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The fundamental concepts of international labour law; the basic principles of EU labour and social law[1]

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Tartalom

1. The emergence of labour law

Nowadays it is an unequivocal fact that labour regulations formed our thinking of work quite significantly, thus the development of several industrial relationships are based on a legal ground striving for justice and fairness. It is also an undisputed statement that the aforementioned development would have been unreachable without shaping and manifesting the working conditions and worker's fundamental rights. It is unnecessary to state that in our history, though, it was not always obvious. Although, even from the prehistoric times, we find several working methods evolving, but we cannot speak about a unified, universal regulating method of the rules of work, if there were any, the labour was shaped and based on the territorial peculiarity and customs.

In the late 18th and early 19th centuries, the industrial revolution had a major impact on Europe's industry. New energy sources were used, such as coal and steam energy, freight transport developed, factories were established. Mass production and wholesale formed.[2] The first major milestone considering the rights of the employees was the 1833 Factory Act.[3] The main provisions of this Act are concentrated on regulating, and under several circumstances, prohibiting child work and creating a control mechanism to ensure that the employers are managing the work accordingly.

The significance of this legislation can be seen in the fact that the legislator took into account the "vulnerability" of workers when drafting the legislation and assessed their personal characteristics, thus limiting the operation according to market needs. After the Industrial Revolution, we witnessed and witnessed countless collective labour struggles from the middle of the 19th century to the present day, the forms of which, although they have changed considerably over time, are all based on the foundations laid nearly two hundred years ago.

2. Interfaces between civil law and labour law

The dogmatic issues concerning labour law revolve around the following topics:
- The subject of labour law regulation, which separates labour law from other employment relationships.
- The theoretical explanations whether labour law has a civil or non-civil status.

[2] See in detail: Zsuzsanna RUSZ: *The History of Labour Law – from Antiquity to Nowadays*, doctoral (PhD) thesis, University of Miskolc Faculty of Law, 2014, http://midra.uni-miskolc.hu/document/16672/9509.pdf) (21 March 2022).
[3] The full text is available at: http://www.educationengland.org.uk/documents/acts/1833-factories-act.html (22 March 2022). See also: Victorine JEANS: *Factory Act Legislation: Its Industrial and Commercial Effects, Actual and Prospective*, T.F.Unwin, 1892.

- Related to these theories about the autonomy of labour law whether labour law can be represented in the legal system as an independent member or its independence is relative.[4]

However, the categorization just outlined, which is primarily in the realm of theoretical law, is by no means self-serving, as the demarcation entails very important practical regulatory issues.
It is an undisputed fact that the employees can be considered disadvantaged parties, since the distribution of rights and obligations are not in balance in favour of the employers. Nevertheless, the legal relationship between the parties is based on a contractual consensus, with a significant degree of freedom of contract. Consequently, the classical employment relationship cannot be classified as a field of public law, and the already mentioned imbalance threatens to become a full member of private law. The contradictions that have just been outlined with apparent and real elements are perhaps most practically resolved by examining whether labour law is predominantly reflected in the legal specificities of private or public law.

In order to resolve the contradiction, it is not necessary to operate with a scientific innovation; it is enough to base it on the ideas of renowned jurists who have already dealt with the issue, namely, EÖRSI and PRUGBERGER.[5] According to EÖRSI labour law is „mixed, complex derived from the dichotomy of public-private law area"[6] and PRUGBERGER stated that „labour law is located between the two both private law and so-called mixed area of legal expertise."[7] The main distinguishing aspects are the following.

As it can be seen in civil law that the parties have equal rights and we cannot speak of a significant dominance of either party. At the same time, there is a shift in the balance of labour law between the parties, which is perceptible even to lay people. Therefore, it can be concluded, that although contractility characterizes employment relationships, it is necessary[8] to compensate for the shift in the proportion of rights and obligations that determine the content of the legal relationship. Perhaps the best

[4] Nóra JAKAB: *A munkajog és a polgári jog kapcsolata a jogpolitika tükrében*, Magyar Jog, 2015/1, 18-19.
[5] György KENDERES: *A munkajogi jogági elhelyezkedésének problematikája*, Miskolci Jogi Szemle, 2014/2, 10.
[6] Gyula EÖRSI: *Jog – gazdaság – jogrendszer tagozódás*, Akadémia Kiadó, Budapest, 1977, 65.
[7] Tamás PRUGBERGER: *Európai és magyar összehasonlító munka- és közszolgálati jog*, Complex, Budapest, 2006, 43.
[8] In any case, it is worth mentioning that, while keeping workers' rights at the forefront, contractility and relative disposition can still be seen as competing ideas. A very glaring example of this is the birth of the new labour code in Hungarian legislation and the codification process that preceded it. While the previous code rested on the ground of relative dispositivity, the new code already operates with the main means of the idea of contractality. See also: Péter SIPKA: *Az új Munka Törvénykönyve felelősségi rendszere, figyelemmel az új Polgári Törvénykönyvre,* Magyar Jog, 2013/12, 735-740. and György KISS: *Koncepcióváltás a magyar munkajogban? Megjegyzések a 2012. évi I. törvényhez,* in: Attila KUN, Attila (ed.): *Az új Munka Törvénykönyve dilemmái c. tudományos konferencia utókiadványa*, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2013, 15.

example of this in this area is the distinction between the service agreement, the engagement contract and the employment relationship. The delimitation according to the aspects (outlined below) points out the main characteristics of each legal relationship, thus shedding light on the cardinal criteria of the employment relationship.

- Duration: An essential feature of employment relationships is that they are based on a lasting relationship, while in the case of the other two types of contract; these are generally not primary considerations.
- Subject: As a general rule, the work must be direct in the employment relationship, while in the case of the other two types of contract we can often find indirect work (e.g. subcontractor)
- Personal obligation: In the employment relationship, contractual performance can only be performed in person, the work is based on the employee's personal abilities, while in the other two types of contract, and the assistance of a third party may be used by the agreement of the parties.
- Right to instruct: In the employment relationship, the employer has an extremely wide right of control and instruction, and although these rights can be found in civil law relationships, they are far from the same extent.
- Legal effect of performance: Given that the purpose of the employment relationship is a permanent legal relationship, so performance does not terminate the legal relationship, while in the case of the other two types of contract it may change, this issue depends on the agreement of the parties.
- Working hours: In an employment relationship, working and rest time is a very strictly regulated area, thus guaranteeing fair working conditions. In civil law contracts, the time limit for performance is decisive, and the associated working time is irrelevant.
- Tools: In an employment relationship, the basic obligation of the employer is to provide the means necessary to perform the work, while in the other two cases the contractors are obliged to perform their duties with their own means.
- Remuneration: In the event that the employee performs work for and for the benefit of the employer, the employer is obliged to pay the wages specified in the employment contract; the mere fact of the work justifies the wage claim. In the case of civil law relationships, we usually encounter a performance-based payment obligation.
- Termination: As it follows from the above, the employment relationship is not terminated by the performance of the contract, so the termination of the employment relationship due to an external cause or the will of the parties may be terminated.

In addition to all this, it is necessary to talk about the factor that rather defines the image of employment, the so-called (economically and personally) dependent work. According to KISS: „One generally accepted definition is an individual worker dependence is the premise of labour law. However, the question is what the basis of dependency is, and we need to answer the question that dependent and self-employed work has the same content. At the time of the development of labour law, dependence clearly meant economic dependence, coercion and the associated vulnerability. The workforce's economic dependence of the person making it available, not only in general but also specifically expressed in this relationship with the exploiter of his labour"[9] According to KISS, this theory is now supplemented by SINZHEIMER's theory[10] of personal dependency, according to which, in addition to their performance, employees also make their personalities available to their employer, so that a new dimension of dependency can be felt.

3. Introduction to international and EU labour and social law (social policy)

Labour and social law rules are, in general, predominant in each country's own national legal order. This is primarily due to the important economic and social interests, which are adapted to the specific characteristics of the labour market with national attributes, but functioning and regulation of the market and the issues of social security following them are primarily relevant within each state.[11] Consequently, the rules of each national employment and social security system show little similarities in many cases, even if, on a regional basis, certain principles or regulative formulas return (e.g. in the legal system of the European Union).[12]

This regulatory diversity is somewhat sophisticated by the universally regulated transparent human rights aspect that permeates labour law, since a number of entitlements play a key role in this area, which are independent of national law in terms of their history and basic rules (right to work, freedom of association, social security, etc.).[13] These principles and rights appear at the national level, more precisely, above it, and in each case the scene of this is a supranational regulatory methodology or institutional system.

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[9] György KISS: *1. § A munkajog fogalma*, in: György KISS (ed.): *Munkajog*, Dialóg Campus, Budapest, 2020, 21-22.
[10] Hugo SINZHEIMER: *Über der Grundgedanken und die Möglichkeit eines einheitliches Arbeitsrechtes für Deutschland* (1914). In KAHN-FEUND Otto – RAMM Thilo Hrsg.: *Arbeitsrecht und Rechtssoziologie*. Frankfurt am Main, pp. 35–61.
[11] Jean-Michel SERVAIS: *International Labour Law (Sixth Edition)*, Wolters Law International BV, The Netherlands, 2020, General Introduction.
[12] Catherine BARNARD: *EU Employment Law (Fourth Edition)*, Oxford University Press, Oxford, 2012, 33-38.
[13] Colm O'CINNEIDE: *The Right to Work in International Human Rights Law*, in: Virginia MANTOUVALOU (ed.): *The Right to Work. Legal and Philosophical Perspectives*, Hart Publishing, Oxford – Portland, Oregon, 2015, 99-106.

Within the framework of the present analysis, the International Labour Organization (hereinafter: ILO) as an arena of international labour law standards and the social policy regulation of the European Union will be discussed which also contains fundamental labour and social law rules on a supranational basis, however, with a limited regional dimension. We will also examine briefly the fundamental context of these areas, including the specialities of international labour law and the impact of EU labour and social law on the Member States' labour law structures.

4. The international side of labour law

A special duality can be observed in the field of labour law regulation when examining the national and international character of the individual norms and rules. On the one hand, due to the already mentioned market and social peculiarities, labour law regulations can be interpreted and applied primarily within the framework of one state, that is, according to the characteristics of national legal systems. On the other hand, nowadays work, working, the economic activity that requires regulation, have become cross-border, international, and it is common in everyday economic practice that work is characterised by some international element.[14] This can cover the personal circle, the location, the way of performance, but also the basic technical conditions.

In other words, although the regulation of a typically national character is prevalent nowdays in the world of labour law, the internationalisation and globalisation of work and the market make it inevitable to apply common regulatory standards prevalent in an international context. Moreover, the international elements of working are not necessarily limited to physical or geographical aspects, as predictability and transparency are important in all respects in the economy, that is, finally, it is inevitable that certain regulatory elements appear, albeit not uniformly, but at least in a similar way, among labour and social law rules.

Looking at the issue from another point of view, it is important that in connection with labour law regulations that are fundamentally rooted in human rights and fundamental freedoms, it is practically inevitable to talk about certain principles and minimum standards that are independent of national laws.[15]

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[14] Gábor KÁRTYÁS: *A munkajog mint versenytényező – az alkalmazandó munkajog meghatározása nemzetközi tényállásoknál, különös tekintettel a kiküldetésekre*, Munkajog, 2019/1, 1-3.
[15] Katalin SZAMEL: *Szociális jogok*, in: Vanda LAMM (szerk.): *Emberi Jogi Enciklopédia*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018 (szerk.): *i.m.*, 664-666.

For example, if we think about the prohibition of slavery and forced labour as a fundamental rule of international labour law (human rights law),[16] then inevitably a kind of common approach, a unified system of expectations comes to mind,[17] rather than any regulatory differences that may be present in each national legal system. These international standards are summarised in ILO conventions, recommendations and other documents,[18] so we will also talk about these in the following.

The ILO has a system of principles and guarantees that has been formed over about a 100 years and is becoming more and more extensive today, and is essentially based on the need to have fundamental social and economic interests that are essential for workers anywhere in the world, in any economic or social setting, in any type of work. However, these common interests and needs should in any case be regulated in a uniform manner, at least in accordance with a system of uniform principles,[19] and it is necessary to formulate it as covenant for as many countries as possible.

If we look at the labour standards developed by the ILO, we are confronted, on the one hand, that the ILO regulates essentially all important aspects of work and the status of workers in some way, and, on the other hand, it is clear that these minimum standards are really limited to a certain level, namely, to the lowest, minimum level. It is not the intention of the ILO to act as a kind of rigid structure for formal judicial redress, that is, it seeks to establish common minimum standards on key issues, at the same time disseminating them as widely as possible, but its conventions and recommendations are based on the principle that the ILO Members may raise these standards. In fact, there are several areas of regulation in which the ILO primarily expects development and a higher level of protection standards recording the need for a kind of progressive legal development process (e.g. ILO Convention No. 102, which lays down non-regression in the context of social security rights).

Thus, the defining international element in labour law can also be described as a kind of common, universal level of expectations, one on which individual states can confidently rely when regulating the most important labour law issues, since the ILO and some of its legal instruments also expect national regulatory autonomy and further development, as well as stronger legal protection.

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[16] József HAJDÚ József: *Rabszolgaság és kényszermunka tilalma*, in: LAMM (szerk.): *op. cit.*, 622-624.
[17] Lee SWEPSTON: *Forced and compulsory labour in international human rights law*, Working Paper, International Labour Organization, 2014, 5-9. https://www.ilo.org/global/topics/forced-labour/publications/WCMS_342966/lang--en/index.htm (29 March 2022).
[18] Jean-Michel SERVAIS – Valérie VAN GOETHEM: *International Labour Organization (ILO)*, Kluwer Law International BV, The Netherlands, 2016, 53-100.
[19] Antonio GARCIA-MUÑOZ ALHAMBRA – Beryl TER HAAR – Attila KUN: *Harnessing Public Institutions for Labour Law Enforcement Embedding a Transnational Labour Inspectorate within the ILO*, International Organizations Law Review, 2020, 235-238. https://brill.com/view/journals/iolr/17/1/article-p233_233.xml?language=en (29 March 2022).

5. Key areas of labour law in ILO conventions and recommendations

Although many countries are members of the ILO,[20] and its most important conventions are generally ratified by most states, but even universal labour law standards of human rights origin do not necessarily appear in the law of all countries, at least not necessarily in the form prescribed by the ILO. Accordingly, we must also bear in mind the principle that the ILO's rule material and regulatory system, which builds minimum standards, can be uniform only to a certain degree. Regarding the purpose of the ILO and certain regulations the series of conventions and recommendations reflect unity, since essentially its content legitimates ILO itself, constructing an ”international labour law corpus”. At the same time, if we examine the ILO standards from a distance, bearing in mind their significance beyond themselves, the picture is much more diverse, as there are significant regulatory differences even between the states that have ratified, say, the same 30 ILO core conventions. In this context, we still need to talk more about a uniform system of national labour law, but these are generally reflected in the ILO's international standards in some way.

In view of the above restrictions, we can therefore speak of a large number of ILO conventions and recommendations, not all of which have been ratified by all ILO Members. According to the current ILO register, we need to talk about 190 conventions and 206 recommendations (latest: 2019),[21] which is a large number, even if not all of them are in force either due to obsolescence or overlapping content between different sources of law (e.g. modifications, revisions).

At the same time, despite the outstanding number of conventions and recommendations, it is possible to form groups between them in a relatively transparent and consistent manner, since despite the extensive work of the ILO, the key elements of the work and the employment relationship are always in the focus of law making. Moreover, the conventions and recommendations are so wide-ranging that the labour market and employment policy,[22] social security rights,[23] legal protection of wages,[24] and also, in addition to specific substantive issues concerning employment, additional individual and collective

[20] As of March 2022, 187 countries are members of the ILO.
[21] https://www.ilo.org/global/standards/lang--en/index.htm (27 March 2022).
[22] ILO Convention no. 122 (employment policy), ILO Recommendation no. 198 (employment relationship) and ILO Recommendation no. 205 (employment and decent work).
[23] ILO Convention no. 102 (social security minimum standards), ILO Convention no. 118 (equality of treatment in social security) and ILO Recommendation no. 202 (social protection floors).
[24] ILO Convention no. 95 (protection of wages), ILO Convention no. 131 (minimum wage fixing) and ILO Convention no. 173 (employer’s insolvency).

labour rights or fundamental human rights requirements such as the prohibition of slavery and forced labour[25] or prohibition of child labour,[26] appear in both conventions and recommendations. Not to mention the innovative or even unusual topics, which in a given form may not be typical elements of a national labour law system, but are still important on international level (naturally, in this case, a small number of ratifications to a given convention can easily occur).

The ILO's own register distinguishes the following labour standards topics:[27]

- freedom of association,
- collective bargaining,
- forced labour,
- child labour,
- equal opportunities and equal treatmnet,
- tripartite conciliation,
- labour administration,
- labour inspection,
- employment policy,
- employment promotion,
- vocational guidance and training,
- employment security,
- wages,
- working time,
- occupational safety and health,
- social security,
- maternity protection,
- social policy,
- migrant workers,
- HIV/AIDS,
- seafarers,
- fishers,

[25] ILO Convention no. 29 (forced labour), ILO Convention no. 105 (abolition of forced labour) and ILO and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).
[26] ILO Convention no. 138 (minimum age) and ILO Convention no. 182 (worst forms of child labour).
[27] https://www.ilo.org/global/standards/lang--en/index.htm (27 March 2022).

- dock workers,
- indigenous and tribal peoples,
- other specific categories of workers (domestic workers, plantation workers, nursing personnel, hotel and restaurant workers, home workers).

6. Brief overview of some conventions of key importance

In the following, we sum up some of the key ILO conventions' essential articles and paragraphs along with some short comments on the importance and meaning of the given international labour and social law standards.

6.1. Collective labour law and industrial relations

Based on the following cited conventions it can be stated in general that the ILO have universal standards in every major field of collective labour law and industrial relations. As the key aspects of collective labour law[28] these international regulations include the freedom of association, the legal guarantees of trade unions, employee involvement, collective bargainings and the fundamental right to conclude collective agreements.[29]

It can also be seen that the ILO conventions set the obligations for the members in a way to ensure all these rights in the most efficient way possible. This way all these rights become easy for both employers and employees – including trade unions, work councils, etc. – to exercise through effective legal protection measures. Although, actual and detailed criteria can hardly be found among these principles, it is important that the Members – including the Member States of the EU – guarantee all these rights in their national labour law systems, focusing not only on the regulations themselves but on the enforcement of the collective labour rights as well.

6.1.1. C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

"Article 2

[28] Beryl TER HAAR – Attila KUN: *Introduction to EU Collective Labour Law*, in: Beryl TER HAAR – Attila KUN (eds.): *EU Collective Labour Law*, Edward Elgar Publishing, Cheltenham, 2022, 1-4.
[29] Tamás PRUGBERGER – György NÁDAS: *Európai és magyar összehasonlító kollektív munkajog*, Wolters Kluwer, Budapest, 2015, 15-30.

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."

"Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

"Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority."

"Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers."

"Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise."

6.1.2. C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

"Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.”

“Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.”

6.1.3. C135 - Workers' Representatives Convention, 1971 (No. 135)

“Article 1

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.”

“Article 2

1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.
2. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.
3. The granting of such facilities shall not impair the efficient operation of the undertaking concerned.”

“Article 3

For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are--

(a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned."

6.1.4. C154 - Collective Bargaining Convention, 1981 (No. 154)

"Article 1

1. This Convention applies to all branches of economic activity."

"Article 2

For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations."

"Article 3

1. Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term collective bargaining shall also extend, for the purpose of this Convention, to negotiations with these representatives.

2. Where, in pursuance of paragraph 1 of this Article, the term collective bargaining also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned."

6.2. Equal employment and anti-discrimination law

Regarding the guarantees of equal employment and equal opportunities in the labour market it is significant that the ILO have some general standards focusing on anti-discrimination law as a whole and at the same time also have universal guarantees focusing on the principle of equal pay between women

and men. Furthermore, regarding the latter, the ILO regulates the standards not only in the case equal work but regarding work of equal value as well and expect the ILO Members to regulate this fundamental legal guarantee on the highest level possible in their legal systems.

Nevertheless, national legislations are bound by other international obligations in this field – e.g. human rights standards or EU law regulations – it is of high importance that the idea of equality and anti-discrimination has been present for a very long time and is emphasised on a high level in the structure of international labour law. Labour market equality between female and male workers is and has been the flagship of these regulations.

6.2.1. C100 - Equal Remuneration Convention, 1951 (No. 100)

“Article 1

For the purpose of this Convention--

(a) the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.”

“Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of--

- (a) national laws or regulations;
- (b) legally established or recognised machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.”

“Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value."

6.2.2. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

"Article 1

1. For the purpose of this Convention the term discrimination includes--

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment."

"Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

6.3. C122 - Employment Policy Convention, 1964 (No. 122)

We mentioned previously that the ILO standards are not limited by the traditional framework of the employment relationship and they exist not exclusively in the territory of the right to social security. The reason for this is that the ILO standards include norms not only related to the concept of the employment

relationship or the employees' legal status but to employment and labour market policies, too. They focus on the stability and development of employment in general. The effective and real employment promotion can be achieved through the right to work along with some special national economic and social policies focused on eliminating unemployment and achieving the possible highest and stable level of employment. These policies are primarily relevant at national level but the ILO have created such fundamental and essential criteria and principles that need to be respected by every ILO Member in their labour market and employment policy structures (active state policies, active support, effective job seeking, etc.).

"Article 1

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that--

- (a) there is work for all who are available for and seeking work;
- (b) such work is as productive as possible;
- (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices."

"Article 2

Each Member shall, by such methods and to such extent as may be appropriate under national conditions--

(a) decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1;

(b) take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures."

6.4. Wages and minimum wages

6.4.1. C095 - Protection of Wages Convention, 1949 (No. 95)

Wages and any kind of payment that the employee receives in exchange for her/his work are essential elements of every kind of employment relationship, including the wages' scale, legal guarantees and the way they are paid.[30] The ILO regulate the definition of "wages", which aims at guaranteeing the broad interpretation of the concept based on the convention mentioned above. As a consequence, the Members are also obliged to create regulations that focus on the broad interpretation and the proper legal protection at the same time. In every important aspect, it is essential to protect the employees' fundamental right in this regard, focusing on the broad concept mentioned; e.g. the principle of equal pay for equal work is an important guarantee.

"Article 1
In this Convention, the term wages means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered."

"Article 3
1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.
2. The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned."

6.4.2. C131 - Minimum Wage Fixing Convention, 1970 (No. 131)

The convention on fixing minimum wages support the effective legal protection of wages focusing on some essential economic and social interests and needs of the whole labour market, especially the employees. The aim of the convention is to guarantee that the ILO Members maintain a labour market system that guarantees the lowest level of wages for everyone working without any further criteria. These guarantees are national legal system-specific regulations because only this way can countries guarantee the effectiveness of this kind of regulation. However, the international standards of the ILO serve as

[30] György KISS: *13. § A munka díjazása*, in: KISS (ed.): *op. cit.* 237-238. and 251-252.

special guidelines for the most part for all ILO Members ratifying these conventions, therefore the guarantees of minimum wages are one of the most essential part of most labour law systems nowadays, although being one of the most traditional element of employment policy at the same time.

“Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.”

“Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.”

“Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”

6.5. C047 - Forty-Hour Week Convention, 1935 (No. 47)

[Ide írhat]

Similar to wages the regulation of working time and rest periods is an essential part of the fundamental guarantees in labour law. Regarding these norms, the national labour law regulations are in the foreground but the universal standards formulated by the ILO are also very clear and significant. Setting the maximum amount of working time and the minimum amount of rest periods are present in every labour law system and these two aspects always go hand in hand. Of course, the special and detailed rules can differ based on the various priorities of the different national labour law systems.

"Article 1

Each Member of the International Labour Organisation which ratifies this Convention declares its approval of--

(a) the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence; and

(b) the taking or facilitating of such measures as may be judged appropriate to secure this end;

and undertakes to apply this principle to classes of employment in accordance with the detailed provision to be prescribed by such separate Conventions as are ratified by that Member."

6.6. C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Connected to the previously mentioned conventions it is obvious that one of the employers' main obligations is to ensure occupational safety and health for all employees. Based on the relevant ILO convention this obligation must be interpreted widely and it is up to the national law makers to create the details of this system and to make it possible to enforce effectively this right as well. However, the principles focusing on the workplace safety of the employees have to be respected by the states and employers alike and the essence of these norms are common thanks to the ILO standards.

"Article 2

1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

- 2. Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health."

[Ide írhat]

“Article 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.
2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.
3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.”

7. Connection between ILO labour standards and EU labour and social law (social policy)

Regarding that all EU Member States are members of the ILO and are parties to the vast majority of key conventions, at the legislative and enforcement level there is no direct link between ILO minimum standards and EU social policy regulations. On the one hand, the ILO's minimum standards, incorporated into the law of the Member States, are ultimately present in EU law, on the other hand, specific labour and social law rules took and still takes them as a basis. In other words, there is no direct relationship, but an indirect relationship exists between the two systems of norms. Moreover, where appropriate, the Court of Justice of the European Union (hereinafter: CJEU) itself may refer to certain internationally recognised labour and social law standards, but overall they can only reinforce the relevant rules and principles of EU law.

In other words, there is a substantive connection between these rules, but there is no formal, legal source-level link. At the same time, ILO conventions are binding in the law of all Member States as legal sources of international law, but not based on the ”own right” of the European integration, but through the legislation of the Member States.

8. Legal and institutional system of labour law in the European Union

In the previous chapters, we examined the drivers of the development of labour law and the justification of the independent legal status of those employed, along with the international standards of labour and social law. The next section deals with the fundamental rights of workers and the institutions

guaranteeing them, as well as the international and national documents that contain them, which can be considered as a practical manifestation of the protection provided by labour law, highlighting the special status of workers.

When Community law was established, four fundamental principles were taken into account. The free movement of goods, services, capital and labour within the EU is still a fundamental part of European Union law. It follows from the free movement of labour within its borders that economic disparities between the Member States must be resolved. In view of the fact that European unity has been expanding continuously since its establishment, its expansion also entails the recruitment of states whose historical past is not at all characterized by economic and political structures based on the Western model. For example, with the recruitment of the former Soviet Member States, there were clear differences within the European Community, which did not leave the community's labour market untouched.

Thus, labour law, as such, has a very extensive system of sources of law within the EU. These sources of law include those with a real imperative character, as well as those that seek to improve the conditions of community employment at a mere recommendation level. Further grouping within imperative rules is possible, so we distinguish between framework rules and standards that impose obligations on all Member States at Community level. Thus, the EU legal system of labour law can be described as follows.

8.1. Binding rules

8.1.1. The most important labour law provisions of the basic treaties

They are also known as primary sources of law. Their aim is to define the fundamental values of the Union. The so-called secondary sources of law created by individual institutions (e.g. Council, Parliament) can be derived from this.

a) TEU. (Treaty of the European Union):

TEU 3. These are best suited to the general objective of the Union, but the result achieved by labour law standards is ultimately derived from this.

b) TFEU (Treaty of the Functioning of the EU):

- As a result of the free movement of labour, ensuring the free movement of workers is also a requirement that is regulated at the level of primary sources of law in the European Union [TFEU] Article 46(1)].

- It also follows from the freedom of labour and employment and the prohibition of discrimination, i.e. that it is not possible to distinguish between workers within the European Union. [TFEU] Article 46(2)].
- Granting the right of residence in view of employment [TFEU] Article 46(3)].
- Establish a harmonised system for flexible and competitive labour market services with skilled labour [TFEU] Article 145].
- Respect for and promotion of the rights enshrined in the European Social Charter, such as the establishment of adequate social protection, the achievement of high employment, the establishment and maintenance of dialogue between the social partners [TFEU]. Article 151].
- The European Union has supportive and complementary powers in the field of social policy and employment in order to ensure that the following conditions are fully applied at Member State level:

- "in particular, improving the working environment in order to protect the health and safety of workers;
- working conditions;
- social security and social protection of workers;
- the protection of workers in the event of termination of their employment;
- informing workers and listening to their opinions;
- the representation and collective protection of the interests of workers and employers,
- the conditions for the employment of third-country nationals lawfully residing in the territory of the Union;
- to allow persons excluded from the labour market to integrate without prejudice to Article 166;
- equal opportunities for men and women in the labour market and equal treatment in the workplace;
- combating social exclusion;
- modernisation of social protection systems"[31]

(c) Charter of Fundamental Rights of the European Union:
- Freedom of employment and guarantee of the right to free choice of occupation [Article 15(1)].
- Guaranteeing the right to find a job, to work, to settle and to provide services freely [Article 15(2)].
- Nationals of a country outside the European Union, if they hold a work permit, can work in the EU under the same rights as EU citizens [Article 15(3)].
- Ensuring workers' right to information and consultation [Article 27 of the Charter of Fundamental Rights].

[31] TFEU. Article 153(1)(a) — (k)

- Guaranteeing the right to collective bargaining and collective claims and strikes [Article 28 of the Charter of Fundamental Rights].
- Guaranteeing the right to use the so-called employment agency services to facilitate free employment policy system [Article 29 of the Charter of Fundamental Rights].
- Ensuring adequate protection against unjustified dismissals [Article 30 of the Charter of Fundamental Rights].
- Ensuring decent working conditions, such as the right to daily and weekly rest periods and the guarantee of annual paid leave [Article 31 of the Charter of Fundamental Rights].
- Ensuring the protection of young workers at work, prohibition of child labour [Article 32 of the Charter of Fundamental Rights].
- Appropriate protection for the family at work, including protection against dismissals due to childbearing [Article 33 of the Charter of Fundamental Rights].
- Ensuring an adequate social welfare system [Article 34 of the Charter of Fundamental Rights].

8.1.2. The most important secondary sources of EU labour law

The TFEU Article 153 gives the legislative bodies of the Union (Parliament, Council of Ministers) the power to draft framework, binding legislation that the Member States must transpose into their own internal legal systems. This is how EU labour law becomes an immanent part of the labour law systems in the Member States. These laws are called directives, the most important of which are the following.

- Directive 2003/88/EC on certain aspects of the organisation of working time, which sets out, inter alia, the minimum conditions to be borne by Member States when creating national rules for night work, weekly rest periods and annual leave. It limits the ability to work overtime, maximizes the amount of time you can do when working at night.
- Directive 83/391/EC introducing measures to encourage improvements in the safety and health of workers at work, which laid down binding rules for the legislative bodies of the Member States in the field of occupational safety and health.[32]
- Directive 2008/104/EC on temporary agency work, which contains binding rules for transposition, such as the requirement of equal treatment and access to vocational training, in order to improve the working conditions of workers in temporary employment as an atypical employment relationship.

[32] Dóra TAKÁCS – Márton Leó ZACCARIA: *Hatékony és tényleges? Munkajogi irányelvek vizsgálata a Kúria joggyakorlatában, figyelemmel a munkavállalói igényérvényesítésre*, Pro Futuro 2021/3, 199-200.

- Directive 96/71/EC on the posting of workers in the context of the provision of services, also known as the Posting Directive, which lays down essential requirements for the working conditions of a worker seconded to another Member State for work purposes, namely, posted workers may be employed under the same conditions as other workers in the seconded Member State. They shall be provided with the rules on working time and rest periods and leave in the host Member State.
- Directive 2001/23/EC on the approximation of the laws of the Member States relating to the protection of workers' rights in the event of the transfer of undertakings, shops or parts thereof, also known as the Transfer Directive, which lays down rules for the Member States to be followed and transposed in the event of a change in the person of the employer.
- Directives on equal employment, i.e. Directives 2006/54/EC and 2000/78/EC, which provide for the requirement of equal treatment within employment relations within the Member States and within the European Union. Interestingly, the fulfilment of the requirement of these Directives was reflected in the programme of the ILO.[33]

It is interesting that in the field of social law closely related to labour law, which is essentially the competence of a Member State to make rules within the legal branch, it contains regulatory provisions, i.e. imperative provisions binding on the Member States without transposing the rules contained therein. Regulation (EC) No 883/2004 on the coordination of social security systems with EEA relevance, intended to harmonise the social systems of each Member State, with the aim of making certain insurance-based benefits (e.g. pensions, health benefits, unemployment benefits) available to EU citizens independently of a Member State under the same conditions as the nationals of that State are insured.

In addition, the law to be regarded as the guiding law in the case of certain contractual relations has also been regulated at the level of regulations in the interpretation and enforcement of the given contract provision. Regulation (EC) No 593/2008 on the law applicable to contractual obligations, also known as Regulation Rome I. In Articles 8, 9 the rules that apply to individual employment contracts are laid down. It is important that the so-called imperative provisions provided in Article 9 override the elective right for some public interest reason. Thus, for this public interest, the provisions relating to that country should apply certain points of the contract where the worker works.

8.2. Non-binding sources of EU labour law

[33] ILO Convention No. 100.

Within the European Union, many of these laws can be discovered, especially in the field of social law. This is because the establishment of national rules on social care systems remains the responsibility of that state, so that the Union can only make recommendations on what circumstances it believes should be implemented when creating such instruments.

One of the most important recommendations is the European Pillar of Social Rights, which contains 20 principles. In the EU's view, the existence of these 20 principles is necessary in order social rights to be enforced as widely and as strongly as possible. These principles can be divided into three main groups, which are as follows:

(a) Equal opportunities and access to the labour market (e.g. education, training; equal opportunities)
(b) Fair working conditions (e.g. safe and flexible employment; work-life balance)
(c) Social protection and social inclusion (e.g. minimum income; unemployment benefits)