

Sára Hungler: Labor Law Reforms after the Populist Turn in Hungary

Abstract

The characteristics of Hungarian populism and its effects on labor and social policy are rather different compared to those of western Member States of the EU. These differences are due to the different experiences related to inter- and intra-EU migration and to the difference in how the EU's austerity measures were imposed during the economic crisis. The two distinctive elements are the workfare regime which replaces the welfare state, and anti-pluralism. In the workfare model, 'hard-working people' are pictured as an idealized mass of employees who are disciplined and striving for betterment every day; and whose jobs and wellbeing are jeopardized by illegal migrants and the idle poor. However, labor law does not strengthen the rights of 'hard-working people' or support them in asserting their rights against their employers. While the Roma have been described as the undeserving poor and mainstreamed in everyday politics and practice, guarantees and protective measures have been severely curtailed in social policy, amplifying the insecurity and material deprivation of those who lose their jobs. Regarding collective labor law, the lack of an autonomous social dialogue supports anti-pluralist trends, a characteristic of populist governance. The fundamental elements of democratic control, such as participation or trade union rights have been largely eliminated to cement the executive power of the coalition.

Keywords: populism, social policy, employment policy, social dialogue, Hungary

1 Introduction

The influence of populism has different implications for labor and social law in Central Eastern Europe (CEE) than we can observe in 'old' Member States. In these latter countries, populists tend to emphasize that the 'hard-working people' need protection against the 'unworthy mass', who are primarily made up of migrant workers from CEE countries leveraging on the foundational provisions for the free movement of individuals, and EU regulations related to the posting of workers. The UKIP's rapid rise in the UK demonstrates the linkage between populism and immigration policies.¹ Moreover, there are Member States such as Greece, where populism targets the austerity measures of the 'troika'. Discontent with the EU and its labor law regulations is rooted in the insistence of an intervening supranational organization on the scaling down of employees' collective and individual protection in the event of collective redundancies and the transfer of undertakings, turning former high standards into low ones on a

¹ Geoffrey Evans and Jonathan Mellon, "Immigration, Euroscepticism, and the Rise and Fall of UKIP," 25 (1) *Party Politics* (2019), 76-87.

European scale. The popular dissatisfaction with the austerity measures fueled the populist movement on both the right (ANEL) and the left (SYRIZA) after the crisis.²

Due to their different geopolitical and economic backgrounds, CEE countries face different issues related to migration and economic crises than their western counterparts. Regarding migration, as most CEE countries are sending and not hosting countries and have lost hundreds of thousands of their workforce due to intra-EU migration,³ the messages frequently used in old Member States against migrant workers are not appealing to the general public. Therefore, populist parties here have to use different rhetoric to increase their support. While Hungary is set head-strong against inter-EU migration and takes the lead in demonizing ‘illegal’ migrants, third-country migrants represent very little threat to the national labor market; moreover, due to growing labor shortages, employers are increasingly in need of non-EU workers and are hiring from neighboring countries such as Ukraine or Serbia, with governmental support.⁴ Posted workers have divided the poor eastern and rich western EU states for decades, with France leading efforts to tighten the rules.⁵ Western Member States have long complained that central and eastern Europe gains an unfair advantage from the ‘social dumping’ of cheap labor, arguing that posting low-paid workers hurts local jobs and erodes labor protections in higher-wage Member States such as France and Germany, while Poland and Hungary have sought to block reforms.⁶ While the Hungarian labor and social law reforms may not derive from the playbook of populism, their major characteristics are traceable in the new institutional setup. The Orbán-led Fidesz government introduced a new vision of ‘illiberal democracy’. Orbán uses this term with a specific meaning, different from the one established in political sciences.⁷ In his interpretation it means that the welfare state has to come to its end, and a labor-based society has to be created. This vision can only be reached if “liberals do not win elections”⁸ (hence the indication of ‘illegal’). Their landslide victory allowed the Fidesz-

² Aslanidis Paris, “Greek Populism: A Political Drama in Five Acts,” in Hanspeter Kriesi and Pappas S. Takis (eds.), *European Populism in the Shadow of the Great Recession* (ECPR Press, Colchester, 2015), 181-196.

³ According to Eurostat data, in 2019, the total migration was 17,9 million, out of which 13 million was active (4,2 percent of the total EU-28 population and 3,7 percent of the EU-27 population. 46percent of migrants targeted the UK and Germany, 28 percent targeted France, Italy and Spain. The biggest sending countries (58 percent) are Romania, Poland, Bulgaria and Italy.

⁴ Since 2016, employment of a third-country national has been much less bureaucratic than before; the Finance Minister decides on the number of people who can be hired without a working visa. As a result, the number of third-country nationals who can be employed in Hungary is around 55-59,000 per calendar year. Official Gazette, 2019/7 (II. 14.).

⁵ Posted workers make up only 1percent of the EU workforce, with many employed in haulage and construction.

⁶ A new EU directive, announced in July, limits the right of citizens from poorer member states to work in richer ones on a low salary. Hungary and Poland both brought actions before the Court of Justice (ECJ, Case C-620/18 Hungary v Parliament and Council, EU:C:2020:1001; ECJ, Case C-626/18, Poland v Parliament and Council, EU:C:2020:1000) seeking the annulment of the amending Directive in whole or in part. Germany, France, the Netherlands, Sweden (in Case C-626/18 only) and the Commission intervened in the proceedings in support of the Parliament and the Council. Advocate General Sánchez-Bordona proposes that the Court of Justice should dismiss the actions for annulment brought by Hungary and Poland against the Directive strengthening posted workers' rights.

⁷ Fareed Zakaria, “The Rise of Illiberal Democracy,” 76(6) *Foreign Affairs* (1997), 22-43.

⁸ Hungarian News Agency, “Az illiberális demokrácia az, amikor nem a liberálisok nyernek,” *HVG* (16 April 2017.), available at https://hvg.hu/itthon/20170426_orban_viktor_brusszel_europai_parlament/2/pp/64089.

KDNP coalition to re-codify major policy areas with no opposition, while triggering substantial attention from national and European institutions due to the removal of democratic guarantees from political processes.⁹ The new direction in employment and social policy was anchored in the Fundamental Law of Hungary, stating that “everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential. Hungary shall strive to create the conditions that ensure that everyone able and willing to work has the opportunity to do so.”¹⁰ Following the adoption of the Fundamental Law, major legislative bills were adopted in the social and labor fields, providing more flexibility while removing substantial elements of security. The Government's social policy is said to be based on the joint reinforcement of employment and family policies,¹¹ aiming for full employment (called as workfare model) and extensive support for (middle class) families.¹²

However, the Government has decided the new social policy directions unilaterally, excluding social partners from the interest reconciliation process and denying the importance of autonomous social dialogue, crucial for the European Social Model.¹³ This anti-pluralism rests on the populists’ claim to be the sole representatives of the people, understood as a homogenous entity; those who dissent from the populist direction and aim to represent autonomous interests (such as trade unions or civil organizations) are subject to banishment and labelled as traitors of the real people.¹⁴ The Labor Code adopted in 2012 further paved the road for the workfare regime and brought in a wide range of

⁹ Some examples are the European Commission for Democracy through Law (Venice Commission), *Opinion on three legal questions arising in the process of drafting the new constitution of Hungary* (No 614/2011, 28 March 2011) (Venice Commission Op 614/2011); *Opinion on the new Constitution of Hungary*, (No. 618/2011, Venice, 17-18 June 2011) (Venice Commission Op 618/2011); European Parliament resolution on the Revised Hungarian Constitution [2011].

¹⁰ Fundamental Law Article XII paras (1) and (2).

¹¹ Hungarian News Agency: “Novák Katalin: A kulcs a család, a munka és az innováció,” *Magyar Nemzet* (7 May 2021), available at <https://magyarnemzet.hu/kulfold/novak-katalin-a-kulcs-a-csalad-a-munka-es-az-innovacio-9768278/>; Hungarian News Agency: “Orbán Viktor: a munkaalapú társadalmat erős családpolitikával kell ötvözni” *InfoStart* (7 May 2021) available at <https://infostart.hu/kulfold/2021/05/07/orban-viktor-a-munkaalapu-tarsadalmat-eros-csaladpolitikaval-kell-otvozni#>.

¹² As Lendvai-Baiton pointed out, the terms gender mainstreaming and gender equality, both favoured by the EU, have disappeared and instead, a more patriarchal term, 'family mainstreaming' has been used. See: Noémi Lendvai, "Soft Governance, Policy Fictions and Translation Zones: European Policy Spaces and their Making", in J. Clarke et al. (eds), *Making Policy Move: Towards a Politics of Translation and Assemblage* (Policy Press, Bristol, 2015), 131–56.

¹³ The social dimension that was supposed to complement the monetary union would become the European Social Model, a concept that was never officially defined. Social dialogue is one of the main pillars of the European Social Model, the unifying and protective umbrella in which social justice and good economic performance are compatible goals. See: Daniel Vaughan-Whitehead, “Is Europe Losing its Soul? The European Social Model in *Times of Crisis*,” in: Daniel Vaughan-Whitehead (ed.), *The European Social Model in Crisis: Is Europe Losing its Soul?* (Edward Elgar Publishing, Cheltenham, 2015).

¹⁴ Jan-Werner Müller, *What is Populism?* (University of Pennsylvania Press, Philadelphia, US, 2016), 3.

deregulations and increased labor market flexibility while severely curtailing collective labor rights¹⁵ and destroyed national-level social dialogue.¹⁶

Even though Hungary's economic performance has been quite strong in the past few years and robust economic growth has been witnessed with one of the highest GDP growth rates in the EU,¹⁷ the populist turn dismantled the welfare state and started building a new regime, characterized by social disinvestment, rooted in the neoliberal scheme.¹⁸ Radical austerity measures were introduced to mitigate the adverse effects of the crisis; however, these appeared in the political discourse as necessary steps to cut back overly generous social benefits which discourage people from entering the labor market.¹⁹ As disincentives, unemployment benefits were minimized, and compulsory public works programs were introduced.²⁰ Overall social spending has been cut drastically since 2010, and social assistance schemes have been terminated. Self-responsibility became the guiding principle in social policy, replacing collective protection with individualistic and often punitive schemes.²¹

The image of a 'hard-working people' whose wellbeing is jeopardized is quite different in Hungary. Populist rhetoric often blames the Roma for all the hardships experienced in the social services. The Roma are often depicted in official statements as lazy and purportedly living on benefit. Public work regulations put a disproportionate burden on the Roma unemployed, interfering with their private sphere, such as the maintenance of their homes, while disregarding the contributing factors leading to their material deprivation, such as segregation and a high ratio of drop-outs in schools.

This paper is divided into three major parts; the first examines the new direction in employment policy and the labor law reform, with particular attention to the role of foreign multinational corporations. The second focuses on anti-pluralist tendencies regarding social dialogue and collective labor rights. Finally, the third scrutinizes unemployment policy measures, a policy terrain where the workfare regime can be best detected.

¹⁵ Csilla Kollonay-Lehoczky, "Génmanipulált újszülött – Új munkatörvény az autoriter és a neoliberális munkajogi rendszerek határán," in: Attila Kun (ed.), *Tanulmányok az Új Munka Törvénykönyvéről* (Károli Gáspár Református Egyetem Állam- és Jogtudományi Kara, Budapest, 2013), 24-56.

¹⁶ Tamás Gyulavári and Gábor Kártyás, "Effects of the New Hungarian Labor Code on Termination: Has it Become Cheaper to Fire Employees?" *Monitor Prawa Pracy* (2016), 342-351.

¹⁷ Constantinos Alexiou, Sofoklis Vogiazas and Nikita Solovev. "Economic Growth and Quality of Institutions in 27 Postsocialist Economies," 47(4) *Journal of Economic Studies* (2020), 769-787.

¹⁸ Peter Abrahamson, "European Welfare States Beyond Neoliberalism: Toward the Social Investment State," 39(1) *Development and Society* (2010), 61-95.

¹⁹ István Horváth, Sára Hungler, Réka Rácz and Zoltán Petrovics, "Dialogo sociale e crisi economica globale in alcuni Paesi dell'Europa centrale e orientale," 1 *Diritti lavoro mercati* (2020), 183-197.

²⁰ Sára Hungler and Ágnes Kende, "Nők a család- és foglalkoztatáspolitikai keresztútján," 9(2) *Pro Futuro* (2019), 100-117; Dorottya Szikra, "Democracy and Welfare in Hard Times: The Social Policy of the Orbán Government in Hungary between 2010 and 2014," 24(5) *Journal of European Social Policy* (2014), 486–500.

²¹ In public work programs, the unemployed are forced to accept work paying at about 50 percent of the minimum wage, on a large scale managed by the Ministry for the Interior and implemented in a rather militaristic style. While between 2011 and 2014, public works became the largest employment-related program in the country—tripling the public expenditures on the scheme—several researchers highlighted its inefficiency. It is estimated that only 10 percent of participants could find a job on the primary labor market six months after the scheme. Public work has also crowded out other active labor market measures.

2 Labor Law Reform and the Idea of the Workfare Society

Before the outbreak of the global financial crisis in September 2008, Hungary managed to achieve substantial fiscal consolidation gains and the general government deficit shrank from 9.4 percent in 2006 to 3.7 percent of gross domestic product (GDP) in 2008. However, following the outbreak of the crisis Hungary faced one of the most severe recessions among OECD countries (and among other transition countries) with a steep fall in the real gross domestic product in 2009, which was double the OECD average.²² Hungary received financial assistance from international organizations, but the recession left deep marks. Moreover, a crisis intensified the effects of the collapse in trade on investor confidence in forint-denominated assets. To ease the devaluation pressure, a combined credit package of EUR 20 billion was granted in November 2008 by the International Monetary Fund, the European Union and the World Bank. Against this background, major structural reforms became necessary to restore the labor market and increase employment.

2.1 The Labor Code of 2012

The recodification of labor law had three major economic reasons, which were described in political statements.²³ First, it was argued that the Labor Code, which was in force at that time, still maintained regulations that fit the market dominated by large companies inherited from the state socialist era. Thus, a new Labor Code was needed, meeting the current needs of the (neoliberal) market economy. Second, it was claimed that the economic recovery needed the most flexible labor market in Central-Eastern Europe because intense flexibilization would enhance job creation in sectors that small and middle-sized companies²⁴ Third, less stringent labor regulations – especially for dismissal and damages – would strengthen the employers' position, which would serve as compensation for the disadvantages they had faced during the economic crisis.²⁵

The arguments were centered around the need for a significant social and economic transformation. As the Prime Minister stated in a conference speech in the World Economic forum in 2011, "reducing unemployment is a matter of life or death for Hungary ... to achieve our goals, we need a complete reform of the labor market and the restructuring of the economy."²⁶ This argument was

²² *OECD Economic Surveys: Hungary* (OECD Publishing, Paris, 2010).

²³ The 'Hungarian Work Plan' and the 'Széll Kálmán Plan' on the restructuring of the economy were announced by the Government in 2011.

²⁴ Many press releases were dealing with this issue by Viktor Orbán and Péter Szijjártó, then spokesperson of the Prime Minister. See, for example, Hungarian News Agency: "Gyurcsány: a kormány rosszul teszi a dolgát," *HVG* (17 May 2011), available at https://hvg.hu/itthon/20110517_orban_kormany_gyurcsany_ferenc.

²⁵ Attila Kun, *National Report, Discussion Document – Hungary* (ISLSSL XI European Regional Congress 2014 – Young Scholars Session, Dublin, 2014).

²⁶ Hungarian News Agency, "Orbán: nem jóléti állam épül," (18 October 2012), available at https://www.napi.hu/magyar_gazdasag/orban_nem_joleti_allam_epul.534599.html. Another example is this

complemented later with the rejection of the welfare society. Orbán stated many times that Hungary was deconstructing the welfare state, which lacked competitiveness, and instead, he is building a work-based society in which no one would deserve any support from the state unless he or she contributed to the economy.

Against this background, the new Hungarian Labor Code came into effect in 2012, with the main objective of increasing the employment rate by promoting employers' competitiveness.²⁷ These interventions to the labor law as a response to the economic crisis were communicated as quick and decisive responses to employers' needs, as a result of which Hungary would be able to speed up its recovery.²⁸ Flexibilization was based on the legal policy argument approximating labor law to private law, while the changing social and economic background was largely ignored. Thus, the crucial question concerning the success of this governmental policy was whether these new flexible rules would serve the 'work-based economy' as envisaged by the Fundamental Law and create 1 million new jobs within ten years, as promised to people in Fidesz's electoral campaign in 2010.

The most important changes were related to the termination of employment, working time, employers' liability for damages, the regulatory role of collective agreements, and the scope of trade union rights. For example, the new Labor Code abolished compulsory calculation methods concerning supplements for overtime and shift work²⁹ and thereby reduced salaries - arguably large companies benefited from this measure.³⁰ By introducing a new calculation method for absentee payments due to employees when not working (i.e. while they are on sick leave or related to their dismissal), these payments were significantly reduced compared to the previous calculation method, which was based on the average wage. Parties can now agree on a basic wage, which may include most of the wage supplements provided by the Labor Code; thus, no overtime or night shift supplements have to be paid. The legal consequences of unfair dismissal have been significantly restricted, and only actual damages are paid to employees as compensation. Radical changes were introduced in the relationship between the statute and collective agreements: collective agreements may derogate from most of the rules on the employment relationship and on collective rights to the detriment of employees.³¹

speech at GLOBSEC 2015 conference, available at <https://www.youtube.com/watch?v=aVBARcSli3Q&feature=youtu.be&t=3653>. This speech is also memorable for two more reasons: the Prime Minister announced that Hungary does not welcome migrant workers and wants to solve its labor shortage "on a biological basis", projecting a new demographic policy; and also he compared the Hungarian economic model to a pornographic movie by saying that nobody is able to define it, but immediately recognizes it once they see it.

²⁷ Explanatory memorandum attached to Act No I of 2012 (Labor Code).

²⁸ *Ibid.*

²⁹ Act No I of 2012 (Labor Code), Section 139 para (2).

³⁰ György Lőrincz, "Kúriai döntés a műszakpótlékra való jogosultság feltételeinek értelmezéséről, avagy a jogalkotói cél feltárásának nehézségei" 3 *Munkajog* (2019), 54-57.

³¹ Act No I of 2012 (Labor Code), Section 277.

While flexibilization of the employment relation and the decline of employment protection laws have been common characteristics of a turn to neo-liberalism across Europe,³² a central element of these reforms in Hungary was to meet better the market need of large foreign multinational companies to attract investment and job creation.

2.2 Job Creation through Foreign Direct Investment

While adapting the varieties of capitalism approach to the CEE context, Nölke and Vliegthart identified dependent market economies (DME), which are characterized by structural dependence on foreign direct investment (FDI), attracted by the ample supply of comparatively cheap and skilled labor, and by solid hierarchical control from headquarters to local subsidiaries.³³ FDI and foreign-owned bank investments are the primary sources of investment in DME countries. Labor relations are typically non-conflictual, trade unions' collective bargaining power is relatively low and social dialogue is decentralized. This setting is comfortable for multinational corporations, who are typically uninterested in (or even strongly object to) getting involved in national- or sectoral-level collective bargaining.³⁴

Hungary is ideal for large investments for many reasons. The corporate tax rate, at 9 percent, is already the lowest in the EU, but with certain tax credits, this rate can be even lower, at around 5 percent.³⁵ The new Labor Code reduced employee protection and let employers define working conditions almost without any control from social partners. Removing the institutions of labor law regulation and reducing legal intervention in the relationships between employers and individual employees increased inequality and cut wages, making employees even more vulnerable to the unilateral will of employers and prone to the adverse effects of the economic crisis. Moreover, while large multinational companies found these flexible employment provisions helpful and thus encouraged foreign direct investment, small and micro enterprises hardly benefited from them in practice, as the enforcement of the Labor Code is in general problematic in this part of the economy. Thus, weaker employment protection contributed to economic growth but hardly generated mass employment.

³² Colin Crouch, "The Neo-Liberal Turn and the Implications for Labour," in Adrian Wilkinson, Geoffrey Wood, and Richard Deeg (eds.), *The Oxford Handbook of Employment Relations: Comparative Employment Systems* (Oxford University Press, Oxford, 2014), 589-614.

³³ Andreas Nölke and Arjan Vliegthart, "Enlarging the Varieties of Capitalism: The Emergence of Dependent Market Economies in East Central Europe," 61(4) *World Politics* (2009), 670-702.

³⁴ Dragoş Adăscăliţei and Ştefan Guga, "Tensions in the Periphery: Dependence and the Trajectory of a Low-cost Productive Model in the Central and Eastern European Automotive Industry." 27(1) *European Urban and Regional Studies* (2018), 18-34.

³⁵ However, Hungary is not a low-tax country. On the contrary, there is a flat income tax rate of 15 percent, meaning that high-income earners earn very well, and the country also imposes the highest VAT rate of any EU country, at 27 percent, which makes goods very expensive for consumers.

Therefore, the government dependence on foreign multinational companies to create the desired number of new jobs fueled clientelism towards these investors.³⁶ The Government has declared certain multinational companies in the automotive sector to be its strategic partners. Clientelism is not an isolated case among foreign businesses; international corporations have been crucial enablers of Orbán's illiberal turn.³⁷ As is known from the varieties of capitalism literature, CEE countries are prone to using foreign direct investment to stabilize their economy.³⁸

Fidesz made political capital on a European level by systematically restructuring the economy, especially by creating a tax haven for multinational companies. While the tax credits given to selected multinational corporations weakened the extractive capacity of the state, the number of newly created jobs was not as significant as expected: multinationals' share of total employment has been around 26 percent.³⁹ The Government has subsidized German automotive companies way above other players in the sector (Table 1). Between 2005 and 2010, the socialist Government provided HUF 111.7 billion (EUR 328.8 million) financial support for various corporations. In return, these companies created 24 290 new jobs. The Orbán government gave HUF 273.7 billion (EUR 769.4 million) support while 33 695 new jobs were created between 2010 and 2020.⁴⁰ The biggest beneficiary of this strategic partnership was BMW, which received HUF 12.3 billion (EUR 35.42 million) state support in 2016 to create 645 jobs. It means that creating one new job in BMW cost around HUF 20 million (EUR 56 240) for Hungarian taxpayers. In the meantime, domestic companies, especially small and medium-sized employers hardly received any financial support for job creation.⁴¹

| | Audi | Hankook | Opel | BMW | Mercedes Benz | Suzuki | Robert Bosch |
|-----------------------------------|------------|------------|-----------|------------|---------------|-----------|--------------|
| Gov. Subsidy (1000 HUF) | 36 109 895 | 15 881 000 | 6 454 275 | 12 322 500 | 35 031 738 | 3 394 115 | 23 857 576 |
| Number of vacancies | 3 012 | 1508 | 859 | 645 | 3 500 | 400 | 6 021 |
| Cost of 1 new position (1000 HUF) | 11988,68 | 10531,17 | 7513,71 | 19104,65 | 10009,07 | 8485,29 | 3962,39 |

³⁶ Clientelism only exists in sectors where companies do not compete with any Hungarian government-associated businesses; they are viewed as 'unwanted competitors'. However, there is no competition from within Hungary in the manufacturing industry, especially in the automotive sector.

³⁷ Dorit Geva, "Orbán's Ordonationalism as Post-Neoliberal Hegemony" *4 Theory, Culture & Society* (2021), 1-23.

³⁸ Dorothee Bohle and Béla Greskovits, *Capitalist Diversity on Europe's Periphery* (Cornell University Press, Ithaca, US, 2012); Nölke and Vliegenthart, *op.cit.* note 33.

³⁹ Hungarian Central Statistical Bureau, available at <https://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/kulfleany12.pdf>. Taxes on capital in Hungary represented the smallest share within total taxation in Eastern Europe, contributing significantly to the weakening of the fiscal capacity of the state: Taxation Trends in the European Union; see: Data for the EU Member States, Iceland and Norway (Publications Office of the European Union, Luxembourg, 2014).

⁴⁰ Hungarian Central Statistical Bureau available at https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qpk015.html.

⁴¹ László Vértesy, *A multinacionális vállalatok szerepe a gazdaságban és a munkaerőpiacon* (Budapesti Műszaki és Gazdaságtudományi Egyetem, Budapest, 2018).

Table 1: The amount of government subsidy (in 1000 HUF) and the number and price of vacancies created by car manufacturers between 2004 and 2020 (source: Hungarian Government, author's compilation).⁴²

Orbán is allegedly using these multinational investors to legitimize his power;⁴³ German automotive manufacturers are essential due to his vulnerability to charges of building the 'illiberal state', and he can always point to the 4 percent annual GDP growth coupled with a low unemployment rate.⁴⁴ In return, he openly supports carmakers in the European Council to save their investments and the jobs they have created.⁴⁵

This *quid pro quo* relationship has continued during the COVID-19 pandemic. At a press conference, Orbán ensured Audi's leadership that "the profit is private, but the risk is shared"⁴⁶ between the Hungarian Government and the German carmakers, as the economic crisis jeopardized job security at the Audi plant. Although Audi made around EUR 5.7 billion profit in Hungary in ten years, which was mostly returned to their German headquarters, the Government offered financial support for the plant to secure jobs.⁴⁷

This regulatory environment fully meets the expectations of large multinational corporations, as it has been described in the varieties of capitalism literature. Therefore, on the one hand, further investments and employment opportunities can be projected. But, on the other hand, clientelism weakens institutionalized interest representation for non-privileged employers, and consequently, questions the importance of autonomous social dialogue.

⁴² Government's statistical data on governmental support given by individual governmental decisions.

⁴³ Geva, *op.cit.* note 37.

⁴⁴ For example, apart from job creation and investments, Audi bankrolls a new multi-purpose sports arena close to their plant as part of its corporate social responsibility efforts. Orbán has been building such arenas all over Hungary, something which has been largely criticized. See Matthias Kolb: "Die deutsche Autoindustrie muss aufhören, sich von Orbán missbrauchen zu lassen," *Süddeutsche Zeitung* (5 April 2018), available at <https://www.sueddeutsche.de/politik/wahl-in-ungarn-die-deutsche-autoindustrie-muss-aufhoeren-sich-von-orban-missbrauchen-zu-lassen-1.3929691>.

⁴⁵ After Germany's automotive industry was hit by its biggest scandal ever, executives of this group of companies then turned directly to Viktor Orbán, asking him to represent the interests of car manufacturers in the European Council, which was currently discussing the matter. It was found that Volkswagen Group's diesel cars had used software manipulation to cheat on emission tests for many years. As a result of the scandal, the price of VW shares began to plummet, and it looked like several companies could be seriously endangered, forcing them to close factories and cut jobs. However, Viktor Orbán agreed to help and kept his promise, as a German automotive executive said with satisfaction See: Szabolcs Panyi: "How Orbán Played Germany, Europe's Great Power," *Direkt36* (18 September 2020), available at <https://www.direkt36.hu/en/a-magyar-nemet-kapcsolatok-rejtett-tortenete/>.

⁴⁶ Soma Ábrahám Kiss, "Orbán biztosította az Audit, hogy a profit privat, a kockázat közös," *Mérce* (17 June 2020), available at <https://merce.hu/2020/06/17/orban-biztosította-az-audit-hogy-a-profit-privat-a-kockázat-kozos/>.

⁴⁷ National News Agency: "Orbán: A kormány kész anyagi támogatást adni a győri Audi-gyárnak," *24.hu* (15 June 2020), available at <https://24.hu/fn/gazdasag/2020/06/15/koronavirus-gyor-audi-orban-viktor-tamogatás/>.

3 Reform of Social Dialogue and Anti-Pluralism Trends

The Government drew up the economic plans after the landslide victory of Fidesz and its politically subordinated ally, KDNP (Christian Democrats). These plans emphasized the role of collective labor law, in particular in economic development, and the importance of autonomous regulations in the world of work.⁴⁸ However, these sources refer to both individual and collective autonomy as new and forward-looking ideas to reform Hungarian labor law. This undistinguished point of reference disregards the historical fact that strengthening individual autonomy would instead represent a step backwards. It is by and large unquestioned that the origins of labor law date back to times when state actors started to control the autonomy of parties entering an employment relationship to protect the weaker party, the employee. Thus, collective autonomy – as opposed to individual autonomy – is an effective tool to control the unilateral regulating power of employers.⁴⁹

The 2012 Labor Code pursued a new regulatory concept and now allows collective agreements to depart from the provisions of the law without restriction, even to the employee's detriment. The new concept allows social partners to have much more influence on shaping working conditions through agreements. However, instead of reinforcing the positions of the bargaining partners, especially that of trade unions, the new Labor Code significantly curtailed trade union rights at the workplace.

The new Labor Code does not provide employees' representatives with strong, enforceable rights to fulfil their tasks. On the contrary, the new Labor Code diminishes the rights of trade unions in two respects. First, the legal protection against the termination of employment is not provided for every officer of the trade union (as had been regulated by the former Labor Code of 1992), but only for a minimum of two and a maximum of six officers, depending on the number of employees in the workplace.⁵⁰ Second, although working time reduction is given to these protected trade union officers, their entitlements are shorter than before.⁵¹ Arguably, it is increasingly difficult in large establishments to effectively carry out tasks related to trade union work in such a short timeframe.⁵² Overall, the new Labor Code favors works council representation over trade unions, as the monitoring of the compliance with labor law became the general task of works councils and not of trade unions as it had been before, even though the necessary authority is not assured for works councils (e.g. the right to initiate proceedings before authorities or the right to strike).⁵³

⁴⁸ Explanatory memorandum attached to Act No I of 2012 (the Labor Code).

⁴⁹ Kollonay-Lehoczky, *op.cit.* note 15.

⁵⁰ Act No I of 2012 (Labor Code) Section 273.

⁵¹ Act No I of 2012 (Labor Code) Section 273.

⁵² The reduced working time entitlement is one hour for every second member of the trade union. In this way, if the trade union has 200 members working for the employer, its members are entitled to 100 extra hours/month. Act No I of 2012 (Labor Code) Section 274 para (2).

⁵³ Act No I of 2012 (Labor Code) Section 262.

Trade unions – which had not been overly strong in the past either – are in an increasingly difficult position to protect employees’ interests. The revision of the Strike Act further curtailed their level playing field⁵⁴ in 2010. Amendments concerning minimum service levels⁵⁵ created a two-tier regulatory system. In some sectors, the minimum service level is set out by a statutory norm.⁵⁶ In other fields, parties have to agree on the minimum service level. If their negotiations fail, the labor court sets the level following the last offer of the employer. The court process, even though the law sets a short 5-day procedural deadline for courts,⁵⁷ is very sluggish in practice. The newly introduced system has had a coercive psychological effect on trade unions because the burden of unlawful action is overly heavy on organizers. Until the minimum service level is decided, a strike cannot be lawfully organized. Consequently, the amendments have had a detrimental effect on the number of strikes: between 2010 and 2019, a total of 341 collective actions were organized, and only 64 were strikes or warning strikes.⁵⁸ Due to the uncertainty regarding the lawfulness of the collective action and the administrative burden related to the court process, trade unions and civil organizations prefer to organize actions other than strikes, mostly marches, governed by the act on freedom of assembly.⁵⁹ However, these alternative actions are significantly less effective than strikes.⁶⁰

The populist approach towards collective autonomy creates a hostile environment for trade union members, and the lack of remedies available for them when their collective rights are infringed make a trade union’s position in the workplace insecure. Furthermore, stigmatizing the representatives of alternative opinions and turning them into political scapegoats creates a general sense of fear and insecurity among existing union members and supporters.⁶¹

The COVID-19 pandemic further added to the decline of collective autonomy. The Government unilaterally adopted measures directly affecting labor law.⁶² As long as the decree adopted

⁵⁴ The right to organize a strike is guaranteed by the Basic Law of Hungary and Act No VII of 1989 on Strikes. According to the law, strikes may be organized to protect the economic and social interests of the employees. Although it is a right of employees, strikes are usually organized by trade unions, while a solidarity strike is within the exclusive competence of trade unions.

⁵⁵ Businesses carrying out essential services for the public must provide a minimum service level during the strike. No statutory norm defines the personal scope of this regulation; it is decided on a case-by-case basis by the courts.

⁵⁶ At the moment, two areas are covered by the law, public transport and postal services.

⁵⁷ Act No CXVIII of 2017. Section 1. para (1).

⁵⁸ Against this legal and institutional background, it was somewhat surprising that strike activity significantly increased in 2019. This year, 16 strikes were organized, which was far above the number of actions taking place in previous years. See: Erzsébet Berki, "*Munkaiügyi akciók 2010 és 2019 között Magyarországon, különös tekintettel a sztrájkra,*" (Friedrich Ebert Stiftung, Budapest, 2019), 9.

⁵⁹ Act No. LV of 2018 on freedom of assembly.

⁶⁰ Berki, *op.cit.*, note 588.

⁶¹ Zsuzsa Árendás and Sára Hungler, "The Empty Shell of Social Dialogue - A Hungarian Case Study," 7 *Társadalomtudományi Szemle (socio.hu)* (2019), 49-69.

⁶² Government Decree No 47/2020 (III. 18.) Section 6.; for the full text in English see https://njt.hu/translated/doc/J2020R0047K_20200319_FIN.pdf. Opposition politicians filed a claim to the Constitutional Court to abolish the decree arguing that the unlimited scope given to employers and employees to defer from the binding rules of the Labor Code is unconstitutional and infringes several EU regulations and

during the state of danger was in force, provisions of collective agreements derogating from its rules could not be applied. A subsequent emergency decree introduced another major blow to trade unions' rights,⁶³ amending regulations related to working time banking. Employers could unilaterally expand the reference period for working time banking, while this type of derogation had formerly been subject to a collective agreement. These exceptional regulations were in force until the expiry of a period of thirty days following the end of the state of emergency. However, after the state of emergency was lifted, the law reinforced the extended reference period for working time banking and stipulated that collective agreements regulating this issue are not applicable. This newly introduced restriction will likely further weaken trade unions' role and hinder social dialogue on the workplace level.

3.1 Abolishing National Tripartism

The tripartite National Interest Reconciliation Forum was abolished in 2010, and a two-tier social dialogue model has emerged in Hungary. On the one hand, there is an official body, the National Economic and Social Council (NESC), which involves representatives from many different areas of society, but it operates without any government agents.⁶⁴ NESC rights are narrowly formulated, and that casts a shadow on its importance as a consultative forum that strives for national consensus in substantial economic and social questions. Albeit envisaged as a comprehensive consultative forum, the NESC lacks the necessary elements to be qualified as a national tripartite forum for social dialogue: the lack of the formal participation of the Government signifies the weak position of the council. Consequently, the Government does not consult the NESC about important topics, such as the minimum wage, making its operation highly contested. On the other hand, there is an informal council established by the Government by a civil law contract, but only selected organizations loyal to the Government are part of this.⁶⁵ The common denominator for these forums is that neither of them meets the requirements for national level tripartite social dialogue set forth by Convention No 144 of the International Labor Organization (ILO).⁶⁶

directives, such as the GDPR (application no. II/00887/2020), however, it is unlikely that the Constitutional Court will deal with a piece of legislation which is no longer in force.

⁶³ Government Decree 104/2020 (VI. 10.).

⁶⁴ The National Economic and Social Council (NESC) is a consultative, drafting and advisory body independent of Parliament and the Government, established to discuss comprehensive matters affecting the development of the economy and society, and national strategies across government cycles, and to promote the development and implementation of harmonious and balanced economic development and related social models. See: Act No XCIII of 2011.

⁶⁵ The Permanent Consultation Forum (PCF) was established by a civil law contract between the Government and the invited trade union federations and employers' associations. The PCF is attended by the Prime Minister in person together with the Secretary of State responsible for Employment Policy. In 2012 the Government invited three out of the six trade union confederations and three out of the nine employer organizations to the forum to develop joint positions regarding employment, industrial development and its related socio-economic and financial aspects, including the policy on wage increments in the private sector.

⁶⁶ The Convention on Tripartite Consultation (International Labor Standards), 1976 (No. 144). The Conventions provides that Contracting Parties undertake the duty to operate procedures which ensure effective consultations concerning the activities of the International Labor Organization between representatives of the Government,

The reforms and their aftermath fit the long term strategy of the Government, which leaves no scope for transparent democratic dialogue and excludes relevant social partners from decision making. The change in the legislation, and thus the character of social dialogue, also meant that positions represented by the participants at such meetings have ceased to be binding on the Government, opinions of the members of the tripartite system are ignored, and consultations have no political, economic or social consequences. Formally, all the institutions of the national level social dialogue are in place, occasional meetings are held whenever the Government finds it necessary to legitimize its steps or decisions publicly, and some of the concrete issues are put on the table during such forums, but the mechanism and negotiating processes of such issues are subjects of serious concern. This practice constitutes procedural violations of democratic rules, not to mention the lack of any social, political or economic impact, or any direct consequence whatsoever of these national-level forum meetings.⁶⁷

The Government effectively eliminated social partners from the employment policymaking process, which has an important spill-over effect on lower levels of social dialogue as well. Instead of genuine bargaining, the related ministries and other government agents directly negotiate with certain large (multinational) business partners. A good example could be an amendment of the Labor Code adopted in December 2018.⁶⁸ The law was adopted without prior consultations with social partners at the tripartite structures, and against the massive opposition of trade unions and a wide coalition of civil organizations, and opposition parties. Demonstrations and road blockades were organized around the country. The law increased the annual overtime to 400 hours (from 250 hours) and also tripled the reference period for working time banking to 36 months. These amendments could lead in practice to the excessive vulnerability of employees and further shift the balance of power to the benefit of employers. Trade unions opposed the adopted changes, presenting expert arguments, and appealing to political decision-makers and the public. Following the adoption by the Parliament government parties, in less than 48 hours the online petitions calling on the President to refer it back to the Parliament received over 11,000 signatures. None of these actions had any effect on the Government or the adopted law.⁶⁹

As populist governance claims to be the sole representative of people, anti-pluralist tendencies are visible in social dialogue as well. Collective bargaining is dysfunctional due to the fact that these institutions and mechanisms are not implemented in a democratic way, and no real dialogue or actual

employers and workers. In contrast, employers and workers are represented on an equal footing on any bodies through which consultations are undertaken. Hungary ratified Convention C-144 in 1994.

⁶⁷ Árendás and Hungler, *op.cit.* note 61.

⁶⁸ Act No CXVI of 2018. The Minister of Innovation and Technology denied the allegations of direct negotiations with BMW.

⁶⁹ Opposition Members of the Parliament filed a motion to the Constitutional Court arguing that the named amendments of the Labor Code are unconstitutional as they violate the right to rest [Art. XVII. paras (3)-(4) of the Hungarian Fundamental Law]. Three years later the Constitutional Court decided that even though the amendments per se are not unconstitutional, the Parliament had failed to regulate the timeframe in which the rest time in the reference period has to be calculated. 18/2021. (V. 27.) ABH (decision of the Constitutional Court).

debates take place. Instead, these mechanisms work in a top-down manner: the illiberal state and its central governing bodies expect certain solutions and answers, leaving no scope for a transparent, tripartite dialogue with the relevant social partners.⁷⁰

3.2 Curbing Collective Autonomy on the Workplace Level

The dysfunctional character of the social dialogue on the national level has, not surprisingly, had negative consequences on the lower levels of social dialogue, too. The consequences are manifold, affecting the general support and smooth functioning of unions on the local level.

These processes have led to a further decrease in union support from members, and have served as a major obstacle to further unionization (Table 2).⁷¹ The number of trade unions operating in Hungary is related to the collective bargaining coverage, as well as to the number of collective agreements concluded. According to OECD data, this rate is meagre compared to the EU bargaining coverage rate of 60 percent; thus, in contrast to the Hungarian figures, two-thirds of all EU employees are covered by a collective agreement.⁷²

| | | 2008 | 2010 | 2012 | 2014 | 2016 | 2018 |
|---|---------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Trade union members* | | 487.0 | -- | 400.0 | 370.0 | 330.0 | 323.0 |
| Trade union density** | Administrative data | 19.0 | 18.9 | 18.0 | 17.7 | 17.0 | 16,5 |
| | Survey data | 14.4 | 22.2 | 11.8 | 10.2 | 20.2 | -- |
| Collective agreement coverage*** | | 22.9 | 27.3 | 26.4 | 22.8 | 21.0 | 21.0 |

Table 2. Industrial relations in Hungary. Source: OECD, ICTWSS⁷³

* number, thousands

** percentage of the total workforce

*** percentage of employees with the right to bargain

⁷⁰ Árendás and Hungler, *op.cit.* note 61.

⁷¹ Horváth *et. al.* *op.cit.* note19.

⁷² OECD, Collective Bargaining Coverage, available at: <https://stats.oecd.org/index.aspx?DataSetCode=CBC>.

⁷³ OECD/ICTWSS database available at <https://stats.oecd.org/index.aspx?DataSetCode=CBC>. and <https://www.ictwss.org/downloads>.

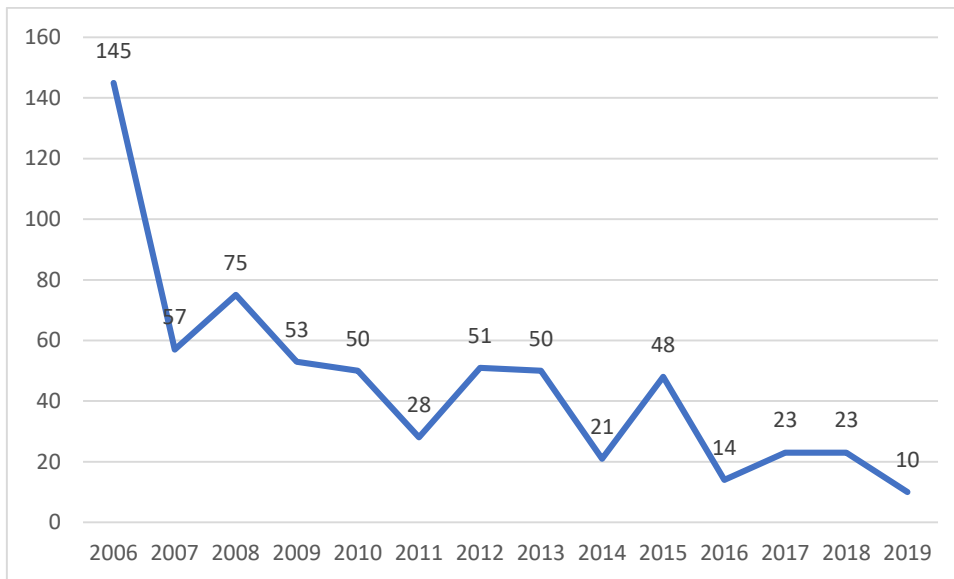


Table 3: The number of collective agreements concluded between 2006 and 2019. Source: National Labor Office database on collective agreements; author’s own compilation.

The low level of collective agreement coverage is linked to other factors, as well. The new Labor Code introduced radical changes in the relationship between the statute and collective agreements: collective agreements may derogate from most of the rules on the employment relationship and on collective rights to the detriment of employees. Representativity criteria for collective bargaining were also changed in the new law: a trade union is entitled to conclude a collective agreement if its membership reaches 10 percent of all workers employed by the employer. However, given the gradually shrinking trade union membership, this may negatively influence the actual number of trade unions eligible for collective bargaining (Table 3).

Another important contributing factor to the declining collective agreement coverage is the flexibility of the Labor Code regarding working conditions. Employers are generally motivated to enter into negotiations with trade unions if they can introduce derogations which make working conditions more flexible (*in peius* derogation for the employees) compared to the statute. However, the Hungarian Labor Code allows employers to alter working condition to a certain extent unilaterally; thus, the detrimental alternation does not require agreement from trade unions.⁷⁴ Working time is the best example of this problem, as it has always been the main field of derogations operating to the benefit of employers. The Labor Code allows employers to unilaterally order 250 hours overtime work per year and to arrange work on six (sometimes even seven) days a week, twelve regular hours a day, only one

⁷⁴ Tamás Gyulavári, “Chasing the Holy Grail? Stumbling Collective Bargaining in Eastern Europe and the Hungarian Experiment,” in Sylvaine Laulom (ed.), *Collective Bargaining Developments in Times of Crisis* (Wolters Kluwer, Alphen aan den Rijn, 2018), 44.

rest day a month, on a Sunday, within a reference period of four or even six months.⁷⁵ The only benefits of *in peius* derogations would be a 36 month reference period or a change in the work schedule within seven days of the start of scheduled working time, but employers scarcely need that long a reference period. Moreover, by introducing a further flexibility element in 2018 by an amendment to the Labor Code quickly nicknamed the ‘slave law’, employees can now ‘voluntarily’ take up an additional 150 hours of overtime.

These reforms aiming at increased flexibility are rather controversial. Increasing the unilateral will of employers over employees in a hierarchical relationship does not protect workers, but intensifies their economic and moral dependency, and thus, their vulnerability. On the other hand, the experience of powerlessness demeans a sense of effective civic agency, and in this way, precarious workers are more prone to precarious democratic citizenship.⁷⁶

4 Reform of the Unemployment Policy as the Manifesto of the Workfare Model

Hungary inherited a generous welfare model from its state socialist past; however, it was dominated by cash transfers and social services did not have the necessary range, capacity or quality. The model had gone through major changes between 2000 and 2008; due to the austerity measures introduced to reach a healthy fiscal balance, benefits were largely curtailed. The welfare cuts were unfolded in a radical turn after 2010 with the official dismantling of the welfare state, along with the shift to the workfare regime.⁷⁷

The cuts in social benefits were also triggered by the aftermath of the 2008 crisis. Despite financial assistance from international organizations, the economic depression hit Hungary hard. In 2007-2008, real income convergence almost stopped, with the real per capita income settling at around 60 percent of the euro area average per capita income.⁷⁸ This already large productivity gap vis-à-vis the OECD average called for continued structural reforms related to the labor market, innovation, entrepreneurship and education. As suggested by the 2010 OECD Economic Survey, the most urgent issues were to adjust active labor market policies to the needs of unskilled labor and to increase female

⁷⁵ Sections 99, 94, 105, 106 of Act No I of 2012 can, due to the COVID-19 pandemic, be unilaterally set for 24 months by the employer upon the authorization of the Government Office (Act No LVIII. of 2020, Section 56 para (4)).

⁷⁶ Alan Bogg and Mark Freedland, “Labour Law in the Age of Populism: Towards Sustainable Democratic Engagement,” *MPIL Research Paper Series* No. 2018-15 (2018), 6-7.

⁷⁷ Ágota Scharle and Dorottya Szikra, “Recent Changes Moving Hungary Away from the European Social Model,” in Daniel Vaughan-Whitehead (ed), *The European Social Model in Crisis* (Edward Elgar Publishing, Cheltenham, 2015), 289-338.

⁷⁸ *OECD Economic Surveys: Hungary* (OECD Publishing, Paris, 2010), 32.

labor market participation by further reducing the maternity leave provisions⁷⁹ and by increasing public support for childcare.⁸⁰ However, these suggestions were only partially considered.

The missing jobs were largely created through extensive public work schemes. The peak of the public work scheme was in 2014 when the estimated number of workers engaged in the public works program was around 300,000. In that year, the budget for this active labor market program was HUF 340 billion (EUR 1094 million). Even though this radical workfare regime affected one-quarter of the total workforce in the public sphere, public works schemes were removed from the protection of labor law measures, and the newly adopted regulations intensified the obligation and local dependency criteria of participants, making people living in poverty more vulnerable.

Linking welfare services to public works is based on the theoretical premise that unemployment benefit-like allowances and other passive provisions decrease incentives to work.⁸¹ This must therefore be counter-balanced by tough eligibility conditions and sanctions, to produce a deterrent effect. Conditions for receiving benefits are structured (frequent visits to the public employment agency, compulsory public works, training, etc.) to create serious inconvenience; thus, compelling an exit from the unemployment status as soon as possible, or the outright avoidance of claiming benefits and taking personal initiatives to get out of poverty.

From a social law point of view, public work in Hungary has a rather mixed nature: on the one hand, public workers are not counted in official unemployment statistics; thus from this perspective it is treated as an active labor market policy measure. On the other hand, public work wages and job seekers allowances are treated as social allowances, which links public work to passive labor market measures. Public work has, indeed, many attributes of employment: the work is performed under the supervision of the (public) employer, based on its instructions and for remuneration. The decision of the Constitutional Court to some extent supports the former argument.⁸² The Constitutional Court indeed reinforces the argument of the constitutional complaint submitted by the ombudsman stating that the fact that public work is a part of social benefit scheme and does not justify the severely detrimental working conditions attached to it. Public workers, many of whom are Roma, are discriminated against as compared to regular employees, without any constitutionally acceptable reasons.⁸³ The Constitutional Court stated that public work has strong public law elements, such as the special regulations on employers, the tasks to be performed and the wages received thereupon, and the strict disciplinary elements of termination. Based on this argument, the Constitutional Court ruled that public work is a

⁷⁹ Until 2009, the system provided an opportunity for working women to stay out of the labor market for up to three years; after the reform this was reduced to a maximum of two-years. Although it was considered a positive step, it lasted only until January 2011. See Act No CLXXI of 2010.

⁸⁰ *OECD Economic Surveys: Hungary* (OECD Publishing, Paris, 2010), 20.

⁸¹ Judit Csoba, "Akarnak-e dolgozni a munkanélküliek?" *5 Esély* (2009), 3-19, at 4.

⁸² 30/2017 (XI. 14.) ABH (decision of the Constitutional Court).

⁸³ *Ibid.*, para 68.

form of atypical work which lies at the intersection of social and employment policy and is a special form of social benefit.⁸⁴

The growing political demand for regulating the unemployed have been fueled from various sources, including the government failure in tackling long-term unemployment, public opinion maintaining the work ethic of the Socialist era, local tensions arising from long-term unemployment and the lack of capacity in local municipalities to tackle it, and last but not least, the revival of the Conservative political tradition of workfare.⁸⁵ As a part of the workfarist turn, thus, the Government introduced measures that were overly punitive. The most serious of these measures was the radical reduction of the level of - the already conditional - social benefits for those who were not participating in public work.

4.1 Public Work Programs

The first public work program in its contemporary meaning began in 1996, in order to tackle long-term unemployment.⁸⁶ This program underwent major reforms in 2000, initiated by the first Fidesz government when the regular social benefit first became conditional on participation in the public work scheme. In 2006 the program was renamed the ‘Integration Program’, the change in the name being triggered by the new conditions related to the more intensive cooperation desired from the participants. The scheme was amended before a new program, ‘Road to Work’, was launched in 2009, targeting the less educated suffering from long-term unemployment. This scheme was criticized because public workers receiving less than the minimum wage could not break out from their unemployed status.⁸⁷ Without training and mentoring, the program did not increase their possibility to return to the labor market.⁸⁸ The program had a substantially increased budget, managed by local municipalities.

Prominent politicians within Fidesz were critical of the program, too. For example, Sándor Czomba, who later became Secretary of State for Employment, argued in 2010 that public work programs are ineffective as participants are not motivated to seek employment on the primary labor market. He also heavily criticized the program for its financial ineffectiveness.⁸⁹ Four years later, he was

⁸⁴ *Ibid.* at para 79.

⁸⁵ Scharle and Szikra, *op.cit.* note 77, 23.

⁸⁶ The origins of the public work program in Hungary go back to the 1940s. The first government-initiated program, organized by the People and Family Protection Fund (ONCSA), aimed to help families engaged in agricultural activities in rural Hungary. However, it eventually became a tool in the Government's hand used to carry out its policy of ethnic and racial discrimination. After WWII, during the communist period, work (possibly within the collective property) was a legal duty, sanctioned by criminal and administrative sanctions.

⁸⁷ Szikra, *op.cit.* note 20.

⁸⁸ Judit Csoba, “Job Instead of Income Support: Forms and Specifics of Public Employment,” 2(6) *Review of Sociology of the Hungarian Sociological Association* (2010); János Köllő and Ágota Schalre, “The Impact of the Expansion of Public Work Programs on Long-term Unemployment,” in Károly Fazekas and Gábor Kézdi (eds.), *The Hungarian Labour Market 2012* (MTA KTI, Budapest, 2011), 46-69.

⁸⁹ “Másképp képzei a Fidesz a munkába vezető utat,” *HVG* (16 April 2020), available at https://hvg.hu/itthon/20100416_kozmunka_fidesz_ut_a_munkahoz_program.

proudly announcing that more than 300,000 people had participated in the public work program in 2014 and that the Government's objective was to increase by as much as possible the number of public work employees who found a private-sector job after having obtained sufficient skills and work experience.

The public works program became the central element of the ruling Government's fight against unemployment. While other active labor market policy measures are underfinanced,⁹⁰ the expensive yet inefficient public works schemes have been reduced but are still maintained (Direct job creation in Table 4, Table 5).⁹¹ It is also visible that job seekers' allowances and other direct cash transfers to the unemployed have been drastically cut. Regarding unemployment benefits, the most stringent rules within the whole EU are those applied in Hungary.⁹²

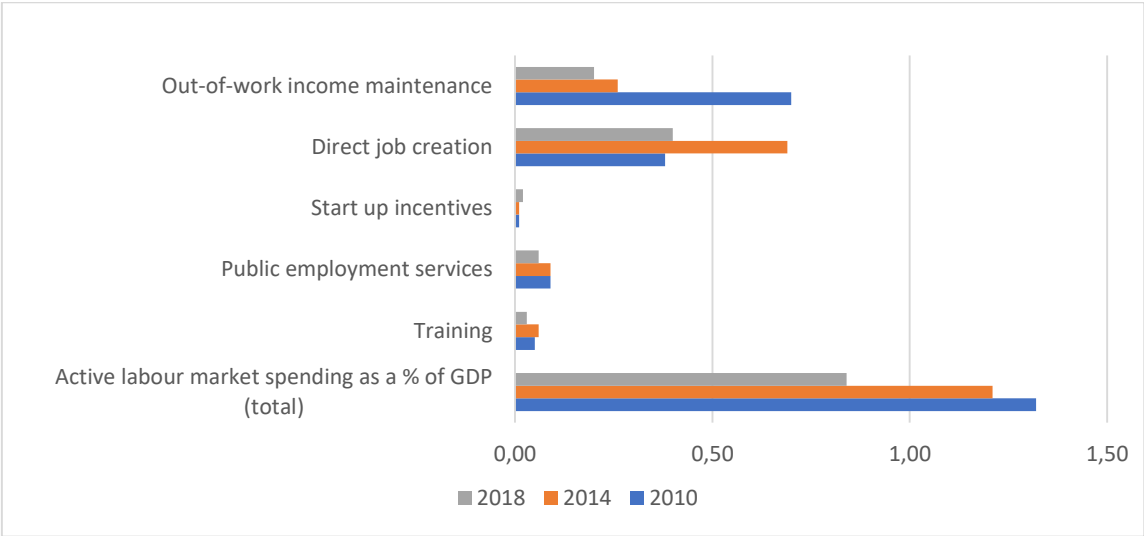


Table 4: Public spending on labor markets in Hungary, Out-of-work income maintenance and support, percent of GDP, 2000 – 2018. Source: OECD database.

| Geographic region | Number of public workers, persons | | | | The proportion of public workers,* percent | | | |
|----------------------|-----------------------------------|-------|-------|------------------|--|------|------|------------------|
| | 2014 | 2016 | 2018 | Change 2014-2018 | 2014 | 2016 | 2016 | Change 2014-2018 |
| Southern Great Plain | 27750 | 31315 | 19301 | -8449 | 3.6 | 3.8 | 2.3 | -1.3 |

⁹⁰ European Commission. “Country Report Hungary 2020,” SWD(2020) 516 final, Brussels, 2020.

⁹¹ While wages in the public sector have been growing, wages in the public works scheme have decreased relative to the minimum wage, from 77 percent in 2013 to 55 percent in 2019.

⁹² Act No IV of 1991, Section 27 para (3).

| | | | | | | | | |
|-----------------------|--------|--------|--------|--------|-----|-----|-----|------|
| Southern Transdanubia | 23883 | 29394 | 16802 | -7081 | 4.4 | 4.9 | 2.9 | -1.5 |
| Northern Great Plain | 56763 | 68986 | 45891 | -10872 | 6.2 | 6.9 | 4.7 | -1.5 |
| Northern Hungary | 45186 | 51661 | 35438 | -9748 | 6.5 | 6.8 | 4.7 | -1.8 |
| Central Transdanubia | 13001 | 12039 | 6274 | -6727 | 2 | 1.7 | 0.9 | -1.1 |
| Central Hungary | 13818 | 11245 | 5251 | -8567 | 0.8 | 0.6 | 0.3 | -0.5 |
| Western Transdanubia | 9695 | 9565 | 5368 | -4327 | 1.6 | 1.4 | 0.8 | -0.8 |
| Total | 190096 | 214205 | 134325 | -55771 | 3.2 | 3.3 | 2.1 | -1.1 |

* The proportion of public workers is the percentage of public workers among total jobseekers (Hungarian Central Statistics Bureau)

Table 5: Public work between 2014 and 2018. Source: author's own compilation based on Kóti, Tibor, "A munkanélküliség és a közfoglalkoztatás területi különbségei, összefüggései Magyarországon", 60 *Területi Statisztika* 5, (2020) 517-547.

The social welfare subsidy system was also subject to significant changes in 2015.⁹³ The range of individuals qualifying as beneficiaries for regular social aid was altered, and those who will reach the age limit for an old-age pension in five years are no longer entitled to regular social aid, and need to participate in the public work program. Since the chances of finding employment in the primary labor market are meagre in this particular age group, this signals that this is not a genuine employment policy measure but rather a disguised social policy instrument. Furthermore, regular social aid was abolished. Instead, ill-health and childcare benefits were introduced, but the conditions for eligibility have remained similar. Those who cannot participate in the public work program due to health issues and are not entitled to an invalidity pension are eligible for an ill-health allowance.⁹⁴ The effect of the welfare reform and its ad-hoc manner was well demonstrated in the *Bélané Nagy v Hungary* case of the European Court of Human Rights (ECtHR).⁹⁵ The ECtHR stated that the margin of appreciation States enjoy in the social field cannot go as far as depriving this entitlement, once granted, of its very essence. Moreover, the rule of law requirements must be observed, and a retrospective disregard of acquired rights and

⁹³ István Hoffmann, *Bevezetés a szociális jogba* (ELTE Eötvös Kiadó, Budapest, 2015).

⁹⁴ If the capacity to work is reduced by at least 60 percent.

⁹⁵ ECtHR, *Bélané Nagy v Hungary*, ECtHR Judgment (13 December 2016) App. No. 53080/13. The disability pension system was replaced by an allowance system, which contained new criteria of eligibility. When in 2012 the applicant applied for the allowance which replaced the pension, she was found ineligible, not because she did not have the requisite disability condition, but because of the insufficient period of social cover – and this irrespective of the volume of her past contributions to the social security system, previously recognized, in terms of service time, as sufficient.

legitimate expectations, as is the case with social security contributions, must be avoided when passing measures of social reforms.⁹⁶

As a part of a more stringent social policy, unemployment measures can be divided into contributory and non-contributory benefits. The contributory benefit, the so-called unemployment allowance (*álláskeresési járadék*), is granted to those who have paid a labor market contribution (which is 1.5 percent of the gross wage) for at least 360 days within three years before losing a job. Further requirements are that a person is actively seeking employment and that the employment agency could not offer a suitable job. This allowance depends on the period the jobseeker was insured and is calculated based on the average contribution paid over the last four quarters. The amount is 60 percent of the insurance contribution but cannot exceed the prevailing minimum wage, which is HUF 167,000 (EUR 470) in 2021. The duration of eligibility also depends on the contribution: ten days of contribution equals one day of eligibility to unemployment allowance, but the maximum duration is 90 days. Previously, the unemployment benefit duration was nine months, which was better suited to a labor market where the average job-seeking period is about 16 months.

However, due to the employment market's characteristics, Roma unemployed are more often subject to punitive measures and loss of eligibility, for example they more often need to be engaged in informal work.

4.2 Ethnicization of Public Work

Since the EU's regulatory framework for social policy⁹⁷ – outlined mostly in soft law measures – was costly (especially its active labor market policies) or undesirable (e.g. gender mainstreaming), it has been politically contested all over Central-East Europe.⁹⁸ Another critical factor is that even though Hungary used to have generous cash transfers, particular forms of social polarization, predominantly ethnic and regional disparities, have remained strong, making the whole welfare regime fragile.⁹⁹ The

⁹⁶ *Ibid.* at para 53.

⁹⁷ The European employment strategy (EES) now constitutes part of the Europe 2020 growth strategy, and it is implemented through the European semester, an annual process promoting close policy coordination among the EU Member States and EU Institutions. In particular, the implementation of the EES - supported by the work of the Employment committee - involves the following four steps of the European Semester: (1) employment guidelines are common priorities and targets for employment policies proposed by the Commission, agreed by national governments and adopted by the EU Council; (2) the Joint employment report (JER) is based on (a) the assessment of the employment situation in Europe (b) the implementation of the Employment Guidelines and (c) an assessment of the Scoreboard of key employment and social indicators. It is published by Commission and adopted by the EU Council; (3) National Reform Programs (NRPs) are submitted by national governments and analyzed by the Commission for compliance with Europe 2020; (4) based on the assessment of the NRPs the Commission publishes a series of Country reports, analyzing Member States' economic policies and issues Country-specific recommendations.

⁹⁸ Noémi Lendvai-Bainton, "Welfare Trajectories in Central and Eastern Europe," in Sofiya An, Tatiana Chubarova and Bob Deacon (eds.), *Social Policy, Poverty, and Inequality in Central and Eastern Europe and the Former Soviet Union* (Agency and Institutions in Flux, Stuttgart, 2019), 263-284.

⁹⁹ Bohle and Greskovits, *op.cit.* note 38.

Roma have been described as the undeserving poor and mainstreamed in everyday politics and practice.¹⁰⁰ The Hungarian Minister of Trade and Foreign Affairs once told the Italian press that Hungarian society “is burdened enough by the unemployment of the Roma community”. In 2012 when Orbán introduced major socio-political initiatives, he claimed that “one cannot live from crime, nor welfare.”¹⁰¹ Ever since, official rhetoric is recklessly placing members of the Roma community in negative lights. For example, when the District Court of Debrecen ruled that, altogether, 100 million Hungarian forints must be paid as compensation to those Roma students whose education had suffered due to racial segregation in Gyöngyöspata, a small town in eastern Hungary, the leader of Fidesz claimed that the decision was a selfish, self-centered “fundraising mission” of George Soros. Orbán, in his radio speech on the State-owned nationwide channel stressed that the decision hurts society's “sense of justice” since the people of Gyöngyöspata will see that the town's Roma community receives a “significant sum without having to work for it in any way.” Orbán also claimed that “If I lived there (in Gyöngyöspata), I would wonder why the members of an ethnically dominant group living with me in one community, in one village, receive a large amount (of money) without working for it while I am struggling here all day”.¹⁰² Later, when the Kúria (Supreme Court of Hungary) upheld the judgment¹⁰³ he stated on his annual press conference that “the judgement (of the Kúria) is entirely unjust, we have to seek justice [as] Hungary is our land, which belongs to our indigenous people”.¹⁰⁴

The ethnicization of social policy is visible through the allocation of resources, as well. Eligibility for social benefits is now at the discretion of district governmental offices.¹⁰⁵ These offices, per their decrees, can set eligibility criteria for social benefits with a broad margin of appreciation, especially concerning merit-based allowances.¹⁰⁶ This regulatory approach enhances local hierarchies and increases the powerlessness of participants, especially since public employment is tied to social

¹⁰⁰ However, it is not a unique Hungarian phenomenon but is present in other Visegrad countries too. Empirical evidence suggests that this is a widespread practice in Slovakia and the Czech Republic as well. See Daniel Škobla and Richard Filčák, “Mundane Populism: Politics, Practices and Discourses of Roma Oppression in Rural Slovakia,” 60(4) *Sociologia Ruralis* (2019), 773-789.

¹⁰¹ Attila Juhász (ed.), *Az átrendeződés éve - A populista jobb és a szélsőjobb a mai Magyarországon* (Heinrich Böll Stiftung and Political Capital, Budapest, 2017).

¹⁰² Karina Csengel, “Orbán Viktor szerint Gyöngyöspatán ’az az érzés alakult ki a romákban, hogy ők vannak többségben’,” *Mérce* (31 January 2020), available at <https://merce.hu/2020/01/31/orban-viktor-szerint-gyongyospatan-az-az-erzes-alakult-ki-a-romakban-hogy-ok-vannak-tobbsegben/>; Illés Szurovecz, “Orbán szerint igazságtalan, hogy kártérítést kaphatnak a roma gyerekek, akiket éveken át elkülönítettek az iskolában,” *444.hu* (9 January 2020), available at <https://444.hu/2020/01/09/orban-szerint-igazsagatlan-hogy-karteritest-kaptak-a-roma-gyerekek-akiket-eveken-at-elkulonitettek-az-iskolaban>.

¹⁰³ Pfv.IV.21.556/2019/ decision of the Kúria (12 May 2020).

¹⁰⁴ “Gyöngyöspata ügyben jogot és nem igazságot szolgáltatott a Kúria - mondta a miniszterelnök,” *Ügyvédforum* (5 May 2020), available at <http://ugyvedforum.hu/cikkek/2020/05/gyongyospata-ugyben-jogot-es-nem-igazsagot-szolgaltatott-a-kuria-mondta-a-miniszterelnok>.

¹⁰⁵ Before the 2015 amendment, local authorities had the right to decide on individual eligibility.

¹⁰⁶ However, this right was somewhat circumvented by the Constitutional Court [30/2017. (XI.14.) ABH (Decision of the Constitutional Court)] as local governments can no longer suspend beneficiaries from public work if they do not keep their house or yard tidy. Regarding means-tested benefits, the Social Law provides basic eligibility criteria.

allowances. Empirical evidence suggests that beneficiaries of direct job creation programs, such as public work programs, are often unemployed Roma. The Ombudsman reported that the public work programs create "discriminatory settings"¹⁰⁷ for Roma, who face discrimination in some municipalities when applying for and participating in public work programs. Similarly, the Legal Defense Bureau for National and Ethnic Minorities (NEKI) expressed that the public work system makes it possible for local councils, the most common public employers, to abuse their powers and take discriminatory actions in connection with Roma public workers.¹⁰⁸

In Hungary, surveys confirm that those on the periphery of the labor market work a lot, in both registered and unregistered employment¹⁰⁹ and public work does not act as a deterrent but is instead perceived in some regions as an opportunity.¹¹⁰ In the words of a Roma public worker, "we won't be able to find employment anywhere. Neither part-time nor full-time. For me there's only public work as an opportunity. Because I am Roma."¹¹¹

The exclusion of the undeserving poor from social benefits fits populist rhetoric well. The suspension and termination of public work contracts have a robust disciplinary character; expressly, the explanatory memorandum attached to this regulation states that the public worker has a special moral obligation to undertake public work.¹¹² Eligibility for public work programs (and thus the associated benefit income) is suspended by law for three months when a) the mandatory school-age child of the public worker is not attending school; b) the public worker refuses to take up the job offered; c) three months before applying for public work, the former employment relationship of the jobseeker was terminated by the public worker or by the employer for disciplinary reasons; d) the public worker refuses to participate in training programs offered; e) a previous public work contract was terminated due to disciplinary reasons; f) the public worker's home is untidy, or a public authority declares a threat to public health or safety in connection with the public worker; or the notary convicts the public worker of a violation of a local government order.¹¹³

The element which requires the public worker to keep his/her home neat and tidy is the most controversial element of the public work rules. This requirement was first introduced in 2011, but the law on public work was amended due to the decision of the Hungarian Constitutional Court.¹¹⁴ The

¹⁰⁷ Report of the Ombudsman no. 853/2014.

¹⁰⁸ Maria Paula Meneses, Sara Araujo, Silvia Ferreira and Barbara Safradin, "Comparative Report on the Types of Distributive Claims, Interests and Capabilities of Various Groups of the Population Evoked in the Political and Economic Debates at the EU and at the Nation-state Level," [ETHOS Consortium, 2018 (unpublished)].

¹⁰⁹ Luca Koltai, "A közfoglalkoztatás szerepe válság idején az európai országokban," 57(1) *Munkaügyi Szemle* (2013), 27–38.

¹¹⁰ Gábor Kertesi and Gábor Kézdi, "Roma Employment in Hungary after the Post-communist Transition," 19(3) *Economics of Transition* (2011), 563–610.

¹¹¹ Luca Koltai, "The Values of Public Work Organisers and Public Workers," in Károly Fazekas and Júlia Varga (eds.), *The Hungarian Labour Market 2015* (Institute of Economics, Centre for Economic and Regional Studies, Hungarian Academy of Sciences, Budapest, 2015), 109.

¹¹² Act No CVI of 2011 Section 2 para (5) g).

¹¹³ Act No CVI of 2011, Section 1 para (4a)-(4b).

¹¹⁴ 30/2017. (XI. 14.) ABH (decision of the Constitutional Court).

Constitutional Court found it unconstitutional that jobseekers could be suspended from public work if they failed to meet requirements set forth by a local government decree ordering them to keep their house/yard/garden neat and tidy. The Constitutional Court argued that such a requirement violates human dignity and the right to privacy, and amounts to discrimination based on property and social status. Furthermore, keeping one's property clean can be ensured through other measures.¹¹⁵ Thus, it was rather surprising when in June 2020 this eligibility condition was re-established with minor changes, stating that it is necessary for public health. Arguably, the Government has no other solution to tackle unemployment than public work, and once a large number of people hit the job market, the only labor market policy measure has to be reserved for the meritorious.¹¹⁶ Thus, due to limited resources, the 'idle poor' will more likely be excluded disproportionately from these programs, which are, anyway, one of the most important sources of income for many families. The re-introduced restriction will likely contribute further to the ethnicization of public employment.

The public work program is targeted at those in involuntary unemployment situations. Those who have willingly resigned from an employment contract cannot benefit from the public work program. Those whose public work is suspended or terminated are not eligible for any benefits for that period. The cause of immediate termination demonstrates the punitive nature of the regulations, too. The public work relation must be terminated with immediate effect if the authority becomes aware of the above conditions after the public work contract was concluded. Even more detrimental for unemployed people are those cases in which the suspension/termination is due to any disciplinary causes.¹¹⁷ In these cases, the authority decides on the suspension/termination without examining whether the disciplinary termination of the former employment was lawful. Therefore, employees dismissed unlawfully by their previous employer receive the same treatment as those who committed a grave violation of any substantive obligations arising from the employment relationship. Even if a former employee successfully challenges the unlawful dismissal in court, they have no remedies against the associated termination of their public work contracts. Therefore, participants with limited access to justice, such as the materially deprived or the low-skilled, face immense structural disadvantages enforcing their rights. The suspension of social benefits leads to an existential crisis for public workers and their families.

¹¹⁵ The measures providing for the obligation of a house owner to meet health and safety requirements are set forth by Act No V of 2013 Section 5:23, Government Decree No 17/2015. (II. 16.), and by Act LXIII of 1999, Section 17.

¹¹⁶ Unemployment has drastically increased since the outbreak of the COVID-19; in August 2020, 368500 jobseekers were registered, which is 118 thousand more people than a year before. The number of public workers has also gradually been growing; in June and July of 2020, 93 600 public workers were registered, and the Government increased the budget by HUF 5 billion during the summer. See Roland Járdi, "Nőtt a közmunkások száma," *Világ gazdaság* (11 September 2020), available at <https://www.vg.hu/kozelet/kozeleti-hirek/nott-a-kozmunkasok-szama-2-3068798/>.

¹¹⁷ An employer or employee may terminate an employment relationship without notice if the other party: a) willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or b) otherwise engages in conduct that would render the employment relationship impossible. See Act No I of 2012 (Labor Code) Section 78 para (1).

5 Conclusions

Populism and its effects on labor and social policy in Hungary have its distinguishing characteristics. These differences are (among others) due to the different experiences related to inter- and intra-EU migration and to the difference in how the EU's austerity measures¹¹⁸ were imposed during the economic crisis. The two distinctive elements are the workfare regime which replaces the welfare state, and anti-pluralism. In the workfare model, 'hard-working people' are pictured as an idealized mass of disciplined employees striving for betterment every day; and whose jobs and illegal migrants and the idle poor jeopardize well-being. On the other hand, anti-pluralism is detected in complete ignorance of social dialogue and legislation overriding the content of autonomous collective agreements.

However, labor law does not strengthen the rights of 'hard-working people' or support them in asserting their rights against their employers. Instead, quite a few protecting rules have been removed from the new Labor Code and overly flexible regulations introduced to strengthen employers' – especially multinational corporations' – unilateral will. Therefore, employees' vulnerability and powerlessness have been increased.

The fundamental elements of democratic control, such as participation or trade union rights, have been largely eliminated to cement the executive power of the coalition. Social dialogue in Hungary does not fulfil its role - for numerous reasons - neither on national nor workplace level. Institutions of social dialogue are in place and operating, meeting the formal criteria of democratic provisions. However, social dialogue as a democratic process is dysfunctional since these institutions and mechanisms are not implemented democratically, and no genuine dialogue or actual debates take place. Instead, these mechanisms work in a top-down manner, the illiberal state and its central Government take direct orders from their strategic partners to serve their needs regarding employment policy, leaving no scope for a transparent democratic dialogue with the relevant social partners. The lack of an autonomous social dialogue supports anti-pluralist trends, a characteristic feature of populist governance.

Guarantees and protective measures have been severely curtailed in social policy, amplifying the insecurity and material deprivation of those who lose their jobs (or could never get one). The ethnicization of public work programs fuels anti-Roma sentiments; the Roma have been described as

¹¹⁸ The so called 'Six Pack' (the legislation consists of these six parts: (1) strengthening surveillance of budgetary positions and coordination of economic policies, (2) acceleration and clarification of the EDP through a Council regulation, (3) enforcement of budgetary surveillance in the euro area through a regulation, (4) definition of a budgetary framework of the MS through a Directive, (5) prevention and correction of macroeconomic imbalances through a regulation, (6) enforcement of measures for correcting excessive macroeconomic imbalances in the euro area) and 'Two-Pack' (the Two-Pack consists of two regulations (based on Art. 136 TFEU) complementing the Six-Pack in euro area countries to improve the transparency and coordination of Member States' budgetary planning and decision-making processes) measures. European Commission (2013) Beyond the six pack and two pack: Economic governance explained. Memo/13/318. (Brussels, 10 April).

the undeserving poor and mainstreamed in everyday politics and practice, a standard feature for Central-European populists.

The overarching purpose of labor law was to free workers from subordination to employers by securing the freedom of meaningful participation in regulating the economy while respecting the autonomy of economic actors.¹¹⁹ However, the populist turn in Hungary has swept away pluralism from society in general and industrial relations in particular. It is feared that the experience of powerlessness negatively affects civic agency, and in this way, precarious workers are not motivated to maintain their social citizenship, which further deepens democratic regression.

¹¹⁹ Hugo Sinzheimer, *Grundzüge des Arbeitsrechts* (G. Fischer, Jena, 1927).