

Theses for the regulation concept of the new Labour Code

Summary

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I. Reasons for a comprehensive review of the Labour Code

I.1. On the character of the new labour regulation of 1992

The Labour Code, entered into effect on 01 July 1992, is one of the authoritative codes of the change of the political regime. According to the legislators' intention, it had to include all components characterizing employment policy in a constitutional state and a social market economy. Accordingly, it had to provide the conditions for both the freedom of undertaking and the career stability of employees at the same time.

The legislator stressed that it would not introduce an authority-type regulation; basically, it would rather set out minimum standards only, and terms and conditions more favourable for employees should be stated in agreements, primarily in collective agreements. Consequently, the principle of relative dispositivity was enacted in relation to legal regulation and the collective agreement.

I.2. Differences from European labour law systems

It soon became obvious that one of the features of European labour law, the contractual legal source system of labour law had not developed under the circumstances prevailing in Hungary. This deficiency was realised by the legislator and was endeavoured to be resolved in two ways. On the one hand, amendments to the LC also authorized for dispositive regulation with respect to several legal institutions within the collective agreement, that is, for derogations to the detriment of employees. On the other

hand issues typically included in collective agreements were forced to be regulated. As the LC was practically amended in "packages" which, by nature, were not intended for a comprehensive and coherent settlement but rather for the occasional reconciliation of employer and employee interests, the regulation became rigid.

I.3. Changes in the economic environment – escaping from labour law

As a matter of fact, the more than fifty amendments to the act did not bring about any substantial changes; at the same time, the economic environment considerably changed. Competition, propelled by globalization, subjects all the components of employer operations, including the engagement of labour, to the requisite of efficiency. Businesses frame their structure and operations to adapt, as much as possible, to changes enforced by economic competition, and this clearly affects employment as well. They strive to organize the labour required in this way, which is a warning sign: the concept of the new LC may not be confined to the traditional labour law framework. This is the reason why it can be observed that the static definitions of labour law are being replaced by teleological definitions linked to objectives. This change is in the interest of both parties, providing greater flexibility for the employer and greater safety for employees and parties of similar legal standing (see, as an example, the interpretation and application of the notions of *employee vs. worker* in British labour law).

Attempts towards efficiency are coupled, in many cases, with the devolution of employment, and an escape from employment within the framework of labour law. There is a widely perceptible tendency towards sham contracts of work and employment in the process of "escaping from labour law". At the same time, there is a number of activities where the legal framework for the work assignment concerned can be provided by arrangements other than classic employment. Authority intervention is an imperative but not a sufficient means of managing the process, in consideration of the not only legal reasons for this phenomenon.

I.4. Voluntary law-abiding – review of related fields of law

In addition to the indisputable role of the new LC in stipulating the terms and conditions of employment, it must be pointed out that in a number of cases, the parties primarily depart from differences in tax and contribution burdens when choosing the type of legal relationship. It should be stressed that the new LC – as a single law – is not a sufficient means of providing the conditions for voluntary law-abiding: the regulatory environment of labour law and legal provisions on taxation and social insurance have a major impact. The theses discuss the framing of the new LC; they are not intended to review all the legal conditions of employment. It should be indicated at the same time that only a simultaneous and consistent review of the branches of law affected may lead to the fact that in a desirable case, work can be kept within the scope of labour law. To put it in another way: the adoption of a new LC will affect large systems.

I.5. Response to a transformed regulatory environment

In alignment with changes in the structure and attributes of the economic environment, one of the high-priority legislative objectives of the new LC is to set out in which cases and to what extent it is required and reasonable to maintain traditional labour-related regulation. It must be stressed that the legislative task is not to weaken employment guarantees in general, all the less because there are great numbers of employees working at traditional large firms as well. Under different circumstances in terms of the employer and employment, other types of protective regulations must be framed.

The concept of the new LC must also take it into consideration that an increasing number of employees work for SMEs, and the number of employees at works of traditional large-scale industrial production is decreasing. Outsourcing is becoming an increasingly wide-spread method for reducing operating costs, also resulting in an increase in the number of small employers flexibly providing services. The employment needs and capabilities of small employers demand differentiated regulation from the new LC; a major part of rules on employees at factories and large firms are impossible to implement in this framework. In developed countries, the services sector has the highest headcount of employees; industries are forced back to the second place, and only a few percent are employed in agriculture. This distribution is also characteristic of Hungary, though in different proportions.

It is worth considering whether to differentiate between regulations according to the ownership structure of employers, with particular regard to state-owned or municipality-owned business organizations (in majority ownership). Prospectively, this differentiation is expected to make it imperative to reconsider the entire system of employment conditions.

I.6. New type of employee protection – according to modified employment demands

Transformation of the employment structure is conducive to a review of the original objectives of labour legislation. Labour laws were enacted in order to protect workers employed at industrial units; the predominance of the services sector partly involves different demands, different types of protection in the labour market. It should be highlighted at the same time that the social protection of employees should continue to be considered as a main regulatory function, with particular regard to fair pay, equal treatment, work and rest periods, and protection of the employment relationship itself, by stipulating rules to restrict the termination of employment. The legal institutions of the new LC must establish this regulatory role by taking into consideration the new demands of employment as well. The dispositive character of regulation – to be strengthened primarily in relation to payment for work –, coupled with the spread of atypical forms of employment, simultaneously indicate the limits of legislation – particularly as stipulated by international labour conventions and EU directives –, ensuring the

indispensable protection of employees as a quasi sui generis feature of labour law, being a terminal point of endeavours for flexible employment.

I.7. Arrangements for legislation – efforts to reach a broad consensus

Labour legislation is a process where social partners exert a strong and direct influence even on the regulatory position of the state. Preparation of the codification concept must be completed in cooperation with national interest representation organizations of employees and employers – and by winning their widest possible agreement. Legislation may only be effective if social partners formulate their expectations and concessions in view of the radically altered situation of employment. The legislative objective is not less than – in the same way as a method for protecting large-scale industrial employment was found by classical labour law – that the new LC, in response to a considerable change in the system of conditions of employment, should codify labour law guarantees requiring alternatives different from the traditional ones. In many cases, adequate flexibility would be the main guarantee for safety. A pronounced expectation is that the law should not discourage but motivate the selection of contracts within the scope of labour law.

II. Basic principles of the LC, nature of the regulation, general provisions

II.1. New basic principles – The specially protected

The LC includes some basic principles of labour law also today, but it does not make mention of the requirement to characterize the performance of legal relationships where performance is usually specified unilaterally. Labour relationships are typically of this nature. Consequently, the new code will also include the basic principle of equity amongst the basic principles known so far. General provisions will regulate the cooperation obligation of the parties, and respect for their right of self-determination. The general provisions must be extended by the general expectations specified among the positive rules in the currently effective LC (e.g. exclusion of causing disproportionate and unreasonable injury in the course of exercising rights), in accordance with the basic principle of equity.

II.2. The regulatory role of collective agreements

As regards the nature of the regulation, the new code assigns a much greater role to collective agreements – to the collective understanding of the parties – than the currently effective regulation does. The regulation is intended to provide the conditions for the regulatory function of collective agreements at an appropriate level. In addition to ensuring regulatory flexibility, this is also one of the essential criteria for the rational adoption of certain EU directives. This, however, will inevitably modify the content

and proportion of cogent and relatively dispositive rules and those allowing for bilateral derogations. It must also be examined whether other collective covenants besides the collective agreement should be allowed to set out rules on working conditions.

II.3. New definitions – a differentiated notion of employees

In addition to containing static notions, the LC does not include certain fundamental legal definitions. For instance, it does not regulate the notion of employee. In fact, precise specification of the personal scope of the act may even entail the partial extension of certain labour law institutions to labourers in a legal status similar to that of an employee. Differentiated regulation of the notion of employee must also be referred to within the scope of general provisions, particularly within the personal scope of the act.

The employment relationship is a legal relationship of a certain term, and the exercise of rights and the performance of obligations entail a number of procedural acts. Representations relevant in terms of labour law must be secured accordingly, together with their general validity tenets and the rules of limitation. As regards the regulation of statements and representations, it is reasonable to ensure concordance with the rules set out in the new Civil Code.

III. The employment relationship

III.1. Selection of the type of contract

The new regulation must also depart from the fact that in the course of selecting the type of contract serving as a basis for work, the parties must act with the principle of proper and fair legal practice in view. Accordingly, provisions should be invariably included on the main aspects of separating the work contract from other legal relationships, clearly stating that a sham contract for work shall be null and void; and if it conceals another contract, the contract must be adjudged on the basis of such concealed contract, entailing legal consequences of taxation and social insurance as well.

III.2. Identifying the content of the employment relationship and the work contract; the issue of dispositivity

It is also important that the selection of a work contract also depends on the parties' will. In this interest, however, it is essential to exactly specify the employment contract and its legal effect, the employment relationship. Enumeration of the content elements required in the contract as set out in the currently effective act does not serve as a substitute for this. At the same time, regulation of the essence of the work contract and the work relationship will draw the limits of the parties' contractual freedoms as well. Nevertheless, through strengthening the parties' contractual freedoms, it is reasonable

to supplement the compulsory content elements of the contract by the fact that the establishment of the employment relationship is also subject to agreement in any issue deemed to be substantial by any of the parties. In this respect, it must be determined with reference to which rules dispositivity is justified – this can be made universal in a collective agreement of broader scope –; positive legal authorization is required for potential derogation in respect of an employment contract as well.

The act must also stipulate in respect of which legal institutions dispositivity may not prevail. As regards dispositivity, it should be noted that the requirement of equal treatment fundamentally restricts / excludes unwanted abuses. So for instance, when determining the amount of remuneration, implementation of the rule of equal pay for equal work may not be legally evaded on the grounds of an agreement concluded with the employee. As a consequence of the solution proposed, the parties may not only dispose on the issue mentioned in the rule on the employment relationship, but also in addition thereto, including stipulations on security deposit or retention money. At the same time, the institutions protecting employees' safeguarded interests (such as the right to receive minimum wage; maximum working hours; minimum rest periods) will invariably prevail through the fact that the act itself prohibits derogation from the rules mentioned.

III.3. More detailed rules on the mutual obligation of cooperation and information provision

Today, one of the most important institutions in relation to the establishment of a work relationship is regulation of the employer's obligation of information provision, on which the currently effective LC contains provisions compliant with European criteria. It must be stressed, however, that this is also a declaration: defective performance or non-performance thereof may entail legal consequences. Accordingly, it is reasonable to specify the regulation. In respect of all this, more detailed regulation of the parties' mutual obligation of cooperation and information provision must be highlighted in regard to legal institutions.

III.4. Compulsory amendment to the employment contract

As an employment relationship is established by the parties' mutual agreement, it may only be modified by the parties' mutual consent. In order to protect employees in a particularly different situation in the labour market – including, primarily, expectant mothers / mothers with small children –, it is reasonable to maintain the mandatory modification of the employment contract by the employer with respect to these employees, to ensure protection for expectant women and the right of mothers with small children to receive appropriate salary. In order to resolve uncertainties detectable in judicial practice, it is necessary to clearly state that if a regulatory provision not allowing for derogation is modified, this will also result in a corresponding modification of the employment contract, regardless of the agreement between the parties.

III.5. The employer's sphere of authority and transfer thereof

The LC does not provide a definition of the employer's sphere of authority, nor the scope of those entitled to exercise the employer's sphere of authority. In terms of business companies, employer's rights are stipulated by the Companies Act. This entails an under-regulation of the issue in the LC, which should be changed. It is reasonable to include provisions in the LC on the transfer of the employer's sphere of authority, on its permanent or occasional nature. Regulation must extend to the written records of such transfer and the withdrawal of the sphere of authority transferred.

III.6. Termination, cancellation – elimination of under-regulation

The termination and cancellation of the employment relationship is under-regulated in the currently effective LC. As regards work, most conflicts arise in connection with the cancellation of the legal relationship; this is the area where most conflicting decisions are passed in judicial practice. Therefore, current regulation is not suitable for employers and employees, either. Currently effective regulation takes the large company model as a basis, contrary to which a differentiated and flexible solution is required. The opportunities until now for termination of the employment relationship must be extended. Thus, if an occupation is made impossible, it should also be allowed to terminate an employment relationship of a determinate period by ordinary termination.

The flexibility and security of employment is ensured by solutions which include opportunities for repeated employment later on as early as the termination of the work relationship. In the event that these techniques are adopted, all currently effective terms and conditions for termination of the work relationship must be reviewed.

III.7. Small employers: termination without reasons – in return for compensation for damages

The LC does not include causes and reasons for termination; it only refers to them in general. Lawful reasons to substantiate termination have been fundamentally developed by judicial practice. Out of these, however, the ones referred to most frequently cannot be applied to employers with low headcounts, including reorganization, job termination, reduction of headcount, meaning that it is difficult for the employer to specify a reason connected to the employer's operation. Therefore it is reasonable to examine whether employers with low headcounts should be exempted from the obligation of providing reasons for termination. In consideration therefore, employees are to receive indemnification in line with the term of the employment relationship.

III.8. Socially justified termination – by strengthening the rights of participation

Particularly in the course of collective dismissal, introduction of the requirement of socially justified termination by the employer will represent stronger employee pro-

tection. In such cases, the employees concerned must be selected also in view of their social circumstances. The notion of social circumstance cannot be defined exhaustively; it includes, in particular, the term of service, age, maintenance obligation, and financial standing. The notions of social justification and social circumstances may be established by a joint evaluation of all conditions affecting the employee's situation; legislation can provide on life conditions only at a general level, and the assessment of specific cases may be assisted by judicial practice or the stipulations of the collective agreement, properly in line with local circumstances. When examining social circumstances, restrictions to protect employees' personal rights and private sphere must be specified. The aspect of social circumstances could be left out of consideration in the event of ordinary termination if so required for ensuring a balanced composition of labour.

A requisite for the enforcement of socially justified termination is that the employer will be obliged to consult with the works council – in the absence thereof, with the representatives of employees – prior to ordinary termination based on reasons of business operation, with particular regard to the circumstances of layoff and the aspects of selecting the employees concerned. In the event of omission of such consultation, ordinary termination shall be null and void. Exceptions by the works council shall not affect the validity of ordinary termination. Exceptions shall not have any legal consequences besides the fact that in the course of assessment of an action to establish the illegality of termination of employment, the employee's social standing may be compared with those cases, where the works council did not raise any objection in relation with ordinary termination. The proposed regulation particularly strengthens the rights of participation of the employees' elected representatives – thereby their liability as well – in the employer's management.

III.9. Termination – more efficient employee protection by doing away with excessive employer burdens

In the course of termination of the work relationship, employee protection must be enforced more efficiently than set out in currently effective regulations (e.g. hearing before termination, specification of particularly justified cases); at the same time, it is reasonable to abolish certain excessive institutions, especially as regards regulation of the legal consequences of violating prohibitions of termination. Nonetheless the high priority of employee protection, it is reasonable to avoid solutions which enforce the employer to pay excessively high amounts. Accordingly, it is expedient to reconsider the period of notice and dismissal pay, as well as to completely revise the legal consequences of unlawful termination of the work relationship, particularly to identify proportionate legal consequences in line with the employer's breach of law.

III.10. Work rules – corrections and streamlining of profile

Apart from some substantial modifications, the work rules of the currently effective LC would rather require minor corrections. It is important to review, in this respect, the terms and conditions of employment other than set in the employment contract based

on the employer's unilateral decision, as well as its accommodation in the system. All those provisions on work rules must be abandoned which basically fall within the collective or individual agreements of the parties. Provisions of the act on study contracts must also be reviewed, many elements of which cannot be sustained in practice. Finally, regulation of legal consequences due to the breach of an obligation arising from the employment relationship – based on the collective agreement – must be specified, particularly to resolve the discrepancy between the recent text and judicial practice.

III.11. Working hours and rest periods – with more flexible guarantees

As regards the new LC, it is the chapter on working hours and rest periods in respect of which the question most conspicuously arises: whether stress should rather be laid on the social protection function or on flexibility and economic competitiveness. On the basis of international experience it can be stated that the rules on working hours must ensure more flexibility than today. This cannot only be achieved, necessarily, by loosening statutory regulation, but also by collective agreements, and by employment contract arrangements within highly specified boundaries. As regards the regulation of working hours and rest periods, it must be taken into consideration – besides preferring flexibility – that safety and the right to rest should not be infringed.

III.12. Differentiated regulation of working hours – notional clarification towards atypical employment

The principle – prevailing too strictly today – according to which more flexible regulation can only be ensured by collective agreement must be abandoned. This is not in conformity with labour affairs reality in Hungary today: there are a number of employers which are not – and will not be – subject to a collective agreement and this is not up to them. Moreover, regulation of this type actually puts large employers with more capital strength to an advantage over smaller, more cost-sensitive employers. It is possible to draw up more differentiated regulation based on the size of the employer. It is also worth considering that – similarly to practices in other countries – employers could derogate from general rules in certain cases if permitted by a labour authority (labour affairs centre). Obviously, terms and conditions thereof must be elaborated in the act.

Regulation of working hours is not only important from the viewpoint of establishing the labour charter and its content, but it is also associated with several atypical employment methods (job sharing, job pairing). However, implementation of these methods in Hungary definitely requires legal regulation, which makes it indispensable to specify certain definitions related to working hours.

III.13. Remuneration for work – partial alteration and clarification of notions

Although the chapter on the remuneration for work does not require to be radically revised, it is still essential to change some of its substantial elements. In respect of this

chapter, it is also essential to ensure dispositivity with reference to the collective agreement, subject to appropriate guarantees. The complicated duality of calculating the average wage and absence pay is a problem fundamentally affecting both employees and employers. This arrangement is questionable. Regulation of the establishment of performance requirements must be reconsidered, with particular regard to provisions on adjustments thereof.

In regard to regulation on the remuneration for work, it is important to have a general definition of the legal notion of pay in the LC; in addition, rules on social allowances should be arranged in a more explanatory manner than at present, together with the terms and conditions of the reimbursement of costs incurred by employees in connection with the work performed.

III.14. Liability

The rules of liability for indemnification in the current LC have long been unchanged, while ownership conditions have been fundamentally altered. Therefore in the field of employees' liability the present statutory restriction of damage caused by negligence may not be sustained. With a view to judicial practice, it is worth considering whether to stipulate employees' obligation of prevention by way of positive rules in the new LC. It is also required to reconsider the notion of the "employer's sphere of operation", unreasonably extended by judicial practice.

III.15. Atypical employment relationships – wide-range dispositivity

Atypical work relationships have a special course of development in Hungarian labour law: in general, positive legal regulation has well preceded practical demands related to the legal institutions at stake. At the same time, experiences throughout Europe on the regulation of legal conditions suggest that in fact an inverse process took place in other countries: labour players developed contractual arrangements by their agreements which were subsequently provided with (partial) positive legal regulation – from a safeguarded public or private interest. Consequently, the demand for regulating atypical work relationships is basically interconnected with the nature of regulation of the employment relationship. It is definitely necessary to encourage the spread of atypical forms of employment in the interest of flexible business administration and employment. An obvious procedure for this, however, is to dismount the barriers posed by the agreements between the parties. On the one hand, this may be achieved by dispositive regulation against the collective agreement. On the other hand, the establishment of atypical legal relations may be assisted by a reconsideration of the nature of regulation against the employment contract. In this respect, the approach – already stated above – may be authoritative according to which both the legal regulation and the collective agreement follow an invariably relatively dispositive approach of a general nature against the agreements between the employer and the employee, but in each case where it is not countered by an elementary legal policy reason, opportunities should also be provided for developing dispositive regulation.

III.16. Managers – those in confidential positions

As regards staff employed in management positions, it is reasonable to maintain a different regulation in that it is reasonable to regulate more strictly both their liability and the institution of conflict of interests in their regard. A group of employees has appeared among managers and subordinates working mainly under instructions, whose members generally perform highly qualified work and hold positions significant for the employer's operations. Thereby they necessarily perform work of confidential nature, typically with remarkable remuneration. The special situation of this stratum of employees is treated improperly by the current regulation: on the one hand, it provides superfluous protection by labour law (e.g. for termination) as compared to the stratum of employees in a much more disadvantaged situation on the labour market; on the other hand, their liability is stated at a general level, that is, in a restricted manner. The labour law status of these employees should be approximated to that of directors and officers. At the same time, the act may not provide a precise definition of this circle of employees as a matter of course, therefore the parties must be allowed to stipulate the partial or complete implementation of rules on directors and officers in the employment contract. The act would restrict this in that it would stipulate that such clause may only be applied in an employment contract of an employee holding a highly significant position in terms of the employer's operations, and according to certain preliminary concepts, it would subject the implementation of more flexible rules – thereby ensuring less protection – to payment of basic personal wage amounting to at least ten times the current minimum wage.

IV. Labour relations (collective labour law)

IV.1. Works council and trade unions – resolving the confusion of roles in the regulation

The most important problem of collective labour law is whether to maintain or dispense with the duality of this area of law. In countries where an institutional dual structure of collective labour law has been realized, the conditions of operation differ from the system of terms and conditions in Hungary. While e.g. in Germany trade unions and collective agreement intervene at levels over the employer, works councils and works agreements affect the employer's decisions at the employer. Functional disorders are avoided by detailed legal regulation.

It has become obvious by today that regulation of works council and trade union rights within the LC has been a failure. There were many problems already with the original regulation, primarily due to the absence of consistent separation and that of really substantial rights of participation. As a result of subsequent inconsequent regulation, the spheres of authority of works councils and trade unions got increasingly mixed up. Amendments to the regulation – without any theoretical basis whatsoever –

have formed such a medley by today that orientation is becoming increasingly difficult. Basically, the present situation does not encourage a dialogue between employers and employees; it is rather suitable for intensifying debates.

In the event that this duality of collective labour law continues in existence, it is reasonable to reconsider regulation of both trade union rights and that of the sphere of authority of works councils. It is open to question whether it is necessary to maintain trade unions' participation rights. In this context, more differentiated potentials within the sphere of authority of participation of works councils should be reviewed, with particular regard to works agreements. In the event that the dual system of collective labour law ceases to exist, legal regulation must ensure – more efficiently than today – the employer's obligation to negotiate, but legislation cannot reach farther than this.

IV.2. Collective agreement – regulatory scope of authority, entitlement to contract and join

Regulation of the institution of collective agreement must be harmonized with the planned modification of Article 13 of the LC: it must be stipulated that the collective agreement may regulate any and all issues concerning the employment relationship. It is reasonable to elaborate the doctrinal bases of the collective agreement more in detail, e.g. as regards invalidity, unlawfulness and any legal consequences thereof. Entitlement to conclude contracts must be regulated differently from the present situation. It is not at all reasonable today to subject trade unions' contracting rights to works council elections. As regards specification of the ability to conclude collective agreements, taking international practice as a basis should be contemplated. More detailed regulation would only be required if more than one trade unions are present at the employer concerned, and there is a debate between them. Regulation must take into consideration any changes in power relations, more specifically to any potential consequences thereof as well. More accurate regulation than today is required in respect of concluding collective agreements with a scope extending to more than one employers. It should be considered to provide employers with the opportunity to join a collective agreement, obviously subject to the terms and conditions set out in the act.

IV.3. Scope, disputes of interpretation, state control and arrangements outside the collective agreement

It is reasonable to sustain the principle that the scope of the collective agreement is extended to all employees in an employment relationship with the employer. Procedural rules – different from the general ones – of legal disputes related to the interpretation of the collective agreement should be regulated. In this respect it is reasonable for the parties to be able to turn to a mediator (arbitrator) or to court. In this area, public legality control of collective agreements should be ensured; however, only a court would be allowed to act, rather than a public administrative authority. It is not excluded, however, that justice should be dispensed upon an authority initiative.

Regulation on the possibilities of the employer and trade unions to come to an understanding outside the collective agreement, including, particularly, the legal nature of wage contracts and their impact on individual legal regulations. It is also important to reconcile opportunities for trade unions not involved in a collective agreement to come to an understanding with the employer.

V. Resolution of labour conflicts

Current regulation of collective conflicts of interest requires complete re-regulation; maintenance of mandatory arbitration should particularly be subject to contemplation.

The notion of labour dispute, its adjudication procedure has been well-established for decades, therefore it is not reasonable to effect substantial changes in this system. At the same time, it is a fact independent from legislation that labour courts are slow to proceed, sometimes even cumbersome – mainly as a consequence of the safeguarding rules of the Code of Civil Procedure. Therefore it is expedient to also ensure alternative ways to adjudge labour disputes as follows:

- provide opportunities for arbitration;
- implementation of the legal institution of mediation (Act LV of 2002);
- introduction of the institution of employee objection to be enforced in the framework of independent labour investigation.

VI. The institution of independent labour audits

VI.1. Labour “auditors” – not an alternative to authority control

Labour regulation protects fundamental employee rights – particularly by mandatory provisions –, therefore observance of these rules, that is, the lawfulness of employment is a fundamental interest of society. It is evidenced by a number of studies and everyday experience as well that still, rules are breached massively in practice. This statement also applies even if the standards and effectiveness of authority labour control have improved indisputably and perceptibly in recent years. It is impossible to finance the establishment of an authority control system to ensure the sanctioning of offences with realistic prospects on an on-going basis for all employers.

Therefore it is reasonable to introduce independent labour investigations similar to the institution of auditing – compulsory to apply in certain forms of business associations – which checks the majority of employers for compliance with labour rules on an on-going basis. The proposal is not intended to establish any kind of concordance between authority and internal controls; in fact, the objective is to clearly separate the two. The solution proposed does not affect and, in particular, does not restrict authority inspections in any manner. It can be mentioned as an example that the operation,

the responsibilities and spheres of authority of the Tax Authority (APEH) will not change at all due to the fact that auditors operate at a specific and considerable part of companies.

VI.2. Who can be an auditor – issues of qualification and liability

This labour inspection would be performed by a natural person with appropriate legal qualifications or a legal entity employing such person, assigned by the employer, whose licences are required to be specified in approximation to their labour supervisor. Within the scope of such assignment, the person completing such inspection may not be instructed; at the same time, partly in consequence of this legal arrangement, he shall be liable for indemnification for their activities as the case may be. It also follows from the arrangement of the assignment that the expenses incurred by the party performing such inspection shall be borne by the employer.

VI. 3. Relationship of employer and auditor – correction of irregularities

An independent labour inspection may be "rewarding" for an employer because the employer may not be fined within the scope of an authority inspection as a consequence of irregularities disclosed and corrected in the framework of the former.

In addition to specifying the licences due for a labour auditor, it is also expedient to reconcile the procedure between the labour auditor and the employer's specific bodies in order to conduct the investigation and to benefit from the results. Regulation thereon must ensure that the merits of any indications by the labour auditor be investigated by the employer in order to correct such irregularity as soon as possible and that any standpoint different from that of the auditor be sufficiently justified.

VI.4. Employee objection to auditor – an alternative means to settle disputes

In the framework of an independent labour inspection, but partly in addition thereto, it may also be reasonable to introduce the institution of employee objections. This essentially means that the labour auditor is obliged to investigate any objections to the lawfulness of employment as submitted to him by any individual employee (group of employees), and settle it, as the case may be, in a manner that the identity of the party submitting such objection could not be ascertained. The auditor shall act on the basis of such employee objection – if deemed to be properly grounded – as in the case of an irregularity disclosed by the auditor himself. Thereby employee objections may also function as an alternative institution to settle labour disputes.