
STUDIA IURIS

JOGTUDOMÁNYI TANULMÁNYOK / JOURNAL OF LEGAL STUDIES

2024 I. ÉVFOLYAM 1. SZÁM



Károli Gáspár Református Egyetem
Állam- és Jogtudományi Doktori Iskola

A folyóirat a Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskolájának a közleménye. A szerkesztőség célja, hogy fiatal kutatók számára színvonalas tanulmányaik megjelentetése céljából méltó fórumot biztosítson.

A folyóirat közlésre befogad tanulmányokat hazai és külföldi szerzőktől – magyar, angol és német nyelven. A tudományos tanulmányok mellett kritikus, önálló véleményeket is tartalmazó könyvismertetések és beszámolók is helyet kapnak a lapban.

A beérkezett tanulmányokat két bíráló lektorálja szakmailag. Az idegen nyelvű tanulmányokat anyanyelvi lektor is javítja, nyelvtani és stilisztikai szempontból.

A folyóirat online verziója szabadon letölthető (open access).

ALAPÍTÓ TAGOK

BODZÁSI BALÁZS, JAKAB ÉVA, TÓTH J. ZOLTÁN, TRÓCSÁNYI LÁSZLÓ

FŐSZERKESZTŐ

JAKAB ÉVA ÉS BODZÁSI BALÁZS

OLVASÓ SZERKESZTŐ

GIOVANNINI MÁTÉ

SZERKESZTŐBIZOTTSÁG TAGJAI

BOÓC ÁDÁM (KRE), FINKENAUER, THOMAS (TÜBINGEN), JAKAB ANDRÁS DSC (SALZBURG), SZABÓ MARCEL (PPKE), MARTENS, SEBASTIAN (PASSAU), THÜR, GERHARD (AKADÉMIKUS, BÉCS), PAPP TEKLA (NKE), TÓTH J. ZOLTÁN (KRE), VERESS EMŐD DSC (KOLOZSVÁR)

Kiadó: Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskola

Székhely: 1042 Budapest, Viola utca 2-4

Felelős Kiadó: TÓTH J. ZOLTÁN

Olvasó szerkesztő: GIOVANNINI MÁTÉ

A tipográfia és a nyomdai előkészítés CSERNÁK KRISZTINA (L'Harmattan) munkája

A nyomdai munkákat a Robinco Kft. végezte, felelős vezető GEMBELA ZSOLT

Honlap: <https://ajk.kre.hu/index.php/kiadvanyok/studia-iuris.html>

E-mail: doktori.ajk@kre.hu

ISSN 3057-9058 (Print)

ISSN 3057-9392 (Online)

SOME LABOUR LAW ASPECTS OF PSYCHOLOGICAL CONTRACT THEORY

KRISTÓF TÓTH¹

ABSZTRAKT ■ A tanulmány célja a pszichológiai szerződés, mint elméleti koncepció központi témáinak bemutatása, a releváns munkajogi összefüggésekre fókuszálva. Az alkalmazott fő kutatási módszer a témában született releváns tanulmányok, cikkek, monográfiák vizsgálata, ezek szerzői által rendszerezett empirikus kutatási adatok másodelemzése, valamint ennek során a főbb munkajogi vonatkozások és összefüggések feltárása. A munkaszerződés és a pszichológiai szerződés viszonyát vizsgálva megállapítható, hogy míg az előbbi egy írásos formában létező, jogi kötőerővel rendelkező szerződés, addig az utóbbi egy elméleti, absztrakt konstrukció, amely a felek kölcsönös és hallgatóságos elvárásait tartalmazza. Ebből adódóan tehát „jogon túli” kategóriának minősül, bizonyos esetekben azonban, főként annak megsértése esetén lehetnek jogi relevanciái.

KULCSSZAVAK: munkaszerződés, pszichológiai szerződés, kölcsönös elvárások, jogi háttérnormák, erkölcsi normák

ABSTRACT ■ This paper aims to present the central topics of psychological contract theory, focusing on the relevant labour law contexts. The main research method used is an examination of relevant studies, articles and monographs on the topic, a secondary analysis of empirical research data systematically compiled by the authors, as well as an exploration of the main labour law aspects and contexts. The difference between an employment contract and a psychological contract is that while the former is a written, legally binding contract, the latter is a theoretical, abstract construct that contains the mutual and implicit expectations of the parties. A psychological contract therefore falls into the category of „extra-legal” contracts, but in certain cases, especially in the event of a breach of contract, it may have legal relevance.

KEYWORDS: employment contract, psychological contract, mutual expectations, legal background norms, moral norms

¹ PhD student, Doctoral School of Law and Political Sciences, Károli Gáspár University of the Reformed Church in Hungary.

1. INTRODUCTION

This paper aims to present the central topics of psychological contract theory, focusing on the relevant labour law contexts. In the first part of the paper, the concept and brief history of the psychological contract, the distinction between an employment contract and a psychological contract, and the role of legal and moral requirements are presented. In the second part of the paper, the content, performance, and breach of psychological contracts will be discussed, drawing attention to the relevant labour law aspects.

2. Concept and a brief history of the psychological contract

The psychological contract is a theory developed by work and organisational psychology.²

The first research on the psychological contract appeared in the 1960s, to describe the psychological factors influencing the employee-employer relationship. The first research on this topic was carried out by CHRIS ARGYRIS and HARRY LEVINSON. Argyris described the „*psychological work contract*” as the relationship between the employer and the employee, the purpose of which is to ensure the continuity of the employment contract. The employer understands the employee’s expectations of high salary, job security, etc., but expects the employee to perform the job accurately. The relationship is limited to ensuring the progress of the work and there is no room for deeper intimacy between the parties. Levinson developed his theory by analysing interviews with American employees and was the first to define the phenomenon as „*psychological contract*.”³

Although Chris Argyris and Harry Levinson were the first to use the concept of the psychological contract, it has been a really „popular” research topic since the work of DENISE M. ROUSSEAU.⁴ In a study published in 1989, Rousseau defines the concept of a psychological contract as follows: „[t]he term of *psychological contract* refers to an individual’s beliefs regarding the terms and conditions of a reciprocal exchange agreement between that focal person and another party. Key issues here include

² MÓNKA GUBÁNYI: A pszichológiai szerződés szakirodalmi összefoglalója. *Vezetéstudomány*, 10/2020, Iss. 40.

³ GUBÁNYI 2020, 41.

⁴ LÁSZLÓ BALOGH: *A teljesítményt befolyásoló szervezetpszichológiai tényezők vizsgálata interaktív sportcsapatoknál*. PhD disszertáció. Pécsi Tudományegyetem, Bölcsészettudományi Kar, Pszichológiai Doktori Iskola, 2008. 12.

the belief that a promise has been made and a consideration offered in exchange for it, binding the parties to some set of reciprocal obligations."⁵

A psychological contract is distinct from mere expectations. Expectations simply refer to what the employee expects to receive from his/her employer. The psychological contract, by contrast, refers to mutual obligations that characterize the employee's relationship with his or her employer. The psychological contract, unlike mere expectations, entails a belief in what the employer is obliged to provide, based on perceived promises of reciprocal exchange.⁶

3. DISTINGUISHING A PSYCHOLOGICAL CONTRACT FROM AN EMPLOYMENT CONTRACT

In some ways, a psychological contract is very similar to an employment contract. Both aim to include the basic terms of the „exchange". A psychological contract is not just about bare promising, but rather it refers to the parties' expectations of one another in a mutually beneficial deal.⁷

That being said, a psychological contract is in many ways very different from an employment contract. One difference is that the content of a psychological contract is subjective, as it contains the parties' expectations of mutual commitment in terms of what they are obliged to give and what they can expect in return from the other party. These expectations arise from the belief that both parties have made a promise and both parties have accepted the same contractual terms. This belief, however, is not based on a written contract. Thus, the parties only assume that they interpret the terms of the contract in the same way. However, the two parties may interpret the content of the contract differently, so they are likely to have slightly different views on what they are obliged to perform. The content of a psychological contract is therefore determined by the parties' interpretation of the agreement, which has no objective content.⁸

Another difference is that the psychological contract is constantly changing depending on the circumstances. A psychological contract, unlike an employment contract, is not made once but rather it is revised throughout the employee's

⁵ DENISE M. ROUSSEAU.: Psychological and implied contracts in organizations. *Employee Responsibilities and Rights Journal*, 2/1989, Iss. 2. 123.

⁶ SANDRA L. ROBINSON – DENISE M. ROUSSEAU: Violating the Psychological Contract: Not the Exception but the Norm. *Journal of Organizational Behavior*, 15/1994, Iss. 3. 246.

⁷ TESS WILKINSON-RYAN: Legal Promise and Psychological Contract. *Wake Forest Law Review*, 47/2012. 847.

⁸ ROBINSON – ROUSSEAU 1994, 246.

tenure in the organization. For example, events in the form of relocations and organizational restructuring may overlay new terms upon old ones.⁹ By contrast, the content of an employment contract is permanent. Under Act I of 2012 on the Labour Code (hereinafter: Labour Code), the parties can only amend the employment contract by mutual consent.¹⁰

A further difference is that, unlike an employment contract, a psychological contract does not exist in written form and its contents cannot be enforced directly in court. For example, if the employer has promised the employee that he/she will be promoted if he/she performs at work well, but the employer does not do so, this is a breach of the psychological contract, even though the promotion is not legally enforceable.¹¹

3.1. Features of the employment relationship

At this point, it is worth distinguishing employment relationships based on an employment contract from other civil employment relationships. Although the employment relationship is created by (employment) contract, unlike civil employment relationships, the employment relationship is characterised by subordination.¹² Three major theories have emerged to explain this subordinate relationship.¹³ The first theory was developed in the 19th century, which is the theory of „economic dependence”.¹⁴ According to this theory, the dependence of the employee results from the economic power of the employer, since the employer has the money, infrastructure, network, etc. necessary to continue the economic activity, without which the employee would not be able to appear on the market independently.¹⁵

However, after the industrial revolution, groups of employees emerged for whom economic dependence was no longer so significant.¹⁶ In light of all these

⁹ ROBINSON – ROUSSEAU 1994, 246.

¹⁰ Labour Code Section 58.

¹¹ WILKINSON-RYAN 2012, 849.

¹² GÁBOR KÁRTYÁS: XXI. század és munkajog: megőrizni vagy megreformálni? In: LAJOS PÁL – ZOLTÁN PETROVICS (ed.): *Visegrád 17.0. A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*. Budapest, Wolters Kluwer, 2020. 43.

¹³ KATALIN DUDÁS – SZILVIA HALMOS – GÁBOR KÁRTYÁS: *A munkajog szerepe a munkaerőhiány kezelésében*. Kutatási zárótanulmány. Budapest, Közösen a Jövő Munkahelyeiért Alapítvány, 2018. 11.

¹⁴ GYÖRGY KISS: A munkajog fogalma. In: GYÖRGY KISS (ed.): *Munkajog*. Budapest, Dialóg Campus, 2020. 21.

¹⁵ KÁRTYÁS 2020, 43.

¹⁶ Kiss 2020, 21.

developments, labour law has developed the theory of „personal dependence”. According to this theory, in the employment relationship, employees add their personality to their performance, and thus become dependent and vulnerable to their employer.¹⁷

Theories of economic and personal dependence have sought to explain the essence of subordination in terms of non-legal factors.¹⁸ However, the employee’s subordination can also be explained by legal factors. A fundamental feature of the employment relationship is the abstract definition of the subject of the employment contract, which is the job function. Within the framework of the job function, the employer is entitled to determine the employee’s performance based on the right of instruction.¹⁹ The employee’s subordination therefore derives from labour law itself, since labour law gives the employer the right to instruct.²⁰

According to the modern conception of labour law, the subordination between the parties is not primarily explained by non-legal factors but related to the abstract definition of the subject of the employment contract (job function) and the employer’s right to instruct. At the same time, as KATALIN DUDÁS, SZILVIA HALMOS and GÁBOR KÁRTYÁS pointed out, the subordination between the parties in the establishment, modification and termination of employment relationships can be explained to a significant extent by non-legal factors, mainly by the employee’s vulnerable position in economic terms. The main motivation for the employee to accept the terms and conditions of the employment contract and to perform the employment relationship is to avoid termination of the employment relationship, which would put him in a crisis in economic and social terms.²¹

4. TYPES OF PSYCHOLOGICAL CONTRACT

Rousseau distinguished two types of psychological contracts: transactional and relational contracts.²² Their different characterization is based on their different orientation towards time frames and tangibility. Transactional contracts are characterized by a short-term employment relationship in which the performance requirements or mutual obligations can be clearly specified.

¹⁷ DUDÁS – HALMOS – KÁRTYÁS 2018, 11-12.

¹⁸ DUDÁS – HALMOS – KÁRTYÁS 2018, 12.

¹⁹ KÁRTYÁS 2020, 44.

²⁰ ATTILA KUN: Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről. *Glossa Iuridica*, 7/2020, special issue. 150.

²¹ DUDÁS – HALMOS – KÁRTYÁS 2018, 13-14.

²² DENISE M. ROUSSEAU: New hire perceptions of their own and their employer’s obligations: A study of psychological contracts. *Journal of Organizational Behavior*, 11/1990, Iss. 5. 390.

They are quite specific and economic in nature. The employee does not want to be a committed member of the employer's organisation. In contrast, relational contracts are characterized by long-term employment relationships in which mutual obligations cannot be clearly specified. They are both economic and social-emotional in nature, less clearly specified and to a degree open-ended.²³ The employer expects the employee to take on more and more tasks, so the employee's skills are constantly improving, and the employer contributes to this by providing training. Employer and employee rely on each other in the long term.²⁴ In terms of the nature of employment, a typical employment relationship is more likely to lead to a relational contract between the parties than atypical or „non-standard” employment (e.g. gig economy, platform work, etc.). For example, in most cases, in a fixed-term employment relationship neither party is seeking to establish a long-term commitment, the employee is less likely to receive on-the-job training, etc. Therefore, in an atypical employment, the relationship between the parties is more likely to be characterised by a transactional contract.

LYNN M. SHORE and KEVIN BARKSDALE distinguished four types of psychological contracts based on the degree of balance and level of obligation. With this model, Shore and Barksdale sought to cope with the problem of the content of psychological contracts and shift the focus to more general characteristics which are less situation-bound. They used the two underlying dimensions of the degree of balance in employee and employer obligations, as well as the level of obligations. The authors considered psychological contracts as balanced if the perceived obligations of the employee and those of the employer are at the same level. They defined the level of obligation as the extent to which the employee and the employer feel obligated to fulfil a particular contract term.²⁵ Following these two dimensions, Shore and Barksdale identified four types of psychological contracts: mutual high obligations, mutual low obligations, employee over-obligation, and employee under-obligation.²⁶

In the case of mutual high obligations, the psychological contract is balanced and both parties have high obligations. This type of psychological contract yields the best results in terms of the employees' affective involvement, their intention to stay or leave, their perception of their future with their employer and the

²³ MADDY JANSSENS – LUC SELS – INGE VAN DEN BRANDE: Multiple types of psychological contracts: A six-cluster solution. *Human Relations*, 56/2003, Iss. 11. 1351.

²⁴ BALOGH 2008, 12.

²⁵ JANSSENS – SELS – VAN DEN BRANDE 2003, 1352.

²⁶ LYNN M. SHORE – KEVIN BARKSDALE: Examining degree of balance and level of obligation in the employment relationship: a social exchange approach. *Journal of Organizational Behavior*, 19/1998, Iss. 1. 733-735.

perceived support that they receive from the employer. In contrast, a psychological contract of mutual low obligations is characterized by balance but with both parties having low obligations. Due to the low perceived employee obligations, this type of psychological contract yields poorer results for the employer than the previous one. The two other types of contracts are not balanced: employee over-obligation and employee under-obligation. Because of the unbalanced and low employee obligations, this type of contract is expected to yield the poorest results of all types.²⁷

The level of commitment between the parties may be influenced by several external factors, such as the state of the labour market. If there is a labour shortage in a particular sector, employees can change jobs easily. An employee may decide to continue his or her career with an employer that offers a higher salary and better conditions. As a result, the relationship between the parties may become asymmetric due to the low commitment of the employee. However, if there is a labour surplus in each sector, employees are more likely to be committed to their employer to maintain the employment relationship. In this case, there may also be an asymmetric relationship between the parties if the employer does not reciprocate the employee's commitment. The lack of commitment is due to the employer's awareness that he or she can easily find another employee to replace the current one. Thus, from a labour market perspective, a relatively balanced labour supply-demand situation is most likely to lead to some form of balanced contract (mutual high obligations or mutual low obligations) between the parties.

INGE VAN DEN BRANDE et al. categorised the types of contracts according to the power distance and the level of the contract. The authors distinguished between „high” and „low” psychological contracts in terms of power distance. The authors defined power distance as *„the degree of inequality in power between a less powerful individual and a more powerful other, or the potential to determine or direct (to a certain extent) the behavior of another person/ other persons more so than the other way round.”*²⁸ Expectations concerning the degree of power distance may be shaped both by the employer and by the employee. Unequal treatment of employees through privileges or differential status treatment, a formal relationship between different hierarchical levels, formal ways of addressing people, and a paternalistic management style are all employer practices which shall create expectations of a high-power distance relationship. The employee can also promote a high-

²⁷ JANSSENS – SELS – VAN DEN BRANDE 2003, 1352-1353.

²⁸ INGE VAN DEN BRANDE – LUC SELS – MADDY JANSSENS – BERT OVERLAET: *Assessing the nature of psychological contracts: conceptualization and measurement*. DTEW Research Report 0241. Leuven, Katholieke Universiteit Leuven, 2002. 10.

power distance relationship by accepting the authority of hierarchy, adopting a conformist attitude and respecting orders.²⁹

The authors also distinguished between „individual” and „collective” psychological contracts based on the levels of the contract. This distinction is based on whether individual employment contracts or collective bargaining is more prevalent in a country’s industrial relations and labour law practice. An individually regulated employment relationship refers to the possibility of individual negotiation or, in other words, individual arrangements that can be made which deviate from the norm. In contrast, in a collectively regulated employment relationship, little or no individual negotiation is possible because all employment aspects have been collectively regulated. An individually regulated employment relationship may be further reinforced by individualized HRM practices such as individual performance-based pay, flexible benefit plans or individual complaint procedures. In contrast, a collectively regulated employment relationship is reinforced through the application of collective personnel practices, such as the use of generally applicable rules and procedures, agreements at the group level and the same or similar treatment of all employees. In a collectively regulated employment relationship, trade unions usually play a more prominent role than in an individually regulated employment relationship.³⁰

The coverage rate of collective agreements varies widely from country to country. In Hungary this rate is quite low, estimated at 30% at most.³¹ In many „post-socialist countries”, including Hungary, trade unions have a „mobilization deficit”, which means that they have difficulties responding to employee discontent.³² According to some views, the Hungarian society is „very individualised, highly segmented and lacks a strong grassroots institutional network [...]”,³³ which does not favour the trade union movement.³⁴

²⁹ VAN DEN BRANDE – SELS – JANSSENS – OVERLAET 2002, 12.

³⁰ VAN DEN BRANDE – SELS – JANSSENS – OVERLAET 2002, 12.

³¹ KISS 2020, 403.

³² ATTILA KUN: International Research Project DIADSE (Dialogue for Advancing Social Europe), National Report-Hungary, 2014. 4. <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html?cb> (2023. 11. 11.).

³³ ANDRÁS TÓTH – LÁSZLÓ NEUMANN – HORTENZIA HOSSZÚ: Hungary’s full-blown malaise. In: STEFFEN LEHNDORF (ed.): *A triumph of failed ideas. European models of capitalism in the crisis*. Brussels, ETUI, 2012. 152.

³⁴ KUN 2014, 4.

5. THE ROLE OF MORAL NORMS REGARDING THE PSYCHOLOGICAL CONTRACT

5.1. Promise in the employment relationship

In an article, GYÖRGY KISS discusses in detail the significance of the promise in the context of the employment contract. The author notes that the analysis of the promise is one of the most complex tasks in contract law. This is because the relationship between promise and contract is perceived in quite different ways, and the binding force of promises and different types of promises is interpreted in different ways.³⁵

In the employment relationship, in addition to the employment contract and the collective agreement, the employer's unilateral commitment may be, for example, a promise made by the employer to the employee. A commitment is a specific unilateral act under which the carrying out of the commitments may be demanded irrespective of the beneficiary's acceptance.³⁶ Commitments can also be made by the employer in internal policy, such as bonus policy or cafeteria policy.³⁷

In line with the doctrine of *clausula rebus sic stantibus*, the Labour Code significantly limits the possibility of terminating or amending a unilateral commitment. Under the Labour Code, „[a] commitment may be amended to the beneficiary's detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the person making the commitment whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship.”³⁸ In this case, the objective circumstances need to be examined, i.e. those from which the major change can be identified. If the employer cannot prove such an exceptional circumstance, the commitment may be amended or terminated only upon the employee's consent.³⁹

³⁵ GYÖRGY KISS: A munkaszerződés tartalmának összetettségéről. *Jogtudományi Közlöny*, 3/2017. 105.

³⁶ Labour Code Section 16, Subsection (1).

³⁷ TAMÁS GYULAVÁRI – ATTILA KUN: A munkáltatói szabályzat az új Munka Törvénykönyvében. *Magyar Jog*, 9/2013. 558.

³⁸ Labour Code Section 16, Subsection (2).

³⁹ ZSOLT CSELÉDI: *Egyoldalú kötelezettségvállalás a munkáltató részéről*. Munkajog Portál, 2014. 12. 11., <https://munkajogportal.hu/egyoldalukotelezettsegvallalas-a-munkaltato-reszerol/>

5.2. Equity, good faith, and fairness

The requirement of good faith and fairness is not only a moral but also a legal requirement. Under the Labour Code, „[i]n exercising rights and discharging obligations, the parties involved shall act in the manner consistent with the principle of good faith and fairness, they shall be required to cooperate with one another, and they shall not engage in any conduct to breach the rights or legitimate interests of the other party.”⁴⁰

The moral requirement of equity is also a legal obligation. According to the Labour Code, „[e]mployers shall take into account the interests of employees under the principle of equitable assessment; where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the employee affected.”⁴¹ The principle of equitable assessment seeks to create a balance between the employer’s right of instruction and the protection of the employee’s interests.⁴² The employer can take several measures that may be disadvantageous to the employee (for example, ordering overtime work), but the Labour Code only prohibits measures that are unreasonable disadvantageous. The Labour Code does not specify which interests of the employee must be taken into account by the employer in the context of the principle of equitable assessment, but these may include, among others, the employee’s personal (even social) circumstances, health, marital status, age, etc.⁴³ Therefore, it may be a violation of this principle, for example, if the employer schedules the employee’s working time in such a way that the employee cannot care of his or her child.⁴⁴

It is important to note that the principle of equitable assessment is not the same as other statutory rules of equity (where the law grants judicial discretion⁴⁵), nor is it the same as the ordinary meaning of equity.⁴⁶ At the same time, concerning the psychological contract, it is also of great importance that the employer exercises equity in the ordinary sense of the word. This equity can take many

⁴⁰ Labour Code Section 6, Subsection (2).

⁴¹ Labour Code Section 6, Subsection (3).

⁴² ATTILA KUN: A méltányos mérlegelés elve a magyar munkajogban – méltánytalanul mellőzve? *Magyar jog*, 12/2017. 735.

⁴³ KUN 2017, 736.

⁴⁴ GÁBOR FODOR T.: *A méltányos mérlegelés elve – új elem a Munka Törvénykönyvében*. Jobline, 2016. 10. 18., https://karrierplusz.jobline.hu/allaskinalok/20161018_A_meltanyos_merlegetes_elve__uj_elem_a_Mu

⁴⁵ For example: Labour Code Section 190 *The court, under special and equitable circumstances, may grant partial exemption from liability to the employee held liable for damages, upon weighing the financial standing of the parties, the gravity of the infringement and the consequences of providing compensation.*

⁴⁶ KUN 2017, 739.

forms, such as tolerating minor delays by the employee, letting the employee off a few minutes before the end of the working day to catch the train, etc. The employer is not obliged to take such measures under the Labour Code, but the exercise of equity in such situations can strengthen the employee's commitment to the employer, increase the level of trust and have other positive effects on the psychological contract.

5.3. „Bounded Self-Interest”: the economic aspects of the requirement of good faith and fairness

The contractual relationship between the parties is governed by numerous moral and legal rules. One of the most important norms is the requirement of good faith and fairness. Researchers on the economic aspects of the psychological contract have made an interesting observation about this requirement. DANIEL KAHNEMAN, JACK KNETSCH and RICHARD THALER examined the economic aspects of good faith and fairness in a hypothetical company and its employees. In their research, they described two hypothetical cases and then asked the research participants to give their opinions on them. The first case was the following: *„[a] small company employs several workers and has been paying them average wages. There is severe unemployment in the area and the company could easily replace its current employees with good workers at a lower wage. The company has been making money. The owners reduce the current workers' wages by 5 percent.”* Seventy-seven percent of respondents thought this was unfair. However, when respondents read in the other hypothetical case that *“[t]he company has been losing money. The owners reduce the current workers' wages by 5 percent,”* only thirty-two percent thought that the wage cut was unfair.⁴⁷

This research concludes that the general public believes that a company is allowed to break its earlier promise (pay less than it promised) to protect its original profits. In this case, there is less chance of a breach of the psychological contract, as employees will not necessarily feel that their wages have been unfairly reduced. On the other hand, it is unfair and a breach of the psychological contract if a company wants to increase its income at the expense of its employees.⁴⁸

⁴⁷ DANIEL KAHNEMAN – JACK L. KNETSCH – RICHARD THALER: Fairness as a Constraint on Profit Seeking: Entitlements in the Market. *The American Economic Review*, 76/1986, Iss. 4. 733.

⁴⁸ WILKINSON-RYAN 2012, 861–862.

6. THE CONTENT OF THE PSYCHOLOGICAL CONTRACT, WITH A PARTICULAR REFERENCE TO LIFELONG LEARNING

Rousseau formulated seven expectations and eight obligations on the content of the psychological contract. Examples of employee expectations include promotion, rewards, training, job security and career opportunities. Employer expectations include, for example, willingness to work overtime, loyalty, knowledge of internal rules and compliance with the employer's interests. HERRIOT et al. also examined the content of the psychological contract. They distinguished between seven categories of employee obligations (e.g. honesty, loyalty, flexibility) and twelve categories of organisational obligations (training, fairness, rewards, etc.).⁴⁹

Several studies have highlighted the need for education and training of employees. In connection with this expectation, it is worth referring to the tendency of so-called „*lifelong learning*.” Lifelong learning is the concept of pursuing additional education and the development of further skills beyond an individual's formal or compulsory education. It is generally voluntary and self-motivated based on a pursuit to learn more, gain new skills or support professional development. Examples include taking part in an online skills course or even enrolling in a re-training scheme. These forms of learning are now being viewed as increasingly vital to employers, future growth, as well as the development of the further education and skills sector. With the future of the workplace looking to change dramatically with automation, AI, Big Data, and the growth of new industries, retraining and skill development will be critical to ensure skills needs are met.⁵⁰ Thus, lifelong learning is essential for competitiveness, employability, social inclusion, and personal improvement. Furthermore, flexicurity is a key concept within the employment policy of the European Union, which contains the strategies connected to lifelong learning.⁵¹

⁴⁹ GUBÁNYI 2020, 44.

⁵⁰ CALLUM CLARK: What is Lifelong Learning and Why is it Important? Higher Education, 2021. February 18., <https://blog.insidegovernment.co.uk/higher-education/what-is-lifelong-learning>

⁵¹ ATTILA KUN: Executive summary. In: ATTILA KUN (ed.): *Az egész életen át tartó tanulás (lifelong learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra*. Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2017. 11.

7. BREACH OF THE PSYCHOLOGICAL CONTRACT

If the employer fulfils the psychological contract, this is reflected, for example, in the employee's job satisfaction, commitment, good behaviour, improved performance, etc.⁵² A breach of psychological contract occurs when one party fails to fulfil its obligations.⁵³ The reaction to a breach of the contract may be, for example, to initiate a discussion, passivity or, in extreme cases, termination of employment. If the employer breaches the psychological contract, it undermines the other party's commitment to the contract, which may lead to the employee putting less effort into his or her work or terminating the employment relationship.⁵⁴ Breaching the psychological contract therefore has serious consequences for the employee's attitudes and behaviour: it reduces the level of satisfaction and trust.⁵⁵

An example of a breach of the psychological contract by an employer is when there is an unwritten rule in the organisation that if the employee does the job well, he or she will be promoted. The employer, however, is not obliged to promote the employee under the Labour Code, but only under the psychological contract. However, if a promotion is not granted, the employee will sooner or later terminate the employment relationship. Of course, it is also possible that the employee breaches the psychological contract. For example, the employee may breach the contract by abusing the „home office” option allowed by the employer and failing to work, treating this form of work as paid leave. In this case, the psychological contract is breached, and the employer must prohibit the home office.⁵⁶

7.1. The schema of employment contract

A schema is a mental model of a concept or category, sometimes described as “*a theory of reality.*” It “*refers to cognitive structures of organized prior knowledge, abstracted from experience with specific instances*” and guides both the encoding of new information

⁵² CHARISSA FREESE – RENÉ SCHALK: How to measure the psychological contract? A critical criteria-based review of measures. *South African Journal of Psychology*, 38/2008, Iss. 2. 276.

⁵³ WILKINSON-RYAN 2012, 847.

⁵⁴ SANDRA L. ROBINSON.: Trust and Breach of the Psychological Contract. *Administrative Science Quarterly*, 41/1996, Iss. 4. 574.

⁵⁵ BALOGH 2008, 14.

⁵⁶ ZSOLT PÉTER SZABÓ: *Bizalom, ha sérül – pszichológiai szerződés a koronavírus idején.* Karrier Trend, 2020.11.19., <https://karriertrend.hu/munkavedelem-es-egeszseg/bizalom-ha-serul-pszichologiai-szerzodes-a-koronavirus-idejen/>

and the retrieval of existing knowledge and memory. The schema of a given contract includes prior beliefs about the nature of the domain as well as explicit rights and obligations iterated during the agreement stage. As regards the employment contract, the „cashier” schema presumably includes the handling of money and being polite to customers but does not include cleaning tasks. It would not be surprising that an employee hired to be a cashier would feel taken advantage of if it turned out that his/her responsibilities included cleaning toilets.⁵⁷

The obligation to perform tasks outside the scope of job function also raises concerns from a labour law perspective. Although the job function is the general definition of the tasks that the employee is obliged to perform under the employment contract, the job function cannot be defined too broadly,⁵⁸ and the employee can only be instructed to perform tasks (except in case of derogation from the employment contract⁵⁹) that fall within his/her job function.⁶⁰

8. SUMMARY

The moral norms play a significant role in terms of the psychological contract. Some of these moral requirements are also reflected as legal norms in the Labour Code. Thus, labour law provides a degree of protection for the enforcement of the employee's interests that are not included in the employment contract and therefore cannot be enforced.⁶¹

The types of psychological contracts can be grouped according to several criteria. ROUSSEAU distinguished two types of psychological contracts: transactional and relational contracts. Their different characterization is based on their different orientation towards time frames and tangibility. As we saw, transactional contracts are characterized by a short-term employment relationship in which the performance requirements or mutual obligations can be clearly specified because they are quite specific and economic in nature. The employee does not want to be a committed member of the employer's organisation. In contrast, relational contracts are characterized by long-term employment relationships

⁵⁷ WILKINSON-RYAN 2012, 848.

⁵⁸ BH 2015. 78.

⁵⁹ Labour Code, Section 53, Subsection (1) *Employers shall be entitled to temporarily reassign their employees to jobs and workplaces other than what is contained in the employment contracts, or to another employer.*

⁶⁰ MÁRIA HAJDU-DUDÁS: *Mi tartozik bele a munkakörbe, meddig mehet el a munkáltató?* Adózóna, 2020. 07. 06. https://adozona.hu/munkajog/Mi_tartozik_bele_a_munkakorbe_Meddig_mehet__2ND6IP

⁶¹ GYÖRGY LŐRINCZ: A munkaszerződés teljesítésének egyes kérdései. *Munkajog*, 3/2020. 12.

in which mutual obligations cannot be clearly specified because they are both economic and social-emotional in nature, less clearly specified and degree open-ended.⁶² The employer expects the employee to take on more and more tasks, so the employee's skills are constantly improving, and the employer contributes to this by providing training. Employers and employees rely on each other in the long term.

Lynn M. Shore and Kevin Barksdale distinguished four types of psychological contracts based on the degree of balance and level of obligation: mutual high obligations, mutual low obligations, employee over-obligation, and employee under-obligation. In the case of mutual high obligations, the psychological contract is balanced and both parties have high obligations. This type of psychological contract yields the best results in terms of the employees' affective involvement, their intention to stay or leave, their perception of their future with their employer and the perceived support that they receive from the employer. In contrast, a psychological contract of mutual low obligations is characterized by balance but with both parties having low obligations. Due to the low perceived employee obligations, this type of psychological contract yields poorer results for the employer than the previous one. The two other types of contracts (employee over-obligation and employee under-obligation) are not balanced. Because of the unbalanced and low employee obligations, this type of contract is expected to yield the poorest results of all types.

Inge Van den Brande et al. categorised the types of contracts according to the power distance and the level of the contract. The authors distinguished between „high” and „low” psychological contracts in terms of power distance. Expectations concerning the degree of power distance may be shaped both by the employer and by the employee. Unequal treatment of employees through privileges or differential status treatment, a formal relationship between different hierarchical levels, formal ways of addressing people, and a paternalistic management style are all employer practices which shall create expectations of a high-power distance relationship. The employee can also promote a high-power distance relationship by accepting the authority of the hierarchy, adopting a conformist attitude and respecting orders. The authors also distinguished between „individual” and „collective” psychological contracts based on the levels of the contract. This distinction is based on whether individual employment contracts or collective bargaining is more prevalent in a country's industrial relations and labour law practice. An individually regulated employment relationship refers to the possibility of individual negotiation or, in other words, individual arrangements

⁶² JANSSENS – SELS – VAN DEN BRANDE 2003, 1351.

that can be made which deviate from the norm. In contrast, in a collectively regulated employment relationship, little or no individual negotiation is possible because all employment aspects have been collectively regulated. An individually regulated employment relationship may be further reinforced by individualized HRM practices such as individual performance-based pay, flexible benefit plans or individual complaint procedures. In contrast, a collectively regulated employment relationship is reinforced through the application of collective personnel practices, such as the use of generally applicable rules and procedures, agreements at the group level and the same or similar treatment of all employees. In a collectively regulated employment relationship, trade unions usually play a more prominent role than in an individually regulated employment relationship.

Although there are significant similarities between a psychological contract and an employment contract, the two contracts are substantially different. The main difference is that the elements of a psychological contract are not part of a written employment contract, as it does not define rights and obligations. In the words of György Lőrincz, it is more of a „*virtual agreement*”, which sets out the expectations of the parties in terms of the employment relationship.⁶³ However, these expectations are not legally enforceable, so their fulfilment or non-fulfilment has no direct legal consequences.

At the same time, it is in the interest of both parties that the expectations defined in the psychological contract are met. Consequently, the parties will seek to include these expectations in the employment contract or other legal agreement.⁶⁴ Several studies have highlighted the need for education and training of employees, as well as the need for loyalty and organisational commitment on the part of employers. A study contract is an excellent way of mutually satisfying these two needs and „converting them into a right”, under which „the employer undertakes to provide support for the duration of studies while the employee undertakes to complete the studies as agreed and to refrain from terminating his employment by way of notice following graduation for some time commensurate for the amount of support, not exceeding five years.”⁶⁵

However, most psychological contract requirements cannot be converted into rights by agreement or legislation, thus they remain „extra-legal” categories. These requirements are not legally enforceable, therefore their fulfilment is based on trust. Nevertheless, if trust is lost, it can have a negative impact not only on the psychological contract but also on the employment relationship.⁶⁶

⁶³ LŐRINCZ 2020, 11.

⁶⁴ LŐRINCZ 2020, 12.

⁶⁵ Labour Code Section 229, Subsection (1)

⁶⁶ LŐRINCZ 2020, 12.

LITERATURE

- ANDRÁS TÓTH – LÁSZLÓ NEUMANN – HORTENZIA HOSSZÚ: Hungary's full-blown malaise. In: STEFFEN LEHNDORF (ed.): *A triumph of failed ideas. European models of capitalism in the crisis*. Brussels, ETUI, 2012.
- ATTILA KUN: A méltányos mérlegelés elve a magyar munkajogban – méltánytalanul mellőzve? *Magyar jog*, 12/2017. 735.
- ATTILA KUN: Executive summary. In: ATTILA KUN (ed.): *Az egész életen át tartó tanulás (lifelong learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra*. Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2017.
- ATTILA KUN: International Research Project DIADSE (Dialogue for Advancing Social Europe), National Report-Hungary, 2014. 4. <https://aias-hsi.uva.nl/en/projects-a-z/diadse/reports/reports.html?cb> (2023. 11. 11.).
- ATTILA KUN: Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről. *Glossa Iuridica*, 7/2020, special issue.
- CALLUM CLARK: What is Lifelong Learning and Why is it Important? Higher Education, 2021. February 18., <https://blog.insidegovernment.co.uk/higher-education/what-is-lifelong-learning>
- CHARISSA FREESE – RENÉ SCHALK: How to measure the psychological contract? A critical criteria-based review of measures. *South African Journal of Psychology*, 38/2008, Iss. 2.
- DANIEL KAHNEMAN – JACK L. KNETSCH – RICHARD THALER: Fairness as a Constraint on Profit Seeking: Entitlements in the Market. *The American Economic Review*, 76/1986, Iss. 4.
- DENISE M. ROUSSEAU: Psychological and implied contracts in organizations. *Employee Responsibilities and Rights Journal*, 2/1989, Iss. 2.
- DENISE M. ROUSSEAU: New hire perceptions of their own and their employer's obligations: A study of psychological contracts. *Journal of Organizational Behavior*, 11/1990, Iss. 5.
- GÁBOR FODOR T.: A méltányos mérlegelés elve – új elem a Munka Törvénykönyvében. *Jobline*, 2016. 10. 18., https://karrierplusz.jobline.hu/allaskinalok/20161018_A_meltanyos_merlegeles_elve_uj_elem_a_Mu
- GÁBOR KÁRTYÁS: XXI. század és munkajog: megőrizni vagy megreformálni? In: LAJOS PÁL – ZOLTÁN PETROVICS (ed.): *Visegrád 17.0. A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*. Budapest, Wolters Kluwer, 2020.
- GYÖRGY KISS: A munkajog fogalma. In: GYÖRGY KISS (ed.): *Munkajog*. Budapest, Dialóg Campus, 2020.
- GYÖRGY KISS: A munkaszerződés tartalmának összetettségéről. *Jogtudományi Közlöny*, 3/2017.
- GYÖRGY LŐRINCZ: A munkaszerződés teljesítésének egyes kérdései. *Munkajog*, 3/2020. 12.

- INGE VAN DEN BRANDE – LUC SELS – MADDY JANSSENS – BERT OVERLAET: *Assessing the nature of psychological contracts: conceptualization and measurement*. DTEW Research Report 0241. Leuven, Katholieke Universiteit Leuven, 2002.
- KATALIN DUDÁS – SZILVIA HALMOS – GÁBOR KÁRTYÁS: *A munkajog szerepe a munkaerőhiány kezelésében*. Kutatási zárótanulmány. Budapest, Közösen a Jövő Munkahelyeiért Alapítvány, 2018.
- LÁSZLÓ BALOGH: *A teljesítményt befolyásoló szervezetpszichológiai tényezők vizsgálata interaktív sportcsapatoknál*. PhD disszertáció. Pécsi Tudományegyetem, Bölcsészettudományi Kar, Pszichológiai Doktori Iskola, 2008.
- LYNN M. SHORE – KEVIN BARKSDALE: Examining degree of balance and level of obligation in the employment relationship: a social exchange approach. *Journal of Organizational Behavior*, 19/1998, Iss. 1.
- MADDY JANSSENS – LUC SELS – INGE VAN DEN BRANDE: Multiple types of psychological contracts: A six-cluster solution. *Human Relations*, 56/2003, Iss. 11.
- MÁRIA HAJDU-DUDÁS: *Mi tartozik bele a munkakörbe, meddig mehet el a munkáltató?* Adózóna, 2020. 07. 06. https://adozona.hu/munkajog/Mi_tartozik_bele_a_munkakorbe_Meddig_mehet__2ND6IP
- MÓNICA GUBÁNYI: A pszichológiai szerződés szakirodalmi összefoglalója. *Vezetéstudomány*, 10/2020, Iss. 40.
- SANDRA L. ROBINSON – DENISE M. ROUSSEAU: Violating the Psychological Contract: Not the Exception but the Norm. *Journal of Organizational Behavior*, 15/1994, Iss. 3.
- SANDRA L. ROBINSON.: Trust and Breach of the Psychological Contract. *Administrative Science Quarterly*, 41/1996, Iss. 4.
- TAMÁS GYULAVÁRI – ATTILA KUN: A munkáltatói szabályzat az új Munka Törvénykönyvében. *Magyar Jog*, 9/2013.
- TESS WILKINSON-RYAN: Legal Promise and Psychological Contract. *Wake Forest Law Review*, 47/2012.
- ZSOLT CSELÉDI: *Egyoldalú kötelezettségvállalás a munkáltató részéről*. Munkajog Portál, 2014. 12. 11., <https://munkajogportal.hu/egyoldalukotelezettsegvallalas-a-munkaltato-reszerol/>
- ZSOLT PÉTER SZABÓ: *Bizalom, ha sérül – pszichológiai szerződés a koronavírus idején*. Karrier Trend, 2020.11.19., <https://karriertrend.hu/munkavedelem-es-egeszseg/bizalom-ha-serul-pszichologiai-szerzodes-a-koronavirus-idejen/>