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Does human resource management correlate with flexible employment?

Introduction

The title of this paper requires some preliminary explanation. Researchers of human resource (HR) management with an economic slant argue that the answer to the question raised in the title can only be "yes." This means that HR management (HRM) presumes and requires flexibility in the provisions of labour law and it is merely out of self-interest that it views one aspect of the security of employees with exceptional attention. Fluctuation in job security has a harmful effect of creating a destructive workplace environment, and leads to dissatisfaction, anxiety and insecurity among the employees. Beyond acknowledging these straightforward effects, the issue must also be addressed from another angle, that is the extent to which legal regulation considers the interest of HR management and, in the course of analyzing proceedings, whether legal provisions take into account the requirements and concerns of HR management. The issue discussed here leads us to these basic questions: whether developments of codification and the need for flexibility in labour law accommodate the needs of HR-management and in what ways the right of the employees to social security should be taken into consideration during the strategic utilization of capitalization in human resources.

As a starting point we can state that the world of labour has become increasingly international and this process has resulted in a new direction of the evolution of labour law in Europe, especially in the European Union. This evolution is marked by the concept of flexicurity. Employment has always been closely related to economic stability because of the employers' interests; yet soaring production and output have been incrementally determined by

the rapid evolution of new technologies.[1] An important human instrument of this is increasingly efficient employment, for which flexible forms of employment are appropriate alternatives. It is always difficult to distinguish correlation from causation when analyzing the links between economic performance, employment creation, and labour market organization.[2] Employment regulations are constantly changing; and both the interest of the employers and the needs of the labour market are becoming part of this regulation. Flexibility emerges in connection with the establishment of legal frameworks for atypical forms of employment, and these forms are widespread. This phenomenon also plays a key role in connection with guaranteeing fundamental labour rights.

Actors of the economy regard labour law as an instrument that creates equal conditions for competition. This drives them to seek the extension of the boundaries of legal regulations. In other words: their goal is a reduction of labour law guarantees. The recent liberalization of the European Union, in particular, the liberalization of the services market resulting from Directive 2006/123/EC, have shown that in the single market there is a strong imbalance between business interests and the protection of social rights.[3]

Relation of HRM and social law

Social rights come into play on several accounts: most predominantly, they provide fundamental guarantees in the world of labour, thereby ensuring security and protection for employees. HR management has a vital interest in protecting the feeling of security of employees, since the role of stable work environments is essential. The question here is how to strike the right balance: provisions of labour law and entitlements to social rights also limit economic competition and are thus ambivalent instruments for HRM, which inherently intends to increase work efficiency. This paper discusses the framework for this interrelationship, which hopefully will provide an answer to the question raised in the title.

The institutions of labour law take a basically neutral stance towards aspects of HR management. Elements of labour law are mainly specified by

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1 H. Rab, P. Sipka, *Are social rights obstacles to flexibility?* "Social Justice 2014" conference abstract, 01-02. August 2014.

2 M. De Vos, *European Flexicurity and Globalization: A Critical Perspective*, "The International Journal of Comparative Labour Law and Industrial Relations" 2009, 25, 3, 209.

3 A. Mattei, *Prospects for Industrial Relations: Overriding Mandatory Provisions in the Transnational Labour Market*, in: Blanpain R. (ed.), *Labour Markets, Industrial Relations and Human Resources Management, Grom Recession to Recovery*, Bulletin of Comparative Labour Relations, Wolters Kluwer, The Netherlands 2012, 151.

the demands of national and international politics and codified accordingly. The world of economic labour law is intrinsically capable of taking the considerations of HR management into account without particular demand for relevant regulation. On the other hand however, the public sector, which is without such competition, requires some authoritative inclusion of provisions required by HR-management.[4] A measure of this kind is unacceptable in the labour law of the private sector on account of the principle of the right to enter a contract freely, which is laid down in the code of civil rights. The redressing of labour law in the manner of the regulations of the private sector (if we acknowledge the prior existence of public sector labour law at all) evolved simultaneously with the increasing prevalence of international demand for more flexibility; perhaps it even triggered the process. With the intensification of the effects of civil law the intention to perfect the principle of freedom of contract has appeared.[5] In this context flexibility can be regarded as a complex concept; it means the regulation of a flexible labour market, flexible forms of employment and also the flexibility of the legal regulation itself.[6]

With the emergence of the notion of flexibility, the need for the protection of social security has resurfaced once again, as this serves as a key element of the aforementioned balance. In my view, these developments are not part of HR management, although they are also not independent of it: the requirements of the private sector for increasing efficiency manifests itself internally as HR-management, however to the outside as the desire to influence employment policies and regulations, which by the end of the day comes down to the urge (often demand) to induce codification. The role of employment policies in influencing the codification of labour law is undeniable, yet this connection is also modified by political considerations.[7]

The demand for the introduction of flexible employment is a constant point on the agenda at international professional labour law fora, with several diverse ideological backgrounds and various sets of instruments and schemes of realization. Beyond the search for the role of labour law, all approaches

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4 See for example the Hungarian act on public servants (act CXCIX of 2011), which prescribes an obligatory system of aspects for application in connection with performance assessment.

5 Firlei K., *Neue Formen und Aspekte atypischer Arbeitsvehältnisse*, [in:] *Österreichische Landesberichte zum Internationalen Kongress für das Recht der Arbeit und der Socialen Sicherheit in Caracas*, ed. H. Floretta, Manzsche Verlag, Wien 1985, 32.

6 C. Brewster, T. Mayne, O. Tregsakis, *Flexible working in Europe*, JWB 1997, 2, 67.

7 In Hungary the official reasons behind the creation of the new labour code of 2012 was to adjust the labour law regulation to the changed employment situation, guaranteeing relief for employers affected by the economic crisis and increasing and readjusting productivity in general.

share the desire to offer alternatives to the current regulations that serve the labour market by protecting the security of employees. The debates focus on questions regarding the extent that the economy can influence labour legislation and also whether the law should offer solutions for the economy or can only serve as an underlying instrument. These issues often overlap into the realms of the theory of law and are irrelevant to the deliberations of this paper, since the questions at stake here pertain to the science of labour law and law-making, in particular to the role of these, but ignore the direct connection of labour law to HR management.

A more exciting point could be the investigation of how HR management and labour market demands are related, and in what ways they interact and induce changes in each other. As a starting point we can argue that both are rooted in the same field: HR management serves the requirement of the employers through the purpose of rationalizing human resources in order to increase corporate (and production) efficiency. The well-being of employees is also a factor in this rationalization process. At the same time the labour market aims to maximize employment, in particular market-driven employment, while employees demand guarantees for the job protection. The achievement of employee satisfaction and job security strongly correlate in most of the cases. In the eye of the employers, as economic actors, HR management is an instrument to maximize profits; hence the various practices of HR-management aim to attain more flexible forms of employment. In this respect, the idea of flexicurity is principally the manifestation of the employers' interests through the loosening of the rigid provisions of labour law, the elaboration of individual forms of employment and through the appreciation of alternative solutions for employment regulations. It could be argued that the evolvement of HR management after World War II had a significant impact on the profound transformations in the structure of employment, which as a result constantly reshape the world of labour law. The desire for renewal, per se, relates to the new approaches to HR in organizational development, since the essence of efficiency is the ability to adjust and adapt to changes in the environment, which can be clearly detected in the demand for more flexible employment. As the desire for the protection of social security and the underlying guarantees emerged in connection with striking a balance in flexible employment, procedures of HR management emphasized greater attention to employees and embraced social factors in motivation, assessment of performance and even in exploring reasons for fluctuation.

The level of social protection depends on how it is approached: it encompasses a spectrum from basic labour law guarantees, through work-safety and work-health measures to initiatives that improve the well-being of employees.

In this respect, the different understandings of social protection lead to issues of equality and non-discrimination and to their relation to HR management, especially remuneration.[8] Several papers and legal practice have proved that equal opportunities are a vulnerable aspect of employment, as discrimination was significantly high in connection with work and employment.[9] In this respect, flexibility and equal opportunities might be seen as contradictory, though the question is rather this: can both notions exist within the field of labour law?

Taking this idea further, the occurrence of equal opportunities in HR management is an interesting subject to examine,[10] even if it must be admitted that equal opportunities are not a priority for HR management. The principle of fairness is however a standard notion in motivation, performance assessment or even the working environment, which allows for the idea of non-discriminatory employment. In labour law which accepts the principle of private law, the freedom to enter into a contract, and which views employees as human capital, i.e. an instrument for achieving efficiency, the application of the principle of equal treatment is merely an obstacle with a social function. In HR management it is furthermore an incompatible, deterrent instrument.

Beyond doubt, the role of fairness in HR management is important from the point of right proportions: the improvement of efficiency should be combined with the objective of eliminating personal envy and dissatisfaction, as economic efficiency does not allow such risks.

Fairness, from another angle, also means lack of discrimination. Within the boundaries of efficiency, this can be compatible with the doctrines of HR management. For instance, differentiation based on performance assessment cannot be considered discriminatory. On the other hand, remuneration outside a previously agreed salary structure is not just discriminatory, but also contradicts the idea of equal opportunities. Motivation, therefore, as a fundamental element of HR management, can evolve through the observation of the notion of equal opportunities. Another element, the recruitment and selection process, which poses great risks to equal opportunities, is definitely neutral to discrimination: if there no requirement for discrimination

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8 Z. Gurmai, A. Benedek, *Egyenlő munkáért egyenlő bért? Egy aktuális kérdés európai vizsgálata*, „Európai Tükör" 2009, 14, 4, 65–70.

9 See in connection with age discrimination, which is a very typical form of workplace discrimination: E. Barakonyi, *Az életkor szerepe a munkajogi szabályozásban*, „HR & Munkajog" 2013, 10, 47–52.

10 See for typical aspects: B. Sándor, *Diszkrimináció a munkahelyen*, „Fundamentum" 2002, 6, 3–4, 154–162.

during the formation (descriptive) period of a position, the employer will observe the requirements of equal opportunity. However, if a discriminatory approach appears more convenient for any reason, from a purely HR management point of view, it will not pose an obstacle. Therefore, the role of rules and regulations in labour law and social security is also to restrict HR management by legal provisions.

The connection between HRM and labour law

Regulations of labour law are created primarily in order to define the legal framework of employment. A remarkable feature of the legal status of employment is that the parties can agree on the content of this legal relation within the boundaries set by the liberal regulations of private law.[11] The purpose of labour law should solely be to provide a framework. However, in real life, the parties' equal and equivalent status is skewed due to the disparity of leverage, and so the role of labour regulations gains importance. Beyond providing a framework, the principal purpose of labour law is the creation of a set of guarantees that restores the equilibrium between the parties. These elements are set by labour law, however they are considered parts of social rights. The ground for development and alterations in labour law is rooted in this feature, since participants of the labour market are found at the opposite sides of employment, and thus require the interference of labour law in their otherwise liberal legal status (of employment) on a different level and with a diverging purpose. A primary aim of labour law is to find a balance: under stable economic conditions it tilts towards social security, while in gloomy labour market situations the liberalization of regulations and the reduction of guarantees become more dominant. It is significant that some experts of labour law claim that the evolving legislation of the EU is the most important route to maintaining social and labour protection in the face of market fundamentalism.[12]

As a result of these achievements employees become a protected group, and this protection mainly originates from the respect of social rights. At international level similar processes can be observed. The question also appears at EU level, as it is obvious in the case of flexicurity, which was developed as a response.

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[11] Gy. Nádas, *Miért és hogyan felelünk a munkaviszony esetében? Áttekintő gondolatok a munkajogi kárfelelősség célja és lehetséges módozatai körében*, „Miskolci Jogi Szemle" 2014, 9, 1, 48–56.

[12] B. Hepple, *Fundamental Social rights since the Lisbon treaty*, "European Labour Law Journal" 2011, 2, 2, 151.

With the introduction of flexicurity the situation however was not resolved, since the demand for flexibility derives from the fact that requirements of labour law are continuously transforming with changes in economic trends.[13] The demand for flexible employment on the one hand leads to the introduction of atypical forms of employment; on the other hand, the framework of labour law also undergoes modification resulting in alterations in the labour regulations that were previously deemed stable. Atypical forms of employment accommodate the requirement that particular needs of the labour market involving a vast number of employees can be met within the rules of labour law, thereby reducing the risks that the employees' social security are exposed to. A feature of employment is that in order to achieve economic efficiency, participants of this legal relationship are willing to transgress the limitations of labour law and find loopholes to reduce the burdens of regular employment. However, in this respect, the social security system – understood here as a legal protection system – appears as a barrier in the implementation of labour law rules. Flexibility is today's ideology[14] to improve the state of the labour market and at the same time for satisfying the need for labour law, which is in accordance with the expectations to improve economic efficiency.

We must not forget that the solutions that offer a competitive method for the employer can mean at the same time uncertainty and danger for the employee.[15] Behind the notion of flexicurity lies an ambivalent situation in which, for the sake of maintaining labour law guarantees, the legislation allows deviation from, and even reductions in general labour regulations.

It is often unfeasible to group elements of HR management within the framework of labour law: for instance the rotation or expansion of the scope of activity, understood as the modification of the employment contract by mutual consent; or – in contrast – the job description, which by definition is a range of duties set by mutual consent on the basis of the principles of HR management, is acknowledged by the labour law as the discretionary directive of the employer. These differences demonstrate the correlation between HR management and labour law. As a general rule, HR management operate within the frameworks of the labour regulations: the remuneration system can be designed with respect to the labour regulations, or the recruitment

[13] Empirical Analysis of Legal Institutions and Institutional Change: Multiple-Methods Approaches and Their Application to Corporate Governance Research ECGI Law Working Paper 238/2014 February 2014.

[14] B. Caruso, *The Concept of Flexibility in Labour Law. The Italian Case in the European Context*, Universita degli Studi di Catania, Catania 2004, 22.

[15] R. Fahlbeck, *Towards a Revolutionised Working Life. The Information Society and the Transformation of the Workplace*, "International Journal of Comparative Labour Law and Industrial Relations" 1998, 14, 3, 256.

process can be brought in harmony with these rules. Nevertheless, the points of contact in these cases are relative: the recruitment process precedes the employment status, which requires labour law regulations, thus legal rules rather aim to maintain equal opportunities, than provide a framework for the employer. The performance assessment process lies even beyond the frontiers of legal guidelines: labour law does not intercede; in other words: performance assessment does not endanger the set of labour law guarantees that protect social security.[16]

Demands of HR management were least met in the areas of incentives and also termination of work. In the sphere of incentives the issues to tackle are not related to obstacles set up by labour law: the motivating power of salary and allowances are limited by the laws on taxation, which eventually limit employers' ability to use them. Still, it is interesting to observe that representative organizations of employees refrain from demanding different taxation of benefits and allowances in kind, than those tools with social function. The reason behind this could be in the fact the pressure from society appears in achieving measures with social benefits. On the other hand, anti-discrimination rules, rooted in the principle of equal opportunity, also hinder the employers' intention to pass motivating measures that lead to differentiation among the employees; and of course this kind of differentiation is prohibited.[17] These impediments, in the end, result in the same outcome as a regulation based on labour law (see termination), even if it is not incompatible with the aims of labour law to open windows to pass measures that increase work efficiency, (e.g. performance-linked remuneration, termination of holiday, replacement, etc.).

The termination of a legal relationship is a field in which the most essential aspect is the existence of guarantees. Even reforms intended to make labour law more flexible do not in general aim to eliminate these guarantees that protect employees. Rather, the measures taken specify atypical forms of termination to alternative forms of employment.

The correlation between labour law and HR management is also determined by the support for the set of guarantees in labour regulations emanating from other sources. The demand of HR management, in itself, is insufficient to overturn and abolish labour law regulations. However, in the event

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[16] Public sector employment of the is the only sphere of labour law in Hungary where assessment performance emerges as a legal norm at all because of the obligatory application and the strict hierarchy in work organization.

[17] Although this is a common phenomenon especially between women and men. See: K. Koncz, *Munkaerô-piaci szegregáció nemek szerinti jellemzői*, „Munkaügyi Szemle" 2009, 53, 2, 53–62.

demands from the labour market or the requirement to support the economy arise, reforms of the labour law might be anticipated. Regulations pertaining to the termination of work are evidence of this: protection of the employee has remained unaffected despite the growing demand for higher flexibility, and even national ambitions to liberalise rules have been met with obstacles in international law[18]. On the contrary, atypical forms of employment were paired with alternative forms of termination regulations. A fundamental obstacle for the creation of unified regulation and protection at EU level is the lack of a unified system of concepts related to employees, the self-employed and even the employment relationship.[19] This gap is the result of the protection of the legal system of the Member States and the primary economic purpose of the regulation of labour law.

Conclusion

To summarize, supposed correlations can be discerned between HR management and labour law, and also between HR management and the new processes that influence labour law. However, the nature of these depends on the developments and demands of the labour market, and should always be examined with a holistic approach. HR management finds its place either within or beyond the boundaries of labour law, yet it apparently does not contradict it directly. In order to precisely map the relationship, the applicability of individual legal instruments of labour law for HR management should be investigated separately.

Also, from another point of view, the recognition of certain HR tools by and in the framework of labour law raises interesting questions to inspect. Furthermore, a thorough study of the labour market processes will also lead to a better understanding of the correlation. The outcome might yield results that are not new for HR management, but could contribute to the innovation efforts aimed at increasing flexibility in labour law. Darwin's thesis – according to which not the strongest or the most intelligent species survives, but the one which can change and adapt the fastest – can be the starting point. This can be imported into labour law as follows: the labour law system that adopts the best solutions in the shortest period of time will be the "winner."[20]

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[18] European Social Charter, Charter of Fundamental Rights of the European Union, conventions of the International Labour Organization (ILO).

[19] T. Gyulavári, Szürke, *Zóna – A munkaviszony és az önfoglalkoztatás közötti jogviszonyok Európában és Magyarországon*, Habilitációs Értekezés, Eötvös Lóránt Tudományegyetem, Állam-és Jogtudományi Kar, Budapest 2010. (manuscript closed: 07.06.2010), 146–147.

[20] Z. Bankó, *Az atipikus munkajoviszonyok*, Dialóg Campus Kiadó, Budapest – Pécs 2010, 36–37.

Abstrakt
Czy istnieje korelacja między zarządzaniem personelem i elastycznością zatrudnienia?

Artykuł dotyczy zarówno prawa pracy, prawa społecznego, jak i zarządzania personelem, ponieważ analizuje związek między tymi dziedzinami. Zdaniem autorki można wyciągnąć różne wnioski dotyczące elastycznego zatrudnienia. Badania mogą pozwolić sformułować rozwiązania na temat elastyczności zatrudnienia i prawa pracy. Punkt wyjścia może stanowić tu teza Darwina, że to nie najsilniejszy ani najinteligentniejszy gatunek przetrwa, ale raczej ten, który umie najszybszej zmieniać się i dostosowywać do nowych warunków.

Słowa kluczowe: elastyczność i bezpieczeństwo w pracy, zarządzanie personelem, prawo pracy, prawa pracowników, prawo społeczne