

Workshop k výzkumnému úkolu institucionální podpory 02-S4-2022-VÚBP Zaměstnávání cizinců - fyzických osob ze zemí mimo Evropskou unii s ohledem na platnou právní úpravu (W)

Název W: Employment of foreigners – individuals from countries outside the European Union with regard to the current legislation

Termín: 2. 5. 2023

Číslo výzkumného úkolu: 02-S4-2022-VÚBP

Název výzkumného úkolu: Zaměstnávání cizinců - fyzických osob ze zemí mimo Evropskou unii s ohledem na platnou právní úpravu

Hlavní řešitel: Výzkumný ústav bezpečnosti práce, v. v. i.

Spoluřešitel: PF UK



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Zápis z workshopu

Dne 2. 5. 2023 se na půdě Právnické fakulty Univerzity Karlovy uskutečnil workshop s mezinárodní účastí na téma *Employment of foreigners – individuals from countries outside the European Union with regard to the current legislation*. Jednacím jazykem byla angličtina a workshopu se zúčastnili i zástupci MPSV. Během workshopu byla prezentována různorodá témata týkající se jak české národní legislativy, tak i komparativní pohled na konkrétní právní úpravy. Velmi zajímavé příspěvky přednesli přední čeští odborníci na oblast pracovního práva a jejich maďarští kolegové z Univerzity v Miškovci. Aktuální příspěvky se týkaly např. problematiky spolehlivého a nespolehlivého zaměstnavatele, zaměstnanecké karty a otázek „worklife balance“. Workshop byl provázen i živou diskuzí mezi účastníky a návštěvníky akce.

Přílohy:

Pozvánka s programem workshopu
Prezenční listiny workshopu
Fotodokumentace z workshopu
Prezentace

Zapsala: JUDr. Lenka Scheu, Ph.D

Výzkumný ústav bezpečnosti práce, v. v. i.

JERUZALÉMSKÁ 1283/9
110 00 PRAHA 1 – NOVÉ MĚSTO
ČESKÁ REPUBLIKA



POZVÁNKA na workshop

Employment of foreigners – individuals from countries outside the European Union with regard to the current legislation

Den konání: 2. 5. 2023

Faculty of Law, Charles University, Prague

Program

JUDr. Štěpán Pastorek: Employee card and illegal work

JUDr. Jakub Tomšej: Reliable and unreliable employers: concept for the future?

Doc. JUDr. Martin Štefko: Zaměstnávání cizinců komparativní analýza v rámci EU

Prof. Nóra Jakab- Mária Vivien Tunyi: Workshop on Worklife Balance

Dr. Melinda Kocsis: THE SOCIAL DIMENSION IN The European Union

Dr. Hilda Tóth: Implementation of the Work-life Balance Directive into the Hungarian Legislation Some practical remarks



PREZENČNÍ LISTINA

Workshop 2. 5. 2023, Faculty of Law, Charles University, Prague

Employment of foreigners - individuals from countries outside the European Union with regard to the current legislation

| NAME | INSTITUTION | SIGNATURE |
|----------------------------|-----------------------------|-----------|
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| ŠTĚPANE | PF UJL | |
| TOMŠE JAKUB | PF UK | |
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| LAURA KOVACS-BERENYI | HU-MISKOLC, FACULTY OF LAW | |
| TUDYI MARIA VIVIAN | HU-MISKOLC, FACULTY OF LAW | |
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Výzkumný ústav bezpečnosti práce, v. v. i.

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Fotodokumentace z workshopu





PRÁVNICKÁ
FAKULTA
Univerzita Karlova

Dual Employee Card and Illegal Work

JUDr. Štěpán Pastorek

Employee card as a residence permit

- Based on the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State
 - implemented into Czech legal system in 2014 ->
 - new type of residence permit: **employee card**
 - Two different types:
 1. Dual employee card
 2. Non-dual employee card
- Dual employee card for foreigners who do not have free access to the labour market and allows them to obtain both the right to reside in the territory and the right to be employed in the territory through a single application for the issue of the residence permit in question.
- Non – dual employee card – for free access to the labour market (+ in some cases work permits)
- As of 17 April 2023, the Czech Republic had a total of **111,169** third-country employee card holders



Dual Employee Card

- The work permit associated with the dual employee card is linked to a specific job under pre-determined and announced conditions
 - To qualify, there needs to be first a position reported in the Central Register of Vacancies to be filled by employee card holders
- The position is included in the database on the basis of a so-called **vacancy report**, in which the employer **specifies the exact parameters of the vacancy** – only under the given conditions can the foreigner perform the job
- The position must be unsuccessfully offered to persons with free access to the labour market and Czech nationals for a standard 30 days before it obtains an identification number and is ready to use for employment cards (the period of 30 days can be reduced to 10 days in some cases).
- The vacancy must meet at least the following requirements: **weekly working hours of at least 15 hours + minimum wage** (regardless of the agreed length of the working week)



Dual Employee Card

- A foreigner with this type of residence permit **may not change employment** (or the terms and conditions of employment with the same employer) **without first notifying the Ministry of Interior and obtaining the approval of the change**
- The foreigner is entitled, but also **obliged, to perform work under the permitted conditions** and to the extent specified in his/her employment contract and vacancy register
 - = In general, changes in the conditions – wage/place of work/job position are subject to prior notification to the Ministry of Internal Affairs and approval.
- If the holder of a dual employee card what to change positions (or parameters of his/her current job), it is **necessary to notify** the Ministry of Interior **at least 30 days before the change**
- The holder of the dual employee card is entitled to change employer no earlier than 6 months after the final decision to issue the first employee card has been made (from the handover of the biometric document)
 - The time limitation does not apply in certain cases and situations



Dual Employee Card

- Furthermore, the holder of a dual employee card is not entitled to change employer or to take up a position if the future employer is an employment agency (temporary work agency).
- A notification of a change that does not meet the conditions prescribed by law shall be regarded as not been made.
- Within 30 days from the date of notification, the Ministry of the Interior shall inform the foreigner and the prospective employer whether the conditions required for the change of employer have been met and whether the foreigner may be employed at that place.
- If, within 60 days of the end of the last employment relationship, the employee card holder has served more than one notice of change of employer to the Ministry of Interior, **only the most recent notice shall be taken into account; the previous notice shall be treated as if it had not been made.**
- A foreigner must notify the Ministry of Interior of a change of employer/position within 60 days after the end of the last employment relationship
 - = After 60 days of unemployment without any notification of a new job, the employee card is *ex lege* terminated. No decision is issued on this fact.



Definition of Illegal Work

1. Dependent work performed by a natural person outside an employment relationship
 2. Work performed by a foreigner in contravention of an employment permit issued or without such permit, if required under the Czech laws, **or in contravention of an employee card**, an intra-corporate transfer card or a blue card issued under the Czech laws or without one of these cards
 3. Work performed by a foreigner for a legal or natural person without a valid residence permit in the territory of the Czech Republic, if required under the Czech laws.
- This definition combined with the current legislative setting of the dual employee card can lead to many complicated situations where a foreigner work illegally – **mainly in contravention of an employee card** (workplace, wage, weekly working hours). Some of the cases are not deliberate breaches of the law...
 - Complicated procedure about the change of employer can also lead to the circumvention of the law and disguised employment agency work, where the temporary assignment of an employee to a user is disguised by commercial contracts – most often framework contracts for work, under which the work is formally carried out by employees for the client, but in reality it contains all characteristics of an agency employment
 - Performing illegal work has many negative effects including possible sanctions for employees and employers – cooperation between Customs Office, State Labour Inspection Office, Foreign Police and Ministry of Interior
 - According to the latest statistics from the State Labour Inspection Office (2022), **foreigners account for 4/5 of all detected cases of illegal work**



Sources

- Act no. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic
- Act no. 435/2004 Coll., on Employment
- State Labour Inspection Office statistics of illegal employment for 2022
 - accessible via:
 - https://www.suip.cz/web/oip09/novinky/-/asset_publisher/3OaLneInMbSQ/content/v-lonskem-roce-bylo-provedeno-vice-nez-6-5-tisice-kontrol-primo-zamerenych-na-odhalovani-nelegalni-prace/20142





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Reliable and unreliable employers: concept for the future?



21 October 2021



JUDr. Jakub Tomšej, Ph.D.



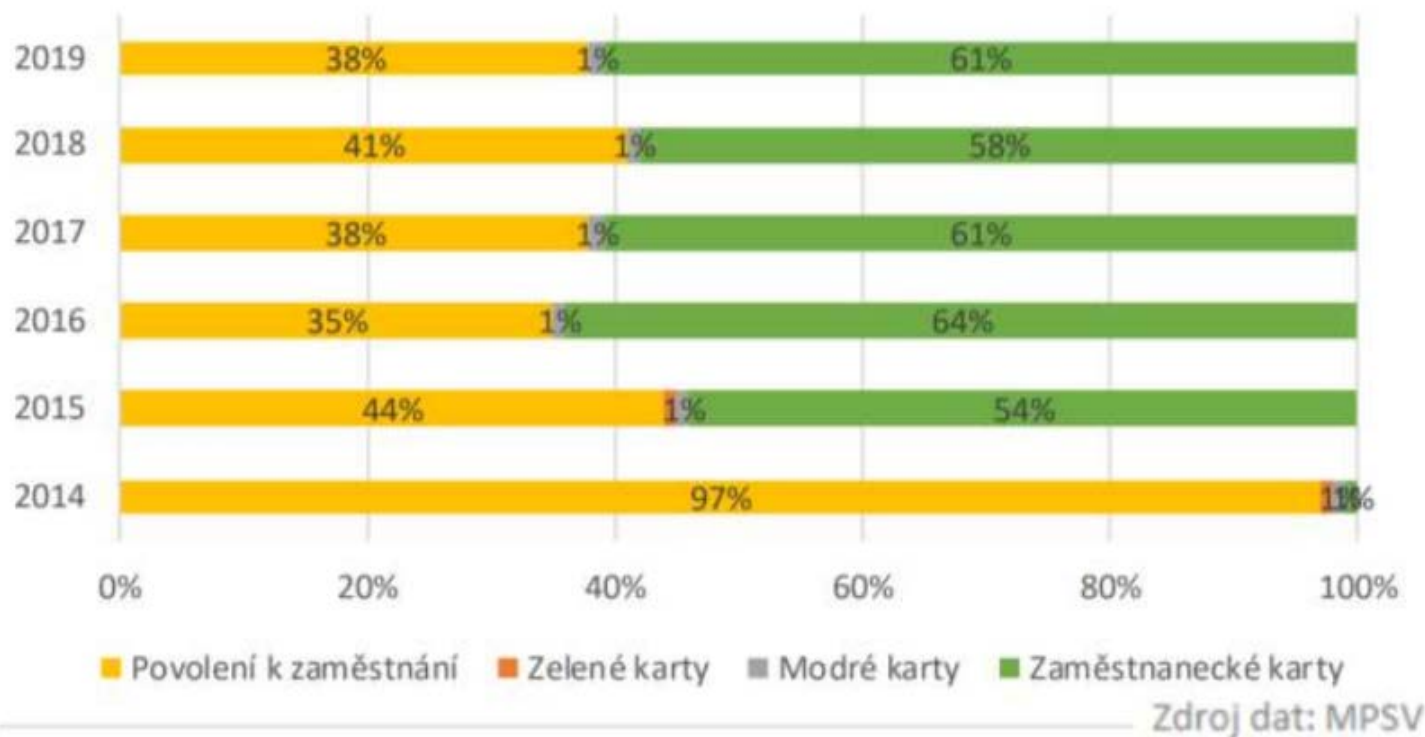
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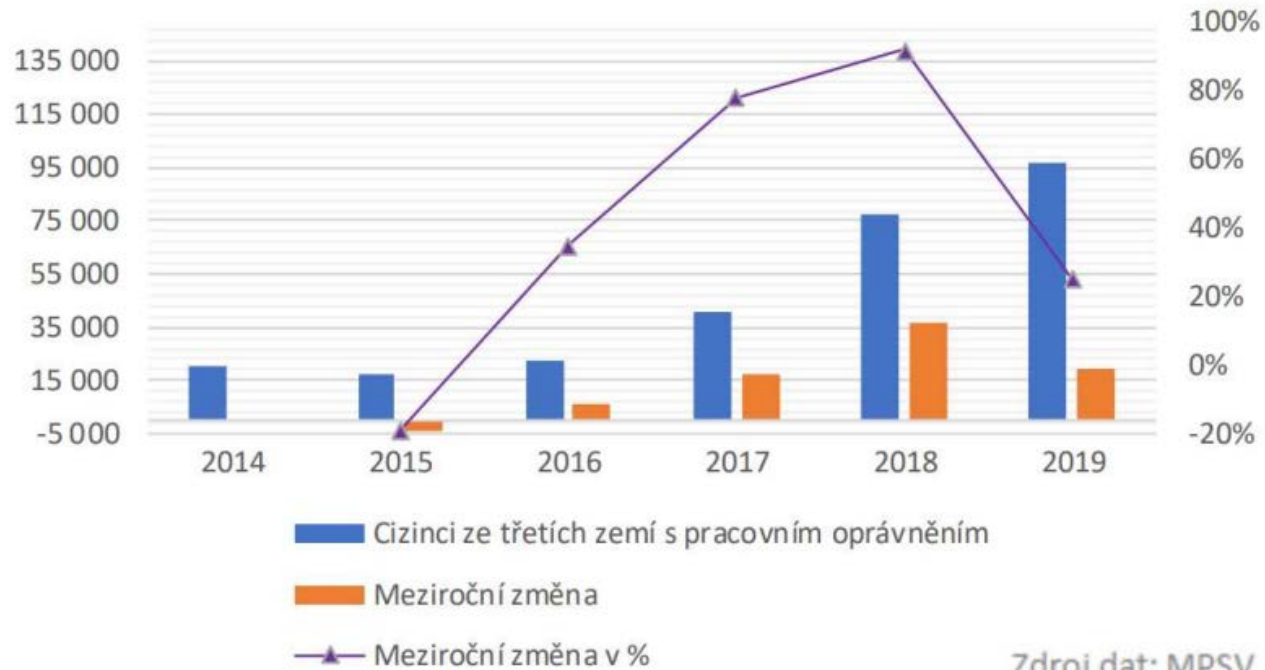
Visa issues

- EU/EEA: free movement of workers
- Third countries: additional permits needed (right to stay, right to work)
- Free access to labour market even for third country nationals IF: (inter alia, for students)
 - They are full-time students at a Czech high school/university in an accredited study programme, or
 - If they successfully passed such study programme (graduates)

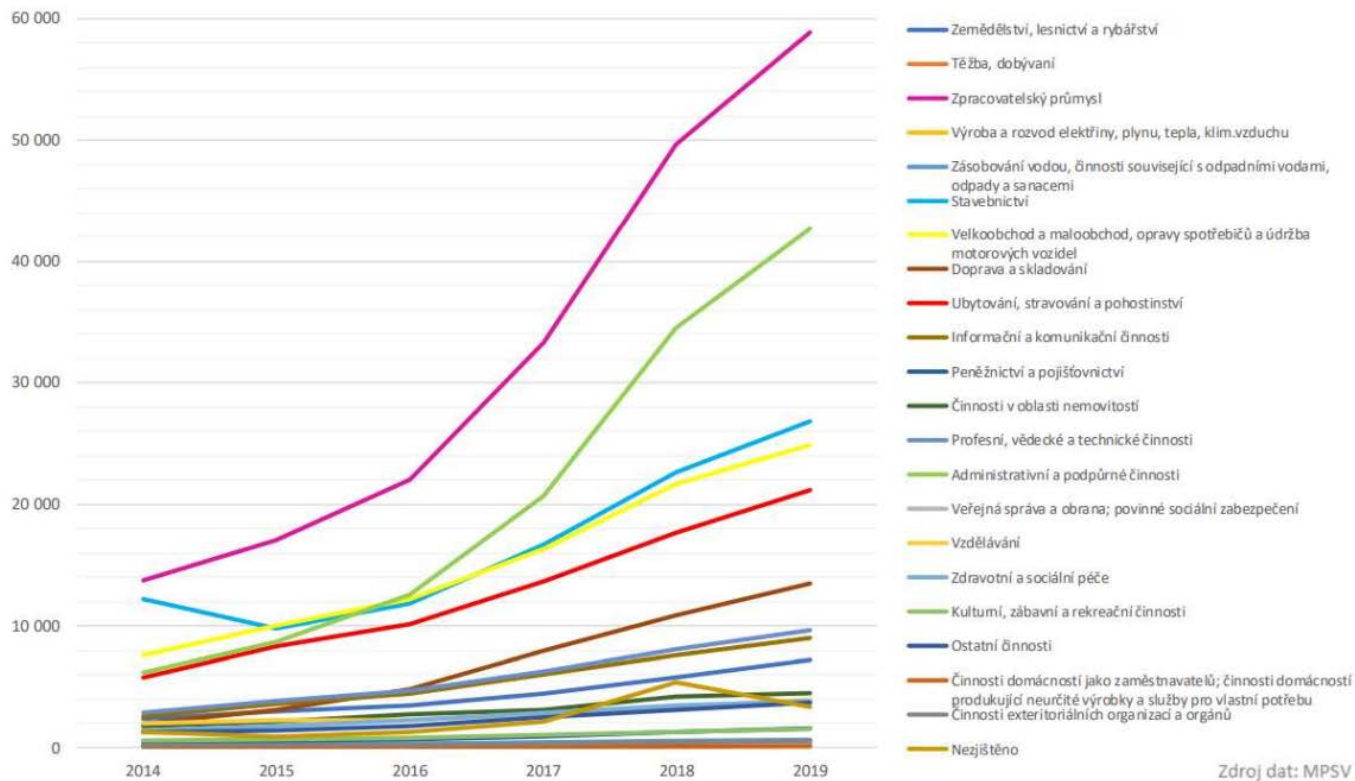
Some statistics



Some statistics



Some statistics





Unreliable employer

- Czech law prohibits the issuance of a work permit or the granting of permission to change employers if the employer is considered unreliable.
- The concept of an unreliable employer is intended to prevent hidden agency employment of foreigners and to prevent employers who systematically fail to comply with obligations arising from other than labor law regulations (public health insurance, social security) from employing foreigners.



Unreliable employer

- An unreliable employer is a person who:
 - Is not debt-free
 - Has been fined for allowing illegal work
 - Is not carrying out economic activity
 - Has not fulfilled the obligation to register a foreigner for insurance
 - Is in liquidation
 - Has a fictitious registered office



Reliable employer

- In addition to the concept of an unreliable employer, Czech law could also recognize the concept of a reliable employer.
- This would provide certain advantages to employers who meet certain criteria, such as:
 - Compliance with labor laws
 - No history of illegal employment
 - A good track record of paying taxes and social security contributions



Reliable employer - benefits

The advantages of a reliable employer status could include:

- Faster processing of visa applications
- Reduced administrative requirements



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Thanks for your attention



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JUDr. Jakub Tomšej, Ph.D.



10



Employment of Foreigners in comparison

Against illicit/undeclared work and violation of Employees' rights



Martin Štefko

Outline

- **11.1 % of the private sector in the EU**
14.8 % of gross value added (GVA)
- Cyprus: whistleblower hotline
- Greece: flexible sanctions
- Lithuania: QR code
- Norway/Finland: mobile application
- Spain: Big data tool

Cyprus

- The Whistleblower telephone hotline
 - to anonymously report fraud and malpractice in the workplace without fear of retaliation
 - number of complaints/reports via the whistleblowing hotline:
 - 359 in 2017
 - 702 in 2018
 - 629 in 2019
 - 394 in 2020
 - 272 in 2021
 - 360 in 2022

Greece

- introduction of a fine of €10,500.00 (2013) = each worker (PI.US 52/13)
 - Lower fines if the undeclared employee is subsequently hired by the employer;
 - Increased fines if undeclared work is detected again; double or triple if aggr. circumstances
 - An employment clause:
 - cannot reduce the total number of workers
 - cannot convert full-time contracts to part-time ones
 - another worker must be hired within 15 days

Lithuania (April 2022)

- the Transparent Worker Identification (QR) Code:
 - obligatory for anyone performing construction work on a construction site
 - allows competent authorities to verify the status of workers and determine if they are working legally or not, including employed, self-employed persons, and posted workers

Norway + Finland

□ The Digital Competence Tool

- will take the form of a **mobile app**
- can be used by workers (in the cleaning sector)
- will gather information on their status
- as well as provide information on their rights
- [Work Help Finland on the App Store \(apple.com\)](#)

Spain

- on-line notifications (IT tools)
 - Big data, Antifraud data + others (IT)
 - better response to digital platforms and home office work
 - Greece uses the ERGANI system
 - Automatisation, AI, frees up resources
 - probabilities are calculated based on business models and are backed by data mining.
 - Prompt payment = settlement on 40 %
 - Full proceeding increased penalties

Conclusions

- What can be used
 - QR codes on overalls (amendment of law)

- Cell phone application (feasible now)
 - Evidence of working hours
 - List of rights in foreigners

- Mitigating circumstances
 - Foreigner is re-hired

Thank you for your attention



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Workshop, Faculty of Law , Charles University
02/05/2023

Implementation of the Work-life Balance Directive into the Hungarian Legislation Some practical remarks

Made by:

Dr. Hilda Tóth, associate professor

Laura Kovács-Berényi, PhD student



CONTENTS

- I. Baseline - regulatory environment
- II. The new Directive - Directive 2019/ 1158/ EC of the European Parliament and of the Council
- III. National Law –new rules
- IV. Challenges
- V. Concluding reflections

WORK

- Sustainability
 - Maintaining balance
 - Flexibility and security
 - social Europe

PRIVATE LIFE

I. BASELINE - REGULATORY ENVIRONMENT

Regulatory framework at Community and EU level regarding work-life balance

- TEU (Article 3)
- TFEU - equal pay for equal work (Article 157)
 - European Pillar of Social Rights
 - Article 2: on gender equality
 - Article 9: on work-life balance (role of decent working conditions)
 - Charter of Fundamental Rights of the European Union
 - Article 23 - Equality between women and men
 - Article 33 - Family and work

II. NEW DIRECTIVE

- European Commission
 - on 26 April 2017, the European Commission presented its proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU;
- Council
 - adopted the new directive on work-life balance on 13 June 2019, published in the Official Journal on 12 July 2019;
- Obligation to implement
 - *by 2 August 2022. ⇒ But! Amendments to the Labour Code with effect from 1 January 2023*
 - *Employees are entitled to take paternity leave in accordance with Section 118 (4) of the Labour Code within two months of the date of application of the Act on Amendment for children born or adopted between 2 August and 31 December 2022.*

OBJECTIVES OF THE DIRECTIVE

- Ensuring equal opportunities, equal treatment requirements and setting them on a new basis;
- Promoting support for having children through modernised legislation;
- Rules allowing flexible employment;
- Rules guaranteeing legal protection.



III. National Law – new rules

Legislative developments in Hungary regarding work-life balance

- *A amendment of the Labour Code with effect from 1 January 2023*
 - *Paternity leave* – 10 working days
 - *Parental leave* – 44 working days until the age of 3 of his/her child
 - *Carers' leave* – 5 working days/year
- *the duration of working time and the flexible planning of working time affect work-life balance*
 - ↓
 - **1. Exemption from the obligation to work;**
 - Carers' leave – for max. of 5 working days/year
 - **2. A amendment of the employment contract;**
 - *After the first six months of employment → the employee can request another, more predictable and secure form of employment*
 - *61 § (4). An employee, up to the age of eight years of his/her child, or a carer of a child, except during the first six months of the employment relationship, may request*
 - *(a) a modification of the place of employment,*
 - *(b) a modification of his or her working hours,*
 - *(c) teleworking; or*
 - *(d) part-time work.*
 - *Important: obligation to state reasons!*

III. National Law – new rules

Legislative developments in Hungary regarding work-life balance

- *A amendment of the Labour Code with effect from 1 January 2023*
 - *2. A amendment of the employment contract;*
 - *Important: obligation to state reasons!*
 - *The employee must give reasons in writing for his request under paragraph 2 or 4 and indicate the date of the change–*
 - *„Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have **the right to request flexible working arrangements** for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.”*
 - *If the employee so requests, the employer shall give a written response within fifteen days. If the request is rejected, the employer shall give reasons for its statement in accordance with Article 64(2). In the event of an unlawful refusal of the application or failure to make a statement, the court shall provide the employer's statement of consent.*
 - *E.g.: What if the request relates to the working schedule? How does the court substitute the declaration on the working schedule?*
 - *⇒ the court has to fill the declaration with content as well!*

National Law – new rules



Legislative developments in Hungary regarding work-life balance

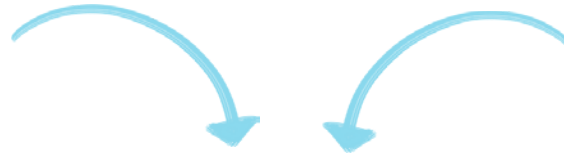
- *A amendment of the Labour Code with effect from 1 January 2023*
 - *3. Termination of employment relationship*
 - *Enhanced protection against dismissal*
 - *Issue regarding burden of proof*
 - *obligation to state reasons!*
 - *If the employee alleges facts showing that he/she was dismissed because he/she took paternity/parental/carer's leave or made a request to that effect, the employer will be obliged to justify that the dismissal was for other reasons.*

IV. CHALLENGES



Telework,
home office

The rise of digital
technologies



The role of
occupational health
and safety in
achieving balance

IV. CHALLENGES

Legislative developments in Hungary regarding teleworking

- Amendment of the Labour Code
 - broadening the definition of teleworking - work is carried out at a place separate from the employer's premises for part or all of the working time
- Amendment of the Act on Occupational Health and Safety
 - amendment of the specific provisions on occupational safety and health for teleworkers
 - possibility to work with personal work equipment
 - 2 groups.:
 - teleworking by the use of computer equipment,
 - teleworking by non-computer means
 - importance of risk assessment
 - importance of OSH training - „best practice" of Cyprus

V. CONCLUDING REFLECTIONS

- The objectives of the new directive are well aligned with the development of the social dimension of the European Union.
 - innovations in fundamental rights and labour law
- The specific nature of the employment relationship also requires special protective measures to ensure the protection of the right to privacy
 - employer control
 - restrictions on employees' right to privacy - 'necessity and proportionality'
- The provisions of the Directive may provide a basis for a more effective enforcement of workers' fundamental rights, human rights and social interests in the field of labour law.
- New challenges, but the value of labour law remains the same

Home office

- In Hungary, the public sector, in the narrow sense of the term, is governed by several pieces of legislation, the two most relevant being:
- Act CXXV of 2018 on Government Administration

It applies to employees of ministries and county government offices

- Act CXCIX of 2011 on Civil Servants
- which applies to employees of the Mayor's Offices (in the cities, villages)

Telework in the Public Sector I.

-
- Act CXCIX of 2011 on Civil Servants
 - Telework - Teleworking is a similar regulation to the competitive sector (Act I of 2012 on Labor Law)
 - Act CXXV of 2018 on Government Administration
 - Regulates the home office in the working time rules, uniquely!

Home office rules

- Two conditions:
- By agreement, at a place other than the place where employee normally works, at his
 - place of residence or at
 - his place of abode,
using his own equipment.
- If the nature of the work so permits and does not involve the government official in a disproportionate disadvantage

Home office rules

Time worked at home

- **Duties to be performed individually**
- **Method of contact**
- **Manner and time of delivery of work performed**

- **The home office is a working time organisation issue.**
- **This theoretical premise is supported by this law, by placing it within the rules of working time.**

THANK YOU
FOR YOUR
ATTENTION!



THE SOCIAL DIMENSION IN THE EUROPEAN UNION

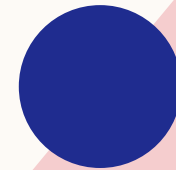
Dr. Melinda Kocsis

AGENDA

Social dimension

European Pillar of Social Rights and Action Plan

Lifelong Learning framework



Trends in Europe:

Financial
crisis

Green and
digital
transition

Aging society

Brexit

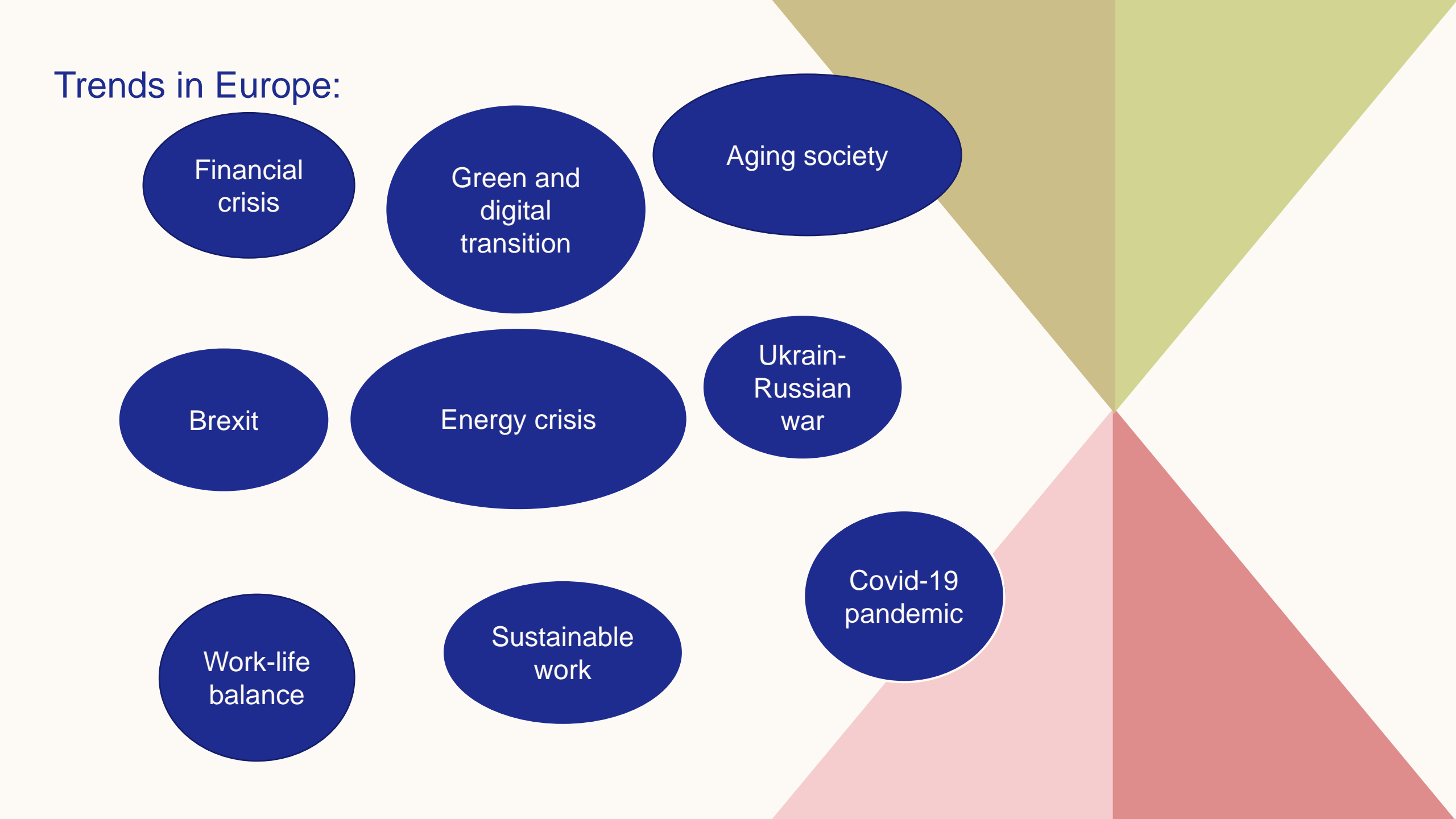
Energy crisis

Ukrain-
Russian
war

Work-life
balance

Sustainable
work

Covid-19
pandemic



SOCIAL DIMENSION

Social dimension is a set of policies in the European Union.

Examples: Employment and labour market policies, Employment law, Labour relations, Social welfare and protection

The initial vision of the European Community was to provide economic growth and this economic growth would lead to social progress.

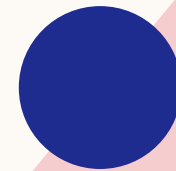
The current aim of the European Union is to promote social progress and improve the living and working conditions of everyone in the European Union.

Aim of the European Union:

To build a strong social Europe that is fair, inclusive and full of opportunity.

The social dimension is an essential part of European integration.

Although the social dimension seems very different across Europe but the social situation in one country has a significant effect on its neighbours, this constituting a strong argument for at least some sort of practical cooperation between



THE EUROPEAN PILLAR OF SOCIAL RIGHTS AND ACTION PLAN

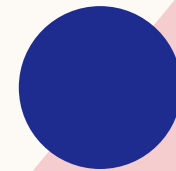
The European Pillar of Social Rights is a political commitment.

20 principles divided into 3 Chapters:

Chapter I: Equal opportunities and access to the labour market

Chapter II: Fair working conditions

Chapter III: Social protection and inclusion



ACTION PLAN

Actions across 3 priority areas:

- 1. More and better jobs – At least 78% of the population aged 20 to 64 should be in employment by 2030 (rate was 73.1% in 2019)**
- 2. Skills and equality - At least 60% of all adults should participate in training every year by 2030 (rate was 37.4% in 2016)**
- 3. Social protection and inclusion – At least 15 million fewer people at risk of poverty or social exclusion by 2030**



LIFELONG
LEARNING (LLL)

THE EUROPEAN PILLAR OF SOCIAL RIGHTS AND ACTION PLAN


European Pillar of Social Rights:

Chapter I: Equal opportunities and access to the labour market

1. Education, **training and life-long learning**

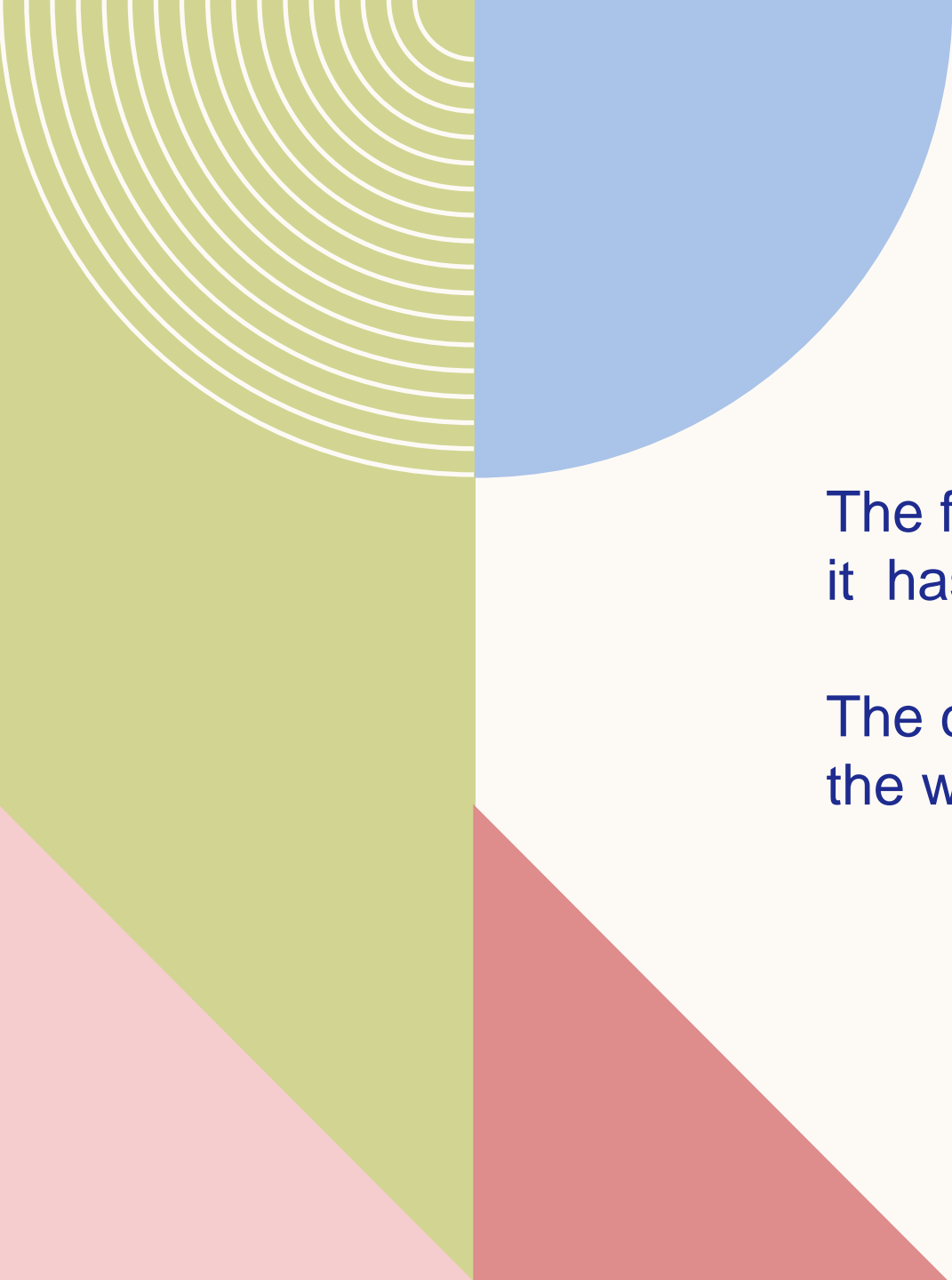
Action Plan:

2. Skills and equality - At least 60% of all adults should participate in training every year by 2030 (rate was 37.4% in 2016)



LLL can be considered as one of the tools that can contribute to support fair and well-functioning labour markets, labour market transitions, sustainable work, prevent skills gaps, and prevent social exclusion.

At the beginning, it was a program of tools for the improvement of the quality of life and society, and then - with the addition of economic elements - it was seen as a tool fight against unemployment.



The focus of the LLL concept was on education but it has been shifted from education to learning.

The context of LLL has been expanded as well from the workers to the whole society.

MAIN DIMENSIONS OF LLL

European Pillar of Social Rights Action Plan

European Green Deal

2030 Policy Programme: Path to the Digital Decade

A New Industrial Strategy for Europe

FACTS

Not enough adults participate in learning.

Participation in adult learning is unequal and strongly depends on the labour market status, employment relationship, company size.

Permanent workers have higher adult learning participation rates compared to other adults.

Lower shares of employees in SMEs participate in adult learning compared to those in large companies.

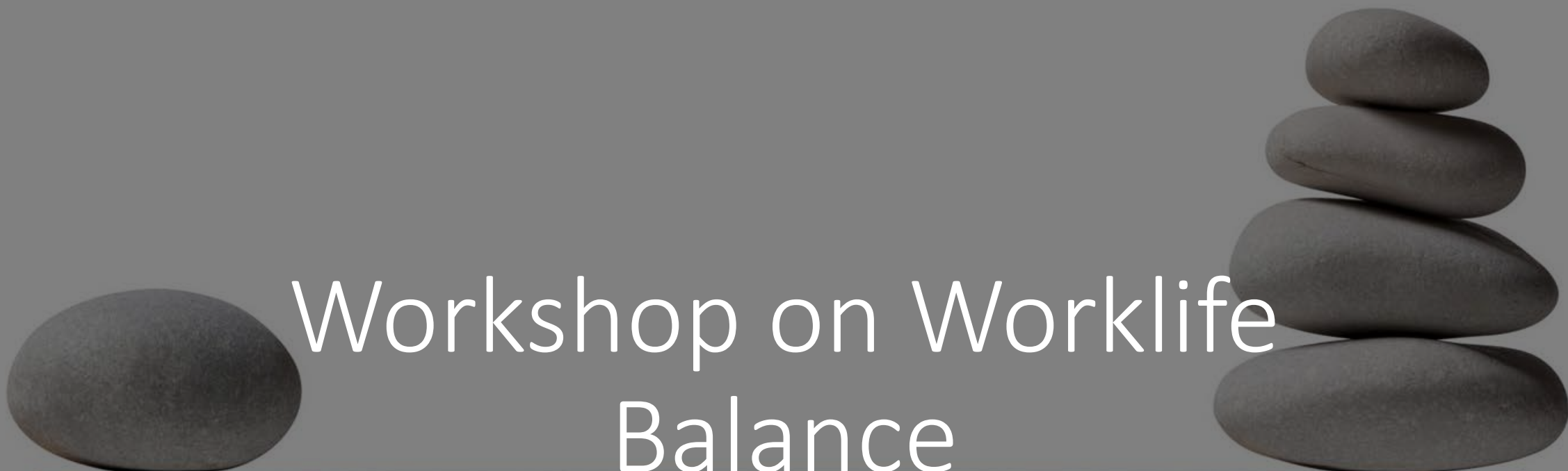
Adults with lower educational attainment participate less in learning.

RECOMMENDATIONS

1. training should be regarded as an individual right (as it exists in some member states)
2. strengthen social dialogue, establish joint committees
3. tax and/or financial support
4. the development of a "cultural awareness" of training
5. creating a databases (ILA at EU level)
6. strong social dialogue and personalised training
7. "peer-to-peer" training
8. green and digital skills
9. training leave and lifelong learning leave
10. third-sector associations



THANK YOU




Workshop on Worklife Balance

Charles University (Univerzita Karlova)

02 May 2023

Nóra Jakab- Mária Vivien Tunyi

Professor of Law



Taking on extra responsibilities - impact on privacy

Mfv.X.10.127/2020

- The employee was regularly forced to work 10-14 hours a day due to the increase in his job duties, but also to perform activities beyond his job duties. For this reason, he was paid a **replacement allowance** of approx. 14 million HUF. His claim in this connection was based on the provisions of § 53 (5) of the Labour Code - employment other than that provided for in the employment contract (redeployment)
- In the case of an employee who, during his/her normal working hours, also performs duties **falling within the scope of another employee's** job, he/she will be entitled to the higher basic salary for the job performed if the duration of this performance can be determined and separated from his/her own job.
- He also cited health problems and a personal crisis. His human dignity has been violated and he is entitled to damages.



First and second instance

- The court of first instance correctly interpreted the substance of the dispute by holding that the Labour Code Article 53 applies to remuneration for work performed during normal working hours. In the event that the employee's duties exceed the normal working hours, he may claim payment for the remuneration for the extraordinary work, but the applicant has stated that he has no claim in that regard.
- The applicant has not proved that he suffered any injury to his personality (impairment of health, personal crisis), which was the basis for the damages award, nor that it was causally linked to his work for the defendant. ***Working more than the normal working hours cannot in itself be regarded as an offence against human dignity.***
- The Court of Appeal correctly held that it also applies when the employee performs other duties in addition to his or her original job duties. In this case, his remuneration depends on whether the period of time during which he and the other employee perform his job duties can be separated. In this case, the other worker may be entitled to a higher pro rata basic salary than the other worker. In the present case, the different job duties could not be separated in time. The claimant was not entitled to a different period of time in the differentiated remuneration. 53 (5) (his own basic personal wage).

- If the employee's own duties and those of another job exceed the normal working hours, he or she can claim the compensation for the extraordinary working time for this period.
- However, it is important to note that the burden of proof is on the employee to show how many hours of work, broken down into days, he or she actually worked.
- Harmful work-life balance practices have developed, with extra work regularly carried out for which the worker has not even received any remuneration

The background of the slide is a light gray color, overlaid with a pattern of numerous overlapping circles. These circles vary in size and are colored in shades of dark blue, medium blue, and various tones of green, from light to dark. The circles are scattered across the entire frame, creating a textured, abstract effect.

Damages for extra work?

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- Working extra hours on a regular basis can lead to a breakdown in your relationship and a disruption of your work-life balance. *In the event of this violation, the worker may be entitled to claim compensation for the extra work, where appropriate, instead of an infringement of human dignity.*

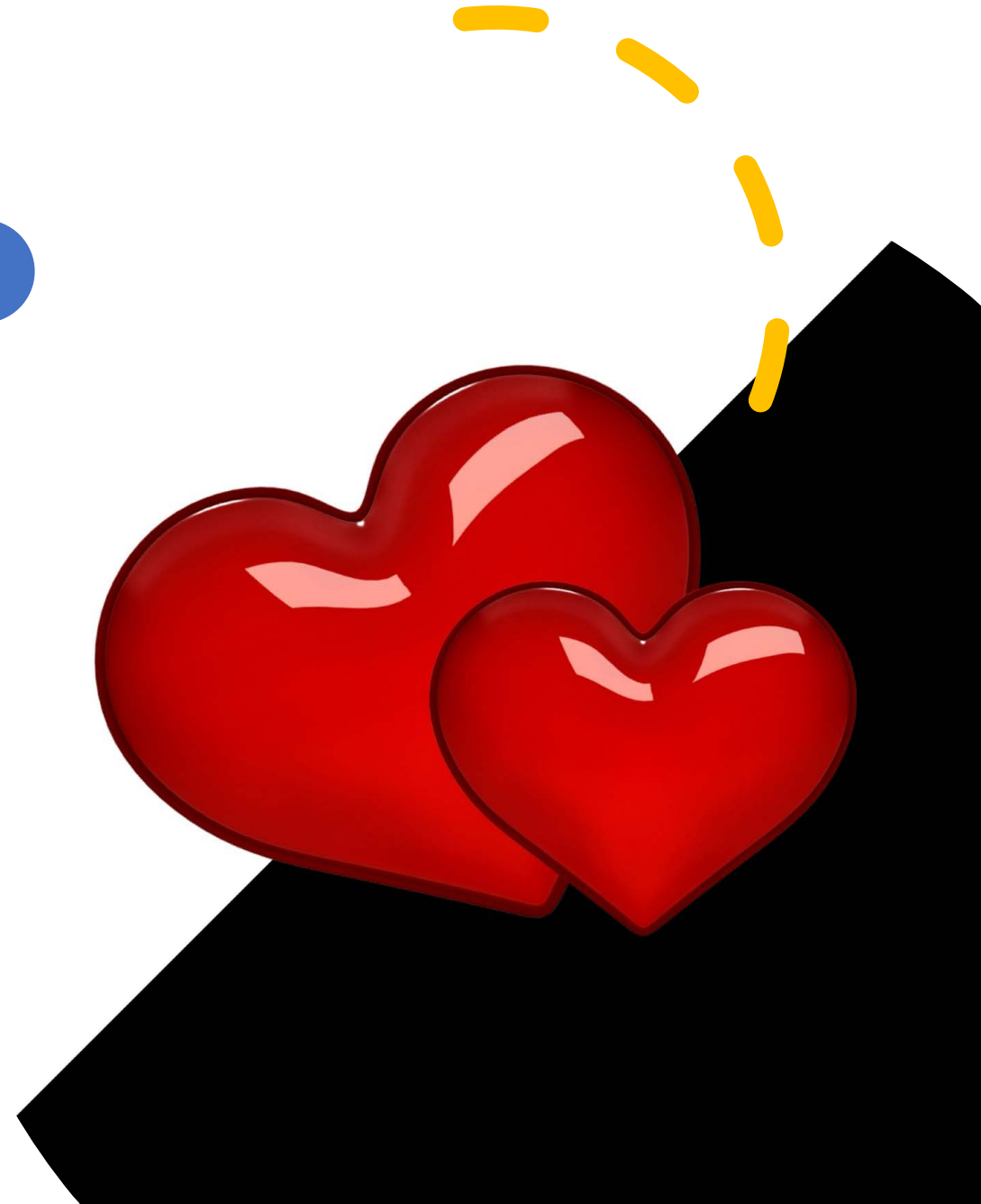




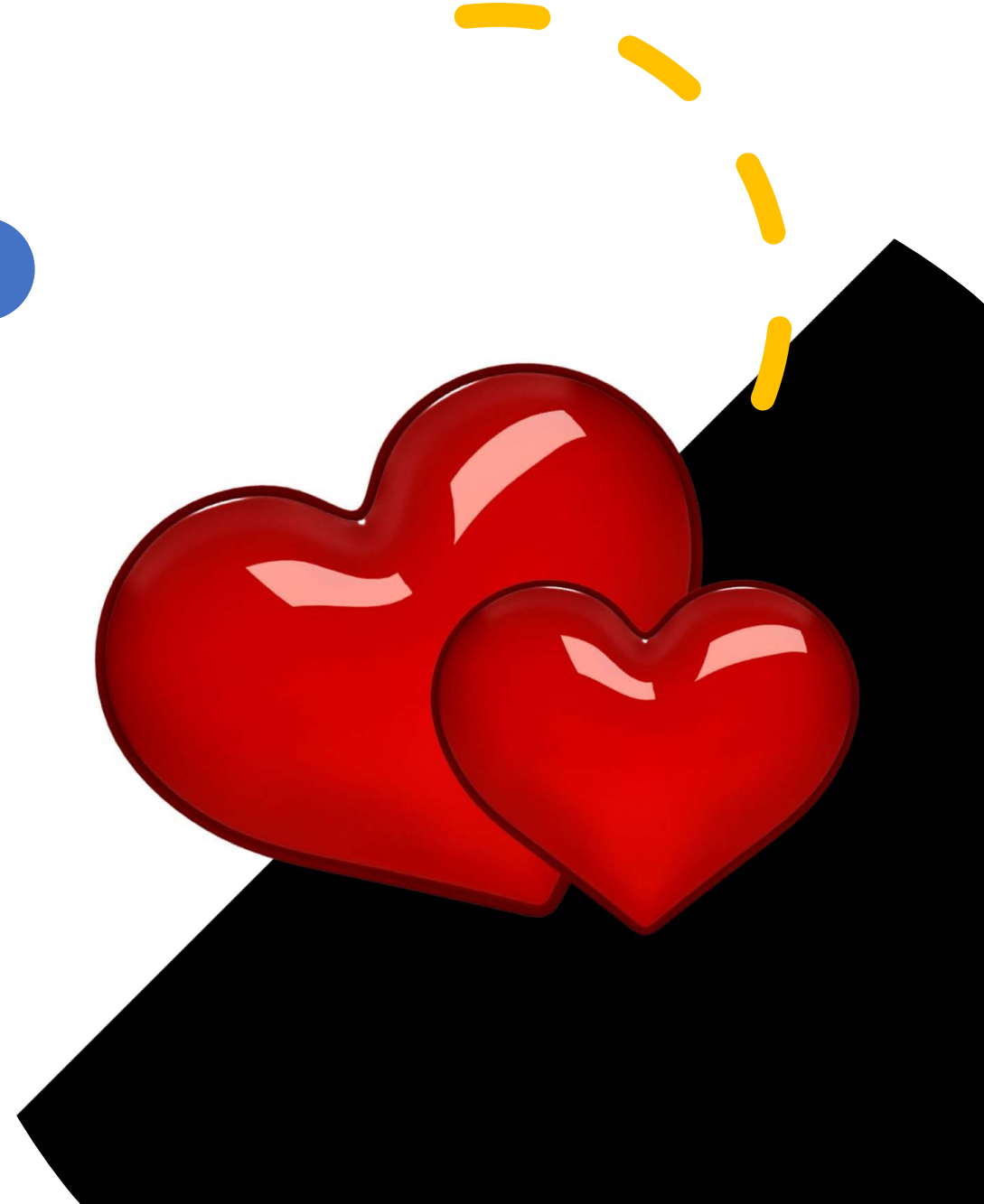
Termination of employment - love affair with another employee

Mfv.10.261/2018/5

- The employer terminated the employment of a teacher in a church school on the grounds that she was having an affair with the husband of a female colleague, also a teacher. /The employee undertook to carry out his work in compliance with the ecclesiastical and secular legislation in force, taking into account the teachings of the Church, and acknowledges that he may not engage in conduct outside the workplace which is unworthy of a Church employee, offensive to the Church, or contrary to the teachings of the Church, which may be grounds for ordinary or extraordinary dismissal./
- both were married and in marital status
- According to the defendant employer, this is contrary to the principles to which the institution is committed. For this reason, it terminated the teacher's employment on the grounds of loss of trust.
- *The reason for the termination* referred to a love affair with the husband of a colleague, who had broken off the cohabitation, so that the applicant had broken up another family unit. According to the employment contract, as a teacher in a church school, she must observe the moral rules required by the Church in her private life.



- Judgment of the Court of First and Second Instance: the legal relationship could not have been lawfully terminated on the basis of the plaintiff's claim.
- The First Instance held that the right to privacy is a personal right that can be restricted. In the context of the employment relationship, this means that the restriction must be strictly necessary for reasons directly related to the purpose of the employment relationship and proportionate to the objective pursued.
- On the basis of the above, the court of first instance concluded that the conduct of the plaintiff as described in the notice of termination could not be considered as conduct in the private sphere, but in the context of the employment relationship, which would be considered as a breach of the employment contract. 66(2), first sentence, could lawfully terminate the defendant's employment relationship with the defendant.





- Curia:! considered the request reasonable!

The same conduct was the basis for the termination of employment and the non-payment of severance pay (the spousal breach of fidelity)

In his action, the applicant claimed that the statement of reasons was unlawful, but did not seek the application of the consequences of the employer's action by claiming that it was unlawful (Articles 82 and 83 of the Labour Code).

In the absence of an action for a declaration that the termination was unlawful, the applicant had no standing to seek a change of the grounds for the termination.
- **Conclusion: in some cases, conduct in the area of private life may also be grounds for termination of employment - for example, if it results in a loss of confidence or damage to the employer's reputation or legitimate economic interest**
- **However, to expect the employee to report an emerging emotional relationship to the employer would be a disproportionate infringement of the employee's right to privacy**

Social media use




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- The civil servant was employed by the employer as a teacher. She also used the Facebook social networking site to communicate between herself and the parents of the students, and sent various messages on this platform in relation to studies. In addition, however, he also posted other posts with other negative content in a publicly accessible manner, including negative comments about minority groups and expressing his disapproval of the articles published.
 - On this basis, the civil servant was dismissed. However, the teacher, who was employed as a civil servant, considered the employer's action to be offensive, arguing that her mere social media posts did not justify termination of her employment. The court assessed the circumstances of the case as a whole, considering that the applicant had expressed herself on social media in her capacity as a teacher and that her employer had a legitimate expectation that she should not engage in such offensive conduct.



Termination of employment

Mfv.10588/2015/1



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- The applicant was employed by the defendant under a fixed-term employment contract from 21 February 2011, which was renewed on several occasions.
 - The last employment contract, dated 31 July 2014, stipulated that the employment relationship would continue until 30 September 2014.
 - On 16 September 2014, the defendant informed the applicant that his fixed-term employment contract expired on 30 September 2014, and that he would not be able to renew the contract after that date.
 - On several occasions during the employment relationship, most recently in March 2014 after she became pregnant, the applicant requested the defendant to establish an employment relationship of indefinite duration, which the defendant refused to do. The applicant was pregnant and gave birth to her second child on 7 October 2014.
 - *The applicant claimed that months of fruitless negotiations and insecurity had made her pregnancy very difficult and caused conflicts in her life outside the workplace (all of which significantly affected her right to privacy)*

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If the *fixed-term employment contract was concluded and repeatedly renewed without the employer having a legitimate interest, the fixed-term employment contract is invalid* (ECJ 1999.133.).

An extension of fixed-term employment may be recognised if there is a legitimate reason for doing so (BH 2006.199).

During the personal interview with the defendant's legal representative, the chairman of the board of directors, the defendant's legal representative invoked the employer's practice of *using fixed-term contracts as a way to encourage better performance*.

Unlawful! does not correspond to the legitimate interest defined by law (for example, there would have been the institution of probation)

Injured: - the requirement of equal treatment and the situation created existential insecurity for the employee.

The tribunal agreed with the first instance court's view that there was a legal basis for the award of damages, as the *applicant's rights to privacy and family planning had been infringed*. However, the amount of damages awarded in the first instance judgment was excessive. Having regard to the infringements correctly identified in the judgment and their consequences for the applicant, the Court of Second Instance found that the amount of the damages could be fixed at HUF 800 000 plus interest.