

*Review of the book*  
***The Sources of Labour Law***  
*Edited by Tamás Gyulavári, Emanuele Menegatti*

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Recent weeks saw the publication of the monograph by several authors, entitled: *The Sources of Labour Law*. It consists of studies prepared by outstanding labour law specialists, edited by Tamás Gyulavári and Emanuele Menegatti.

The monograph is divided into two parts. The first part is devoted to general issues related to labour law sources, while the second one provides an analysis of the hierarchy of these sources in individual countries representing different circles of legal cultures (consisting of 15 national reports). As a result, the whole work is based on the principle of universalism of dogmatic studies, because it discusses various aspects of the problems of contemporary labour law sources, both in general theoretic terms and in dogmatic terms.

The first chapter of the monograph contains an introduction to the subject of the study. It outlines the structure of the book, provides the characteristics of individual sections of the publication and, at the same time, refers to the issues discussed in the national reports. The objectives of the reviewed publication include presentation of the structure of labour law sources, starting from legislation, through collective and individual agreements, to jurisprudence. The authors discuss the issues of labour law sources both in the horizontal comparative perspective, and from the national points of view. The second important thread of the study, apart from the presentation and analysis of labour law sources, is the issue of the hierarchy of such sources. The adopted research hypothesis states that the structure and hierarchy of labour law sources have recently been challenged by endeavours of legislation, politicians, and economists, as well as by the lobby of employers. As a result, the fundamental objective of the reviewed monograph is to provide a map of globally noticeable trends in relation to the recent transformations of sources and their hierarchical order in labour law. The study will also outline the issues of historical development and recent reforms related to the sources of labour law.

Chapter two discusses the issues of historical reconstruction of the origins of current labour law regulations. Alan Neal presents a comparative analysis of the central place of the employment contract in the common law and continental systems, and provides an insight into the reception of principles the "contract" in the Chinese legal system. The author concludes that there is an urgent need for structural revision, due to the fact that the current structure is unable to reflect the specificity and dynamics of current labour markets and labour law relationships.

In the third chapter by Edoardo Ales, the author focuses on the regulatory function of collective agreements in the light of their relation to legislative instruments and individual employee rights, at the same time presenting a multi-dimensional approach to international and transnational collective and individual labour law standards. The view presented by the author that the wide role assigned to collective agreements led, in a way, to reducing the scale of regulatory capacities of individual employment contracts.

The further chapters of the reviewed publication are devoted to reflections on the role of case law in the legal context under the common law and continental law systems. The authors emphasise the role of jurisprudence, which generally plays a similar role in the development of labour law, in spite of systematic differences between specific legal areas. Joellen Riley Munton points out that under common law it was precisely jurisprudence that influenced the development of numerous essential labour law concepts, in particular the definition of "employment" and its adaptation to changing circumstances that result from the transformations of work. On the other hand, Martin Risak presents the role of courts in creating the law, in particular in filling the gaps that exist in the legislative area.

Chapter six discusses the issues of the influence of economic management of the EU on the hierarchy of sources of law in Member States. The author analyses the challenge of the model of employment regulation based

on obligatory statutory protection with a centralised model of collective agreements, and the EU's support for the flexible standard.

The second part of the monograph is devoted to development issues in countries on 6 continents. The editors took care to present a wide array of cases representing different regions of the world, traditions, legal systems (continental law and common law), and social development. Apart from studies on European countries, the publication also contains reports from American countries, as well as Australia and Africa. However, a vast majority of texts concerns European countries, most of which are EU Member States (Russia is an exception).

The structure of national reports refers to several key issues in each of the discussed national examples, i.e.:

- the main sources of labour law and their historical development,
- the relationship between the law and collective agreements,
- the relationship between various levels of collective agreements, including their decentralisation,
- the relationship between the employment contract and mandatory statutory principles and collective agreements,
- the role of jurisprudence (case law).

The first of the aspects studied in the monograph is the analysis of sources of law in the light of the Constitution. It is worth noting that the authors fulfil the requirement of comprehensive discussion, by using comparative analysis in reference to continental and common law solutions. The monograph refers both to the hierarchy of sources of law in continental legal systems (e.g. Denmark, France), as well as legal systems that originate from common law that evolved to the continental version, as in South Africa. The authors also analysed German constitutional traditions and their influence on Polish and Hungarian legal regulations, which is a part of the analysis devoted to Central European legislation, in particular with respect to the application of jurisprudence. At the other end of the spectrum are legal regulations originating from Russia and described in reference to the Russian constitution, which is characterised as the most important statutory act, although it is closely linked to previous, Soviet constitutions. A different approach is presented in chapters focusing on common law systems. The insightful reflections are presented in form of an analysis of Anglo-Saxon solutions, including, in particular, the problem of a specific elimination of state legislation protecting workplaces by the Supreme Court of the United States under the pretence of prioritising constitutional freedom of obligations in employment relationships.

Another aspect of the reviewed publication refers to the relationships between legislation and collective agreements. The authors analyse the widely accepted principle of favour. The analysis concerns individual national regulations and their modifications, such as the

Hungarian reform of 2012 that permits introducing any changes to the minimum statutory guarantees, even to the detriment of employees, which demonstrate the realisation of the problem principle. It is also manifested in the analysis of legal systems, where the principle of favour is still the main principle in collective agreements (e.g. Russia, Brazil and China). One should note that the reviewed section of the monograph meets the criterion of comprehensiveness, as it analyses examples of legislation both from common law and continental law areas.

The third aspect concerns the issue of decentralisation of collective agreements, in particular their internal position in the hierarchy of sources of law of the collective agreements itself. The thread that should be considered interesting, is the issue of theoretical models connected with the outlined proposal of division into centralised systems, with collective agreements as the most important in the sector (e.g. Sweden or France) and decentralised systems based on generally exclusive contracts concluded with a single employer (e.g. the United Kingdom, Australia). The criterion of comprehensive discussion is met due to references to such legal systems that were not subject to decentralisation, e.g. Brazil or South Africa, which enables the analysis of the whole problem universe in this respect. It should also be noted that in the conclusion section, the editors point to an emerging global trend, according to which the neo-liberal convergence between collective agreement systems is introduced mainly by state legislative interventions.

Another important aspect analysed in the monograph is the issue of work conditions agreed in the content of the employment contract. According to the authors, the main principle states that the introduced conditions may only be more favourable than those provided in collective agreements. The authors apply the principle of thoroughness by referring also to exceptions from the above principle, which were introduced in the Australian, Hungarian and Brazilian legal systems. The authors also present solutions that provide a complete counterpoint — i.e. examples of limited possibilities of contracting changes that may be observed in Danish or Swedish regulations.

In conclusion, one should state that authors of individual chapters generally refer to the set research hypothesis. An example might be the analysis of Australian reforms connected with labour law, dictated by changing political forces, by following the trends in Brazilian legislation and the Chinese reform of 2008. One should also note the fragment on sources of labour law written by Łukasz Pisarczyk. The author presents the problems of Polish labour law sources in an relevant and duly insightful way.

The book is worth recommending and useful for its wealth of information due to the wide variety of discussed topics. The readers will find plenty of valuable information of a global nature, which may allow them to broaden their knowledge on labour law sources in various legal systems. This reviewed volume certainly fills a gap in the literature, at least within the confines determined by the authors.