reasons of dismissal, e.g. that

\(^{100}\) Garancsy Gabriella: A munkajogviszony megszüntetése. 116.

\(^{101}\) Regarding 'reconstruction' see: Kollonay Lehoczky, Csilla: European Enlargement: A Comparative View of Hungarian Labour Law. 2004


\(^{103}\) Legfelsőbb Bíróság Munkaügyi Kollégiumának 95. számú állásfoglalása.

\(^{104}\) Kiss György: Munkajog. 239.
termination of the agency contract is a valid ground for dismissal of agency worker, has remained unchanged. This problem addresses the issues of inequality in right to apply to court, and the infringement of dignity. Similar concerns arise in connection with the remedies for termination of definite term employment contracts.

In compliance with the practice of the Court of Justice of the European Union, lack of reasoning in case of employees who are entitled to old age pension is only acceptable if an employee does not suffer from a significant loss of income. The dissertation argues that employer’s right to terminate definite term employment contract by paying compensation equal to the absentee pay due for twelve months, or if the time remaining from the fixed period is less than one year, for the remaining time period is infringing the principle of protection against unjust and arbitrary dismissal. In this case the protection is replaced by compensation, making employees vulnerable. Such practice is also an infringement of dignity, degrading employees to mere economic tools of employers. Employees cannot deny the justification of their dismissal and therefore protection could not be effective either.

The most important changes introduced by the 2012 Labor Code regarding termination was the legal consequence in case of wrongful termination. Application of in integrum restitutio, is now limited and compensation became a general remedy. By limiting the role of in integrum restitutio, remedies aiming job security is also circumvented if not abolished. It would be necessary to provide greater discretionary power to courts to decide whether restoration is really impossible or overly burdensome for an employer who wrongfully terminated its employee. This concept would still respect that sometimes restoration is not possible.

According to the new Labor Code employer is liable to provide compensation for damages resulting from the wrongful termination of an employment relationship, however compensation for loss of income from employment payable to the employee may not exceed twelve months’ absentee pay. This limitation contradicts to the principle of full compensation. It is argued that by limiting damages to losses which should have been anticipated by an employer could provide a fairer compensation mechanism for employees. Courts should acknowledge that employees are entitled to non-pecuniary damages in case of wrongful termination, as protection against unjust and arbitrary dismissal is derived from the right to work, which is a human right.

The dissertation argues that it would be necessary to introduce punitive sanctions, proportionate and dissuasive enough to prevent employers from dismissing employees in an unjust and arbitrary manner. This measure could be justified, as at the moment there is no sanction proportionate to the gravity of infringement. The payment levied on employers could be used to mitigate the social costs of unjust and arbitrary dismissal, for example it could be imposed as a contribution to a special fund supporting job seekers.

Summarizing the intermediate finding of this part, it is argued that the current protection mechanism implemented by the 2012 Labor Code is not providing effective and sufficient protection against unjust and arbitrary dismissal, as the current system is not eliminating contradictions which have been long present in the Hungarian jurisdiction. The dissertation provides possible solutions (de lege ferenda suggestions) to the existing problems, such as the

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examination of external circumstances and the judicial review of the notion of impossibility in cases of dismissal with immediate effect, and revision of regulations concerning prohibition of dismissal of women while receiving treatment related to a human reproduction procedure and during maternity leave.

After reviewing relevant international human rights instruments and analyzing Hungarian legislative traditions, it is argued that key elements of adequate protection against unjust and arbitrary termination are 1) the obligation of employers to justify dismissal by clear and reasonable reasons provided in a written form; 2) effective protection by the right to appeal, necessary elements are that an employer should prove that a dismissal was justifiable, and appeals are reviewed by an independent and impartial forum; 3) the right to ample sanction, which meets the principles of equity. Sanctions applied prior to the Second World War did not meet (or only partially met) these requirements, as some of the justifications for dismissal were not reasonable, and there was no unified requirement to employers to justify dismissal. In the decades of state socialism the lack of appropriate judicial review was most probably the weakest element of the protection scheme, while concerning the most recent Labor Code – as it was discussed above – the protection against unjust and arbitrary dismissal is still not a coherent system.

Termination without justification infringes human dignity; the lack of reasoning eliminates legal limitation of dismissal, often leading to arbitrary practices which provided unrestrained opportunities to employers to dismiss employees, who through this procedure are degraded to economic tools of their employers. This situation increases vulnerability and dependence of employees, putting them and their families in precarious financial situation. In the absence of obligatory reasoning, the right to appeal is hampered and becomes only a formal option for dismissed employees to seek justice. It is necessary to have an impartial and independent forum to review applications, otherwise effective protection against unjust and arbitrary dismissal is not provided for employees. Sanction mechanism is efficient if it able to meet principles of equity (reparation, has an effect of both general and specific prevention, encourages voluntary compliance with law, demonstrates the disagreement of society, and reinstall the integrity of labor law). In accordance with the above stated, the third hypothesis PROTECTION AGAINST ARBITRARY AND UNJUST DISMISSAL SHALL BE GUARANTEED AT MOST BY THE OBLIGATION OF EMPLOYER TO JUSTIFY THE DISMISSAL, BY EFFECTIVE LEGAL ENFORCEMENT, AND BY ADEQUATE LEGAL SANCTIONS. (H3) is justified.

5. Significance

Findings related to the position of labor law and public service law demonstrating that both fields belong to the same branch of law could be directly utilized in the elaboration of legislative actions. The statements of this section underline that regulations should be consistent in both fields. Fundamental issues like protection against unjust and arbitrary dismissal should be regulated alongside the same principles and values, especially regarding the obligation for reasoning, formal and substantial requirements of dismissal, major elements of sanction system, and remedies.

Concerning the findings related to the human right nature of protection against unjust and arbitrary dismissal could also be utilized by lawmaker, as they could serve as a compass regarding the system of termination, including the sanctions of wrongful termination.
Hopefully remarks related to the problems of the latest Labor Code of Hungary and especially those of mentioned as *de lege ferenda* proposals could be considered by courts and the legislator as well.

The current dissertation could also serve as a basis for further academic researches concerning legal history, termination, or doctrinal issues of labor law. Results could be also utilized for legal education, particularly for labor law and human rights courses.


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Other relevant publications


PETROVICS Zoltán: A munkaviszony megszűnése, megszüntetése és a jogellenes megszüntetés jogkövetkezményei; a csoportos létszámcsokkentés. In: BERKE Gyula – HAJDÚ Edit –
