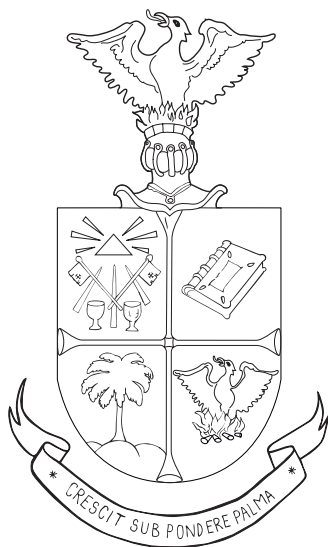


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Osztovits, András



Budapest, 2021

Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar

SOME TENTATIVE EXPLANATIONS FOR THE PROTRACTED DEVELOPMENT OF PLATFORM WORK (AS A TRANSNATIONAL PHENOMENON) IN HUNGARY

Introduction

As has been widely reported, the gig economy is still rather immature in Central and Eastern Europe, more concretely (as a case study) in Hungary. According to some research estimates, the share of the Hungarian adult population (6.7%) making some earnings from platform work is well below of the rates of such countries as Spain (11.6%), Portugal (10.6%) and Germany (10.4%). etc.² Furthermore, in Hungary, platform work, as such, is neither defined nor regulated. Moreover, platform work (as a phenomenon) is immature, hardly visible and marginal; it is not (yet) perceived as a separate regulatory / employment field and it also lacks specific policy (etc.) attention.³

In this context, the present paper aims to put forward some tentative, potential and structural explanations for the slower, sluggish development of the phenomenon – and its regulation – in Hungary. Even though the reasons identified and described below are surely country-specific, some of them might deserve wider reflection. The following main reasons are identified and analysed in the paper: 1. lack of a labour-(law)-related focus within the discourse; 2. lack of legal clarity; 3. plethora and fragmentation of contractual choices; 4. lack of a legal-political focus; 5. lack of civic, public pressure; 6. potential supplanter-effect of some prioritized non-standard forms of work; 7. potential distorting effect of some political goals and / or financial measures; 8. the overly flexible nature of the standard employment relationship (as giving less motivation for non-standard forms of work in general).

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2 See the so-called COLLEEM project, cited by Makó Csaba, Illéssy Miklós Nosratabadi, Saeed (2020): Emerging Platform Work in Europe: Hungary in Cross-country Comparison, *European Journal of Workplace Innovation*, Volume 5, Number 2, June 2020, 158. – Makó Csaba, Illéssy Miklós, Nosratabadi, Saeed (2020)

3 See for further details: Meszmann T. Tibor (2018): *Industrial Relations and Social Dialogue in the Age of Collaborative Economy (IRSDACE)*, National Report Hungary, CELSI Research report 27, 2018. – Meszmann T. Tibor (2018).

1. Lack of a labour (law)-related focus within the national discourse on platform work

One can have the impression that the whole ‘platform-workers’ discourse is not primarily a matter of status / classification (employee vs. self-employed) in Hungary (as opposed to countries where the discourse is more developed and nuanced), but a matter of plain lawfulness (declared / undeclared or formality / informality). Accordingly, the related Hungarian debate (if any) is more focused on taxation, unfair competition and public law / administrative law issues (instead of a labour law perspective, focusing on the status question⁴). According to estimates, some 10–15% of employment (captured by the Wage Survey) is undeclared in Hungary.⁵ No data are available on the issue to what extent platform work contributes to these figures, but one may guess that this newly emerging sector can represent a considerable share of undeclared work. As experiences show, the platform economy in Hungary is functioning principally in sectors where, by default, rather informal services are characteristic (e.g. babysitting, household work, cleaning, taxi services etc.). In sum, platform work in general bears a high level of informality in Hungary (lacking institutionalized practices, standards etc.).

2. Lack of legal clarity: the ‘grey zone’ of labour regulation

Act I of 2012, the Labour Code (hereinafter LC) is based – to a great extent – on traditional employment and full-time contracts of indefinite duration. The LC includes a brief – relatively vague and seemingly very broad, but non-operational, rather formalistic and old-fashioned – statutory definition of the employment relationship, the employer and employee. Accordingly, “an employment relationship is deemed established by entering into an employment contract. Under an employment contract: a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages.” (LC § 42.). “‘Employee’ means any natural person who works under an employment contract.” [LC § 34 (1)]. “‘Employer’ means any person having the capacity to perform legal acts who is party to employment contracts with employees (LC § 33.). These definitions are formalistic in the sense that they are based on the ‘employment contract’, offering little room for extensive, inclusive, creative interpretation (e. g. involving platform workers, or other non-standard contractual practices). A redefinition of the notion of the employment relationship might be desirable in order to apply a less formalistic, more purposive definition (focusing more on the economic dependency aspect).

4 For example, there is no case-law at all concerning the classification of platform workers.

5 Albert Fruzsina – Gal Robert I. (2017): ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts Hungary 2017, EU, Directorate-General for Employment, Social Affairs and Inclusion, 18. – Albert Fruzsina, Gal Robert I. (2017)

Furthermore, Hungarian labour law is based on a classical ‘binary divide’ between subordinate and independent workers (i.e. employees, with the full coverage of labour law, and the self-employed, without any labour law protection); there is no intermediary (third) category. However, it must be noted that the first draft of the new LC (July 2011) attempted to extend the scope of the LC to other forms of employment (in the event of the existence of certain preconditions). The Proposal foresaw the category of “person similar in his status to employee” widely known in an increasing number of countries (i. e. economically dependent workers). Workers in this category depend economically on the users of their services in the same way as employees, and have similar needs for social protection. For that reason, the Proposal suggested extending the application of a few basic rules of the LC (on minimum wage, holidays, notice of termination of employment, severance pay and liability for damages) to other forms of employment, such as civil (commercial) law relationships aimed at employment (a ‘person similar to an employee’), which in principle do not fall under the scope of the LC. This planned legislative solution intended to promote the social security of workers, regardless of the nature of the legal relationship within the boundaries of which work is performed. By virtue of this solution, the Proposal was expected to reduce the evasion of the rules of labour law and the efforts made by employers to seek release from the effect of labour law, and thereby it aimed to contribute to the legalisation of employment. Finally, the new legal category was left out from the final text of the Code, mainly because of political debates and because of its rejection by social partners. This category might have been applicable to platform workers, too (at least to some extent). However, it would be difficult (if not impossible) to estimate the potential effect of a reform like this, but such a ‘third category’ could even multiply problems of classification instead of solving them.

In sum, the labour law status of platform workers in Hungary is undecided. There is no special regulation either on platform per se, or on a broader, more general ‘third category’. As Makó et al. note, Hungarian labour law “presently hardly answers any questions related to the protection of platform workers. Therefore, it would be necessary to create a separate and detailed legal regulation regarding workers outside the scope of employment relationships, with specific attention to platform workers.”⁶

3. Plethora of contractual choices

Platforms claim that they only serve as ‘matchmakers’ (some of them even officially register as a ‘private job brokerage agency’⁷), and it is up to the parties to decide on the

6 Makó Csaba, Illéssy Miklós, Nosratabadi, Saeed (2020), 165-166.

7 Article 6 of Act IV of 1991 on Job Assistance and Unemployment Benefits lays down that, apart from government employment agencies, labour exchange services (“private labour exchange services”) may be provided by a person who is able to meet the relevant requirements prescribed by legislation issued on the basis of the authorisation of the Act.

actual legal form of work and / or taxation. In other words: platforms do not interfere with the autonomy of the two parties – users and platform workers – to organise their own employment frameworks (and this ‘matchmaker’ role of platforms is not – yet – https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1334 really called into question in Hungary from a labour law point of view). As mentioned before, one may suspect (and experience) that parties (mediated via a platform) often use informal, undeclared practices. Even if the parties choose to apply formal, legally recognised practices, several employment and taxation forms and regimes are available, even beyond (and within) the plain employee versus self-employed binary. Three unique legal categories are described briefly here; these are (and can be) relevant for platform work in Hungary. None of them is without problems, as described below.

A.) The legal construction of *simplified employment* and occasional work relationships (hereinafter: SE) is partly regulated by Chapter XV of the LC (as a specific form of the employment contract), partly by Act LXXV of 2010 on Simplified Employment (which regulates SE’s administrative and public law aspects). SE is formally an employment relationship, more precisely an atypical one, probably the most atypical one, being relatively far from the protective level of the standard employment relationship. In fact, the SE system is a kind of ‘budget/ low-cost’, or ‘second-class’ employment relationship, partially ‘outsourced’ from the scope of standard labour law (the LC defines the applicable and the non-applicable labour law rules). The SE system provides employers with a ‘cheap’, administratively less burdensome and flexible – but also less protective – method of occasional employment. It is a form of casual work, or marginal part-time employment. Officially, it is intended to tackle undeclared work. SE is exempted from certain minimum labour and/or social protection standards or obligations. There is no space to go into more details here, but it must be noted that SE entails lower, more flexible minimum wages (as of 2013): employers have to pay only at least 85% of the general national minimum wage and 87% of the national minimum wage for employees with secondary level qualifications (guaranteed wage minimum). Practically speaking, this might be one of the biggest enticements of the whole SE system for employers (in light of this, Gyulavári heavily criticises this regulatory solution and states that this differentiation can have no rational explanation⁸). The SE regime is also very handy for platform work.

The Government is authorized to specify the conditions and detailed regulations relating to the provision of private labour exchange services and for the notification of private employment agencies. This system is subject to the provisions of Government Decree No. 118/2001 (VI.30.). The Decree uses the terms temporary work agency (TWA) and private job brokerage agency (PJBA).

- 8 Gyulavári Tamás (2018): Az alkalmi munka a magyar jogban, In: Bankó, Zoltán; Berke, Gyula; Tálné, Molnár Erika (szerk.) *Quid Juris?*: Ünnepi kötet a Munkaügyi Bírák Országos Egyesülete megalakulásának 20. évfordulójára, Pécs, Magyarország, Budapest, Magyarország: Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Kúria, Munkaügyi Bírák Országos Egyesülete, 134-135. – Gyulavári T. (2018)

B.) So-called *household work (HW)* has a special status in Hungarian tax law. Household work is a personal service performed for a natural person as employer. Since 2010, wages from household work (i.e. paid by natural person ‘employers’ to household service ‘employees’) do not bear any common charges. This unique tax category (‘outside’ of the tax regime) is regulated by Chapter I of Act 90 of 2010 on the creation or amendment of certain laws on economic and financial matters. The category of ‘household services’ shall be interpreted narrowly, as only those activities that are listed in the Act (home cleaning, cooking, washing, ironing, child care, home teaching, home care and nursing, housekeeping and gardening) are exempted from tax; no similar tasks can be considered as a household job. The household worker must be a natural person performing household work who does not perform this activity as a sole proprietor or as an entrepreneur. The employer must also be a natural person. Such employment must be free from all kinds of business motives. Although this form of employment is free of common charges (and it is exempted from the tax regime), the ‘employer’ has to send a report (via an electronic form, or a phone-line) to the tax authority every month when he or she employs a household worker and has to pay a – rather symbolic – monthly flat-rate registration fee. In practice, as statistics show, despite the very low registration fee, HW is rarely registered (and / or such natural person employers are not aware that registration is compulsory). The HW regime is neutral towards the labour law status of household workers, and it is not a separate form of atypical / non-standard work. In other words, the household worker and the natural person employer may choose the form of their legal relationship freely (it might be an employment contract, contract of services under civil law or simplified employment; however, in practice, such work is often informal). After all, the construction of household work is not really seen as genuine ‘labour’; it is more perceived as an economic activity and a lawful source of auxiliary income. Furthermore, as no contributions are paid; the household worker is not covered by social security.

HW can be mediated via platforms; there are some examples for this in Hungary (e.g. C4W). In sum, the HW regime represents a – fairly unsuccessful – attempt to legalise informality in the field of household work (increasingly organised via platforms as well).

C.) *Self-employed persons* (tentatively including platform workers) can choose *several tax regimes*. Among others, the private entrepreneur may, provided that certain statutory conditions are met, opt for a special, favourable regime of flat-rate taxation, called Fixed-Rate Tax of Low Tax-Bracket Enterprises and on Small Business Tax (KATA). Taxpayers opting for KATA, as a main rule, pay a specific monthly flat-rate tax (of 50,000 HUF – or 75,000 HUF if they choose to do so) instead of corporate or payroll tax. The popularity of this small taxpayers’ itemised lump-sum tax (KATA) has grown heavily in recent years (with thousands of small- and micro entrepreneurs opting for it). It can lead to abuses in the area of employment, as it can motivate an ‘escape’, or a comfortable way out from employment status to self-employment (giving

room for a tempting, much ‘cheaper’ and easier method of taxation).

In sum, it seems that the intense fragmentation of contractual options and the variability of different tax measures can have the potential to distort labour-law rationales. Therefore, it can be perceived that the potential equalisation of the financial burden of various non-standard forms of work would be able to contribute to more transparent and fair employment practices (both in general and in the field of platform work).

4. Lack of a legal-political focus

In general, labour law is currently not primarily perceived in Hungary as ‘social law’, but rather as one instrument of economic and employment policy. The official reasoning of the draft LC (2012) contained the following telling formulations of such policy-objectives: “reducing the regulative functions of state regulation”, “implementation of flexible regulations adjusted to the needs of the local labour market”, etc. One can have the impression that the unrestrained faith in the supremacy of the market and the contract (as a regulatory tool) puts the state’s role as the guardian of decent working conditions in the shade. Partly as a consequence, there is no separate ministry of labour / social issues in Hungary and labour law protection is not a priority issue on the political agenda at all. Long-term, purposive⁹ thinking is missing in the field; national-level tripartite dialogue is weak and, in terms of EU labour law (and employment policy more generally), the country is much more a “follower” than a “trend-setter”. For instance, in the field of platform work, no official policies or regulatory concepts exist and the legislator will most certainly wait for a future EU law measure before it starts to act (Note: an interview with a high-level government official from the Ministry of Finance – which was responsible for labour law matters till the end of 2019 – has confirmed this total lack of policy attention with respect to platform work in Hungary¹⁰).

5. Lack of civic, public pressure

According to some opinions, Hungarian society is – by default – “very individualistic, highly segmented and lacks a strong grassroots institutional network”, which is not a good foundation for well-functioning industrial relations.¹¹ Social dialogue is

9 Davidov, Guy (2016): *A Purposive Approach to Labour Law*. Oxford University Press, Oxford, 2016. – Cf. Davidov, Guy (2016).

10 Kun Attila: Hungarian National Report (draft report), “NEWEFIN - *New Employment Forms and Challenges to Industrial Relations*” project (Supported by the European Commission - Application ref. VP/2017/004/0028 *Improving expertise in the field of industrial relations*) – Kun Attila (2020).

11 Toth A., Neumann L. and Hosszu H. (2012): Hungary’s full-blown malaise, in: Lehndorff S. (ed.) *A triumph of failed ideas. European models of capitalism in the crisis*, Brussels, ETUI, pp. 152. - Toth A., Neumann L. and Hosszu H. (2012)

generally weak in Hungary. It is not a surprise that it is even weaker in the platform economy sector.

In general, one might dare to state that non-standard forms of work (including platform work) are largely out of the sight of unions and social partners in Hungary (of course, exceptions do exist, but one can have the impression that ‘the exceptions prove the rule’). The same opinion was confirmed by recent empirical research dealing with precarious employment in Hungary. This research clearly points out “the lack of involvement of social partners, especially trade unions, in influencing the regulation and employment policies of the government” and that “industrial relations are poorly utilised in fighting precarious employment.”¹²

Workers’ organisations in the platform economy in Hungary are currently non-existent (no data reported and trade unions also do not report any activity in this respect). There is one (relatively new) association of platforms, the Sharing Economy Association (In Hungarian Sharing Economy Szövetség, SESZ). The Sharing Economy Association was established in March 2017 to promote the development of the sharing economy in Hungary. Its main goal is the interest representation of platforms regarding training, regulation, etc. Not much activity is reported, according to its website.¹³ According to interviews, the above-mentioned SESZ prepared a specific tax-law proposal in relation to platform work. However, this proposal is not fully worked out; it has never been openly or widely discussed and promoted and it is far from being implemented.

In total, no steady, relevant and weighty social pressure exists in Hungary for the regulation and / or ‘humanisation’ of the platform economy.

6. Potential supplanter effect of some prioritised non-standard forms of work

The so-called supplanter or superseding effect of some artificial, state-supported non-standard forms of work might also be a – partial – explanation for the overall underdevelopment of the platform economy in Hungary. For instance, as briefly described below, student employment in Hungary is ‘de facto’, practically monopolised (or at least heavily dominated) by the school cooperatives’ sector.

Act X of 2006 on Cooperatives regulates unique non-standard forms of work via cooperatives. It regulates four specific types of cooperatives: school cooperatives (SCs), social cooperatives, agro-economic cooperatives and general interest associations of pensioners (i.e.: pensioners’ cooperatives). Via these cooperatives, the legislator created very specific frameworks of work for certain well-defined groups of workers (students, the ‘needy’, people working in agriculture, those receiving old-age pensions),

12 Meszmann T. Tibor (2016): Country report: Hungary — PRECARIR: The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations, project no. VS/2014/0534, CELSI, 1. - Meszmann T. Tibor (2016)

13 <https://www.sharingeconomy.hu/>

in which employment entails substantially lower costs, and, at the same time, as a ‘price’ of cheap and flexible employment, these workers are excluded from the standard shelter of labour law and are placed in a significantly less favourable, more flexible legal position. Two out of these four forms of cooperatives – school cooperatives and pensioners’ cooperatives – give rise to a specific triangular form of work, which bears a strong resemblance to the structure of temporary agency work.

SCs fulfil a significant role on the labour market and they have a dominant and unique market share in the field of youth employment. Work via a school cooperative is ‘cheap’ for users (SCs enjoy “full immunity” from social security contribution; no social contribution tax is to be paid) and flexible, because this form of work is no longer an employment relationship under the LC. Working via SC is truly a hybrid, *sui generis* legal relationship.

In sum, SCs are regulated in quite a controversial manner in Hungarian law and they seem to be heavily and disproportionately over-supported by public policy as compared to their factual activity and effectiveness. The SC sector seems to operate as a kind of state-funded ‘business’ and what extra services (in terms of social and employment policy) are carried out by SCs in exchange for the exceptional state support is not fully evident and transparent. Among others¹⁴, Kiss also argues that the whole employment policy applicable to cooperatives should be changed in Hungary.¹⁵

Although the issues of cooperative-employment and SCs in Hungary are separate ‘stories’, in the context of platform work one may speculate that, because of the monopolising effect of SCs, not many students (and pensioners) turn to alternative, new forms of employment, such as platforms.

7. Potential distorting effect of some political goals and / or financial measures

The Hungarian ‘story’ of Uber is the probably neatest example of how strong political visions and wills can quickly overrule professional debates and / or spontaneous developments.

Uber started its business in Hungary in the autumn of 2014. From the beginning, there were heated discussions about the legality of its service. Taxi drivers protested against Uber several times, because they thought that Uber drivers offered the same

14 Kun Attila: School cooperatives. : A ‘Hungaricum’ in labour law in the field of youth employment. In: Roberto, Fernández Fernández; Henar, Álvarez Cuesta (szerk.) *Empleo juvenil: Un reto para Europa (Youth employment: A challenge for Europe)* Cizur Menor, Spain: Sociedad Aranzadi, 71-91. - Kun Attila (2016); Sipka Péter and Zaccaria Márton Leó (2017): A szövetségi tagi munkaviszony jogi kockázatai, különös tekintettel az alapvető munkavállalói jogokra, *Munkajog*, HVG Orac, 2017/1., 2017 december, 23-30. - Sipka Péter and Zaccaria Márton Leó (2017).

15 Kiss György (2017): Employment Relationship between School Cooperatives and Their Member: The Stepchild of Employment, 14 *US-China L. Rev.* 499, Vol. 14 August 2017 No. 8. 514. – Kiss György (2017)

service as regulated taxis, but without complying with relevant laws and with the aim of avoiding taxation. Uber took a stand against regulatory and state bodies, claiming that it was not operating taxis, but was functioning as an online market-space. At a later stage, Uber and the Hungarian government seemingly found a compromise on how the business could operate legally, but in the end, a new Act (Act LXXV of 2016 on the legal consequences of unauthorised passenger transport by car) entered into force in the summer of 2016, in practice hampering Uber's operations. The taxi-drivers' lobby seemed to reach its goals. The Act sets out that an intermediary that provides a passenger service has to comply with the rules applying to dispatching services. If the intermediary does not comply with these rules, the Transportation Authority can impose a fine and, if after this fine the intermediary continues to provide such a service, it can order the cancellation of its electronic data in the business register. The Hungarian authorities and the government proposed that Uber should register as a transport organizing service provider in Hungary, which Uber openly resisted. On July 14th, a day after Act LXXV of 2016 was passed, setting rules for intermediary operations of transport organizing companies, Uber announced that it would cease its operations in Hungary.

8. The overly flexible nature of the standard employment relationship (as giving less motivation for non-standard forms of work in general)

In general, as a union economist (quoted by Kártyás) noted, “the new labour regulation makes typical employment flexible enough that employers do not need to turn to the new forms.”¹⁶ Maybe this statement sounds somewhat speculative, but it certainly makes some sense. It might also be an exaggeration, but some authors assume that the new Labour Code had a regulatory vision to support “the most flexible labour market in the world”.¹⁷ Indeed, it is a widely shared view in Hungary that the default, ‘standard’ Hungarian labour law itself offers plenty of possibilities to alter the structure and content of a seemingly standard employment relationship in a way that includes a huge array of flexibility and ‘atypicality’. Thus, the formally ‘standard’ contract can easily be turned into materially ‘non-standard’ one via flexible – collective and individual – contractual arrangements and work organisation. It seems that the current labour market need for creative, non-standard forms of work (including platform work) is still somewhat limited.

16 Kártyás Gábor: New forms of employment: Employee sharing, Hungary, Case study 15: Policy analysis. 14.

17 Gyulavári Tamás, Kártyás Gábor: Effects of the New Hungarian Labour Code: The Most Flexible Labour Market in the World? *LAWYER QUARTERLY* 2015 (5) : 4 pp. 233-245., 13 p.

Summary

The gig / platform economy is still rather immature in Central and Eastern Europe, more concretely (as a case study in the present paper) in Hungary. Platform work (as a phenomenon) is immature, hardly noticeable and marginal; it is not perceived (yet) as a distinct regulatory / employment field and it also lacks specific policy (etc.) attention. In this context, the present paper aimed to put forward some tentative, potential and structural explanations for the slower, sluggish development of the phenomenon – and its regulation – in Hungary. Even though the reasons identified and described above (summarised in eight points) are surely country-specific, some of them might deserve wider reflection.