DIGITALIZATION OF WORK IN THE MIRROR OF LABOUR LAW PRINCIPLES IN HUNGARY

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Abstract
The field of labor law can be characterized primarily as a legal branch regulating personal relations. Of course, this is true for most of the legal branches as well. But fewer legal regulatory fields can tell that there is a relation between the parties with a specific nature of trust. Of course, this is not classic trust, but it is similar. The relation between the employer and the employee usually supposes a relation based on long-term personal contribution in which all the participants have their task, right, and obligation. We are talking about a complex relationship system in which personal nature and stability have an especially important role. I want to illustrate the impact of digitalization on employment through the principles of labor law. To this end, I will focus on the general behavioral requirements of digitalization. I will also explore the meaning of the principles in this changed context. It will be necessary to regulate future forms of employment, but it will also be necessary to find the relevant legal basis. This article seeks to identify these legal bases.

Keywords
AI, Digitalization, Labor Law, Fair Consideration
1. Introduction

The rules of labor law can be found in Act I of 2012 on the Labor Code (hereinafter: LC). Over this, we can also talk about other employment rules. The role of these is rather complimentary, so I will not deal with them in the frames of this study because of voluminous causes. There are rules for the most important life situations developed based on the employment relation, in the form of well-created or less working legal institutions. But the legislator should have prepared for life situations in which the created rules could not help. In these cases, we should turn to the principles. In my opinion, the principles often mean static beside the dynamics of the rules. And solid, strong basics will be needed. The reason for this is the continuous digitalization of our everyday life. Work is a part of our life, so the world of work is also being digitalized. The digitalization of work creates new questions and life situations for which there may be no ready labor law rules. (Top, 2019).

However, principles change slower than the rules, if they even change, so in the intermediate periods when the concrete regulation cannot follow the changes of technological and social relations, principles will help us. This is true, even if labor law principles will rather be considered to be general behavior norms.

2. Literature Review

The importance of the topic marked in the title has come to the focus gradually during my research. I have dealt with the digitalization of work in this current project during the last 1-1.5 years (Mélypataki, 2020), (Mélypataki et al., 2020). The issue of labor law and the digitalization of the labor market is complex in which the relation between new technologies and people should also be examined. (Baranski et al., 2021) Personal space is transposed to the digital space. The demand for digitalization increases significantly, and one of its branches will be the increase of the significance of robots. As I can see, some prognoses about automation (McKinsey Global Institute, 2017) will expire as several companies would like to robotize their working processes partly or completely (Rácz, 2019). Human manpower is one of the weakest points in the developing globalized market (Deloit, 2020), its replacement by machines has started decades ago, and this will just be accelerated by this current situation. But this is only one direction of digitalization. The importance of the use of applications and further phenomena of the gig economy, such as crowd work will have the same importance as well (Tóth, 2017). In the case of
work-on-demand via apps work usually happens in the traditional sense. The significant role of the digital marketplace is in the business between the customer and the service provider (Tóth, 2018). ‘Sharing’, which is based on the optimal utilization of the tools, comes to the foreground in this aspect. Numerous services can be ordered via applications from a taxi to food delivery. Its innovation is that the online platforms connect demand and supply via the application. It brings the market participants closer to each other (Lipták, 2019). This segment has been increased more by the situation caused by the pandemic. During the quarantine period, it has brought a significant increase in the sectors where this model works, especially in the field of food delivery.

The third element of digitalization is the opportunity of the application of artificial intelligence. In this relation, artificial intelligence performs work alone or by robots controlled by it (Jakab & Tóth, 2020). Some working processes happen in the form of completely automated RPA processes (Mélypataki & Juhászné, 2020).

It can be seen from the above that digitalization is a collective concept that will have some impacts on work and therefore, on labor law relations. Classic work will transform in the medium term, and one of its main indicators is the current epidemic situation as well. Although, all the three ways are different and their combination can easily occur as well, but their effect is common. And this effect is that human manpower is becoming more vulnerable. This vulnerability will have a labor law and an employment policy aspect as well. In the frames of this study, I would like to highlight the labor law issues.

3. Methodology

The research was based on an analysis of the written body of labor law and the hierarchical relationship between the parties in labor law relationships. It is this hierarchy which the principles seek to help to overcome. The principles were invented for classical labor law relationships. For this reason, I have chosen the method of analogy analysis, based on which I transpose the classical principles into changed life situations and examine their workability.

4. The Dilemma of the Creation of the Regulatory Frame

The above-mentioned phenomena are complex, which change certain elements of the current social situation. Concepts and factors will change in the labor law relation. Jakan, N. and
Tóth, H. (2020) also point on this in her work cited earlier in which she lists the questions where change is expected:

- Who is the employee?
- Employer structure
- New working relations (Jakab & Tóth, 2020).

The listed questions are naturally basic questions that hold further sub-questions. The dual concept of employee-employer is losing its significance in the digitalized labor market (Vallasek, 2020). Several other values connect between the two extreme values, such as the range of persons with a legal status similar to the employee, or the range of people with a legal status similar to the employer (although this is mentioned less). The employer structure is changing at employers where new technologies are used. It is not necessary to introduce a complicated technology for this, the extension of the home office or teleworking, which has become necessary in the spring of 2020 due to the pandemic, is enough.

New working relations are developing and transforming continuously. Technological development is moving at a fast pace that could not be followed by the legislator at the moment, or it may not want to do so. The legislator should rethink the mottoes of the 20th century and the directions of solidarity as well. Work as the basis of society is remaining important in the future, but the freedom of choice relating to it and solidarity are just as important. Even if we accept that digitalization and artificial intelligence will create more workplaces in the longer term than the disappearing ones, new solutions are also necessary. An interim period precedes digital well-being and therefore the increased demand for human manpower when several people lose their jobs because of the application of the new technology (Csepeli, 2020).

But what should be the direction? The question is raised by Zaccaria, M. and Sipka, P. (2019) in their common study (Zaccaria & Sipka, 2019). How much can we plan? How far can law go? In my opinion, we cannot, since the thinking of law is linear in time, but technological development is more times periodic and cyclic. If the law runs ahead shouting one of the directions as the main digital direction of the labor market, it seems that it tries to predict the future, which is more likely to fail. Technology is changing every minute; what is a promising way in a moment, it can be a dead-end by the next day.

What is sure is that standard questions arise independently from the directions of development. One basic question, that also arose in the labor law section of the conference called
“A mesterséges intelligencia alkalmazásának hatása az alapjogokra” (in English: The effect of using AI on fundamental rights) organized on the University of Public Service on 27 February 2020, is that how law, especially labor law, can follow technological development and the constantly new and newer situations emerging due to the change. The legal rule in force is unable to follow these changes and this would not serve legal safety as well. The participants of the section reached the consensus that, however, technological changes influence the everyday relation system, but there will always be principles in the labor law that should represent constant value and protection independently from technology and relations.

5. General Principles of Labour Law

The principles of labor law are included in the introductory provisions of the LC. The provisions contain several types of principles:

- Interpretation principles
- General behavior requirements
- The protection of personal rights
- General principles of data handling
- Principle of equal treatment

The real principles can be found in the listed groups, their application influences the whole legislation. So, that is why it can provide help in the cases when legal regulation becomes unable to follow technological changes on the level of the legal institution. It should also be added that it can even happen that the technological changes are so rapid based on which just interim periods or an 'ex lex' situation will exist for a very long time. In these situations, it is important to take out such general behavioral requirements as the obligation of information and co-operation, the principles of expectation, good faith, fairness, and fair consideration. Of course, the number of principles and general behavioral requirements is much higher, but I will not deal with them in the frames of this study. So, I would like to present certain principles in the frames of some examples in the following. Of course, the principles should always coexist together. But I will always try to focus on the most dominant problem set in the questions that I would like to present.

5.1. The Obligation of Co-Operation and Information

In the case of the obligation of co-operation and information, it is important to highlight the role of the dimension of time. As Juhász, Á. (2017) also underlines, it burdens the parties not
just from the moment of signing the contract, but even from the period of the contractual negotiations, the pre-contractual period as well (Juhász, 2017). I would like to add that the dimension of time could also have significance after the expiry or termination of the contract. This will primarily be a strong issue in connection with other agreements made regarding the employment relation. Two agreement types should be mentioned here. One is the non-competition agreement, which is made especially regarding the expiry/termination of the employment relation. The other agreement is the study contract.

It could be a question: how does this principle connect to the earlier research? In my opinion, it is quite important that the employer can co-operate appropriately and provide the appropriate information for the employee. The application of the HR robot examined by me earlier also relates to this. It raises more questions. One is whether the emancipation of AI is necessary for the future. The practical relevance of the real practical utility of the answer is already relevant. In my opinion, this is why the present examination of this empirical question is not useless. The necessity of the examination of this question is also supported by the case that happened at the Amazon that experimented with the development of an HR robot. The experimental project was closed with several results and lessons. As it turned out from the news, the project was started in 2015 and finished by the company by 2017. The project was not successful, several mistakes came out which could affect the company seriously in the future, and they could bring the company's responsibility to the foreground quite seriously. One of the greatest problems of using the HR robot was that it started to make causeless differences between male and female applicants.

The example above affects more principles, such as the obligation of co-operation and information as well. In this case, the employees did not know that an algorithm decided on their fate. That, whether artificial intelligence can be used for performing such processes in the present legal frames (Stefán, 2020), the employer violated the principles. Co-operation and information are based on the parties' mutuality. On the trust which should exist during the whole time of the employment relation. The employer violated this principle. If we continue this question, it rises how can it be kept in cases when the employer wants to use the new technology for monitoring the employees, delegating its right to monitoring? It will raise quite strong ethical questions. Using a robot is a standard practice today. We would not even imagine that how many purposes the robots are used for by some companies. Some companies use them as supplementary workforce besides
human manpower. And other employers use them, especially for monitoring purposes (Dzieza, 2020).

5.2. The Principle of Fair Consideration

If we continue our earlier example according to which the employer would let its right to monitoring to robots or artificial intelligence in legal frames, we will face some questions. This highlights the principle according to which the employer should always validate the possibility of fair consideration in its decisions, so, it is important to underline that legal regulation frames on their own are not sufficient. The collaboration of collaborative robots (hereinafter: cobots) and human manpower poses numerous dangerous situations. One of its reasons is that the robotic system follows only the program. The program defines clear commands and goals. A robot is not able to question and evaluate the quality of these commands because of its nature and characteristics. The system seems to be a perfect compliant system. This system does not know deliberation and the nature of human conditions. The system of human workers is an imperfect system from the aspect of the robot since it can overwrite and revalue the received instructions if necessary, and it performs them less precisely compared to machines. The perfect system will always find mistakes in the imperfect system compared to it. This is needed to be examined from two aspects. One is if robotized technology is used for controlling the employees' work, and the other is the creation of the structure of work safety rules mentioned above. The first one simply takes advantage of the employees if it is regarded and raised above human employees by the employer. Based on the above, a robot is a despot boss when the perfect system meets the imperfect one. Josh Dzieza explains some examples in his cited study when these relations are realized.

Humans cannot sustain the intensive work required by robots without their health damage. Employees become stressed because of the differences between the systems, and lots of them burn out in a short term (Dzieza, 2020). We face the limits here as well that artificial intelligence is not artificial intelligence it decides by following program codes, but the decision is also coded. It is unable to perceive the variables based on which it should make a decision that is based on fair consideration. Maximally, it can take into account only the factors that have been included in the program. Artificial intelligence as a boss is unable to make decisions containing social considerations based on fairness. Artificial intelligence does not feel. This alone creates such a paradoxical situation that we, humans, can connect emotionally to a robot, artificial intelligence,
or their physical realizations which are unable to return it, and it cannot be expected from them in any fields of life, even not on the field of working. (Pusztahelyi, 2020).

6. Conclusion

It can also be seen from the examples above that the success of the labor law principles is an important element. Since the effectiveness of the employer's rights can be forced based on these in the periods when work will transform due to technological changes. The transformation will not happen from a minute to another, it will be a process. The process will have stations. The application of teleworking and home office not mentioned earlier in this study can be raised as a good example. According to the news, the national regulations will change due to the pandemic. But the questions are: how much can equal treatment be ensured under the changed circumstances? (Riaz, 2018) What kind of protected properties should be considered? The LC contains rules which ensure the protection of teleworkers. Of course, as Michal Baranski also highlights, this atypical work includes other problems and dangers instead (Baranski, 2018).

Can we achieve that human existence becomes a protected property? Can it be included in the range of the protected properties listed by Act CXXV of 2003 on equal treatment (hereinafter: Ebktv.)? This Act lists nineteen plus one protected property. The plus one protected property is the category of “other”, which can be used as a flexible paragraph. There are properties in the “other” category which are not named, but they are such an integral part of a certain person’s personality that could not be changed. The question is whether someone’s human existence can be categorized to these properties, or it will be a completely different one. This problem can arise primarily in the examples mentioned earlier. On the one hand, in the form of the question that artificial intelligence is discriminative? (Ningrum et.al, 2020) Regarding the examined solution in the case of the HR robot used by Amazon, the suspicion of programmed discrimination also emerged. Literature knows the possible causes of this phenomenon.

- If the algorithm was taught by discriminative data
- If the algorithm is taught by data realizing the present world well
- If the programmer acts discriminatively when defining the aim
- If the programmer chooses variables after data entry that could be taken into account by the algorithm

Any of the listed causes could cause a mistake in the HR processes.
The other could be the case when the employer prefers mechanical labor-power instead of human manpower on a discriminative basis. This will be primarily a phenomenon in an indirect form. The basis of the decisions is always the production-related cost-reduction and the increase of efficacy. The human person gets such a competitor on the labor market who will outrun the human manpower after appropriate developments. It will be a dogmatic question that how much can the employer's economic decision made in fair jurisdiction be sued due to indirect discrimination in these cases? How much can the rescue due to the violation of equal treatment be applied? Based on § 7 (2) of the Ebktrv., an action or behavior does not violate the requirement of equal treatment, if it inevitably limits the fundamental right of the suffering party to the assertion of another fundamental right, as long as the limitation is suitable for achieving the aim and it is proportional with it. Moreover, it can also be saved, if the other party has, for objective reasons, a reasonable cause directly related to the legal relationship in question. The question is whether the employer's economic decision based on cost-effectiveness fits the two saving cause groups on a dogmatic basis.

A further question origin from how to show the content of the preference named in the Ebktrv. will transform? Can it be used in these life situations for the advantage of human manpower? Besides these, it will also be necessary to examine whether dismissals due to automation can be involved in this range since mechanical labor-power is more effective than human manpower.

There will be numerous questions that should be answered. There will be several behavior forms that will be the opposite of the labor law principles. So, the question can arise that what the principle is good for if it is not followed in several cases. The power of the principles is in that the labor law guarantees can be requested by referring to them. Behavior forms and actions can be sued and forced which protect the employees, and, if necessary, the employers. Labour law principles will not change, their protective nature will remain. It is customary to say that principles have an 'ultima ratio' protective function. We will need exactly this in the following period as if the legal, social, and technological development will move away so much that legal guarantees could not be ensured in another way, labor law principles could be the final tools.
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