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The Development of the Hungarian Labour and Public Service Laws After the Regime Change



Summary

The first Hungarian government that took office after the change of regime was also the first in the post-communist region to codify regulations similar to the West-European labour and public service law. The intent of the new Hungarian codification was to reconcile employers' and employees' interests. Hungary joined the European Union on 1 May, 2004. In the course of the accession negotiations, many labour law directives were incorporated into Hungarian law and order. Therefore, our labour law regulations could be regarded as EU-compliant. When the legislature re-codified labour law in 2012, the aim was to confront international economic challenges so as to make labour law regulations more flexible and increase employment and economic growth. Meanwhile, significant modifications in the public sector directly served this goal by establishing a new life and career model for civil and public servants.

Journal of Economic Literature (JEL) codes: K19, K31, K40

Keywords: labour law, law for public servants, law for civil servants, labour law relations, collective labour law

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HISTORICAL BACKGROUND

Prior to the 1990 regime change in Hungary and in the subsequent year, Act II of 1967 served as the Labour Code, which regulated only the individual labour law and labour relations to include not only the regulations of economic life, but also those relating to the labour relations of civil and public servants. The main reason for this was that most companies were owned by the state and according to the prevailing ideology at the time, the lowest level of economic administration was the state company (Ficzere, 1970, p. 87). Therefore, state company employees were actually civil servants, as well. Only employees of worker cooperatives did not belong there. Their membership was regulated by Chapter VIII of the Act III of 1967 on Agricultural Cooperatives. In the case of industrial cooperatives, the “Employment Rules” were prepared by each industrial cooperative, based on the sample employment rules. Such regulations were issued by the National Association of Industrial Cooperatives and approved at their general meetings. The general theory upon which cooperative membership was based consisted of three elements: membership in the organisation, financial membership, and membership according to personal capacity, which could manifest in the member’s work performance (Hegedűs, 1973, p. 34).

Returning to the formerly operative Labour Code: it did not regulate collective labour law, but rather, included only a short chapter summarizing the status and tasks of trade unions. The trade union’s position depended upon the state, since the National Council of Trade Unions functioned partially as a ministry, and its president was a member of the Council of Ministers. Therefore, trade unions did not protect employees’ interests, but rather, supervised the degree to which employees performed the state’s economic expectations in place for companies and their employees. The fact that there was no need for the protection of employees’ interests was supported by the Soviet jurist, Venediktov’s theory of dual collectives. According to this principle, all state companies are owned by all nationals on the one hand, and by the collective of employees of the company on the other. Theoretically, therefore, no conflict existed between the company’s management and the employees’ collective (Venediktov, 1948, p. 24). As the official labour law theory disclaimed the existence of a labour fight, an act on strikes in socialist countries like Hungary did not exist. With the establishment of alternative trade unions one after the other in the last two years of the communist era, the theory was refuted. Employees resigned from trade unions under the supervision of the National Council of Trade Unions, which they should, in fact, have joined before (by law).

During the two years preceding the regime change, in the spin of events, the government could not foster the introduction of workers’ shares by a separate legal act to entice employees’ interest in economic management. Legislation was passed on the collective framework agreement, which was provided for a longer period of time and foundation on which collective agreements would be made annually, depending on the economic and wage conditions. At this time, alternative trade unions already operated effectively (the Act VII of 1989 on Strike), which was not very successful, was also created (Kenderes et al., 1989; Prugberger and Tatár, 1994).

THE EVALUATION OF THE FIRST LEGAL CODIFICATION OF LABOUR
AND PUBLIC SERVICE LAW AFTER THE REGIME CHANGE

As the first government, led by József Antall, assumed power after the change of regime in 1990, the Minister of Labour and the Minister of Internal Affairs immediately started the re-codification of labour and public service-related legal relations. Act XXII of 1992 on the Labour Code, Act XXIII of 1992 on the Legal Status of Civil Servants (hereinafter Ktv.) and Act XXXIII of 1992 on the Legal Status of Public Servants (hereinafter Kjt.) took effect on 1 July, 2012. This regulatory system of labour and service relations was actually different from the West-European solution: labour law regulation of service relations, while the public service law governed state (public) service relations. According to the Hungarian trichotomy, the public service was divided into two areas: the public servants, who worked for public institutions not exercising authority, fell under the regulations of Kjt., and those who worked for public institutions with authority as officers were within the rubric of Ktv.

The system of labour relations

The Labour Code, which took effect in 1992 and followed the West-European solution, regulated both areas of collective labour law: the law of interest reconciliation (also known as “coalition law”), involving the rights and obligations of trade unions, the national interest reconciliation and the corporate collective agreement, and the law on labour relations in the workplace, pertaining to the system of works councils and the works council agreement. By these collective labour regulations, the Hungarian labour law legislation took the lead in Central and Eastern European post-communist countries, since these states incorporated such legal regulations into their labour codes only later on.

On the other hand, the Hungarian collective labour regulations were rather deficient and mixed in nature. They were imperfect, due to the fact that they regulated only the national interest reconciliation system, but did not involve the sectoral and regional interest reconciliation, the national sectoral and regional collective agreement and the accession criteria to the national interest reconciliation council, operating with a tripartite character (interest representatives of the state, trade unions and the employers). However, they regulated the conditions of concluding corporate collective agreements, namely the representativeness, very democratically. Pursuant to the regulations, if one or more trade unions together (if there were more trade unions, they formed a confederation with the similar ones) had ten percent representation at the works council election alone or altogether, and the candidate of the trade union received more than half the votes in the workers’ council election alone or jointly with the candidates of similar trade unions, the collective bargaining agreement could be concluded. However, if only one of the trade unions operating at a company wanted to conclude a collective bargaining agreement, its candidates had to receive more than sixty-five percent of the votes at the workers’ council election.¹

With regard to the development of the national interest reconciliation system, the following facts merit consideration. The predecessor of the Interest Reconciliation Council regulated in the Labour Code was established by a decision of the Council of Ministers in 1988 (1081/1988. (X. 1.) MT (in Hungarian: *Minisztertanács*, MT) under the name of National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács*, hereinafter OÉT), which was the first tripartite forum of the Hungarian social dialogue. So began the Western type (among independent organisations) institutional dialogue among the government, trade unions and the employers' interest representatives. Trade unions could join the OÉT upon the invitation of the government.

After the regime change, the name of the OÉT was changed. The new government regulated the Interest Reconciliation Council first by its decision No. 3240/1990 as of 12 August, 1990, then the government decision No. 3356/1990 ensured the materials, equipment and staffing resources of the Interest Reconciliation Council (hereinafter ÉT), on the basis of which the ÉT operated without separate statutory legitimacy until the establishment of the OÉT.

The Labour Code of 1992 did not legitimize the ÉT either; it only referred to the settlement of issues relating to labour relations and employment, and the interest reconciliation functions in connection with them relating to the competence of the ÉT (Act XXII of 1992 Section 16). The competence of the ÉT involved three compulsory areas: the minimum wage and salary, the establishment of maximum work periods, and the laying down of rules of collective redundancy different from those of the Labour Code. The ÉT gained general power in deciding national labour law issues. On the other hand, the conditionality of representativeness necessary to join the ÉT was not resolved.

On 21 April, 1999, the ÉT was transferred, unaltered, into the National Labour Council (*Országos Munkaügyi Tanács*, hereinafter OMT). The new government, coalition of the Alliance of Young Democrats (*Fiatal Demokraták Szövetsége*, Fidesz), the Independent Smallholders, Agrarian Workers and Civic Party (*Független Kisgazda-, Földmunkás és Polgári Párt*, FKGP) and the Hungarian Democratic Forum (*Magyar Demokrata Fórum*, MDF), wanted to place interest reconciliation on new grounds. Government decision No. 2301/1998. (XII. 30.) comprised the professional concept of the system of social dialogue. The membership of employers' and employees' interest representatives was attached to representativeness in the national industry by the statutes. Thus, the issue of membership seemed to be resolved. The government introduced a two-level interest reconciliation system. Therefore, in 1999, the Economic Council was established (1999-2004), which took over the OMT's tasks of conciliation relating to economic policy.

The new government was formed in the spring of 2002, the left-liberal coalition, the Hungarian Socialist Party (*Magyar Szocialista Párt*, MSZP) and the Alliance of Free Democrats (*Szabad Demokraták Szövetsége*, SZDSZ) decided on the re-start of interest reconciliation by the government decision No. 1094/2002. (VI. 8.). The agreement on the re-establishment of OÉT was concluded on 26 July, 2002, which

declared the dissolution of OMT, as well. The name of OMT was altered to OÉT in the Labour Code as of 1 September, 2002. The OÉT (as the ÉT before it) appeared in many legal regulations. Moreover, the new government even gave the right of understanding to this consultative, advisory body, which still had no statutory legitimacy. The Constitutional Court (*Alkotmánybíróság*, hereinafter AB) declared this competency of OÉT unconstitutional (40/2005. (X.19.) AB ruling). Therefore, the National Assembly promulgated and passed the Act on the operation of OÉT on 11 December, 2006. The act was not published because the President of the Republic asked for a preliminary ruling from the AB. The President of the Republic regarded the public authority power of the organisations which were members of OÉT unconstitutional, since their authorisation could not be traced back to the majority of voters or even to that of the parties to employment relations. The Constitutional Court ruled the Act unconstitutional and remanded it to the National Assembly for revision. The National Assembly took an extraordinarily long time to set forth the new regulation. Governments did not manage to settle the macro-interest reconciliation on a statutory level for twenty years after the regime change. Therefore, Act LXXIII of 2009 on the National Interest Reconciliation, which took effect as of 20 August, 2009, was a milestone. Though this act was in effect only for two years, it can be regarded as significant in defining the legal frameworks of interest reconciliation.

According to the standpoint of the right-wing, Christian-democratic government with the Fidesz and Christian Democratic People's Party (*Kereszténydemokrata Néppárt*, KDNP) established in the election results of 2010, the OÉT represented only a narrow social layer. In order to achieve a wider social dialogue, it decided to set up a new board and Act XCIII of 2011 established the National Economic and Social Council, which has operated as a multilateral consultative forum ever since.

Concerning the works council, its unique form was introduced by the Labour Code of 1992 on the basis of the German model. However, there is a significant difference between the two models. Whereas the German works council had a comprehensive right to interfere in the employers' decisions (co-decision authority) relating to developing working conditions, determining wages and salaries, safety in the workplace and occupational health, pursuant to the Labour Code of 1992, the co-decision authority of the Hungarian works council is comprised only of the management of the welfare works institutions and it determines the share from the social fund. The works council has had (and until this day possesses) only the right to consult on all other issues, although the employer is not sanctioned for holding to its position. In the works council's electoral system, the system without the participation of trade unions was mixed by the Belgian, Holland, French and Spanish models, where candidates were appointed not by the nomination committee elected by the resigning works council, but by trade unions. The Hungarian regulation introduced a mixed system, where primarily trade unions could nominate directly, though fifty employees could also directly nominate a person (Act XXII of 1992, Section 49 Subsections 3 and 4).

Regulations relating to individual employment relationships

As far as the individual labour law rules of the 1992 Labour Code are concerned, they were in line with the Western European regulatory system that was infused with the concept of the welfare society and state and the social market economy system. The original text of the 1992 Labour Code provided employees with nearly all social minimum safeguards which were ensured by Western European countries for their own employees. However, these labour-related social rights have progressively weakened or narrowed in the course of the amendments of the Labour Code.

The first major modification took place in 1995, when the smaller amount of “absence allowance” was introduced instead of the average wage allowance for all legitimate absences of the employee from work (leave, sick-leave, fulfillment of civic duty, etc.). At the same time, the general rule protecting employees (which provided that, in the same work week, overtime could not reach four hours and was limited to two) was abolished.

Then, with the comprehensive amendment of 2001, it became possible for an employee to have unusual work hours more than forty-eight hours per week, if this was justified by technology or economic interest. The weekly overtime limit was abolished, and limited to two hundred fifty working hours per year, which could be raised up to three hundred hours by a collective bargaining agreement. “The framework of working time” (frame of reference), which could be a maximum of six months pursuant to the EU directive, was introduced by the amendment of 2001, such that without a collective bargaining agreement, the working time limit could be four months. However, it could be extended up to six months, if a collective bargaining agreement was concluded. In contrast, the old EU Member States limited the framework of working time to one month.

Another deficiency in Hungarian labour law regulations occurred because according to the Hungarian Labour Code, only twenty percent of normal pay should be tendered for standby and forty percent for on-call duty. In contrast, the European Court of Justice ruled on numerous occasions that on-call, onsite work (NZA, 2000, pp. 1227-1228; NZA, 2004, pp. 164-170; Prugberger and Nádas, 2014, p. 230) (which, in some cases, involved standby, as well) constituted normal working hours with normal remuneration (Zaccaria, 2013, pp. 131-140; Fodor, 2016; Sipka and Zaccaria, 2016).

Unlike the Franco-Latin states, but similar to the German labour law, the Labour Code of 1992 did not permit the unilateral final amendment to the employment contract. However, the employer had the opportunity to transfer his employee to another company in a long-term ownership or in the case of an economic merger with him, and to assign him to a different job, plant or plant section within his own company, as a substitute employee. Alternatively, the company could outsource the employee within his own company or to another company. Each of the employees could not exceed forty-four working days per year, and altogether one hundred and ten working days a year. Moreover, the code provided the employer with the opportunity to

lend out his steady employee to another employer for two months maximum, in case of a reduction order, for example, thus avoiding termination of employment for that individual. However, Hungarian employers could abuse their position, since Hungary did not adopt the Western European States' requirement that an employment contract exceeding the period of one month required the approval of the labour office or works council.

Regarding the employer's termination of the employment relationship, the Labour Code of 1992 took over the Western European solutions of protection against dismissal (reasoning for termination, period of notice, redundancy payments). There is only one worrying restriction relating to collective redundancies, which is not typical of the old Member States, despite the adoption of interim constraints introduced by directive amendments. Prior to the amendment to the directive, if the employer had planned to dismiss five persons from a plant with ten major employees, a collective redundancy case occurred. After the amendment to the directive, it changed so that if an employer dismissed ten persons from a plant employing twenty workers, the collective redundancy criterion became valid. In this case, the employer had to invite the works council to join a thirty-day negotiation period before the planned termination. If a works council did not exist, the trade union having representatives at the company and the representative of the labour office would be involved.

Pursuant to the directive, this negotiation period was thirty days, which could be extended by more than said time in more complex cases, while in easier cases, it could be shortened by fifteen days. In Germany and France, it is stipulated that the employer must prepare a social plan for this negotiation and he can only dismiss a worker in a socially justifiable case. The majority of the continental Western European states use this rule without its stipulation, and did not take over the fast-paced "seniority" principle suggested by the IMF, according to which those who became employees later would go first in case of redundancy (Birk, 1997). The IMF and the EU wanted to extend this principle to the new Central European Member States. However, ultimately, there was a compromise, according to which the period of negotiation was determined in fifteen days in accordance with the amendment to the directive, which could be extended up to thirty days, during which period, efforts had to be made in the course of the negotiations to send as few workers as possible (Prugberger, 2008). However, contrary to the Romanian *Codul Muncii* (Labour Code) (Kokoly, 2006, p. 758), the Hungarian regulation does not state that if the company is economically restored and there is a need for hiring employees, the dismissed employees have a priority right to employment within a year.

It is also necessary to mention that the original text of the Act of 1992 stipulated that as a sanction for unlawful employers' dismissals, the employee must be paid an average salary from the redundancy until the final reassigning judgment was made and in addition, the employer must pay compensatory damages to the employee, resulting from the unlawful dismissal. In case the employer or the employee did not want reinstatement, in addition to any severance pay, the employer could redeem it with

an amount equal to twelve months' severance pay. However, an amendment to the Labour Code later modified this rule, and the extent of severance pay was determined by judicial discretion in the amount of two to twelve months' severance pay.

Regulations applying to the public sector

As mentioned earlier, the public service in Hungary was regulated by two separate acts since 1992. All employees of public institutions not exercising authority, regardless of whether they were administrative, case management or physical workers, were regarded as public servants. In this respect, the Franco-Latin effect is emulated. Originally, in a similar way, everyone who worked for an authority was a civil servant. However, the first government of Viktor Orbán (hereinafter Orbán government), following the German-Austrian model, wanted to keep only the administrators in the status of civil servants under the effect of Ktv. Therefore, the legislation placed case managers and the physical personnel under the effect of the Labour Code from 1 July, 2001. During the administration of Péter Medgyessy (hereinafter Medgyessy government) following the Orbán government, the case managing staff was placed back within the scope of Ktv. Regarding their basic structures, Kjt. and Ktv. resembled much and they still resemble each other. Both legal relationships are established by an appointment. The only differences are that in case of the latter, an oath must be taken, and the personal conditions are different. One could become a civil servant only if one met the requirements of age, Hungarian citizenship, and at least secondary education. In addition, an application system and apprenticeship must be fulfilled, along with the requirement of passing a public administration examination. Today, however, the service relationships of public servants in a higher status are established in the same manner. Originally there was, although not in the Western-European extent,² a relative degree of status security in both cases. If the institution or the job at the institution was abolished, both the public servant and the civil servant had to be tried to be moved to a suitable service place of employment and could only be relieved as a last resort. In this case, both Kjt. and Ktv. stipulated a significantly longer notice period than the Labour Code, and provided a larger amount of severance pay with more favourable conditions. Status security also meant that the service relationships of public servants and civil servants could be terminated only in the event of a serious disciplinary offense with disciplinary proceedings similar to public and civil servants of the Western European countries.³ At the same time, however, in the case of reorganisation, both acts allowed the collective redundancy completely unknown in the Western European public sector, although the working conditions were much more favourable for public servants and civil servants than in the labour law (as already occurred in case of five persons' dismissal, the labour law stipulations of collective redundancy shown earlier had to be applied). However, it should be mentioned as a criticism concerning both public sectors that pursuant to both acts, the appointment of a leader could be withdrawn at any time without cause, later had to be demonstrated upon the public or civil servant's request. This could easily lead to arbitrariness and status uncertainty (e.g. if

the relieved leader could not be classified and transferred, he was removed from the public sector).

Considering the differences, in the public servants' sector, the rules of working hours and those of overtime, together with allowances, coincided with the provisions of the Labour Code. The situation was the same as far as rest periods and leave were concerned. Whereas, Ktv. strictly defined the beginning and the end of the daily work hours, it did not, however, reward overtime, either with an allowance or time off in proportion to overtime. Every year, only some holidays were provided by Ktv. together with "recreational" leave, both of which were abolished later.

The first Orbán government introduced the so-called "chief official" system on a temporary basis, and the civil servants who belonged to this staff received a higher salary as confidential officials, and could be transferred anywhere as required. This institution, however, was eliminated by the Medgyessy government, which replaced the first Orbán government. The leave schemes of the civil servants depended on the classification. Civil servants had two types of classification, one for subordinate civil servants and another for senior civil servants, and the leave of the subordinate and senior civil servants was according to these two categories. The extent of rest leaves was determined by the classification title in case of a subordinate civil servant, while regarding senior civil servants it was defined by the leadership level. All this has not changed fundamentally.

In both the public servants' and the civil servants' sectors, the classification (and accordingly, the salaries) depend primarily on the degree of the qualifications. Second, however, the time spent in public service is taken into account. Nevertheless, the classification system is totally different in the public servants' and the civil servants' sectors. The former resembles the Franco-Latin and the Austrian system, to some extent.

As in the Austrian system, the classification (payment) classes are defined in alphabetical order according to the degree of higher qualification levels, and each class has seventeen (salary) grades, depending on the seniority in grade (Veszprémi, 2012, p. 35).

On the other hand, pursuant to the Ktv., similar to the German solution, civil servants in the position of administrators, have two classification classes, each having eleven (salary) grades, according to whether they have upper or secondary level of qualification (Peine and Heinlein, 1999, pp. 42-60, 105-117). The classification grades and the sub-grades within them are defined by the seniority in grade. Within the classification class of case management there are seven grades. Although there is a significant difference between the two classification systems, an approximation could be made. As regards both public authorities and public institutions without authority, the civil servant classification system could be used in the administrative sector, and as far as the case management and the physical staff are concerned, the public service classification system would be suitable. The classification system for senior officials is essentially the same in both sectors. Only the classification of civil servants should be simplified slightly. In this way, the obstacle to unify the two spheres would be eliminated (Prugberger, 2010, p. 45).

THE EVALUATION OF THE SECOND LEGAL CODIFICATION OF
LABOUR AND PUBLIC SERVICE LAW AFTER THE REGIME CHANGE

The Labour Code of 2012

In 2008-2009, the worst financial and economic crisis of the last eighty years emerged in the world, one of the consequences of which was the rise in unemployment. After the crisis, interest reconciliation and search for consensus became more important. A great emphasis was placed on participation in labour relations and cooperation between the social partners and the state (Lentner and Parragh, 2016). Interest harmonization, realised in line with EU legislation, is an essential basis for stable state operations and sustainable development (Lentner and Parragh, 2017).

The so called “Flexicurity” programme⁴, which includes the need for flexible and reliable contractual provisions, lifelong learning, an active labour market policy, the need to create more flexible social security systems as far as both the international and the national rules are concerned, appeared in the EU’s employment literature already prior to the crisis (Tóth, 2017, p. 620; Jakab, 2017, p. 213). This programme set in motion the debate focusing the issue of the development of labour law, and the birth of the so-called Green Paper is also connected with it (EC, 2016). This was a public debate on how to achieve sustainable growth, more and better job creation in the EU through development in law. The study was published in 2006, and it covered the challenges of the 21st century, too.

In the elaboration of the concept of the new Labour Code, one of the fundamental goals was to incorporate the Green Paper’s recommendations into the internal legal order, to create flexible working conditions, while to safeguarding the social security of workers. Thus, the new Labour Code took into account the international social and economic changes, and moved labour law legislation mainly toward dispositivity. This gives the agreements between the employer and employee, as well as between the trade union and the employer, a more important role in determining the content of the employment relationship and thus, the intervening role of the state is pushed into the background. In general, it can be stated that the legislator’s intention was appropriate for managing the consequences of the emerging economic crisis. However, the social partners see the greater role of dispositivity as a violation of employees’ and collective labour rights.

Significant changes to the new Labour Code, can be noted in the provisions of the Civil Code (*Polgári törvénykönyv*, hereinafter Ptk.), which took effect in 2013, clearly appear in the labour law regulations, and this is particularly apparent in the circle of the general provisions and the rules relating to labour law liability.

The new act gives greater scope to the parties’ agreements, and in the individual section, comprises mostly framework provisions relating to the content of the employment relationship, with the stipulation that the parties may deviate from these rules in the employment contract or the collective bargaining agreement.

The system of legal consequences of unlawful termination of employment has also undergone significant transformation. One of the changes is that the employee can

only ask for restoration of employment in five cases of extremely flagrant breaches (Gyulavári, 2015, p. 227). In the case of unlawful termination, the employee may claim damages, which means much less compensation than before. In the case of damages, the employee may claim a loss of income, but the amount of damages is limited and may not exceed 12 months' payment for periods of absence. The new rules have also taken over the Ptk.'s compensation provisions, according to which an employee is required to seek a new job after his termination of employment and has to present justification in court, as well.

The employer's liability for damages to the employee was amended by the new Labour Code, which partially placed it on new grounds. It introduced the institution of exculpation incorporated in the system of civil law liability in the labour law. This institution also comprises the predictability clause, which may result in the employer's partial exemption from compensation if the damage was not foreseeable at the time when the damage occurred. The other rule, which also facilitates the reduction of the employer's liability for damages, is the regulation which introduces the institution of "control circle", instead of the institution of "operational circle".

The latter is a much wider and objective category, and according to the essence of the regulation, the employer is exempt from liability if the damage was caused by a circumstance outside his control circle. Some authors argue that these amendments may also be a disadvantage for workers in a labour lawsuit (Prugberger and Kenderes, 2013, pp. 393-395).

In the field of labour relations, the essential change relating to collective agreements is that the act restricts the parties' collective bargaining capacity to the smallest extent. The new act substantially amended the rules concerning the conclusion of collective bargaining agreements, according to which the collective agreement can be concluded by the trade union whose membership reaches ten percent of the employees who are employed by the employer. Previously, trade unions' measure of contracting capacity was their success rate at the works council's election.

According to the ministerial reasoning, the legislator hopes that these amendments will significantly increase the activity of interest representation agencies in shaping the world of work, while reducing the unjustified state interference and limiting it to the use of market-based solutions.

Regulation of the legal relations of the public sector after 2010

Following the change of government in the spring of 2010, the new government (2010-2014), which replaced the left-liberal government led by Gordon Bajnai, created the Act LVIII of 2010 on the Legal Status of Government Officials. With this, basically, it negated the civil servants act of 1992 (Ktv.), which was applied only to civil servants employed at local governments afterwards. Subsequently, barely within a year, simultaneously with repealing both the act on government officials and the civil servants act (Ktv.) as of 1 March, 2012, the Act on public servants in public service (Act CXCIX of 2011, hereinafter Kttv.) was completed and took effect. The new act,

having incorporated the act on government officials, comprised the status, rights and obligations of government officials and (parliamentary, president of the republic's, etc.) civil servants employed by "self-governing" institutions independent of the government, and municipal (county and community) civil servants.

Compared to the laws of civil servants of the Western European states, the problematic deviations that have already been mentioned in relation to the Ktv. still remained. Moreover, the status security of civil servants continued to weaken and their dependence on their superior strengthened. Because the new Kttv. stipulated that the civil servant was obliged to be loyal to his superior, however, at the same time, the superior could dismiss the civil servant by the right of "loss of confidence", which might lead to the suppression of constructive criticism and adverse selection. It also weakened the status of the civil servant that the possibility of initiating a disciplinary action against the civil servant at his request by means of which he wanted to clarify unfounded suspicion was left out of the Kttv. At the same time, the position of all civil servants was weakened by the fact that the effective interest reconciliation with the participation of trade unions, the collective civil service law present in Western European countries, was dropped from the Kttv.

In addition, if we compare the rules of Kttv. with the rules of the continental European countries, we can see that the regulation in the Kttv. is not consistent at the level of principle. In continental Western European countries, though the individual levels (central, regional, district and municipal) are regulated by separate acts, the principles of the regulations are uniform. The same cannot be said about the Kttv. Following the general provisions, the Kttv. regulates the status of government officials almost casuistically, after which come the regulations related to the civil servants employed by autonomous institutions, then the legal regulations pertaining to municipal civil servants. However, while the regulations relating to government officials are too detailed and fundamentally based on the previous Labour Code of 1992 (which is advantageous), the stipulations pertaining to municipal civil servants are rather superficial and defective. Therefore, if there is a legal gap in the latter area, the legal practitioner is obliged to apply the rules of government officials on the basis of "internal analogy" (Prugberger and Nádas, 2014, pp. 1-8). In order to avoid recurrences and shortcomings, and for better clarity, it would be appropriate if a part of the general provisions of Kttv. comprising the general rules relating to government officials was created and it would include the general rights and obligations of civil servants, supplemented by the trade unions' interest reconciliation and participation system in institutional councils. After it became the part of special provisions consisting of chapters, including the rights and obligations of government officials, the civil servants employed by national autonomous authorities and special issues concerning municipal civil servants.

Act LII of 2016 on State Officials taking effect as of 1 July, 2016 (hereinafter Áttv.) further divided the regulation of the public sector. The scope of the new act affected government officials, and was extended to them in three steps. First, from 1 July, 2016, employees at the lowest level of public administration: capital city district and county

district officials were taken out of the meaning and purpose of Kttv. and these persons became state officials. Secondly, as of 1 January, 2017, the legal status of employees employed in capital city district and county government offices was converted into state officials' legal status. And finally, the scope of the act will be extended to employees in ministries and central administrative organisations as of 1 January, 2019, thus the Kttv. will practically be a nullity and it will probably be repealed.⁵

According to the ministerial reasoning of the act, there is a need for a new career model in public administration, in which the remuneration is largely based on the quality and efficacy of the official's performance.

The most important and undoubtedly the most striking institution of the new career model is the new pay system, in which promotion depends primarily on performance and not on the time spent in public service (seniority). Officials within the scope of the new act are entitled to higher remuneration than employees of other public administration bodies. However, the rise in the national guaranteed minimum wage and salary in 2017 increased the salary of officials under the intent of the other public service act, so the difference is no longer significant.

With regard to remuneration, taking into account the salary of officials under different laws, the principle of equal pay for equal work may be uncertain according to the opinion of some researchers (Mélypataki, 2017, p. 370).

This new act also includes an in-service training system for officials, essential to the performance of their duties at a high level, on which the remuneration system also depends. This aspect of the act is also a novelty. The aim of the legislature to create customer-friendly public administration and to help everyone to handle their affairs related to public administration as close to their place of residence as possible seems to have been realized. The horizontal growth of tasks and high expectations require the establishment of an extremely well-trained and competent staff, capable of being rehired. This is a challenge for the professionals dealing with the development of public administration.

Regulation relating to public servants after 2010

Kjt. which took effect in 1992, and remained in force even after the change of government in 2010, with certain amendments. However, the comprehensive amendment of the Kjt. in 2012 (Act LXXXVI of 2012) did not address the regulation of the public servants' legal relationship to that of civil servants but to the regulation of the Labour Code.

This is demonstrated by the fact that the comprehensive amendment left out the disciplinary procedure from the Kjt. and instead, it introduced the institution of extraordinary release. On the other hand, it is a positive, and at the same time, significant approach to the Labour Code that the modification of the public servant's employment relationship related to the change in the person of the public employer, similar to the employer's succession in the labour law, and the establishment of employment resulting in the termination of the public servant's legal status were incorporated in the Kjt., too. At the same time, the new act moved away from the Labour

Code when it left out the “collective redundancy-like” special regulation which had to be used in the case of the dismissal of five or more public servants by the employer or in the course of reorganisation of the position, thereby weakening the existential security of public servants.

NOTES

- ¹ Act XXII of 1992 on Labour Code Section 33.
- ² In the Western European states, public servants and civil servants can only be deprived of their jobs by disciplinary proceedings. Cf. Veszprémi, 2012, Chapter 3; Peine and Heinlein, 1999, pp. 109-110.
- ³ Ibid.
- ⁴ See the Commission Communication on the development of common principles of flexicurity: COM(2007) 359. The aim of flexicurity is to ensure that all citizens of the EU can enjoy a high level of employment security, that is, they have the ability to find work and have prospects for employment in a rapidly changing economic environment at all stages of their life until retirement. The aim of flexible security is also to assist both employers and employees in exploiting the benefits of globalization.
- ⁵ Section 37 of Áttv. stipulated that the scope of the Act would apply to government officials of central government departments as of January 1, 2018, however, in September 2017 the legislator changed the target date for January 1, 2019.

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