20 Presentation of Employment Encouraging Mechanisms of the Competitive Sector

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20.1 Introduction

The purpose of this study is to examine what legal challenges the competition sector faces regarding employment and how to compensate these challenges. I do not with to analyze this issue, however, from the perspective of classical economic and CSR considerations, instead, I would like to present legal and economic responses by mapping the guarantees and constraints that emerge under the labour law framework and labour law regulations.

Before comprehensively analyzing the issues described above, it is important to present the effects of economic processes as factors for the development of labour law. It is so, because identifying what legal solutions would achieve the desired effect can only be done from this perspective, even if we only respond to market processes or just predict changes in the foreseeable future.[1] The competition sector basically operates within the framework of employment exposed to the expectations of economic activity. This situation also appears in the legal environment as labour law has been responding to these needs over the last decades. The forerunners of the trend – from the viewpoint of my analysis– were the appearance of atypical forms of employment. In addition, the need for collective labour law and the system of collective legal instruments have been transformed. Nowadays, new legal solutions are being produced by social and economic changes, that are difficult to transfer into the legal system at this time. Some of them

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1 Antonio Viscomi, 'Labour, Law and Econimics', *Hungarian Labour Law E-Journal*, 2014/1, p. 68.

are *extra legem* solutions such as Uber or online marketing activities, while others are soft law solutions that are, at least, adopted by the legislator. All of these processes have a strong impact on the classical system of labour law, so in order to avoid a loss of position and importance of law in the labour market,[2] it is necessary for the labour law to follow up and monitor these new solutions.[3] By reviewing these solutions, I intend to get closer to the labour law expectations that determine the operation of the competitive sector, and to show which are the instruments that provide the protective function of labour law and which are those that only give rise to the erosion of the fundamental labour rights, work safety and occupational health and safety standards. Considering the aforementioned, the question is whether labour market developments could be encouraged in a way that would be accepted by market players and would not affect the fundamental rights of the workforce. The present study seeks to answer this question.

20.2 The Importance of Atypical Forms of Employment

The atypical forms of employment that appear in labour and employment law are not the result of labour law research, but are the products of the labour market. In order to highlight their essence and nature more clearly, it is necessary to analyze why these employment relationships are deemed atypical. Firstly, it should be noted that atypical employment can also mean the emergence of solutions outside of labour law, thereby 'liberating' the employment relationship from labour law constraints. The typical employment relationship itself can be defined by several of its characteristics. Typical (standard) employment: is for a full-time job, established for an indefinite period of (permanent) time with one employer, at a workplace specified by the employer, performed by the employer's tools and within the working time that is also determined by the employer.[4] Conse-

2 Mitchell and Arup found that, to better understand the labour market processes and to enact more effective responses, labour law should not be separated from other fields of law that regulate legal relationships of employment. They also expressed that people in employment should not be privileged, also formulating a suggestion to break down these disciplinary boundaries. *See also*: Attila Kun, *A munkajogi megfelelés ösztönzésének újszerű jogi eszközei* (New solutions for labour law compliance), Károli Gáspár Református Egyetem, L'Harmattan Kiadó Budapest, 2014. Judy Fudge, 'Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law', in: Guy Davidov & Brian Langille (eds.), *The Idea of Labour Law,* New York: Oxford University Press, 2011, p. 125.

3 Labour law, in this regard, is directly ensures the development of the EU, and could be the most important instrument to maintain social and labour protection against the fundamentalism of the market. Thanks to the acquis communautaire of labour law, workers are a well-protected group, whose legal protection comes mainly from the adoption of social rights. *See*: B. Hepple, 'Fundamental Social rights since the Lisbon treaty', *European Labour Law Journal*, Vol. 2, No. 2, 2011, p. 151.

4 Tamás Gyulavári, *A szürkeállomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán* (The gray zone. Economically dependent work on the boundaries of employment relationship and self-employment), Pázmány Press, Budapest, 2014, p. 105.

quently, any legal relationship that differs in one or more elements from the typical employment relationship belongs to the concept of atypical legal relationship.[5]

The Hungarian Labour Code, however, designates a narrower circle of atypical employment relationships. Not to mention that the range of atypical relationships recognized by labour law is also considerably narrower than the actual ones.[6] Also, the atypical nature of the first few atypical forms of employment that evolved, such as part-time or fixed-term employment, is highly questionable. Additionally, labour law contains provisions that provides several opportunities for typical employment to technically be considered as atypical employment solely through work organization techniques. The employee, whose working time is scheduled through working time banking – that allows employers to schedule working hours flexibly on a daily and weekly basis –, or who performs a standby job, the seasonal worker, and last but not least, the standby and the on-call duty constitutes a fundamental derogation from standard employment regulations. This may not mean a less relevant and atypical issue regarding the employees and the law, than for example the number of employers at employee sharing, or the opposite, the number of employees at job sharing, where several employees carry out the duties of one job, jointly. I consider it necessary to mention these issues because in the case of the new *platform work relationships* that will be presented later on, based on the nature of these differences, the classification of the same, not just acknowledging their atypical status, but presenting them as an employment relationship under labour law has led to serious legal controversies.

The presence of self-employment in the labour market is partly due to the same reasons. While employing an employee within an employment relationship comes with several constraints and additional costs, taking the services of an entrepreneur through a personal services contract, is a civil law relationship, and despite the fact, that in this case the same job is performed, it comes with less obligations and is concluded in this form *e.g.* for tax purposes. The economic attitude towards the avoidance of the employment relationship[7] is not new in labour law. This has led to the adoption of the Joint Directive No. 7001/2005. (MK 170) of the Hungarian Minister of Employment Policy and Labour Affairs and the Minister of Finance. Later on, Hungary became concluding party to the ILO's 198 Recommendation on Employment in 2006, that became part of and was included in the new Hungarian Act I of 2012 on the Labour Code, where combating disguised contracts appears as a principle. In order for employment to be included in the employment relationship of labour law, it is necessary to define the concept of the

5 Zoltán Bankó, 'Az atipikus munkaviszony fogalmáról' (The definition of atypical employment relationship), in: György Kiss, Gyula Berke, Zoltán Bankó & Edit Kajtár (eds.), *Emlékkönyv Román László születésének 80. évfordulójára,* Pécs, 2008, p. 48.

6 See later in detail the emergence of Uber and other platforms works (sharing, gig works).

7 Tamás Gyulavári recognizes the attitude of economic operators as straightforward and rational behavior when orienting themselves towards the cheaper contractual types of employment. *See in*: Gyulavári 2014, p. 110.

employment relationship and its basic (qualifying) marks, where there is still a great uncertainty up to this day.[8] Previously, employment has shifted towards civil-law relationships, and nowadays the emerging digitization of employment makes it difficult to restrict the scope of work to closed legal categories.

The atypical nature of employment is the result of economic processes that appear not only in the context of the solutions that are alternatives to the employment relationships but also within the employment relationship itself. This also indicates that market-based pressure is so significant in the labour market andthat even if the employment relationship is approached in any conservatively, it cannot be left out of our focus. While part of the atypical forms of employment have emerged as an instrument for labour market policy intervention,[9] others were the result of the 'deformation' of the employment relationship.[10] As atypical relationships developed in several different ways, were adjusted to the specificities of each country in many variations with considerably different contents, their recognition as an atypical employment relationship of labour law, means only the acceptance of these special relationships under the law.[11]

The predominance of the differences and the demands of employers originates from the already existing asymmetry of leverage – or the imbalance of powers – in the employment relationship.[12] Thus, when considering the question, the specific relationship between the participants of labour law cannot be disregarded, since the relationship between the employee and the employer, which is basically not balanced, and is instead, hierarchical considering *e.g.* the unilateral right of the employer to order and control, also determines the realistic level of flexible adaptation. On the legal protection side, Bellace goes further in her analysis, and in respect of the imbalance of the employment relationship, the rethinking of the human rights consideration of the right to work in the light of international conventions and EU law is also anticipated.[13] At the same time, it is nec-

8 Regarding this issue, *see*: Tamás Gyulavári, 'A gazdaságilag függő munkavégzés szabályozása: Kényszer vagy lehetőség? (Regulation of economically dependent employment. Compulsion or opportunity?), *Magyar Munkajog e-folyóirat*, Issue: 2014/1, pp. 1-25, where the author analyzes in detail the changes introduced with the Act I of 2012 on the Labour Code regarding the determination of sham/disguised contracts.

9 *See e.g.*: posted workers' employment relationship.

10 *E.g.* school cooperative employment originates from the employment of posted workers.

11 Following the previous examples, the legal relationship of a school co-operative member, where there is no permanent employment relationship, the mandatory minimum wage clauses do not apply to remuneration, the emergence of several labour law guarantees (leave, termination clauses) is out of the question, however, it is a form of employment relationship recognized as an atypical employment.

12 Viscomi 2004, p. 68.

13 Janice Bellace, 'Who Defines the Meaning of Human Rights at Work?', in: Ales Edoardo & Senatori Iacopo (eds.), *The Transnational Dimension of Labour Relations. A new order in the making?,* Collana Fondanzione Marco Biagi, G. Giappichelli Editore, Torino, 2013, pp. 111-135.

essary to mention the concept of 'due diligence', that can be mentioned as a novel solution following the emergence of human rights.[14]

In order to provide flexible employment in accordance with labour market conditions, it is necessary either to specify the characteristics of employment relationships in detail or to reverse the rigid framework by recognizing all forms of employment within the labour law framework. However, this path leads to the unknown, presenting significant risks, therefore, states try to avoid it. For this purpose, the institution of *flexicurity* was laid down in the law of the European Union, and has been developed as a guarantee of flexible[15] and safe employment.[16] The liberalization of internal market services under Directive 2006/123/EC suggested that there is a significant difference between economic interests and the need to protect social rights and interests.[17] However, in the course of the recent years it can be traced that this constitutes an inadequate solution for the participants of the labour market. Flexibility emerged in a dual way in legislation: on the one hand, it means the adaptation of labour law to labour market requirements, on the other hand, in the means the level of dispositive provisions of labour law regulations. From any angle we take, the focus is on the adaptability of labour law regulations.[18]

The concept of flexicurity has not resolved the issue, however, as the need for flexibility stems exactly from the fact that, as a result of economic trends, the expectations of labour law are constantly changing.[19] It should also be borne in mind that it is in the fundamental interest of labour market participants that these (often ex-lex) solutions be left outside the scope of labour law.[20] It is not a coincidence, therefore, that the latest

14 Attila Kun, 'How to Operationalize Open Norms in Hard and Soft Laws: Reflections Based on Two Distinct Regulatory Examples', *International Journal of Comparative Labour Law and Industrial Relations,* Vol. 34, No. 1, 2018, p. 26.

15 Flexibility in this regard is a complex concept: flexibility means a flexible labour market, flexible forms of employment and the flexibility of legal regulations as well. *See in*: Chris Brewter, Lesley Mayne & Olga Tregsakis, 'Flexible working in Europe', *JWB*, No. 1997/2, p. 137.

16 We must not forget that providing a competitive solution to the employer often involves uncertainty and danger to the employee. In: Reinhold Fahlbeck, 'Towards a Revolutionised Working Life. The Information Society and the Transformation of the Workplace', *IJCLLIR*, Issue 1998/3, p. 9.

17 Alberto Mattei, 'Prospects for Industrial Relations: Overriding Mandatory Provisions in the Transnational Labour Market', in: Roger Blanpain (ed.), *Labour Markets, Industrial Relations and Human Resources Management, From Recession to Recovery*, Bulletin of Comparative Labour Relation, 2012, Wolters Kluwer, p. 151.

18 It already appears in the Work of Zoltán Bankó in 2010 In: Zoltán Bankó, *Az atipikus munkaviszonyok*, Dialóg Campus Kiadó, Budapest-Pécs, 2010, p. 40.

19 John Buchanan, Dominic Heesang Chai & Simon Deakin, 'Empirical Analysis of Legal Institutions and Institutional Change: Multiple-Methods Approaches and Their Application to Corporate Governance Research', *ECGI Law Working Paper*, No. 238/2014 (accessed: 2018. 01.22.).

20 See the disputes regarding Uber in the past few years that appeared at an international level. In the United States, procedures were initiated in several states to recognize Uber drivers as employees (*e.g.* Douglas O'Connor v. Uber; Darrin E. McGillis v. Uber), and there have been labour lawsuits in the United Kingdom as well. In the EU, an EU-level inquiry was launched in a Spanish case, whereby the EU Court ruled that Uber is a transport service, not just an online platform. (Judgment of 20 December 2017 in Case C-434/15, *Asociación Profesional Elite Taxi v. Uber Systems Spain*, SL, ECLI:EU:C:2017:981).

trends emerge not along the concepts of labour market policy, but in a 'start-up' way, as home office-type employment is often not performed as a teleworking job,[21] but as liberalization from the constrains of the classic employment relationships obligations with HR motivational intentions. As far as these forms of employments are concerned, it is also to be remembered that within the framework of this kind of liberalization, the satisfaction of employee needs also appears.[22] The demand of employees has also changed over the past few years. Earlier, a stable and predictable career and security of work was the major motivational force. Today, until now, flexibility, independence, self-employment, direct recognition and high pay have become increasingly important. These expectations can be adjusted to other types of employment solutions. In the following, these new work organization solutions will be examined in order to get closer to analyzing the employment incentive mechanisms of labour law and thus, the competition sector.

20.3 New Work Organization Solutions within and outside the Framework of Labour Law

It is characteristic of atypical employment relationships that they differ in basic elements from the standard employment relationship. The decisive difference has been, according to the practice so far, if the new form of employment is regulated by law.[23] The expansion of the scope of atypical legal relationships is continuing at the international level, as employers always think of solutions that provide maximum profit in the context of local conditions. This market economy approach, from the labour law perspective however, can also result in the dismantling of labour law guarantees, just like the sham/disguised forms employment solutions outside of labour law, which I have already mentioned. In other words, if all atypical forms of employment would be legalized and wide-ranging derogations from the labour law guarantees would be allowed, then classic employment should be protected by a strong bastion of solutions, since it has been gradually established internationally starting with the industrial revolutions and as a result of national

21 Zoltán Bankó, in his study on the analysis of teleworking, examined the case law and analyzed statistical data to conclude that, despite employment policy support, the introduction of telework did not produce the great results that had been expected. In: Zoltán Bankó, 'A távmunkával kapcsolatos jogalkotási, jogalkalmazási és foglalkoztatáspolitikai tapasztalatok Magyarországon' (Legislative, jurisdictional and labour market policy experiences regarding teleworking in Hungary), *Hungarian Labour Law E-Journal*, 2016/2, p. 61.

22 If we look at the example of Uber, Airbnb, Deliveroo, Handy or TaskRabbit, we see that online applications were first generated to a serve a demand on both sides, and only the apps with a mass base have raised the issue of the employment relationship.

23 This is how outsourced work was created, *i.e.* the posted worker relationship in response to the need to establish employee leasing and short-term and temporary employment at various employers. Then the market demand led to the emergence of a more special relationship, that does not provide continuous work: the school cooperative relationship.

legislation. Continuing this logic, the foundation for global frameworks is this uniform path of legislative development.

If there was an open road to the creation of national atypical forms of employment, then the unified guarantee system would gradually break up. In the global economic environment, the importance of regulation at the national level is weakened, but at the same time real transnational labour law regulations do not yet exist.[24] It is no coincidence, therefore, that labour law has created several ideologies centering on the relationship between the market and the labour law and regarding the circumstance that labour law cannot develop without market developments. To put it another way, it is necessary for labour law jurisprudence and legal theory to examine labour law is a legal instrument of economic regulation or a guarantee that creates "checks and balances." This dilemma fundamentally defines the work of theoretical experts active in the field of labour law today. The problem today is to define – within the two extreme points of view – where labour law regulations should be placed, and at which point it is necessary to interfere with legislation for the proper functioning of the market. This cannot be decided on the basis of scientific theories, but in response to the labour market processes also depending on the sensitivity of each legal system, including the legislators and those applying the law.[25] Professionals ó more open to the market approach argue that it is necessary to promote and enforce market considerations in order to ensure the sustainability of labour law.

Arthurs makes direct suggestions, claiming that labour law cannot be limited to the legal status of employees under the employment relationship.[26] In addition, he asserts that labour law is itself a guarantee scheme and thus the duty of labour law is to provide the necessary protective framework for all employees in an employment position irrespective of the nature of the legal relationship. However, if we assume that the forms of employment on the labour market should be determined on the grounds of a relationship system, the relationship between the labour market and labour law must be analyzed. To support his arguments, Deakin also examined the role of labour law in market growth in detail, and categorized the role of labour law on the market as well, distinguishing between market-restricting, market-correcting and market-creating functions.[27] According

24 See Attila Kun 2014, p. 15, who cited in this regard the work of Arturo Bronstein, *International and Comparative Labour Law: Current Challenges,* Geneva, Palgrave MacMillan, ILO, 2009; where he writes about the crisis of labour law. Similar thoughts were expressed by Tamás Prugberger in his work: Tamás Prugberger, *Munkajogi normatív értékek és a neoliberális globalizálódó gazdaság* (Normative values in labour law and the globalizing neoliberal economy), Miskolc, Bíbor Kiadó, 2008.

25 Nóra Jakab & Henriett Rab, 'A munkajogi szabályozás foglalkoztatási viszonyokra gyakorolt hatása a szociális jogok és a munkaerőpiac kapcsolatának függvényében' (The impact of labour law regulations on employment conditions, regarding the relationship between social rights and the labour market), *Pro Futuro*, 2017/1, pp. 26-40.

26 Harry W. Arthurs, 'Labour Law after Labour', *Osgood CLPE Research Paper*, 2011/5, pp. 12-29.

27 Simon Deakin, 'The Contribution of Labour Law to Economic and Human Development', in: Davidov & Langille 2011, pp. 156-159.

to Deakin, the outcome of labour market trends and changes fundamentally determine labour law, that is, these factors are closely related.[28] There is, in this respect, a more contradictory, more conservative approach to the role of labour law – see, for example, Weiss' position, who seeks to maintain direct legislation in terms of labour law goals and methodology,[29] but nevertheless acknowledges the need to renew labour law, in order to make it more effective.[30]

Besides those described above, theories evolved aiming to promote the contractual freedom of the parties subject to labour law. György Kiss represents this view in Hungarian legal literature, but we can encounter this position in international literature as well.[31] In all of these theories the theoretical and regulatory openness of labour law can be discovered, demonstrating that labour law is not only has the willing to change, but is also capable of doing so. It is merely the attitude towards the scale and pace of it that is changing constantly. Thus, through the means of traditional labour law legislation, the renewal and liberalization of labour law is constantly on the table, in a way that the social protection and the employment security of workers as a necessary value are sought to be protected. In my opinion, the curiosity of the situation is that, in several cases, this is achieved in a context where workers failed to express any interest, as if they were in a phase of misunderstanding driven by their current interests and they generally come to their senses too late. This is supported by the spread of platform working patterns presented in the below.

The path of the evolution of atypical employment relationships already described above, has changed slightly in recent years. Organizational solutions emerged that were elaborated unilaterally by the employers, regulated in their internal regulations or policies,[32] or in soft law solutions recognized by legal practice.[33] As far as these innovations are concerned, a dilution of the employment relationship can rarely be seen, therefore, they are generally widely accepted. The new solutions are linked, on the one hand, to the appearance of companies on the market (CSRs) and resulting engagements, and are specifically geared towards combatting employee exploitation.[34] Such a solution is the voluntary abbreviation of working time or the amelioration of monotonous work processes through rotation. On the other hand, the willingness to establish a more effective working relationship with workers is also not a negligible factor, which is traditional area of human resources management. One of the most significant elements of human resources

28 Deakin Simon & Morris Gillian, *Labour Law,* Sixth Edition, Hart Publishing, Oxford and Portland, Oregon, 2012, 2.

29 Manfred Weiss, 'Re-Inventing Labour Law', in: Davidov & Langille 2011, pp. 43-57.

30 John Howe, 'The Broad Idea of Labour Law', in: Davidov & Langille 2011, pp. 299-300.

31 A strong link can be recognized with the "relational contract" theory of MacNeil.

32 *E.g.*, I would mention the increasingly common 'home office' work organization solutions.

33 The employment that is in conformity with the legal regulations can be a factor in the context of public procurement. *See in detail in*: Attila Kun 2014.

34 Attila Kun formulated the promotion of responsible employment as the first task in the transformation of labour law, in this respect. *See in*: Attila Kun 2014, p. 16.

management is employee motivation, which, besides constituting a rational addition to the budget, encourages workers to achieve a proportionally higher work performance. The presence of human resources management is particularly significant in professions on the labour market where there is a labour shortage or where over-demand appears. In this case, those opinions appear to be in the forefront that are looking for more beneficial work organizational solutions for employees. More flexible working hours, or the nowadays popular home office work – as a form of work organization – can be led back to this aspiration (even within the framework of labour law). The question can be raised immediately: why should we consider these types of work as atypical solutions? The answer is that in these solutions the working time, the organization of the job or the place of work can significantly differ from the frameworks of the employment relationship. This is the case with classic atypical jobs. Since shortened working hours, part-time work, job/ employment sharing and job rotation, job profile expansion and so on, originate from the same roots, the relationship seems to be even closer to teleworking and home office work.

As a conclusion, I also refer to the fact that there is obviously a demand on the employees' side for labour rules that not only provide security for employees, but also allow deviation from rigid rules. This is the reason why various solutions appear as instruments outside the scope of the classic labour law, in employers' policies and internal regulations, rather than in amendments (or draft amendments) of the labour code. For this reason, employees continue to feel that their employment relationship remains intact, and guarantees are provided to them. This also suggests that the guarantees and the protection of labour law must be expanded outside the framework of traditional labour law,[35] especially when, in the interest of employees, platform work relationships – presented in detail below – are recognized as employment relationships under the scope of labour law.

Arguably the most controversial employment solutions in employment law evolved together with the spread of information technology applications. A common feature of these forms of employment is that work is organized through an online interface, that is why they are called platform work. Their characteristic is that the activity itself is based on the idea of launching a start-up company to meet users' needs, focusing not on employment, but on organizing the satisfaction of a market demand. Businesses outside the online world also seek to satisfy a market demand, requiring that staff and personnel be recruited, but in the latter case, an employment relationship is immediately established, requiring the personal presence of staff. Meanwhile, platform work involves applications created through the web interface, where, after registration, parties can come into contact with each other without the direct involvement of the 'employer' launching the application.

35 Agreeing with Tamás Gyulavári, who made the same statement regarding economically dependent work Tamás Gyulavári, 'A gazdaságilag függő munkavégzés szabályozása: Kényszer vagy lehetőség?' (Regulation of economically dependent employment. Necessity or opportunity?), *Hungarian Labour Law E-Journal*, No. 2014/1, pp. 1-25.

In Europe, the most controversial example of this model is Uber, where the online interface provides connection and coordinates between the driver and the passenger, reminiscent of the dispatcher centers of taxi companies. Economically, this is done in order to carry out a business that is financially clean and does not have cash flow (it seems ideal for the tax system). Payments are made through the Uber application. At the time of the establishment of the system, it was in the interests of the parties to organize a cheaper transport than those offered by taxi companies. It was in the drivers' interest to have flexible working hours, a proportionate remuneration and to avoid availability without work performed, while the passengers were interested in a more simple, predictable, faster and cheaper service. If we analyze this, we can look at employment-related features of the employment, but we can also analyze the issue from a human resources management perspective, meaning a clear link to market economy interests.

From an HR perspective, these applications also address those who would refrain from engaging in an employment relationship. Individualized surfaces offer occasional jobs that can usually be performed during rest periods of other workers that are employed in employment relationships, or often constitute activities that are separated from daily work.[36] These workers no longer wish to be employed in an employment relationship, or even say that, they consider this to be a hobby-type activity, and they want generate some extra tax-free income. Thus, it possible that work organization techniques and solutions outside labour law have a motivational power, since the service price is lower due to lower employment costs. Meanwhile, the service not only fills the market gap, but is highly popular among users.

Examining the issue from a market economy perspective, two types of interest appear. On the one hand, a new market participant improves the labour market situation and, by paying taxes, also contributes to the balance of public finances and generates consumption through tax payments, boosting the the GDP. The instruments of employment policy provide solutions that are market-driven, and at the same time, atypical forms of employment. In this context, these new employment solutions are part of this tendency, with the exception that since they are based on ideas appearing on online platforms, many of them are products of startup businesses, consequently, they are not products of the labour market policy support system or employment subsidies. In other words, they are developing a new 'atypical' legal relationship in a way that the labour market has not anticipated, could not prepare for it, so that employees are also stranded outside purview of labour law.

This usually does not constitute a problem for the employees' side. More often than not, the issue of labour law solutions is not primarily raised by employees, instead, it is fiscal considerations or market competition that disrupt the situation. If we do not recognize these relationships as a form of employment relationship under labour law, then

36 *E.g.* cleaning, minor assembly jobs, courier or craft and creative tasks.

taxes and other mandatory financial charges will not be paid (neither *e.g.* personal income tax nor social security contributions). Firstly, since these companies generate new and increasing income, this would mean tax revenues for the state if it was collected rapidly by the – now rigid and obsolete – taxation system.[37] If an employment becomes long-term, or if– as it often happens – because of the more favourable considerations, a job becomes full-time and becomes a main source of income, it is difficult to 'legalize' the relationship without resistance. There have been numerous examples[38] for this, *e.g.* with Uber and Deliveroo,[39] that include the largest number of platform workers. For those who do work as platform workers, the benefits turn into disadvantages when it becomes their main occupational activity. This is because in case they fail to pay taxes and social security contributions related to the employment relationship, the work they do will never provide a right to a pension or guarantee health insurance benefits (sick pay, maternity benefits) or even in-kind healthcare services. Not to mention classic labour law guarantees.

As far as the status of platform workers from a labour law perspective is concerned, there are no protective clauses for termination in these relationships. This is because they were organized for occasional work, there is no working time limit, rest period guarantee, no minimum wage and no paid leave, to mention just those obligations to which the employment contract is subjected to according to several international conventions.[40] These guarantees, however, only provide protection for employees, that is to say, those persons who are employed in an employment relationship under labour law. The struggle, therefore, in the labour law of our day centers around whether these legal relationships should be classified as employment relationships. The straight path to protection is through the expansion of the concept atypical employment relationships. According to

37 Or the problem is precisely the lack of this, as evidenced by Uber's case in Hungary. The company did not pay tax on profits in Hungary, while the cheaper service provided by the savings on employment costs triggered the frustration of taxi companies operating along classic employment lines, wanting to demonstrate against them by means of labour law (strike).

38 As it already happened in quite a few countries. *e.g.* there were lawsuits against Uber in several states of the USA, a legal procedure was launched before the European Court of Justice, based on a Spanish case. *See e.g.* footnote 20.

39 Deliveroo is a cycling courier company, a significant market player in the United Kingdom. The Independent Workers' Union of Great Britain (IWGB), after its attempts to negotiate a collective bargaining agreement on behalf of the couriers was refused by the employer, initiated proceedings to secure employee rights before the Central Arbitration Committee (CAC). In its decision rendered in November 2017, the CAC expressed that they cannot be considered as employees, but much rather as self-employed persons. This is because riders had a right to substitute themselves both before and after they accepted a particular job. The decision is particularly interesting in the light of the fact that a week earlier in *Mr Y. Aslam and Mr V. Farrar and Others v. Uber*, the Court of Justice (Employment Appeal Tribunal) rendered an opposite decision when, in second instance, it confirmed that Uber drivers were workers.

40 Under the aegis of the United Nations, the International Covenant on Economic, Social and Cultural Rights, within the framework of the Council of Europe, the European Social Charter, several conventions of the ILO, and within the European Union, beside the Charter of Fundamental Rights, several directives and regulations have been adopted to standardize and protect workers' rights.

the ensuing controversy, there is a danger that labour law will be 'diluted' this way, so labour law guarantees and constraints that have been achieved and enshrined in labour law through lengthy and arduous struggles will be weakened. Meanwhile, those arguments supporting the inclusion of these types of work under labour law protection claim that even a more flexible labour law framework is more effectively regulated than 'extra legem' solutions. If we are approach the issue from the aspect of motivation, there is a high demand for these forms of employment in the labour market, so there is a need to find solutions to maintain the level of employment in order to preserve the interest of the participants of the market. This can be achieved by following the suggestions already made by Mitchell and Arup, who would extend the scope of labour law beyond the scope of the employment relationship, in a way that the substance of labour law would not be deteriorated, but its scope would increase. In my view, this also ensures faster and more flexible legal adaptation because leaving a great number of legal relationships without protection, would mean leaving a lot of workers behind.

20.4 Conclusions

In respect of works organized through online platforms (Uber, Handy, TaskRabbit, Deliveroo, or in Hungary, Rendi and Oszkár Telekocsi), we can clearly say that their development was not driven by labour market policy goals. Thus, the number of those involved is low, while the relationship established must follow minimum requirements of labour law. It is not a coincidence that I do not speak of legal relationships, as this relationship is so loose in many cases that no personal encounter or signing of a contract takes place. As far as the labour law aspect is concerned, the relationship is established for personal work,[41] in order to generate (additional) income, however, because of the favorable parameters, it becomes for many people a form of full-time employment. Regarding the employment motivation of the private sector, the question is where the boundary should be drawn for employment. In this respect, several arguments and interpretations have emerged, which, however, were not discussed in the present study. But honestly: when we sign up for a trip on Oszkár's surface or undertake university studies and receive a job (cleaning, childcare) for income, where we do not aim to establish an employment relationship, we do not even think about carrying out the job to become an employee of someone else. If, however, this is a regular, recurring, lasting task between the same parties, then employees generally require employment security. In other words, when establishing flexible employment and atypical relationships, it is not only necessary to enforce classical labour law considerations, but also, in my view, to differentiate between

41 As far as *Deliveroo* is concerned, I would like to go refer to the British decision that explicitly emphasized the lack of this personal obligation when the work was not recognized as an employment relationship under labour law.

them, on the basis of the employment's duration. In addition, there it may be necessary to develop several specific attributes, that may be achieved through negotiations in larger forums.[42]

As far as legal relationships that are organized around online platforms are concerned, due to their novel and clamorous nature, we tend to dissociate these from an employment on an ideological basis. However, it must not be forgotten that this novel development provides work for a significant number of people and thus a livelihood. Therefore, in terms of compliance with labour law frameworks, we must most probably change our viewpoint because, to be honest, an employment based on the membership of a school cooperative society does not fit into the labour law framework, even if we only take the non-continuity of the employment and the payment of wages into consideration. As far as Uber drivers are concerned, the clear requirement of availability and the personal execution of the work, finally, the remuneration clearly point to an employment relationship. In this regard, there are suggestions in legal literature seeking to create an appropriate point of view to qualify these relationships as employment relationships. Here, labour law and market expectations are both met, as the competition sector is motivated to develop ideal forms of employment, while labour law is motivated to relegate work into the context of employment relationships or to be able to integrate atypical relationships under labour law rules. The extra legem instruments of the competitive sector, which intend to encourage employment, seem to ultimately gain legal relevance through labour law. The employment guarantee scheme should also be present when balancing the impacts of market expectations that afflict the workers. However, as much as the legislator should cooperate with market participants, we must not forget that the basic objectives of the development of labour law included the aspiration to ensure uniform and institutional safeguards and protection for workers (including working time limits, paid rest periods, minimum guarantees for remuneration) which is now naturally present in almost all forms of employment. To preserve these guarantees, steps must be taken, as it they been taken earlier when basic labour law guarantees were achieved. The task of labour law practitioners is to monitor the safeguarding of these guarantees during the impending reforms.

42 Referring to the personal obligation to perform work that was assessed in the *Deliveroo* case.