HUMAN RIGHTS IN THE HUNGARIAN LABOUR CODE

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Protection of human rights, particularly the rights of persons working in the free market economy, features prominently in the Hungarian Labour Code enacted after the great political and economic change. As the state ceased to be the only, or the principal employer, either directly or in the guise of various "voluntary" cooperatives, the proliferation of private enterprises necessitated a law to regulate labour relations between the employers and employees. In this paper Professor Szakats provides an overview of the Code by selecting certain provisions which emphasise human rights, and comparing them with the corresponding New Zealand statutory protection, and relevant ILO Conventions and Recommendations.

I INTRODUCTION

The Labour Act 1992[1] in effect is a Code consisting of 174 sections which cover nearly all aspects of the employer-employee relationship: complete freedom of association for workers and employers alike, creation and termination of employment contracts, hours of work and leave.

Workers' participation,[2] the provision for the establishment of plant councils in all workplaces with more than fifty employees, purports to give the workers rights in the management of the business. Whether the German system was the model as "work democracy", or whether this is a concession to the previous Communist system when the slogan was "the factory is ours," the council is a democratic body. In general the Code

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1 *Munka Törvénykönyv, 1992 XXII statute, Labour Code* ["the Code"]. As the Code is in Hungarian, translation of its provisions to English presented difficulties in finding the equivalent legal expressions which would give the meaning truly and clearly; frequently paraphrasing was necessary.

Unless otherwise expressly stated all references inthis paper to sections are to sections of the Code.

2 See Part VI below.

recognises employers' managerial freedom, but at the same time actively protects employees from ultracapitalist exploitation, and emphasises the protection of human rights.

Despite privatisation of the economy, the state has still retained important regulatory, supervisory and conciliatory powers for the purpose of keeping a healthy balance between the two sides of industry in order to prevent both from gaining too much power, and abusing it to the detriment of the other party and the peace of the country. A tripartite body, the Conciliation Council,[3] composed of representatives of the Government, employers and employees, has the task of making decisions in questions of national interest, and in particular:

(a) to determine rules which supersede statutes on termination of employment for economic reasons which affect a substantial group of workers;

(b) to determine minimum wages and supervision of labour matters;

(c) to make proposals as to the longest daily worktime, and non-working days.

When the Council has agreed, the Minister of Labour proclaims the agreement by legislation. With the consent of the Council, the Minister also may regulate the method of work qualification.[4]

II FREEDOM OF ASSOCIATION – TRADE UNIONS

The Code gives complete freedom both to employers and employees to form unions and associations for the protection of their members' economic and social interests. Employers and workers alike have an unrestricted right to join an organisation of their choice, or if they so wish, keep aloof from any of them. Several different trade unions and other organisations may be formed competing with one another in the same trade or occupational group, and they all can function at the same workplace.[5]

Trade unions, and through them the workers, have substantial rights; one such right is to keep their members informed of all their rights in respect of their material, social and cultural interests. At the same time, of course, the workers must be told their duties. In any matter affecting the employment relationship, the unions represent their members

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3 Sections, 16-17; see ILO Conventions, Part VIII below.

4 Section 17(4). The position and powers of the Minister of Labour are contained in a different statute, as are the status, powers and jurisdiction of the Labour Court. Further, several matters are regulated by other legislation, such as public employment.

5 Sections,14,15,18. BH1992.499 (judicial decision); all different workers' organisations are referred to as trade unions.

against employers and Government departments.[6] On authority given the union may act on behalf of an individual member in a dispute with an administrative organ, and appear before a court.[7]

Employers must not deny access to a person representing the union or an individual employee, if prior notice was given.[8] State authorities and employers should supply any necessary information on matters relating to the workers' economic and social interests to the union with reasons for any proposed plans.[9] If the managerial action would affect 25 per cent or 50 workers before carrying it out, the plant representative of the union should be informed and that representatiave may comment or even initiate consultation on it.[10] The union is also entitled to supervise the proper observance of work rules, and draw attention to any omission.[11] The significance of this is mainly for ensuring safety of the workplace and work methods. In the instance of disagreement, either party may apply to the Labour Court after unsuccessful attempts of settlement by conciliation.[12]

As several workers' organisations may function and have members at the same workplace, all unions have the same rights.

As a cardinal safeguard "the employer is not entitled to demand from an employee a declaration whether or not he or she belongs to a union". Employment must not depend on membership or non-membership. The worker cannot be ordered to resign from one, and join another union as the "boss" wishes, or keep away from any such organisations.[13] In other words, union membership is regarded exclusively as a private matter for the employee, just like religious affiliation. Simply, it does not, and should not, influence the employer either in employing or dismissing anybody. To make dependent any right or benefit on union membership or non-membership is expressly prohibited.[14]

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6 Section 19(2).

7 Section 19(3).

8 Sections 19A, 22(1).

9 Section 21(1).

10 Section 21(2); see Part VI below.

11 Section 22(2).

12 Sections 22(3), 23(4). Detail of the procedure is not relevant for the present purposes.

13 Section 26.

14 Section 27; see ILO Conventions 87 and 98, Part VIII below.

III THE EMPLOYMENT RELATIONSHIP

A Collective Agreements

The employment relationship is created by a dual system of collective agreements and individual service contracts.

Collective agreements made between employers, or employers' organisations and a trade union or several trade unions regulate the basic rights and duties of both parties.[15] The Government may initiate negotiations through the Conciliation Council,[16] or the employers concerned and the union or unions.

If several trade unions have members employed by the same enterprise, they can bargain together, provided that their candidates for the Plant Council election gained together more than 50 per cent of the votes. In the case of a single union, it must have obtained more than half of the votes to be entitled for entering into a collective agreement. The different unions should cooperate, but when they do not, that union which got more than 65 percent of the votes, has the right to bargain, and make an agreement. Negotiation may be started even when none of the unions had the required percentage of votes, but the agreement reached must be approved by the workers.[17]

The collective agreement comes into force when the Minister of Labour proclaims it in the Official Gazette and it is registered.[18] It binds:

(a) all workers employed by the employer concerned, members of every union at the workplace and also non-members;

(b) the employer and/or the employers' organisation party to the bargaining;

(c) all members of the employers' organisation that made the agreement;

(d) all employers joined later.[19]

At the joint petition of the parties the Minister may extend the application of the agreement to employers and workers in other trades and occupations which are ramifications of the industry covered.[20]

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15 Section 30.

16 Section 17(2).

17 Sections 31-33.

18 Section 38.

19 Section 36.

20 Sections 34-35.

Either party may terminate the agreement by three months notice.[21]

The Labour Court has jurisdiction to settle disagreements in a non-litigious process.[22]

B Individual Employment Contracts

The actual employment relationship between an employer and an employee is created by an individual contract which must comply with the basic terms of the collective agreement, but may vary those terms in favour of the worker. It must be in writing and state the personal basic pay, the type and place of the work.[23]

Any person who completed the compulsory minimum education requirements may enter into an employment contract.[24] Persons of limited contractual capacity need the consent of their legal representative only if they are under 16 years of age.[25]

Women and young persons not yet 18 years old must not be employed for work which can be detrimental for their health and physical development, except after medical examination on special conditions.[26]

Detrimental discrimination in connection with employment is prohibited on the ground of sex, age, nationality, race, ancestry, religion, political belief, union membership and connected activity, or any other matter not relevant to the employment relationship.

If the discrimination arises from the character of the work, however, it is lawful and not classified as detrimental. Possibility of promotion to higher grades must be strictly based on length of employment, experience, and performance. Preferential, positive discrimination on the other hand may be obligatory for specific class of employees.[27]

In any argument that the discrimination complained of was not unlawful the burden of proof is on the employer.[28]

Any person of full legal capacity can be employer including a legal person, or a corporation if the statute or the document forming it empowers to employ.[29]

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21 Section 30.

22 Sections 34(6), 37(2).

23 Section 76.

24 Section 72(1).

25 Section 72(2)-(5).

26 Section 75(1).

27 Section 5(1),(3),(4). MK74,No.2; MK97,No.3 (Magyer Közlöng, Hungaria Gazette).

28 Section 5(2).

C Wages

The general rule is: wages are payable, any different arrangement is null and void. Wages should be the personal basic pay as stipulated in the contract, but the parties have the right to agree otherwise. Remuneration may be calculated on a time basis or as production wages, or as a combination of these.[30]

The Government determines after consultation in the Conciliation Council the rates below which no pay agreement can be made, together with the group of employers to which it applies.[31] When deciding on it, regard should be had to the necessities of employees, the national average of wages, cost of living, welfare benefits, standard of living of different social groups, and economic circumstances together with requirements of development, production and the desirable maintenance of high standard of professions.[32]

Night work and shift work carries additional pay defined in different percentages depending on the time and type of work. Overtime carries 50 per cent extra, likewise work on a rest day. For not actually working but being in attendance to be called, 25 per cent of the personal basic wages are payable.[33]

The employer is bound, besides paying the agreed wages, to provide actual work in accordance with the contract and relevant law. All employers must ensure healthy, safe working environments and methods, organise the production system well, and give all necessary directions with the opportunity of acquiring knowledge and skill for the proper performance of the employees' duties.[34]

Workers are obliged on their part to work personally, at the place and time prescribed as instructed, using care and skill, to cooperate with fellow employees, and generally to conduct themselves without endangering health and safety of other persons.[35]

While obedience to all lawful instructions is required, workers may refuse to perform dangerous tasks; and must refuse any order which would seriously jeopardise other

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29 Section 73.

30 Section 76.

31 Sections 17(1)(b), 144(4).

32 Section 144(5).

33 Sections 145-149.

34 Section 102; BH1994, 55, BH1992, 731.

35 Section 103; BH1996, 563.

person's life, health or physical fitness. In case of such lawful disobedience the worker is entitled to payment of absence fee.[36]

When the employee does not work, for any cause arising from the employer's circumstances, the basic wages still must be paid.[37]

The Code also provides for payment of an absence fee where the employee is excused from working for reasons of permitted absence.[38]

Where the employer enters into any other work relationship, the employer must be informed; it can be prohibited only if it would endanger the employer's lawful economic interests.[39]

In the case of the employee's breach of duties the Labour Court on the application of the employer may order payment of compensation. When the damage was caused by negligence the amount ordered cannot be more than one and half times the worker's average monthly earnings, but when intention is proved the entire amount of loss should be refunded. This sum will not be reduced, even when the employer because of the conduct of a third person affected did not receive equivalent damages. The burden of proof lies on the employer, but the employees may prove that an unavoidable event beyond their control resulted in the loss, or that the employer failed to secure proper guarding.[40] When deciding the amount the Labour Court has to consider all circumstances, the degree of guilt, the nature of the damage, frequency of guilty conduct, and the position of the employee in the workplace hierarchy.

IV VARIATION AND TERMINATION OF CONTRACT

The parties may agree to vary their contract, but an altered collective agreement cannot change existing contracts to the detriment of the workers, but only in their favour.[41] A woman worker cannot be transferred to other locality after ascertainment of her pregnancy, but she should be given lighter duties, and in accordance with medical opinion conditions of her employment should be modified. Even though she is permitted to work

36 Section 104(1)-(4).

37 Section 104(5).

38 Section 107; see Part V below.

39 Section 108.

40 Section 109; MK122, 10, ss 166-174, Part V. MK26,1; see Parts IV and V.

41 Section 82; BH1993,468.

shorter hours, and shifted from night duties to day work, her previous average earnings must not be reduced. An adopting mother is entitled to the same treatment.[42]

Employment contracts for an indefinite time,[43] apart from operation of law (death of either party, dissolution of corporation)[44] may be terminated by:

(a) the parties' agreement;

(b) ordinary notice;

(c) special notice;

(d) instant dismissal during probationary period.[45]

A contract for a definite time delimited by calendar reference[46] is terminated at the expiry of the period instantly, without any notice.[47] During the agreed period it can be terminated only with mutual consent or special notice, but the employer must pay one year's average pay.[48] The definite period cannot exceed five years, even when at the expiry of the first period a further period is agreed. Where after expiry the employee carries on with the employer's consent, the employment will change to one for an indefinite time.[49]

When the employer intends to dismiss a worker who has an important office in the union, previous consent must be obtained from that union.[50]

Either party may serve ordinary notice in writing any time but the employer must state the reasons for the dismissal, which can refer only to the employee's skill and conduct, or to substantial changes in the employer's economic, financial or family circumstance which

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42 Section 85; MK57,2.

43 Section 79(1).

44 Section 86.

45 Section 87.

46 Section 79(2).

47 Section 86(c).

48 Section 88(2); BH1996,452.

49 Section 79(2)-(4); BH1992,610, BH1992, 501.

50 Section 28; MK4,3.

make it impossible to keep the employee.[51] The worker should be given the opportunity of stating a defence.[52]

The minimum period of notice is 30 days. After more than three years' service a further five days will be added, and during further years the entitlement increases by more days up to 20 years, when a maximum of 90 days is reached.[53] During the period of notice the employee must be excused from work half time, but still be paid fully the average basic earnings.[54]

The Code prohibits an employer from giving ordinary notice during:

(a) the employee's inability to earn because of illness for a year from the onset of the disease (in case of TB two years);

(b) the entire period of receiving welfare benefit consequent to industrial accident or occupational disease;

(c) unpaid leave for nursing an ill child or close relative;

(d) pregnancy, three months after, and unpaid leave for nursing the child;

(e) compulsory military service.[55]

The dismissed employee is entitled to a lump sum as final payment measured according to the length of employment; in the case of three years employment one month's earnings, increasing after 25 years six months' average basic earnings.[56]

Special notice of dismissal is required where the employee either intentionally or with gross negligence commits a substantial breach, or behaves in a manner which makes impossible the continuation of the employment relationship. The employer must give reasons setting out the facts which constituted the breach.[57]

Where the employee terminates the employment by special notice the employer is obliged to pay the sum equivalent of the employee's average earnings which would be due

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51 Section 89; MK95,4.

52 Section 89(3), (4); BH1993, 266.

53 Section 92.

54 Section 93.

55 Section 90.

56 Section 95.

57 Section 96.

for time of ordinary notice, together with the final lump sum. Further, the employee may demand compensation for any loss caused by the employer.[58]

The Code prescribes a detailed procedure to remedy any complaint against the employer alleging that the termination was unlawful. When the Labour Court finds the complaint proved, it grants reinstatement together with all pay due and also compensation.[59] In a reverse case the employee may be held liable for any damage caused, but the compensation awarded to the employer cannot be more than the worker's average earnings for one and half months, except where the collective agreement stipulates three months' earnings.[60]

V HOURS OF WORK AND LEAVE

The eight hour workday principle is accepted as a general rule but the parties may agree on shorter workday, or longer in the type of work where constant readiness is required but, cannot be more than 12 hours.[61] In case of extremely harmful or dangerous tasks legislation or collective agreement may restrict the maximum work period to not more than six hours, and also impose other restrictions.[62]

Work performed between ten pm and six am is qualified as night work. Female employees from the commencement of pregnancy until the child reaches the age of one year and young persons must not be ordered to do night shift. No exceptions are allowed. Similarly women in this condition are prohibited overtime.[63]

When the working time is more than six hours a day, at least 20 minutes rest time should be allowed, and in continuous overtime it is needed every three hours.[64] After finishing a day's work work must not be resumed until after 11 hours rest. The parties may agree to a shorter rest period but to not less than eight hours. A collective agreement may provide that during waiting time in readiness, not actual work, the employees are not entitled to rest periods.[65]

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58 Section 96(7); BH1994,58, BH1993, 651.

59 Sections 100; 166-172, BH1994,221, BH1993, 397.

60 Section 101; see also s 174, see Parts III and V.

61 Section 117(1)(2).

62 Section 117(3).

63 Section 121; see also s 75.

64 Section 122.

65 Section 123; MK17, 4.

Non-working days are: 1 January, 15 March (national holiday), Easter Monday, 1 May, Whitsun Monday, 20 August (St Stephen's Day), 23 October, 25-26 December. Of course, included as a non-working day is, Sunday or, in the case of Sunday work, another day of the week. On those days only most essential work is performed where break is not possible (hospitals, police, public transport).[66]

Shiftworkers must be given 42 hours continuous rest, including a Sunday, or in case of Sunday work another day.[67]

Any work done in excess of the usual hours is classified as overtime. A collective agreement may stipulate that it be ordered by written instructions.[68] Overtime cannot be ordered if it would endanger the worker's health, safety or be an inequitable burden considering the circumstances of the worker and his or her family. An employee who brings up an infant alone is in the same position until the child reaches the age of four years, and must agree to any extra work.[69]

Maximum overtime by any person is limited to eight hours together on four consecutive days, without exception. The annual upper limit is 144 hours, though a collective agreement may stipulate 200 or in exceptional cases 300 hours. There is no restriction in the case of accident, natural disaster or for the prevention of heavy damage.[70]

The employee will be excused from work in cases of:

(a) performing a citizenship duty;
(b) death of a near relative, for two days;
(c) illness and inability of earning;
(d) compulsory medical examination, including pregnancy;
(e) voluntary firefighting or ambulance service;
(f) blood giving, four hours after;
(g) unavoidable reasons for absence;
(h) permission by the work rules or by the employer.[71]

Every year employees are entitled to holidays, ordinary and extra.[72] The basic ordinary holiday of 20 workdays will be increased after the worker's 25th birthday to 21

66 Section 125(2); MK82, 5.

67 Section 124(2).

68 Sections 126-127, BH1992,557.

69 Section 128.

70 Section 139.

71 Section 107. See also above Part III 3.

days, after the 28th birthday to 22, after the age of 31 to 23 days; then in every second year a further 1 day is added until the age of 45 when it will be 30 working days.[73]

A worker under 18 years is entitled to five extra days. A parent who devotes much time to the education of a child, or a solo parent of a child or children younger than 16 years should receive in the case of one child two, after two children four, and if more seven, extra days. An adopting parent has the same right.

Blind workers are entitled to five extra days. Permanent underground workers and those exposed to radiation are also entitled to extra leave as stipulated in the collective agreement or in the employment contract.[74]

During the time the employee temporarily is not working, the employee retains entitlement to holidays in the following cases:

(1) while incapable of earning because of illness;
(2) during birth leave;
(3) during the first year of unpaid leave for looking after a child not yet ten years old;
(4) during 30 days unpaid leave;
(5) during reserve military service;
(6) during non-working days receiving average pay or absence fee.[75]

Sick leave is allowed a maximum of 15 days a year with medical certificate, three days without. During that time the worker should be paid 75 per cent of average earnings.[76]

A pregnant woman is entitled to 24 weeks leave, four weeks around the time of the expected birth. It will terminate:

(a) after six weeks of a stillbirth;
(b) if the child dies 15 days after the birth;
(c) if the child is given into state wardship immediately after birth.

In any case, the birth leave cannot be shorter than six weeks. If a premature child is cared for in a special institution the unused part of the leave can be taken after the child is

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72 Section 130(1); MK18,2, MK19,3.

73 Section 131.

74 Section 132, MK100,3, MK120,2.

75 Section 130(2).

76 Section 137.

sent home, but only within one year from the birth. In case of an ill child the leave may be prolonged up to the age of ten years.

A nursing mother should receive one hour rest twice a day for the first six months, and one hour a day until nine months. The employer is obliged to grant leave for not more than two years without pay for the purpose of caring for an ill spouse, or other close relative.[77]

The employee will be liable for any damage caused by culpable breach of duties, if the employer can prove guilt and the measure of loss. Culpable means intentional or gross negligence. If the Labour Court finds guilt the full amount of loss may be granted, though ameliorating circumstances will be considered. In the case of negligence the compensation cannot be more than one half of the worker's average monthly earnings.[78]

The employer, on the other hand, is absolutely liable for all damage caused to a worker. No guilt or negligence is required to be proved.[79]

VI WORKERS PARTICIPATION

A significant part of the Code provides for workers participation in management of the enterprise by establishing Plant Councils. Such a Council must be elected at every workplace with more than 50 employees. In small workplaces with at least 15 workers, one person will be chosen as sole representative. The number of Council members depends on the number of employees on a descending scale: 13 over 2000 workers, down to three if less than 100.[80]

Detailed procedure regulates the electing members of a Council, its functioning and cessation.[81]

The Council has the right to participate in decisions relating to use of money for welfare as provided in the collective agreement. The employer must obtain the union's opinion before making any decision affecting workers. Further, every six months the union should be informed of:

(a) any change of the plant's business plans,

(b) development of wages policy, payment, liquidity, work time and conditions.[82]

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77 Section 138; see s 128(2) .

78 Sections1 66-173, MK26,1, MK25,1. BH1994,514, MK113,2, BH1993, 331; see Parts III and IV.

79 Section 174; MK30,1, MK31,2, MK29, 3; see Parts III and IV.

80 Sections 42-70.

81 For the purposes of this article a few salient points are sufficient.

While the management is obliged to inform the union of all matters relating to the employees' economic and social interests, the Council and its members are prohibited from disclosing any information which may threaten the employers' lawful economic interests or the employees' personal rights.[83]

In case of strike at the employer's enterprise the Council must remain absolutely neutral; it must not organise, assist or impede a strike.[84]

VII THE LAW IN NEW ZEALAND

In New Zealand under the Employment Contracts Act 1991 (EC Act) union membership is voluntary, employers are not allowed to give preference to employees on account of their attitude to unions. Neither party may exert undue influence on workers, demand membership or resignation.[85]

The position of trade unions in New Zealand before the present statute did not comply with the ILO Conventions, notwithstanding that the state was, and still is, a member of the ILO. Previous, now repealed, statutes [86] provided for compulsory union membership. There were no parallel unions in any occupational group and the compulsion placed the unions in a monopoly position. Compulsory membership was introduced in 1936, abolished in 1961 and replaced with insertion of a preference clause in collective agreements, giving preference to union members in employment. In fact it was a thinly disguised form of compulsion. In 1983 the National Government abolished it, but in 1985 the Labour Government reintroduced it, until in 1991 the EC Act finally made union membership voluntary.

Collective bargaining and collective agreements, despite similarities, are somewhat different under the EC Act 1991. Not only trade unions, membership of which now is voluntary, but many other groups, organisations or persons may negotiate with authority received from those for whom they are acting, and enter into an agreement in their name and on their behalf.[87]

This provision applies also to employers.

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82 Sections 65-67.

83 Sections 68-69.

84 Section 70.

85 EC Act, ss 5-7.

86 Industrial Conciliation and Arbitration Act 1961-1984 with many amendments, Labour Relations Act 1987.

87 EC Act, ss 10-18.

A significant difference, however, should be noted. The Hungarian collective agreement made between unions and employers lays down the basic conditions for employment, but in itself it does not create the employment relationship. It rather has the force of a regulation to be followed as minimum conditions in any individual employment contract. On the other hand, a New Zealand collective agreement creates actual employment, a collective contract. In fact such a collective contract consists of a number of individual identical service contracts, collective only in the sense that an agent with more bargaining power than a single worker negotiated it for them.[88]

An employee under the EC Act may enter an individual employment contract where there is no collective contract applicable. Even where such collective contract applies nothing prevents the parties to negotiate an individual contract, but this cannot be inconsistent with the collective one. In this respect the collective one has a primary binding force, like that under the Code and reverts to the previous position in New Zealand.[89]

Any person of full contractual capacity may be an employer or employee including a legal person in accordance with the power granted by the statute or document establishing it. At common law, as a matter of policy, all persons are conferred capacity,[90] except those who for reasons of tender age, mental incompetence or on any other ground lack the required understanding. Subject to certain conditions contained in specific statutes,[91] nevertheless those with limited capacity may be employed.

Detrimental discrimination in employment on the ground of sex, marital status, religious belief, ethical belief (non-religious), colour, race, ethnic or national origin, including citizenship, disability (physical or psychiatric, intellectual impairment, blindness), age, political opinion, employment status (unemployed or receiving welfare benefit), family status and sexual orientation (heterosexual, homosexual, lesbian or bisexual) is strictly prohibited as unlawful.[92]

These provisions reveal again common features in the two countries human rights legislation. The New Zealand Act, however, adds marital status, different kinds of

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88 EC Act, ss 19 and 20.

89 EC Act, s19.

90 See for example *Hellaby Shortland Ltd v Weir* [1976] 2NZLR 355 (CA).

91 Age of Majority Act 1970, Minor's Contracts Act 1969, Mental Health (Compulsory Assessment and Treatment) Act 1992.

92 Human Rights Act 1993, ss 21-22 [HR Act]. The HR Act consolidated the Human Rights Commission Act 1977, the Race Relations Act 1971, and parts of the Homosexual Law Reform Act 1986.

physical and mental disability, male and female homosexuality, family and employment status. Refusing to employ, treating less favourably or dismissing a person on any prohibited ground is equally a form of unlawful discrimination.

Further, the HR Act provides particulars for complaints procedure by establishing a Human Rights Commission and a Review Tribunal,[93] while the Code does not. It seems, nevertheless, that the Hungarian Labour Court has jurisdiction in these, as in all, matters relating to the employment relationship, and the Code contains many protective measures in those parts which regulate particular areas of employer-worker relationship.

The wages or salary payable in New Zealand is determined during the bargaining process and recorded in the contract, collective or individual. The remuneration can be an annual salary to be paid monthly or fortnightly, weekly or hourly wages. Piece payment is reckoned on the basis of production, frequently as an incentive in addition to hourly wages. Other incentive payments, bonuses, and commissions are applied in certain industries and businesses.

The Government decides the amount of minimum wages from time to time.[94]

Women should be paid on the same rate as men according to the Equal Pay Act 1972. Despite this statute and the Human Rights Act, as women mainly work in different occupations, this still has not been fully achieved.

The Wages Protection Act 1983 provides for the proper payment of wages.

The Holidays Act 1981 consolidating former statutes, provides for public and annual holidays. Every employee is entitled to not less than 11 whole holidays on pay. These are the commonly observed Christian religious days, like Christmas and Easter, and the national and provincial holidays. In addition, workers should be allowed three weeks also on full pay. A contract may grant more, but cannot reduce it.

The Parental Leave and Employment Protection Act 1987 clearly indicates its purpose by its title. Such leave is without pay, and cannot exceed 14 days, though may be extended. Where during pregnancy a female employee cannot perform her work, she may be transferred to lighter duties. Continuity of employment during her absence is presumed, but if the employer proves that temporary replacement would not be practicable, because of the key nature of her position, she may lose the job. Although she is not entitled to remuneration during her leave, she can claim redundancy pay. As

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93 HR Act ss 2-20.

94 The Minimum Wage Act 1983. Every year the Governor-General on the recommendation of the Minister of Labour issues an Order in Council setting the minimum rates.

legislation does not provide for redundancy compensation, unless the contract stipulates for it no payment can be assured.

The Health and Safety in Employment Act 1992 is the principal statute regulating workplaces to protect workers' health and prescribing safe working practices. The Accident Rehabilitation and Compensation Insurance Act 1992 is a much emasculated re-enactment of the Accident Compensation which introduced no fault compensation for accidents at work and anywhere. The original intention of paying compensation for accidential injury which occurred anywhere without proof of somebody's fault has now shrunk to workplace injuries only, and even in such cases, an injured person's pre-existing medical condition, which may have been a contributory or even sole cause of the injury, is questioned, and if so found any compensation can be denied. The Machinery Act 1950, many times amended, provides for safe operation of machinery. The Smoke-Free Environments Act 1990 purports protecting non-smokers against unhealthy effects of secondary smoking.

All these statutes have an elaborate procedure for enforcement: the Human Rights Commission, the Employment Tribunal and the Employment Court, mentioning only the most important institutions. The Labour Department functions as an administrative body, the Minister of Labour being the political head.

VIII THE SUPRANATIONAL EFFECT OF THE ILO CONVENTIONS

Under the influence of the International Labour Organisation, generally known as the ILO, and the binding force of Conventions, the principles of labour law, especially the law of employment, became more humane, ensuring observance of human rights, and to a great extent similar, international, or rather supranational, in the civilised world, irrespective of whether the country's legal system belongs to the civil law or common law families. The old law of master and servant in England, as well as in New Zealand, has changed to the law of employment discarding feudal connotations.

One of the most important principles is freedom of association, freedom to form trade unions.

Even if a state did not ratify an ILO instrument, membership by itself binds the country to respect the principles of freedom of association.[95] Convention No.87 provides:[96]

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95 Digest of Decisions and Principles of the Freedom of Association Committee, ILO: *"by membership of the ILO, each member state is bound to respect ... the principles of freedom of association"*.

96 Convention No 87, Freedom of Association and Protection of the Right to Organise, 1948, art 2; Convention No.98, Right to Organise and Collective Bargaining, 1949, art 1(2)(a).

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Convention No 98 prohibits making "the employment ... subject to the condition that the worker shall not join a union or shall relinquish trade union membership".

The use of the phrase "shall have the right" clearly indicates that there can be no compulsion, both positive and negative right of association is allowed, workers are free to join or not to join.

Even where a state ratified an ILO resolution a reservation can be entered, if its internal laws are not compatible with any covenant. This was the position in New Zealand before 1991.

Two most important ILO documents are: the International Covenant on Civil and Political Rights 1966; and the International Covenant on Economic, Social and Political Rights 1966. Specifically applying to trade unions are Convention No 87, Freedom of Association and Protection of the Right to Organise 1948, and Convention No 98 Right to Organise and Collective Bargaining 1949.

Other instruments purport to prohibit discrimination: Convention No.111 and Recommendation No 111, Discrimination (Employment and Occupation) 1958; Also Convention No 100 and Recommendation No 90 Equal Remuneration 1951.

Family matters are dealt with by Convention No.156 and Recommendation No.165, Workers with Family Responsibilities, 1981. Convention No.117, Social Policy (Basic Aims and Standards), 1962 also aims at protecting a worker's family.

The welfare of female workers is specifically provided for by Conventions No.3 and 103, Maternity Protection 1919, revised in 1952, and Convention No 4, Night Work (Women), 1919, revised by Convention No 41, 1934 and Convention No 89, 1948.

Employment of children and young persons is regulated by a number of Conventions: Convention No 5, Minimum Age (Industry), 1919, revised by Convention No 59, 1937. More recent instruments are Convention No.138, and Recommendation No 146, Minimum Age, both 1973. These apply to industrial while Convention No.33, 1932 (revised by Convention No 60, 1937) refers to non-industrial employment.

Night work by youth, the prohibition of exploiting children by compelling them to work not only by day but also at night received early attention under Convention No 6, Night Work of Young Persons (Industry), 1919 (revised in 1948 by Convention No.90). 1921 Recommendation No.14, Night Work of Children and Young Persons extended this to

agricultural work. For non-industrial occupations Convention No 79 and Recommendation No 80 (both 1946), apply.

Children as young as eight years used to perform certain work in coalmines in the 19th and even in the early 20th century under very miserable circumstances. Recommendation No 125, Conditions of Employment of Young Persons (Underground Work) 1965 were aimed at improving, if not entirely prohibiting, the use of cheap child labour.

The tasks demanded to be performed by children in mines and factories were (and where it is still practised are) most harmful to their health and wholesome development of their body, were aggravated by poor nourishment, therefore constant health checks were required. Convention No 77, Medical Examination of Young Persons (Industry), 1946 serves this aim together with Recommendation No 79 of the same year. Recommendation No 124, Medical Examination of Young Persons (Underground Work) 1965, and Recommendation No 125, Conditions of Employment of Young Persons (Underground Work), 1965, more specifically focus attention to work in mines. Convention No.78, 1946 is parallel to Convention No 77 relating to non-industrial work.

On the other end of the scale Recommendation No 162, Older Workers, 1980 prohibits ageism in employment.

The question of remuneration, the main cause of friction between the two sides of enterprise, produced a number of documents. Convention No.26, Minimum Wage Fixing Machinery, 1928, Convention No.131, Minimum Wage Fixing, 1970 together with Recommendation 135, gives guidance, if not instructions, for reducing arguments about rates. Convention No 95 and Recommendation 85 both 1949, are most valuable.

Since its early years the ILO has produced many documents to ensure decent working hours, rest time and leave. The first is Convention No.1, Hours of Work (Industry), 1919, followed a few years later by Convention No 47, Forty-Hour Week, 1935. Recommendation No 116, Reduction of Hours of Work, 1962 signified further development. The principle of the 5 day 40 hours work week has now been accepted in most Western countries. A number of further Conventions apply to specific industries and occupations.

Night work in general (not women and youth) is dealt with in Convention No 171 and Recommendation No 178, both of 1990, entitled (not surprisingly) Night Work. Convention No 14, Weekly Rest (Industry) 1921, regulates rest days for manual workers.

As late as 1957 commerce and office workers were considered by Convention No 106 and Recommendation 103. Entitlement for paid leave was dealt with by Convention No 52 and Recommendation No 47, both in 1936, followed by Recommendation No 98 in 1954

and Convention No 132 of 1970, all with the title Holidays with Pay. Convention No.140 with Recommendation No 148 of 1974 provide for Paid Educational Leave.

Many Conventions and Recommendations relate to health and safety at work. Only the most recent ones are quoted: Convention No 161 Occupational Health Services, 1985, Convention No 164, Occupational Safety and Health, 1981, Convention No 174, Prevention of Major Industrial Accidents, 1993. Convention No 144, Tripartite Consultation (international Labour Standards) 1976 also deserves mentioning.

IX CONCLUSIONS

The above brief and somewhat random extracts from the Code and the even briefer reference to the law in New Zealand adequately illustrate definite similarities in protecting human rights in compliance with the relevant ILO Conventions and Recommendations. It is clear, despite these similarities, nevertheless, that in the detail, especially in the procedure of obtaining remedies for any illegal act or omission and for breach of contract, the fundamental elements of their general legal systems have been retained.

In certain respects, mainly in protecting women in pregnancy and after the birth of the baby, nursing a sick child or close relative, the Code is superior. Maternity leave in New Zealand is granted without pay, for a shorter period, and though her position while not working is deemed to continue, she still may lose it.

In the matter of leave the Code in general seems more generous. The minimum ordinary annual holidays are 20 working days, and for workers over the age of 45 years this increases to 30 working days with pay. There are also many provisions for special leave for young persons, parents, blind employees, permanent underground workers and those exposed to radiation. Sick leave and parental leave is granted with part of the ordinary average wages.

All New Zealand statutes, the EC Act, the HR Act, the PLEP Act provide various, elaborate authorities, commissions, tribunals and courts for any injured party for complaining and obtaining remedy through different complicated and sometimes conflicting procedures – conflicting in the sense that in certain cases action may be commenced before either of two authorities with dissimilar jurisdiction and procedure.

The Code frequently refers to the "Munkaügyi Bíróság" Labour Court, the jurisdiction and power of which is regulated in a separate statute. Beside this, it seems, the Minister of Labour, the Ministry and other administrative organs have a role in employment matters.[97]

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97 See Martin Vranken "Specialisation and Labour Courts: A Comparative Analysis" (1988) Comparative Labour Law Journal 497-525.

It is not necessary to examine all legal rules of the two countries side by side; the reader can see most of the similar and dissimilar features. As stated in the Introduction this article mainly intends to focus attention to the paramount principle of protecting human rights through the freedom of association and unimpeded collective bargaining.

Concrete realisation of human rights, dignity of the individual and general welfare is embodied in various statutes, regulations, rules, orders and other instruments relating to work conditions, safety, health and rest time of the workers. No doubt credit for these should mainly be attributed to the supranational character and force, or at least moral power and worldwide influence, of the ILO.

LES DROITS DE L'HOMME DANS LE CODE DU TRAVAIL HONGROIS: COMPARAISON AVEC LE DROIT NÉO ZELANDAIS, À LA LUMIERE DES CONVENTIONS INTERNATIONALES

Le bouleversement politique et économique qu'a connu la Hongrie au cours des deux dernières décénies, marque le passage d'une économie de type socialiste à un systeme fortement teinte de capitalisme et en cela se rapproche du systême néo-zelandais.

La première conséquence a été de substituer ou d'ajouter à un employeur unique traditionnel, l'Etat, tout une multitude de nouveaux employeurs et de multiplier ainsi les risques de déséquilibres dans le monde du travail.

Il convenait alors de prevoir tout un nouvel ensemble de règles, notamment en matière de droits de l'homme, qui tiennent également compte de la définition retenue dans les conventions internationales, et en premier lieu l'International Labour Organisation.

Tel est le but du code du travail hongrois de 1992.

En Nouvelle Zélande, les principes fondamentaux dégagés ou repris par les conventions internationales, au premier rang desquels figurent la liberté d'association et de se syndiquer, furent appliqués avec néanmoins quelques réserves.

Dans ces domaines tout comme dans ceux relatifs aux conditions de travail d'une manière générale, le droit du travail hongrois présente des similitudes avec l'Employment Contract Act 1991 néo-zelandais.

Mais au delà de ce premier constat, une étude détaillée révèle des différences sensibles: ainsi par exemple, les règles relatives à la rupture du contrat de travail.

Ainsi si les deux systèmes juridiques assurent une protection sensiblement égale des principes des droits de l'homme en droit du travail, il reste que dans certains domaines le

code hongrois apparait bien supérieur au droit néo-zélandais. Ainsi la protection assurée en Hongrie aux femmes enceintes qui travaillent va bien au delà du régime néo-zélandais.

La principale explication de ces différences tient aux particularismes inhérents à chaque système juridique. En effet dans le système hongrois, l'Etat conserve une place préponderante, assimilable à celle d'un arbitre entre les intêrets souvent contradictoires entre les employeurs et les employés alors que le systeme néo-zélandais privilégie l'autonomie des parties interessées.