I. INTRODUCTION

In 1992, following the change of the regime, apart from the labor law of the private sector, the law on public sector officials, a new act (Ktv.: this is the Hungarian short name of the Act), was established. Act XXXIII of 1992 on the Status of Civil Servants acting on 1 July 1992 was in force for nearly twenty years. In 2010, the public service was placed on new foundations, one of which was the lack of background needed to complete the career system. This deficiency is also intended to replace the 2010 Act LVIII of 2010 on the Status of Government Officials, which entered into force on 6 July 2010 and then repealed on 28 February 2012. (Kjtv.: this is the Hungarian short name of the Act). The Kjtv. were covered by the central government departments, government officials and non-professional members of the law enforcement agencies, thus removing this circle of employees from the scope of the Act. This legislation did not affect the autonomous state administration bodies and the local government offices.

In addition to the fact that it was the first law in the sphere of public sector disintegration, it became "famous" and not very popular with the introduction of the legal institution of the dismissal without justification and proved to be short-lived.

Ktv and Kjtv were simultaneously repealed with the entry into force of the new law regulating public service.

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1 The presentation was supported by the National Research and Development Agency (K120158 research topic) from the NKFI Fund.
2 For the employees of the central administration, the creation and introduction of a new career model was the primary goal of the legislator. See further analyzes of the legislation. G. MÉLYPATAKI: A kormánytisztviselői törvény az európai jog tükrében. Sectio Juridica et Politica. Tomus XXIX. 2011. 483–502.

According to the law, the introduction of an employer's unjustified dismissal became necessary due to the fact that Hungary was in a very serious economic situation, which required the creation of flexible working conditions. On the other hand, the legislature justified this otherwise contradicting many international law provisions, so that if a government official is entitled to terminate the legal relationship unilaterally without reason, why this employer can not. This legislator dismissed the employer and the employee as a quasi-contradictory factor in dismissing the legal relationship, ignoring all the characteristics of the employment relationship, which is in itself a contradiction and an utopia.

5 (1) (a) and (b) of the Act V of 2012 on the rules on temporary, amending and repealing the Law on Civil Servants and amending certain related laws.
Act CXCIX 2011 on the Status of Civil Servants on the basis of the experience of six years since the entry into force of the Law on 1 March 2012, some of the shortcomings and problems of the law can be detected and may become timely in view of the revision of the law.\textsuperscript{6}

According to the explanation of this law, "the general objective is to promote the establishment of a strong civil servant and value-saturated public service officer with the vision of establishing a senior staff with a high level of professional knowledge and the development of new public service life-cycle models, and by providing clear rules for public administration workers." It is also intended to establish a public service that is efficient and cost-effective, democratic, non-party and lawful.

The Act also introduced new rules regarding the modification of the appointment, the purpose of this lecture is to demonstrate in practice the appointment of modification cases to demonstrate that such regulation needs to be corrected, despite the fact that the legal institution can not be unlawfully detected by the court, the more vulnerable to protect the party, to avoid abuse of office or power.

II. NEW RULES FOR AMENDING YOUR APPOINTMENT IN KTTV.

A general principle in labor law is that modification of contracts is only possible with the agreement of both parties. In labor law, the content of the labor law and the employment contract does not have to be the same, and the content of labor law is also governed by the employment rules. This may result in a change in the employment relationship if the law, the employment contract or the collective agreement change.

The current labor law regulations allow an unilateral amendment of the contract of employment by the employer, while maintaining strict safeguard rules. Such a change may take the form of a job other than a contract of employment, at a workplace or other employer, but only for a limited period of time and to ensure the employee's existential protection only with payment of the basic salary for his assigned job, but on his original job.

In addition to the foregoing, the Labor Code obliges the employer to amend the employment contract if the employee returns to the place of work after a long-term absence and has been wage-improvement at the employer's absence. As a one-sided modification obligation, a pregnant or nursing worker is required to offer a job appropriate to his / her health status or to exempt a certain job from paying a basic salary. It can be seen that labor law allows a one-sided employment contract amendment to the employer only as a strict exception, ensuring that the worker is not thereby disadvantaged.

Labor law is intended to ensure the balance of the parties, protecting the employee's dependency. The definition of the contents of the employment contract is apparently consensual, but the equality of the parties in that relationship does not arise. Subject to the permanent nature of the legal relationship, the acceptance of the contents of the employment contract may not be modified by the employer at the disadvantage of the employee, unilaterally, by endangering the obligations arising from the

employment relationship. This guarantee rule protects the employee's vulnerable position.

The economic interest of the employer is to maximize the performance of the employee, which cannot be met if the employee's social security has exposed the unilateral modification of the employment relationship. Thus, in the case of that legal institution, the general purpose of labor law is also safeguarded, the protection of the worker because of his vulnerability, which is guaranteed by the legislator's incorporation by means of public law.\(^7\)

However, as regards labor law, the content of the public service relationship cannot be freely formulated by the parties, its elements will be incorporated into the legal declaration establishing the legal relationship, as determined by the statute, in the appointment. The legal relationship is established by appointment, which is an act of public authority. When determining the content of the appointment, the public service employee does not have a bargaining position. A civil servant may not influence the content of his appointment, his "contract freedom" shall prevail in that he or she is free to decide whether or not to accept the appointment.\(^8\)

Regarding the content of the legal relationship established with the appointment, states that it should only be amended by mutual agreement between the state administration body and the government official.\(^9\) This principle has already been contained in the earlier law governing public service. Changes to the content of the appointment shall be governed by the rules for appointment and adoption.

However, from the general rule, Section 48 para. (2) contains exceptions, which lists taxative cases in which the public servant does not have the consent, the employer may unilaterally modify the appointment. The former Ktv also included the amendment of the employer's unilateral appointment, but the legislator introduced strict limits to prevent disadvantage of the civil servant.\(^10\)

The current regulation has broken this regulatory principle. There are cases of modification of the unilateral legal relationship, when the civil servant is clearly in a better position with the amendment. Thus, the progress of the government official in his salary step and the establishment of his salary according to law may have benefits for the government official.

Unilaterally change the appointment, the employer determines the requirement for an examiner required for the career of a government official, which does not necessarily benefit him. Furthermore, the one-sided amendment, which may also be the disadvantage of a government official - if it changes the place of work within the area of the settlement, then the change in the status of the government may be disadvantageous due to family circumstances.

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\(^7\) GY. KISS: Alapjogok kollíziója a munkajogban. Pécs, 2010. 9. Here see: In particular connecting to labour law this idea: "lawmaking and law enforcement are inclined to the weakness of the present and tend to be even today."

\(^8\) I. HORVÁTH: A közszolgálat munkajoga. in.: T. GYULAVÁRI (ed.): Munkajog. Budapest, ELTE Eötvös Publisher 2014. 553.

\(^9\) Ktv. Article 48 (1)

\(^10\) Paragraph 14 (1) (b) and (c) of the Ktv. provides that a unilateral amendment to the disadvantage of a civil servant is available to the administrative body if there is a reorganization within the administrative body but in this case the public service, employment, the salaries must remain unchanged and the place of employment must remain within the area of the settlement. The other case is if a succession occurs but the former must not be changed.
This study is based on the 48 (2) (d), previously unpublished employer appointments that are not known in the public sector, concern the practical problems of modification, in particular if the employer modifies the appointment according to which the job has changed.

The legislator has created two guarantee rules that need to be taken into account when unilaterally modifying the appointment. On the one hand, the appointment can be amended by the employer without the consent of the government official if the new job is in line with the qualifications, qualifications or professional qualifications of the government official, and on the other hand if the new position is disproportionate to the government official, in particular his health or family circumstances it does not hurt.11

The first guaranteed warranty rule is, in my opinion, objective in nature, justified by the relevant documents, supported by qualifications, qualifications and professional experience. If the civil servant disputes the lawfulness of the unilateral measure, it may, under this warranty rule, examine the unlawfulness of the court.

The other guarantee rule is subjective, and disproportionate harm to family circumstances is dependent on individuals, and the existential situation also depends on a number of external circumstances, so the assessment of this circumstance is relatively complex by the employer and can lead to the illegality of the measure more quickly than the existence of the facts as outlined in the first guarantee questions.

Perhaps this has been acknowledged by the legislator by creating an exception to the rules because managers are not covered by this latter guarantee rule,12 so the leader of the labor protection law network is even tighter and does not provide real protection to the objective guarantee rule. In general, the leader has a degree in the public sector that makes it possible to fill most jobs.

A civil servant who, because of his unilateral employer's action, is subject to a substantial change in his salaries - may only be reduced - or who is a director of a subordinate official, may apply for an exemption from the employer, a salary for the dismissal period and, if he is entitled to, severance pay. The reason for the dismissal of the employer at that time was that the civil servant had requested the legislature to justify the modification of the unilateral appointment of a civil servant by the civil servant for mandatory relief.13

The dismissal of public officials without justification can thus be deduced from the law, the justification for not accepting the appointment of the employer as a substitute for the change of job - an appearance, and for this reason the civil servant does not recognize the real cause of the dismissal, no reason.

By placing the legislator in the grounds for exemption under Article 48 (2). (d), the lawfulness of the measure can not be disputed with reference to this, nor does it justify the employer's measure to exonerate the right of dismissal as a reason for the need to change the job, without the domestic remedies available at home.

Although the modification of the appointment as an employer measure does not in itself lead directly to the termination of the legal relationship, it is necessary to

11 Kttv. Article 48. (4)-(5)
12 Kttv. Article 48. (6)
13 Kttv. Article 63.(2)
examine the provisions of the Act on the Establishment of Decisions made in the absence of a reasoned waiver. 48 (2) (d) of the Basic Law and International Standards.

III. RELEVANT JUDICIAL PRACTICE ON THE SINGLE APPLICATION AMENDMENT

In litigations before the Kuria, government officials asked for the unlawfulness of the modification of the employer's unilateral appointment to challenge the reality and the rationality of the measures. Mansion states that "the appointment without the consent of the government official, as a unilateral statement of the state administration body, does not provide for a duty to state reasons, and therefore its legality is not determined by whether the measure was real and reasonable, but that the Section 48 of the Warranty Rules has been respected by the State Administration."\textsuperscript{14}

The Kuria did not find any breach of warranty rules in the relevant cases.\textsuperscript{15}

However, when the appointment is amended, the employer must abide by the principles of public service law, and the court may, where appropriate, violate those principles in order to determine the unlawfulness of the measure. The examination of several principles of general behavioral requirements may lead to the appointment of an appointment to be unlawful in a given specific case. On the one hand, in the exercise of the rights and the fulfillment of obligations, the governmental service and the civil service must act in accordance with the principles of good faith and fairness.\textsuperscript{16}

On the other hand, abuse of rights is prohibited, in particular, when it is aimed at limiting the legitimate interests of others, limiting, harassing, harassing or suppressing their opinions.\textsuperscript{17}

In the cases under investigation, government officials have also referred to the abuse of rights, but it is crucial to be able to prove this question. The analysis of the case law of Mansion Law Abuse has examined in detail the cases pending before the Mansion, grouped according to the nature of the employment relationship. Perhaps it is not surprising to find the report that public officials and government officials have often denounced the political reasons and the rhetoric of abuse of rights (representation of interests, expression, criticism against leaders, previous qualification, previous appeal against performance appraisal).

The jurisprudence analysis team emphasized that, in the case of abuse of rights, the employee must demonstrate that the employer's measure constitutes an abuse of rights as a result of, or is a causal link between, the conduct complained of, that is to say, he has to prove the worker's claim in that regard.\textsuperscript{18}

Evidence is usually difficult.

\textsuperscript{14} Mfv.I.10.842/2016/6.
\textsuperscript{15} See also Mfv. II.10.564/2014/5.
\textsuperscript{16} Ktv. Article 9. (2)
\textsuperscript{17} Ktv. Article 10. (1)
\textsuperscript{18} The case law of the prohibition of abuse of rights. A summary report of the case law analytical group. http://www.kuria-birosag.hu/hu/joggyakorlat-elemzo-csoportok-osszefoglalo. Downloaded: August 10, 2018
Recourse to judicial practice does not provide a sufficient guarantee for the government official with regard to established practice, as opposed to modifying the one-sided appointment as a result of the legislator's erroneous legislation. The one-sided appointment change should be restricted to appropriate limits - eg. only for a definite period of time - so as not to present a real threat to all government officials.

IV. SINGLE APPLICATION AMENDMENT AND FUNDAMENTAL RIGHTS ADOPTED IN THE BASIC LAW

Among the labor law rules, first, the Kjtv. with the entry into force of the law, the possibility of eliminating the employer's failure to state reasons in the public sector. Numerous legitimate criticisms have been made for the statutory provision and many have referred to the Constitutional Court with reference to the unconstitutionality.

The Constitutional Court has ruled on 8/2011. (II.18.) AB declares the Kjtv unconstitutional. Article 8 (1) and annulled it with effect from 31 May 2011. That provision contained the exclusion of the government official's legal status without justification. The same provision of the KTV, which included the release of the civil servant's legal relationship without justification, (IV.7.) AB has been annulled.

The Constitutional Court has found that Article 8 § 1 (b) unconstitutional violates the following principles set out in the Constitution: the principle of the rule of law enshrined in Article 2 (1) of the Constitution, Article 70 / B. (1) of the Constitution, the right to appeal to the court referred to in Article 57 (1) of the Constitution. (Decision No. 8/2011 (II.18.) AB) The Constitutional Court has found that Article 8 § 1 (b) unconstitutional violates the following principles set out in the Constitution: the principle of the rule of law enshrined in Article 2 (1) of the Constitution, Article 70 / B. (1) of the Constitution, the right to appeal to the court referred to in Article 57 (1) of the Constitution. The right to human dignity is the most basic basic law that protects the whole human personality and the legal status of man. The fundamental content of this right is that every person is treated with human dignity, the individual is entitled to treat him with respect for all human beings, bearing in mind the value of human personality. Human dignity must be respected and protected by the state. The Kt. Article 8 (1), as can be stated in the explanatory memorandum of the Act, provides an opportunity for the government official to terminate his legal relationship by the employer in order to facilitate the pursuit of government aspirations without legal restrictions. This legal solution, as the Constitutional Court has pointed out above, involves the possibility of arbitrary abolition of the public service relationship based on the subjective judgment of the employer, which could result in unforeseeable danger to the maintenance of the government official and his family. This creates an unconditional subordination, a vulnerable situation for the government official. In the opinion of the Constitutional Court, this vulnerable position of a government official as a "tool" of state intervention is contrary to human dignity. (Decision No. 8/2011 (II.18.) AB). See also: GY. KISS: Alapjogok kollíziója a munkajogban. Pécs, Justis Bt. 2010. 41-68


20 According to the Constitutional Court, in the closed system of public service contracts, the statutory regulation of the grounds for exemption and, consequently, the obligation to state reasons for the exemption is a guarantee issue of constitutional significance governed by Article 70 / B of the Constitution. (1) (Decision No. 8/2011 (II.18.) AB)

21 In the opinion of the Constitutional Court, the legislature, by not regulating the statutory conditions for the dismissal of the employer and providing the opportunity to dismiss the reasoning of the decision, disproportionately restricted the right of a government official to enjoy the judicial protection under Article 57 (1) of the Constitution. (Decision No. 8/2011 (II.18.) AB)

22 The right to human dignity is the most basic basic law that protects the whole human personality and the legal status of man. The fundamental content of this right is that every person is treated with human dignity, the individual is entitled to treat him with respect for all human beings, bearing in mind the value of human personality. Human dignity must be respected and protected by the state. The Kt. Article 8 (1), as can be stated in the explanatory memorandum of the Act, provides an opportunity for the government official to terminate his legal relationship by the employer in order to facilitate the pursuit of government aspirations without legal restrictions. This legal solution, as the Constitutional Court has pointed out above, involves the possibility of arbitrary abolition of the public service relationship based on the subjective judgment of the employer, which could result in unforeseeable danger to the maintenance of the government official and his family. This creates an unconditional subordination, a vulnerable situation for the government official. In the opinion of the Constitutional Court, this vulnerable position of a government official as a "tool" of state intervention is contrary to human dignity. (Decision No. 8/2011 (II.18.) AB). See also: GY. KISS: Alapjogok kollíziója a munkajogban. Pécs, Justis Bt. 2010. 41-68

23 Decision No. 1068/B/2010. AB
As a result of the unilateral appointment as a modification, the exemption, the justification of appearance, actually allows the government official to give up without an explanation, by introducing an intermediate employer's measure and appointment.

In the cases investigated, the employer applied the unilateral amendment of the appointment to the employers, and rarely the subordinate government officials, which resulted in a 1/3 decrease in salaries in some cases. Thus, the employer creates a situation in which the government official does not wish to maintain the legal relationship, asks for his termination.

It is therefore necessary to examine the validity of the fundamental rights enshrined in the Basic Law in the case of that legal institution, which could not be established in the examination of the justification without justification.

The Constitutional Court ruled Kjtv. (1) of the Constitution states that "in the event of the dismissal of a government official, the absence of the grounds for dismissal and the statutory regulation of the duty to state reasons for the employer may jeopardize the party political neutrality, the independence, the impartiality and the legality of the administrative decisions".24

The unilateral modification of the appointment - with which the government official is disadvantaged - is equally endangering neutrality, legality, and impartiality. The unilateral modification of the appointment, which permits the employer to change the job without any legitimate reason, and to the analogy of the unconstitutionality of the non-justifying legal institution, is also in breach of certain articles of the Hungarian Basic Law. Thus, which sets out the right to human dignity, Article XII. which includes the right to work and occupation freely, and the provisions of Article XXVIII. which includes the right to take up court proceedings.

V. CONCLUSIONS

To conclude, I convey one of my judgments of the European Court of Human Rights. The verdict was issued by a Hungarian employee in the lawsuit against the Hungarian State in the absence of justification. The legal status of the Hungarian citizen shall be governed by the applicable law in force at the time. The employer has terminated the dismissal without reason, the employee has applied for compensation before the Court. The Court found the application partially well-founded and required the Hungarian State to pay damages. The Court emphasized that the purpose of the Convention for the Protection of Human Rights and Fundamental Freedoms is to 'non-theoretical or illusory, but to ensure practical and effective rights' and that the maintenance of the right to bring labor under domestic law does not in itself ensure the effectiveness of the right of access to a court in the event that this opportunity is deprived of all content and thus of all hope of success."25

24 Decision No. 1068/B/2010. AB
25 K.M.C. v. Hungary (application no 19554/11) European Court of Human Rights