

Nóra JAKAB*
Sustainable development and human resources**

Sustainable development has several meanings. This essay approaches the issue from the society's and work's point of view.

Sustainable society among others aims to cope with the economic inequalities existing among nations and on different parts of the world, to handle the inequalities between men and women, to eliminate inequalities in accessing to work and in making a living.¹ Social dimension of sustainable development came to the front in 2002 on the World Congress held in Johannesburg. The three pillars of sustainable development have been clarified on this congress, i.e. sustainable development consists of economic, environmental and societal pillars.²

In relation to sustainable society – maybe surprisingly – I would like to emphasize the importance of work. There has been a vivid professional debate in the European Union for a long time on the presence and future of labour law regulation, on the work (in itself) and working person forming the basis of labour law regulation, and furthermore on the protective nature of labour law regulation, namely on tailoring down or broadening it. This debate is highlighted by the White Paper, Green Paper, Supiot and Wim-kok report. Taking into consideration the above mentioned documents Mark Freedland distinguishes three different concepts in the European policies: (a) social policy based on the social dialogue and on the outstanding role of social partners; (b) employment policy strengthening the competitiveness and increasing employment rate; (c) human right concept with special regard to equality rights, balancing the employment policy serving economic interest.³

* dr. jur. associate professor, University of Miskolc, Faculty of Law, Institute of Civilistic Studies. Department of Labour and Agricultural Law, 3515 Miskolc-Egyetemváros, civnora@uni-miskolc.hu

** The essay was supported by the National Research, Development and Innovation Office (within the framework of K120158 project) and was realised from the National Research, Development and Innovation Fund.

¹ Enyedi György: Fenntartható fejlődés – mit és hogyan kell fenntartani? *Magyar Tudomány*, 1994/10, 1151-1160. Cited by: Olajos István: *A vidékfejlesztési jog kialakulása és története*, Miskolc, Novotni Alapítvány, 2008.

² Bányai Orsolya: *Az energiafelhasználás csökkentésére és a megújuló energiaforrásokra irányuló szabályozás az ökológiai fenntarthatóság nézőpontjából*, PhD értekezés, Debrecen, 2012, 23.

³ Gyulavári Tamás: Munkaviszony, önfoglalkoztatás és a közöttük lévő szürke zóna, *Esély*, 2009/6, 76-79.

The Wim-kok report determines the key elements of employment policy in compliance with the Lisbon strategy:

(a) In order to increase the employability and productivity the followings are essential: increasing the flexibility of working people and undertakings, integrating more people to the labour market, investing into human capital, and implementing reforms effectively by appropriate governance.

(b) Besides flexibility working people need security. Security refers not only to the employment, but also to the maintenance of work and to making a progress in work. According to the Wim-kok report this helps to avoid fragmentation of the labour market,⁴ accordingly people within labour relationship (insiders) enjoy high security, but people outside of it (outsiders) experience the lack of it or the minimum level of it.

(c) By means of tax and subvency policies everyone shall have access to the labour market. Accordingly full participation of women in work shall be made possible in line with child and elderly care's developments.

(d) Consequently Member States shall have active aging strategy as employability of people over 50 constitutes a great challenge to the employers as far as training/retraining is concerned.

(e) Investing into human capital supposes the realization of lifelong learning. This is very important to less educated people.⁵

Consequently the Wim-kok report points out that investment into human capital, employment of more and more people are very important for sustainable society, as human resource means one kind of inducement for the economy.

In my opinion sustainable society requires among others such a policy making, of which starting point is human dignity, and enjoyment of right to work calls for setting up conditions enabling the acquirement, development and realization of one's capabilities.

Human rights such as right to work derive from human dignity. According to Gábor Kardos work is integral part of the human being, it is basis of self-determination. Conscious work is being carried out by humans and in the case of unemployment one's dignity is undermined.⁶ Therefore, work is a material source of human being and human dignity as the Constitutional Court laid down.⁷ Right to work was interpreted by the Constitutional Court as a constitutional right having two aims. Right to work has a social and subjective side.

⁴ See Reich, Gordon és Edwards' double labour market theory.

⁵ Employment Taskforce chaired by Wim Kok: Jobs, Jobs, Jobs Creating more employment in Europe, homepage of World Employment Confederation, in: http://www.ciett.org/fileadmin/templates/eurociett/docs/Kok_Report_2003_Jobs_Jobs_Jobs.pdf (2014.06.23.), 8-9. Lásd még: Frey Mária: Az Európai Unió foglalkoztatási stratégiája, homepage of MTA KTI, in: http://econ.core.hu/doc/mt/2004/hun/Frey_I.pdf (2014.06.23.) 145-193.

⁶ Kardos Gábor: *Üres kagylóhéj? A szociális jogok nemzetközi jogi védelmének egyes kérdései*, Budapest, Gondolat Kiadó, 2003. Cited by: Petrovics Zoltán: A biztonság árnyékában. A munkajogviszony megszüntetésével szembeni védelem alapkérdései, Ph.D. értekezés, Budapest, 2016, 123-124.

⁷ Decision of the Constitutional Court no. 8/2011. (II.18). Cited by: Petrovics 2016, 96.

Right to work as social right establishes state obligations to introduce conditions for the enjoyment of the right (such as employment policy, job creation measures etc.). Right to work as subjective right has not been limited to work performed under the employment contract, it included right to free choice of occupation and right to engage in work. This right enjoys the same protection as the freedom rights against the state interventions. To decide on the constitutionality of restrictions differentiated measure has been introduced distinguishing between setting conditions for the choice of occupation and engagement in work.⁸

Role of capabilities of the human resource is joint with the reflexive labour law regulation. The term 'reflexive labour law' was used by Rogowski and Wilthagen in 1994. According to this theory the legal system shall be regarded as an independent system such as the political and economic system. All three systems shall protect its own intuitions. By deviding law, politics and market a decentralized societal structure would be created, in which power is splitted between autonomous institutions linked to one another. Autonomy of the legal system is precondition for rule of law and for objective jurisprudence. It would be unreasonable to separate legal system from its surrounding environment. If legal system lost its independence it would be a chanel to express political will.⁹

Though, if law were separated from other societal sub-systems, societal effects could not prevail not guaranteing its effectiveness. This is particulary true in labour law, of which evaluation takes place by means of its societal and economic effects. Labour law can be seen as self-reflexive and self-supporting. Organizationally it is closed, in a cognitive sence it is open. Organizationally the signs of inner operation call for reproduction and renewal. The cognitive openness refers to the answers given to signs coming from outside. Therefore law, politics and economy effect each other not meaning that these three systems would be totally open to the effects of other systems.

Consequent law applies indirect regulating technics to influence. This is self-regulation and self-reflexion. Legal regulation tells us hardly enough how other systems accept it, that is why inner process shall be evaluated and legal contexts of other fields of science shall be analised.

Reflexive labour law has an important role in launching such a social policy in which more people are able to enjoy social rights, and to lead a life accordingly the capabilities. Freedland and Countouris, Deakin and Rogowski refer to Sen and Nussbaum capability approach, and make a comaprison with the labour market.

⁸ Decisions of the Constitutional Court no. 21/1994. (IV. 16.), ABH 1994, 117, 120-121.

⁹ On reflexive labour law see: Arthurs, H.: Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labour Law, in: Brian Bercusson – Cynthia Estlund (edit.): *Regulating Labour Law in the Wake of Globalisation. New Challanges, New Institutions*, Oxford and Portland, Oregon, Hart Publishing, 2007, 19-36. On the future of labour law see: Bercusson – Estlund 2007; Catherine Barnard – Simon Deakin – Gillian S Morris: *The Future of Labour Law. Liber Amicorum Hepple, B. QC*, Oxford and Portland Oregon, Hart Publishing, 2004; John D.R. Craig – S. Michael Lynk (edit.): *Globalization and the future of Labour Law*, Cambridge, Cambridge University Press, 2006.

In the centre of Sen's theory stands the capability to function focusing on what one is able or unable to do. This theory refers to the practical opportunity, functioning is one's factual achievement, which is accomplished by one's being and activities.¹⁰

What does practical opportunity mean? For Sen it means capability. Activity is not used in its usual sense, it also refers to wishes, for example to eat properly. Two examples of starving people illustrates this concept: one starving person does not eat on religious grounds, the other does not have anything to eat. This is the difference between activity and practical opportunity.¹¹ Sen focuses on the interests instead of activities. Two ways are distinguished how to interpret one's interest and achievement: the way of welfare and advantage. Welfare applies to activities carried out in favour of one's well being. Advantage relates to practical opportunities which are at one's disposal, and in accordance with one can choose. One's set of capabilities is set of ways of activities corresponding to one's right to choice. This set of capabilities are influenced by the goods, the environment surrounding the person, personal characteristics, and all these factors lead to activities. For measurement of set of capabilities Sen refrains from determining a method, because the problem, the circumstances make one's characteristics and capabilities a varying factor.¹²

In Sen's theory practical opportunity is determined by personal characteristics (including disability), in a broader sense by the environment and disposable goods. Practical opportunity relates to right to choice according to which one acts. Dignity of choice becomes a special role in this theory.

The concept of Martha Nussbaum is based on human right approach emphasizing that human beings must be examined in themselves not taking into consideration the family relations. This theory completes Sen's concept listing the fields of life where capabilities are essential: lifeleading, physical health, creating environment, decision making regarding our life, thinking, emotions, making contact etc.¹³ Capabilities are divided into three categories: essential, inner and complex capabilities. Children already have essential capabilities, they are the basis for improvement of others. Inner capabilities can be developed by training, education and can be acquired by socialization. Complex capabilities are joint by inner and external capabilities in order to enjoy the above mentioned fields of life.¹⁴

¹⁰ Sophie Mitra: Capability Approach and Disability. *Journal of Disability Policy Studies*, 2006/4, 236.; Mark Freedland – Nicola Countouris: *The Legal Construction of Personal Work Relations*, Oxford, Oxford University Press, 2011, 378-379.

¹¹ Mitra 2006, 238.

¹² Mitra 2006, 238.

¹³ Martha C. Nussbaum: *Sex and Social Justice*, Oxford, Oxford University Press, 1999, 41-42.

¹⁴ Nussbaum 1999, 44. See more details about the connection between the market and the capability-concept in: Simon Deakin: Social Rights and the Market. An evolutionary Perspective, in: Brendan Burchell – Simon Deakin – Jonathan Michie – Jill Rubery (edit.): *Systems of Production. Markets, organisations and performance*, London and New York, Routledge, 2005, 75-88.; Simon Deakin – Ralf Rogowski: Reflexive labour law, capabilities and the future of social Europe, in: Ralf Rogowski – Robert Salais – Noel Whiteside (edit.): *Transforming European Employment Policy. Labour Market Transitions and the Promotion of Capability*, Cheltenham, UK, Northampton, MA, USA, Edward Elgar, 2011, 229-254.

How the relationship between labour law regulation and capability approach can be defined? Aim of labour law regulation is not only to balance between the parties. Among the aims of labour law such an objective shall be supported which promotes the principle of autonomy and equality in work, secures the enjoyment of decent living and social rights. And it does so in favour of a sustainable society. This theory surpasses the frames of labour law and human rights constitute a limitation of the employer's power giving broader space to the collective bargaining and the principle of partnership.¹⁵

However in time of economic crisis it is hard to imagine parties will live with the freedom of contract at a broader scale according to the partnership's principle. Moreover, in the Hungarian labour law regulation the realization of such a principle is far more harder than in other Western-European countries.

Deakin and Rogowski think that Supiot-report highlights the basic problem: how labour law can be reregulated in a way which is capable to cope with the market and organizational expectations relating reflexively to them. Supiot did not consider the rigidity of fordist model and new technologies the only reasons for change. He pointed out also unemployment by loss of wages, sickness, aging, and dependent relations causing inequality. Collective labour institutions were unable to provide effective protection for employees. One main reason for this is that social and economic rights¹⁶ were based on stabil employment. He suggested a labour law reform looking beyond employment, and labour law protection was linked not only to the labour relationship, but also to beyond it by means of new regulating technics and political initiations.

¹⁵ On the change of labour law see: Simon Deakin – Gillien S. Morris (edit.): *Labour Law*, Oxford and Portland, Oregon, Hart Publishing, 2012, 30-37, 131-190.; Mark Freedland – Nicola Countouris: *The Legal Construction of Personal Work Relations*, Oxford, Oxford University Press, 2011; ILO (1997) Contract Labour – Fifth item on the agenda Report V (1) to the International Labour Conference 86th Session 1998, Geneva; Simon Deakin – F. Wilkinson: *The Law of the Labour Market. Industrialisation. Employment and Legal Evolution*, Oxford, Oxford University Press, 2005; Roger Blainpain – Frank Hendricks: *European Labour Law*. Kluwer Law International Bv The Netherlands, 2010; B. Veneziani: The Employment Relationship, in: Hepple, B. – Veneziani, B. (edit.): *The Transformation of Labour Law in Europe, A Comparative Study of 15 Countries 1945-2004*. Oxford and Portland, Oregon, Hart Publishing, 2009; Simon Deakin: The Contribution of Labour Law to Economic and Human Development, in: Guy Davidov – Brian Langille (edit.): *The Idea of Labour law*; Oxford, Oxford University Press, 2011, 156-178., <https://doi.org/10.1093/acprof:oso/9780199693610.003.0011>; Mark Freedland – Nicola Countouris: The Legal Characterization of Personal Work Relations and the Idea of Labour Law, in: Guy Davidov – Brian Langille (edit.): *The Idea of Labour law*. Oxford, Oxford University Press, 2011, 190-208.; Arturo Bronstein: *International and Comparative Labour Law*. Palgrave Macmillan, International Labour Organisation, 2009, 1-22.

¹⁶ See about development of economic and social rights: C. Kaufmann: *Globalisation and Labour Rights. The Conflict between Core Labour Rights and International Economic Law*, Oxford and Portland, Oregon, Hart Publishing, 2007.

This included the establishment of labour market status instead of employee status resulting in the enjoyment of social drawing rights out of the labour relationship making possible lifelong learning and training.¹⁷ This concept is in compliance with the capability approach. It facilitates to make labour market more flexible by introducing reforms on the reconciliation of work and family life, and by paying contributions to the social security system in the case of unemployment creating security.

As detailed above I tried to highlight that one basis of sustainable society is human dignity and – in relation to this – establishment of such conditions under which people can gain, develop and enjoy their capabilities, as work forms existential part of the individual providing security, which is important in the *flexicurity*¹⁸ concept very much.

¹⁷ See more details about this in: European Commission: Transformation of labour and future of labour law in Europe, Final Report, 1998. 212-217. paragraphs. See effects of social rights on the labour market in: Simon Deakin: Social Rights and the Market. An evolutionary Perspective, in: B. Burchell – S. Deakin – J. Michie – Rubery, J. (edit.): *Systems of Production, Markets, organisations and performance*, London and New York, Routledge, 2005. 75-88.

¹⁸ On the felxicurity see: Y. Stevenst – Buggenhou van B.: The Influence of Flexibility as a Motor of ChangingWwork Patterns on Occupational Pension as Part of Social Protection in Europe, *Comparative Labour Law & Policy Journal*, 1999-2000/21, 331-370.; K. V. W. Stone: Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in our Time, in: Bercusson, B. – Estlund, C. (edit.): *Regulating Labour Law in the Wake of Globalisation, New Challenges, New Institutions*, Oxford and Portland, Oregon, Hart Publishing, 2009, 115-136.; J. Michie – M. Sheehan: Labour flexibility – securing management’s right to manage badly?, in: Brendan Burchell – Simon Deakin – Jonathan Michie – Jill Rubery (edit.): *Systems of Production, Markets, organisations and performance*, London and New-York, Routledge, 2005, 178-191.