| Chapter 4 |

Slovenia: Social Law and Labor Law – an Overview of Key Concepts

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ABSTRACT

The chapter, grounded in most relevant domestic literature on employment and labor relationships, provides the reader with a general overview of Slovenian individual and collective labor law regulation, its relation to EU law, and its placement in the wider field of social law, alongside social security law or social insurance regulation. It consists of an analysis of key sources of labor law, i.e., the Slovenian Constitution, the Employment Relationships Act or, simply, the Slovenian labor code,[1] and autonomous legal sources like different-level collective agreements. Other important acts, like the Labor Inspection Act, Public Employees Act, or the Public Sector Salary System Act, are also referred to in places as to depict the regulatory framework as a whole. The chapter also addresses key aspects of most important labor law institutions, like the employment relationship, established by the employment contract, never staying far away from the evergreen interplay between labor law and (contract) civil law. It also considers some of the common challenges, faced in the field today, like disguised employment relationships or the conclusion of successive fixed-term contracts.

KEYWORDS

individual labor law, collective labor law, social law, constitution, Employment Relationships Act, employment relationship, employment contract, Slovenia

1. Constitutional Provisions

Next to general provisions of the Slovenian Constitution,[2] like art. 1 (determining Slovenia is a democratic state), or art. 2 (according to which, Slovenia is a state governed

1 Throughout the contribution, the authors use the suggested names (translations) of acts, provided by the Legal Information System of the Republic of Slovenia. They only depart from such naming in cases of syntactically completely inappropriate translations.

2 Official Gazette of the RS, No. 33/91-I to 92/21. All citations refer to the legislation applicable at the time of the initial submission of the chapter for publication. Due to COVID-19 emergency legislation, several pieces of legislation were later amended. All amendments that are highly relevant for this discussion have been considered. Most recent issues of Official Gazettes concerning the applicable legislation are listed among the sources of Slovenian labor law at the very end of the chapter. Some legal sources, like the Criminal Code or the Civil Code or, for example, *lex specialis* antidiscrimination provisions, are included in the text but omitted in the final overview

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by the rule of law and a social state), at least six provisions enshrined om the human rights chapter of the Constitution are relevant in the field of labor law.

First, art. 49 stipulates the freedom of work, according to which everyone shall choose his or her employment freely, and shall have access under equal conditions to any position of employment. Art. 49(4) prohibits forced labor. Blaha notes that according to the case law of the Slovenian Constitutional Court, art. 49 guarantees not only that a person has the possibility of obtaining means for subsistence from employment or work but also entails the right to pursue one's chosen profession, the right to vocational training and education, and career advancement or promotion.[3] According to the author,[4] the personal scope of application of art. 49 comprises both employees as well as self-employed persons.[5]

Second, art. 50 stipulates the right to social security, guaranteeing citizens' the right to social security and the right to a pension, under conditions provided by law. According to art. 50(2), the state shall regulate compulsory health, pension, disability, and other social insurance, and shall ensure its proper functioning. According to art. 50(3), special protection in accordance with the law shall be guaranteed to war veterans and victims of war. At first glance, it might seem that there exists no link between art. 50 and labor law regulation. However, the Slovenian social security system is grounded in the notion of a Bismarckian, employment-based social insurance scheme, linking one's economic activity to his obligation of insurance. Since employees and self-employed persons are compulsorily insured in all social insurance branches, i.e., health, pension and disability, unemployment, and parental protection insurance, the link between art. 50 and labor law might not be *direct* or straightaway noticeable, but is still very much relevant. As observed by Bubnov Škoberne, social insurance is insurance against the occurrence of a social risk of one's temporary or long-term loss of earnings.[6] Traditional social risks, like unemployment, sickness, and old age, which are also covered by the Slovenian social insurance system, namely lead to a loss or reduction of one's salary or wage obtained from employment or other income, obtained from self-employment. From this perspective, the fact that the right to social security seems reserved for Slovenian citizens only must be approach with caution. If transgressing the sheer linguistic interpretation of art. 50, it is clear that all persons paying social security contributions in Slovenia, on the grounds of either employment or self-employment, are

of sources. Conversely, some legal sources are listed only within the final overview. Due to the high number of *lex specialis* labor law provisions included in, for example, legislation in the field of firefighting, healthcare, the judiciary, military service, policing, etc., those provisions are excluded from the final overview. The same applies to numerous decrees and other by-laws as well as collective agreements.

3 Blaha, 2011a, p. 767.

4 Ibid., p. 773.

5 Slovenian labor law as a rule refers to a *worker* (sl. *delavec*) as persons, performing work within an employment relationship. Due to the international readership, the authors however use the term *employee* (sl. '*zaposleni, zaposlena oseba*').

6 Bubnov Škoberne, 2010, p. 91.

entitled to receive social security benefits either in cash or in kind within the double-sided social insurance relationship.[7] In most cases, the latter is not grounded in the notion of citizenship or (permanent) residency but in other the legal grounds, like the conclusion of an employment contract, that lead to the obligation of insurance due to person's performance of a lawful economic activity. Any withdrawal, suspension, or reduction of social security benefits on the grounds of personal circumstances such as citizenship or residency would also lead to a violation of the right to private property, enshrined in art. 33 of the Constitution.[8]

Third, art. 75 of the Constitution stipulates that employees shall participate in the management of commercial organizations and institutes in a manner and under conditions provided by the law. Employees participation is in general governed by the Workers' Participation in Management Act (WPMA).[9] Blaha however notes that according to the case law of the Constitutional Court, the legislature is free to regulate the said right in different acts, such as workers employed in the private and in the public sector, and provide for a different scope of rights.[10] In doing so, he has no obligation of providing for employees' participation in management boards and/or supervisory boards. If not provided by special legislation, private sector workers exercise their rights on the grounds of the general WPMA. Concerning workers employed within public institutions, the author points out that the legislature should have stipulated special rights and obligations under the Institutes Act.[11]

Fourth, art. 76 of the Constitution stipulates that the freedom to establish, operate, and join trade unions shall be guaranteed. It is strongly related to the more general right of assembly and association, provided for in art. 42. As observed by Kresal Šoltes, the provision does not determine the content of the right itself, which can be derived from international law.[12] The constitutional right is further regulated by the Collective Agreements Act.[13]

Fifth and finally, art. 77 of the Constitution stipulates employees' right to strike. According art. 77(2), the latter may be restricted by law when required by public interest protection and with due consideration given to the type and nature of the involved activity. Additionally, art. 74 on freedom of enterprise is relevant for self-employed persons, wishing to pursue market activities. As observed by Zagradišnik, the Constitutional Court has determined the freedom of enterprise as the freedom of establishment, management, selection of market activities, business partners, etc., regardless of the size, status, or other characteristics of the enterprise.[14]

7 Extensively on the relationship in Strban, 2005, pp. 89 et seq.
8 For a recent discussion on proprietary protection of social rights see Strban and Mišič, 2020, pp. 1 et seq.
9 Official Gazette of the RS, No. 42/07 to 45/08.
10 Blaha, 2011b, p. 1071.
11 Official Gazette of the RS, No. 12/91 and the following (Blaha, 2011b, p. 1071).
12 Kresal Šoltes, 2011, p. 103.
13 Official Gazette of the RS, No. 43/06 to 45/08.
14 Zagradišnik, 2011, p. 1038.

Legislative labor law provisions (and health and safety at work provisions) also share a link with art. 34, of the Constitution, stipulating the right to personal dignity and safety, or art. 14, guaranteeing equality before the law, according to which everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance. According to art. 6 of the Employment Relationships Act (ERA),[15] employers must respect the prohibition of discrimination when hiring, throughout the course of the employment relationship and concerning the termination of the employment contract.

The Protection against Discrimination Act,[16] in art. 2, explicitly prohibits unequal treatment concerning employment and access to self-employment, employment conditions and selection criteria, promotions and working conditions, including remuneration and the termination of employment contracts. Equal treatment provisions apply to all industries and sectors. Art. 2 also prohibits unequal treatment concerning trade union or workers' association participation or participation in any other professional association, also considering equal treatment concerning benefits granted to members of such associations. Art. 13 however allows for several departures from categorical equal treatment protection in the field of employment. Different treatment on the grounds of age is for example allowed when it is objectively and rationally upheld by a legitimate aim, like employment and labor market policies or vocational training aims, and if the means to achieving such legitimate aim are adequate, necessary, and proportionate.

Similarly, religious, or other personal beliefs may represent lawful grounds for unequal treatment in cases of employment by churches or other religious organizations or public and private organizations, possessing a particular set of ethical beliefs, if employees' religious and personal beliefs represent a justified professional requirement according to the type and context of employment.

According to art. 15(3) of the Constitution, human rights and fundamental freedoms shall be limited only by the rights of others and in cases provided by the Constitution. Generally, every human right infringement must be grounded in a constitutionally legitimate aim and must pass the proportionality test. Whenever considering antidiscrimination provisions in the field of labor law, not only the provisions of the ERA, but also the provisions of the Constitution and of the general Protection against Discrimination Act must be considered. Prior to its enactment in 2016, it was the Implementation of the Principle of Equal Treatment Act[17] that had to be considered alongside pure labor law provisions on equal treatment.

Recently, however, the Slovenian Parliament introduced new grounds for dismissal, possibly considered as less favorable and unjustified unequal treatment of

15 Official Gazette of the RS, No. 21/13 to 203/20.
16 Official Gazette of the RS, No. 33/16 to 21/18.
17 Official Gazette of the RS, No. 93/07 to 33/16.

employees on the grounds of (old) age. Even if bound by ILO Convention No. 158 concerning the termination of employment at the initiative of the employer, and the European Social Charter (ESL), Parliament introduced a new cause of dismissal by which an employer can one-sidedly terminate an employment contract if the employee fulfills old-age retirement criteria. It must be established that there is no genuine reason for dismissal, either from the employee or the employer, e.g., a business reason. The Slovenian Constitutional Court has suspended the use of the said amendment of the ERA until it reaches a substantive decision in the case put forward by the trade unions on the grounds of unlawful age discrimination.[18] One the one hand, the amendment that was introduced by emergency coronavirus legislation is said to have followed the legitimate or public interest aim of securing employers' existence during the COVID-19 crisis.[19] However, from this perspective, the traditional business reason should have sufficed. On the other hand, the amendment was also supposed to have enabled enhanced employment of younger people instead of the old, who already enjoy social security (for old age), even if this legitimate aim of the labor market seems unrelated with the general aims of emergency coronavirus legislation. Even so, in cases of such dismissals, the employment of younger persons was not required by law, making the amendment inadequate in following the said legitimate aim. Since ERA already regulates the common business reason for dismissal, the part of the amendment relating to the legitimate aim of keeping businesses afloat during and after the health crisis, is to be considered not inadequate but unnecessary. From this perspective, both measures fail the proportionality test even before subject to its final step, the balancing of individual rights or constitutionally safeguarded values.[20]

2. Systematic Placement of Slovenian Labor Law

According to Vodovnik et al., labor law represents an independent branch of the Slovenian legal system, a characteristic confirmed by the fact that it possesses its own particular structure of regulation with its own principles and the fact that individual rights, stemming from the particular branch of labor law, enjoy protection under a

18 The final decision that annulled the amendment of the ERA and the Public Employees Act (Official Gazette of the RS, 63/07 to 202/21), containing the same provision as the ERA, was reached in November of 2021, after the chapter had been initially submitted for publication. See Decision of the Constitutional Court of the RS No. U-I-16/21, U-I-27/21 of 11 November 2021.

19 As in other EU Member States, COVID-19 reshaped the way we are to think of work organization, especially within particular service industries, where telework became the new norm, of course with all of its benefits and drawbacks, posing challenging questions of employee's autonomy, health, and safety (at the home office), supervision and privacy, work-life balance, etc. In the field of social security, countless measures concerning either new social security benefits or the amendment of the existing conditions were taken.

20 See also Bagari and Strban, 2021, pp. 9 et seq.

special branch of the court system.[21] According to art. 5 of the Labor and Social Courts Act,[22] labor courts possess competence concerning the following individual labor disputes: a) on the conclusion, existence, duration, and termination of the employment relationship, b) on the rights and obligations from the employment relationship, c) on the rights and obligations of posted workers and user undertakings, d) on rights and obligations from employment (hiring) proceedings between the employer and candidate, e) on industrial property rights stemming from an employment relationship, f) on child and student labor, g) on scholarships, h) on volunteer internships, and i) on other individual labor disputes as provided by the law. Concerning collective labor law, art. 6 stipulates the following labor disputes: a) on collective agreement validity and enforcement, d) on collective bargaining competences, e) on mutual compliance of collective agreements and their compliance with the law, f) on employees' participation, g) on trade unions' competence regarding labor relationship, h) on trade unions' representativeness, and i) on other collective labor disputes as provided by the law.

In a way, it is precisely art. 5 and art. 6 of the Labor and Social Courts Act that paint the picture of the Slovenian labor law system as a whole, encompassing both individual and collective employment relationships. Disputes, stemming from such relationships are resolved before specialized labor (and social) courts.[23] The same applies to art. 7, stipulating the material scope of coverage of specialized social courts, e.g., in the field of pension and disability insurance, parental protection and family benefits, social assistance benefits. Labor law regulation's inextricable link to social security law, placing labor law in the wider field of social law, has already been discussed in the previous paragraphs,[24] dealing with art. 50 and the constitutional human right to social security, transgressing its national personal scope of application due to the prevailing notion of the social insurance relationship. As observed by Kresal et al., it is also labor or collective agreements that sometimes contain norms concerning social security, e.g., on supplementary pension insurance (i.e., occupational social security schemes) or on the amount of particular benefits (provided by employers), such as sickness benefits,[25] making the link between social security and labor law even stronger. Apart from public expenditure side-constraints of public sector employers, there of course exist no limitations for private-sector employers to provide, even one-sidedly, additional benefits with a social aim to their employees.

21 Vodovnik, Korpič-Horvat, and Tičar, 2018, p. 36.

22 Official Gazette of the RS, No. 2/04 to 10/17.

23 According to art. 23 of the Labor and Social Courts Act, the law or a collective agreement may prescribe a mandatory attempt of a peaceful dispute resolution prior the initiation of a court proceeding. In such cases, the attempt represents a formal requirement for action.

24 However, as generally observed by Pieters, 2006, p. 23, the *wage earner* in social security law may differ from the *employee* concept in labor law since persons, considered as employees by labor law, may, under some national systems or regarding some branches of social insurance be exempt from insurance and vice versa. As aforementioned, all employees in Slovenia *ex lege* enjoy full social security (insurance) coverage.

25 Kresal, Kresal Šoltes and Strban, 2016, p. 36.

Health and safety provisions, stemming primarily from the Health and Safety at Work Act[26] as the *lex generalis* in the field, also form part of the link between labor and social security law provisions.

Even if sharing a profound connection to social security law as a discipline of public law, labor law has generally developed from civil law, an element that is, according to Vodovnik et al., still visible in the current regulation of the employment contract. According to the authors, the link is also or even most visible in cases when civil law provisions directly regulate parts of labor law, e.g., the liability for damages from the employment relationship.[27] The link between civil and labor law is further examined below, when analyzing the key elements of the employment relationship and the employment contract. However, in general terms Slovenian labor law could be considered as, on the one hand, falling within the realm of social law as a wider notion (comprised of labor law, social security law, health and safety regulation, etc.)[28] and a special discipline of public law, and, on the other hand, sharing a profound link to civil law regarding parties' private autonomy both in the field of individual as well as collective labor law. In that sense, civil law characteristics take over once a minimum level of protection, offered by public law provisions, is in place.

Vodovnik et al. also highlight the important connection between labor law and penal law, with the latter offering special definitions concerning criminal offences of employees but most importantly employers.[29] The Slovenian Criminal Code[30] consists of eight labor- or social security law specific criminal offences, stipulated in Chapter 12, like the violation of basic rights of employees (art. 196), workplace harassment (art. 197) or, for example, safety at work endangerment (art. 201). The Criminal Code also stipulates in its art. 289 that a person who knowingly does not adhere to a final court decision, by which it has been decided that an employee is to return to work (workplace reintegration with the employer), is fined or imprisoned for a term, not exceeding one year. As observed by the authors, criminal law on the one hand determines and regulates particular criminal offences that can be committed by employers and managers against their employees and, on the other hand, determines less harmful criminal offences that are punishable only by fines.[31] Additionally, statutory descriptions of intent, negligence, self-defense, accountability, etc., ought to be strictly considered whenever employers or managers are deciding on sanctions stemming from employees' culpable behavior.[32] Researchers also point out the important link to corporate law, administrative law, and international and European Union law,

26 Official Gazette of the RS, No. 43/11.
27 Vodovnik, Korpič-Horvat, and Tičar, 2018, pp. 35–36.
28 *Social law,* however is commonly used as a synonym for *social security law.*
29 Vodovnik, Korpič-Horvat, and Tičar, 2018, p. 36.
30 Official Gazette of the RS, No. 50/12 to 95/21.
31 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 37. For a full analysis of the link between labor and criminal law see the recent scientific commentary on the Criminal Code, Korošec and Filipčič, 2019, pp. 327–416, with individual commentaries by Filipčič, Tičar and Strban.
32 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 37.

noting the specific regulation concerning particular labor law related legal institutions, like minimum salary, industrial property, or the aforementioned health and safety legislation.[33]

Specific labor or, more precisely, employment law provisions also stem from the Public Employees Act—prescribing, for example, special tenders and selection procedures, special conditions for fixed-term employment, promotions, etc.—and from the Public Sector Salary System Act,[34] prescribing special conditions concerning remuneration, for example, the classification of pay scales, the basic salaries of apprentices, public officials, general secretaries, or managers. Even so, Slovenian employment law, commonly considered as a notion wider than labor law, corresponds to the theoretical paradigm of monism.[35] Employment relationships of civil servants fall under the same regulatory framework as private-sector employees' relationships. Put differently, general labor law provisions are applicable for both private and public-sector employees who are employed with state bodies, public agencies, funds or institutions, self-governing local communities, etc.[36] According to art. 2 of the ERA, the latter also applies to employment relationships of employees, employed with state bodies, self-governing local communities, public institutions and other organizations or private public service providers unless otherwise provided by special legislation. However, Senčur Peček[37] notes that officials or office-holders do not fall under the category of a civil servant, meaning that their rights and obligations, and some in the field of labor law, are defined by special legislation, like the Deputies Act[38] or the Judicial Service Act.[39]

3. Basic Concepts of Slovenian Individual Labor Law

In his theoretical systematization of major legal disciplines, Pavčnik describes labor law through its gradual separation from civil law, next to the then developing discipline of social security law.[40] According to Pavčnik, the liberal 19th century state first regulated work through civil law contracts, stemming from the then applicable Civil Code (in German, *Bürgerliches Gesetzbuch*), however, with gradual development, increasing numbers of heteronomous (state) legal rules begun to limit party autonomy as to offer a wider set of rights to workers (employees).[41] As noted above, the now autonomous legal branch or legal subsystem of Slovenian labor law developed from

33 Ibid., pp. 38–40.
34 Official Gazette of the RS, No. 108/09 to 84/18.
35 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 55.
36 Ibid.
37 Senčur Peček, 2019, p. 30.
38 Official Gazette of the RS, No. 112/05 to 48/12.
39 Official Gazette of the RS, No. 94/07 to 36/19.
40 Pavčnik, 2007, p. 575.
41 Ibid.

civil (contract) law.[42] According to Vodovnik et al.,[43] the ERA from 2002,[44] amended in 2013, represents the basis of contemporary employment law in Slovenia. The 2013 ERA, which also represents the central piece of domestic legislation governing individual labor relationships, introduced several new labor law institutions, like the economically dependent person, i.e., a self-employed person who provides the majority of his or her services for a single client, thus enjoying a limited scope of labor law protection.[45] It also amended the regulation of the employment contract, probationary employment, fixed-term employment and other flexible forms of work.[46] Two of the key institutions, the employment relationship and the employment contract, are further examined in the following paragraphs.

3.1. The Employment Relationship

The ERA consists of a definition of an employment relationship. Art. 4 defines it relationship as a relationship between employee and employer, in which the employee voluntarily enters an *organized work process* within which he *personally* and for *remuneration* carries out *continuous work* in line with the *employer's instructions* and under his or her *supervision*.

According to Tičar, the definition of an employment relationship helps us to define someone as an employee and to afford him proper labor protection and while it at the same time allows us to better define the very elements of an employment contract.[47] Unlike in cases of work performed on the grounds of a civil law contract, that commonly means a one-off provision of a particular service, long-term mutual trust represents one of the key elements of an employment relationship, from which both the employee's and employer's specific obligations, like the prohibition of competitive activity, trade secret protection, etc., can be derived.[48] Another departure from the traditional civil law relationship lies in the indefinite duration of the employment relationship, in which work is performed continuously. Continuous work performance also applies to fixed-term employment relationships, since the contractual activity cannot be considered as a one-off provision of a particular service, under which the service provider is bound only by his or her obligation of result.[49] If some services can be outsourced, an employment relationship represents a *personal* relationship between the employee and his or her employer. Put differently, work must

42 On contractual approaches to the employment relationship see Končar, 2007, pp. 19 et seq.
43 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 39.
44 Official Gazette of the RS, from No. 42/02 to 21/13.
45 The special category of an *economically dependent person* represents the ERA's main answer to atypical or new forms of work, since any person who performs any economic activity that meets the legislatively prescribed definition of an employment relationship should, according to law, perform the said activity on the grounds of a contract of employment and not, for example, as an self-employed person or on the grounds of individual civil law contracts.
46 Belopavlovič, 2019, pp. 7–8.
47 Tičar, 2012, p. 21.
48 Ibid., p. 23.
49 Ibid., p. 24.

be performed by the person who concluded the employment contract. That is also the key reason employers take advantage of tests, exams and trial or probation periods of employment.[50]

Unlike a *pro bono* provision of a service, work must be remunerated. Non-payment or payment of a significantly lower salary represents grounds for extraordinary termination of the employment contract by the employee.[51] According to Kresal and Senčur Peček,[52] whenever deciding on the existence of an employment relationship, two basic premises must be followed. First, the key element of differentiation between independent work, self-employment or, put differently, (civil) contract work, is the element of subordination, which always must be considered in the wider context of particular employment, technological progress, etc., and cannot be understood merely as constant and direct supervision by the employer. Such reasoning is also confirmed by Končar, who notes that workers today commonly possess better education and expertise, are more autonomous and creative and commonly no longer require several detailed instructions from their employers.[53]

Similar to Tičar,[54] Kresal and Senčur Peček mention several possible tests like the *control* or *subordination and control test*, accompanied by the more up to date *business* and *integration test*. Due to new patterns of work organization, also the *mixed test*, merging criteria from other tests, and the *risk test* have gained importance.[55] Second, facts of every individual case ought to take priority over the formal elements of a particular contract. Kresal, referring to ILO Recommendation No. 198 on the Employment Relationship, lists additional specific criteria that could be used as to determine whether an employment relationship does or does not exists among the parties, concerning mostly work performance and remuneration.[56] She for example points to the questions of who supplies the necessary tools, materials, and technologies, whether the payment is periodical, who bears the business or financial risk, who covers commuting expenses, whether the obtained income is the sole or main source of subsistence, etc. As highlighted by the author[57] and stipulated in art. 11(2) of the Recommendation, Members should a) allow for a broad range of means for determining the existence of an employment relationship and b) provide for a legal presumption that an employment relationship exists where one or more relevant indicators are present. As follows, Slovenian labor legislation follows the Recommendation from 2006 in full in this regard.

The definition of an employment relationship, stipulated in art. 4, means that in theory, every civil or other legal relationship in which indicators of an employment

50 Končar, 2008a, pp. 37–38.
51 Tičar, 2012, pp. 24–25.
52 Kresal and Senčur Peček, 2019a, p. 35.
53 Končar, 2016, p. 261.
54 See Tičar, 2012, pp. 25 et seq.
55 Kresal and Senčur Peček, 2019a, p. 35.
56 Kresal, 2019, p. 137.
57 Ibid.

relationship appear should be considered as such and that an employment contract, possibly of an indefinite duration, should be concluded. Even more so, art. 18 of the ERA provides for a legal presumption according to which the existence of defining elements of an employment relationship determines the existence of an employment relationship. Such presumption however only takes effect within a dispute on the existence of the said relationship between the employee and employer. Even more generally, the establishment of an employment relationship due to the presence of its defining elements in as a rule possible only within a dispute, when contract workers, student workers or self-employed persons, e.g., architects, journalists, or taxi drivers, sue their *de facto* employers within a disguised employment relationship and claim its existence and the conclusion of an employment contract. There, employees may prove the existence of indicators and the employment relationship itself with all available evidence. The determination of a single indicator is commonly not enough, while the court must consider all different types of employment contracts and all evidence or indicators as a whole as to fore and foremost determine whether the claimed employee is subordinate to the his or her claimed employer.[58] The indicator of subordination of course cannot be considered as full loss of autonomy by the employee, especially in cases of highly skilled professionals and modern forms of work organization, nor as constant and direct employer's oversight and control. It should be looked at more as a general context of dependence and subordination in which work is carried out.[59] Since the Labor and Social Courts Act provides almost no special provisions concerning proceedings determining the existence of an employment relationship, according to art. 19, provisions of the Civil Procedure Act[60] mostly apply.[61] Thus, the existence of an employment relationship can also represent a preliminary question according to art. 13 of the Civil Procedure Act, when the decision of a court depends on a prior determination of whether a particular right or legal relationship exists.[62] However, as long as no suit is filed or as long as no labor inspection proceedings take place, party autonomy, even if misused in favor of the *de facto* employer, prevails.

Even so, a lack of initiated judicial proceedings does not mean that an employment relationship cannot be established *ex officio*. According to art. 13(2) of the ERA, it is prohibited to perform work on the grounds of a civil law contract, apart from special cases provided by law, if the defining elements of an employment relationship exist. According to art. 19(1)(6) of the Labor Inspection Act,[63] a labor inspector can issue a decision prohibiting work performance if work was performed on the grounds of civil law contracts, contrary to the ERA and, according to art. 19(2), demand that a written employment contract is offered to the employee within three days from receiving the decision. The competence to demand for an employment contract to

58 Ibid., p. 139.
59 Ibid.
60 Official Gazette of the RS, Nos. 73/07 to 70/19.
61 Kresal, 2016, p. 220.
62 Ibid., p. 221.
63 Official Gazette of the RS, Nos. 19/14 to 55/17.

be offered and concluded was granted to labor inspectors with the amendment of the Labor Inspection Act in 2017,[64] with the aim of offering a higher level of protection to false self-employed persons, contract workers, etc., without the need for a separate action in which they would must claim the existence of an employment relationship. In 2016, a year prior to the amendment, labor inspectors were still very much critical of the fact that with no additional competences or employers' obligations to offer employment contracts, the latter would continue to seize their unlawful conduct by simply ending whatever relationship they had with the worker.[65]

However, such labor inspectors' competences could lead to the imposition of an employment relationship to cases in which equivalent parties autonomously decided not to conclude an employment contract but govern their relationship by civil law contracts. Additionally, Scortegagna Kavčnik[66] notes that the Department of Legal and Legislative Services of the Slovenian Parliament deemed new powers as questionable, possibly exceeding inspectors' powers according to the general Inspection Act.[67] Even so, the recognition and imposition of employment relationships also serves legitimate labor market and social security (insurance) aims, not necessarily fulfilled if *de facto* employment is exercised as self-employment or, even more so, (civil) contract work due to different tax and social security contribution payment obligations or at least due to greater opportunities for earnings manipulations. As observed by Tičar, it is also the key aims of Slovenian labor law regulation enshrined in art. 1(2) of the ERA that allow for limitations to parties' autonomy concerning the conclusion, content, termination, etc., of the employment contract. However, both the employer and the employee remain bound by typical civil law standards like, due diligence, good business practices, etc.[68]

3.2. The Employment Contract

ERA dedicates a specific chapter of more than 100 articles to the regulation of both formal and substantive elements of the employment contract like means of its conclusion, suspension, amendment, termination, or form. Tičar notes that it is not only lawmakers from countries belonging to the continental but also from countries belonging to common law traditions that have posed greater limitations to parties' private autonomy concerning the content or rights and obligations stemming from employment contracts. Heteronomous statutory provisions, following the general trend from *contract* to *status*, are drafted with the aim of offering a higher level of protection to employees as weaker contractual parties, thus bringing the employment contract closer to a somewhat declaratory legal act, merely marking the conclusion of an employment relationship.[69]

64 Official Gazette of the RS, No. 55/17.
65 Rakita Cencelj, 2017, p. 71.
66 Scortegagna Kavčnik, 2020, p. 28.
67 Official Gazette of the RS, No. 43/07 to 40/14.
68 Tičar, 2012, p. 54.
69 Ibid., pp. 55–56.

ERA, for example, provides for a written form of conclusion, the set of contractual parties, capacity and freedom of contract, mandatory posting of vacancies, etc. Kresal and Senčur Peček consider the employment contract as a special and autonomous contract of labor law, regulated next to general civil law provisions. According to the authors, the placement and definition of the employment contract as either an independent labor law contract or a specific civil law contract is left to the discretion of national legislatures and thus cannot be governed by neither international nor EU law.[70] Under Slovenian legislation, if there is an absence of particular labor law rules, civil law rules thus *mutatis mutandis* apply regarding the conclusion, validity, termination, and other elements of the employment contract. Civil law rules concerning the conclusion of an employment contract apply, for example, to parties' capacity and consent, consideration and grounds for conclusion, contract form, etc. Regarding some institutions, like liability for damages or absolute and relative nullity, the ERA even directly refers to the application of civil law rules.[71] Nullity of an employment contract for example leads to restitution claims on the side of both the employee and the employer, concerning salaries for example. However, if for example the employer is recognized by the court as a fraudulent party to the employment contract, the latter can deny his or her claim for restitution, considering the unlawful conduct of (possibly) both parties and the status of the violated legally protected categories or values.[72]

Concerning partial (absolute) nullity, art. 88(1) of the Civil Code,[73] stipulates that nullity of a particular contract provision does not lead to the nullity of the contract as such, if the contract can remain in force without the validity of the said provision and if the provision does not represent a contractual condition or consideration. Mežnar lists the example of a contract provision, providing for a below-minimum pay or a below-minimum number of days of annual leave. In such cases, statutory regulation would apply.[74] According to art. 32 of the ERA, if there is any employment contract provision conflicting with the general statutory, collective agreement, or an employer's general act provisions concerning parties' minimum rights and obligations, the latter provisions apply directly. From this point of view, Slovenian employment contract regulation on the one hand allows for a certain degree of parties' private autonomy, mirroring the traditional civil law foundations of employment relationships. The application of civil law rules in particular cases, when prescribed by the ERA, further contributes to this fact. On the other hand, any unforeseen departure by the ERA from its or other heteronomous public law rules or autonomous legislation is countermanded by their direct applicability as to offer sufficient labor (and social) law protection to the employee. As observed by Kresal,[75] the level of employees' protection

70 Kresal and Senčur Peček, 2019b, pp. 107–108.
71 Ibid., p. 108.
72 Mežnar, 2019, p. 113.
73 Official Gazette of the RS, No. 97/07 to 20/18.
74 Mežnar, 2019, p. 113.
75 Kresal, 2019, p. 121.

is furthered by the mandatory written form of the employment contract, also mirroring both the longevity of the relationship and the common conflict of interests, and may be increased in cases where no written agreement on mutual rights and obligations would have been made. Kresal thus points out that the written form of the contract is stipulated to the maximum benefit of the employee.[76] If the parties did not conclude an employment contract in written form or have failed to include all its mandatory elements, this does not affect the existence or validity of the contract. Put differently, the employment contract is lawfully concluded once the parties have agreed in whatever form on all its mandatory elements listed in art. 31 of the ERA, e.g., the duration of the employment relationship, working time, type and description of the performed work, etc. According to art. 49, a change of key conditions of employment, agreed upon with the employment contract, like a change to the type and description of the performed work, contract duration, etc., a new contract must be concluded. A mere amendment to the existing contract does not suffice.

Kavšek, when discussing *factual* employment relationship, grounded not in a written employment contract but in its determining elements or indicators, suggests that the employee would also must prove that a consent between two parties was reached.[77] The author however notes that the Slovenian Supreme Court does not follow the suggested contract-based understanding of labor relationships, since it determined that the presumption of an existing labor relationship, more precisely, the existence of factual employment triggers the presumption of an existing employment contract.[78] Kavšek follows the presumption of an existing employment contract from art. 5 of the Prevention of Undeclared Work and Employment Act,[79] according to which a worker, who did not conclude an employment contract or whom his or her employer did not register within or deregistered from all mandatory social insurance branches, is presumed to have obtained a full-time employment contract of an indefinite duration.

Finally, yet importantly, ERA predicts a full-time employment contract of an indefinite duration as the general rule.[80] If the employment contract does not stipulate the duration of the employment relationship, it is presumed, under art. 12(2), that a contract of an indefinite duration has been concluded. According to art. 54 and 55, a fixed-term employment contract can be concluded as an exception only,[81] under special conditions provided by the law, e.g., in cases of project work, season work,

76 Ibid.
77 Kavšek, 2020, p. 37.
78 Ibid.
79 Official Gazette of the RS, No. 32/14 to 43/19.
80 Such general rule is also mirrored in art. 39 (transitional provisions) of the Market Regulation Act, Official Gazette of the RS, No. 80/10 to 54/21 as amended by ZUTD-A, Official Gazette of the RS, No. 21/13, according to which employers, concluding employment contract of an indefinite duration are relieved of paying employment contributions for two years, while employers, concluding fixed-term employment contracts, pay five times the general percentage.
81 It also must be distinguished from *probation* or *probationary period*, stipulated in art. 125 of the ERA.

temporarily increased work demand, absent worker replacement. However, as made clear by a recent extensive study on precarious work in Slovenia,[82] fixed-term employment, even in cases of steady, long-term demand for work, seems to be the new (unlawful) norm. Interestingly, ERA contains no limitations concerning minimum working hours. A part-time employment contract could also be concluded for example for a minimum duration of one hour per day.

Ways or reasons of termination are listed in art. 77. An employment contract is terminated a) with the expiry of time, b) in cases of employee's or employer's (natural person as employer) death, c) by agreement, d) by regular (e.g., business reason) or extraordinary (severe violations) termination, e) by court judgment, f) *ex lege* in cases provided by the law, and g) in other cases provided by the law.

4. Basic Concepts of Slovenian Collective Labor Law

As aforementioned, the Slovenian Constitution stipulates not only the general right of assembly and association (art. 42) but also, like Germany, France, Spain, Italy, Finland, or Belgium,[83] a specific and autonomous right guaranteeing the freedom of trade unions (art. 76). Kresal Šoltes notes that both the legal theory and case law of the Constitutional Court interpret trade union freedom in a way as to relate both to the organizational and functional aspects of trade unions' operations.[84] She also points out that art. 76, even if grammatically limited to the positive aspect of the right, encompasses both its positive and negative side, as established in international law,[85] meaning both the freedom *of* and the freedom *from* trade union association. As already discussed, the Slovenian *system*[86] of collective agreements is regulated by the Collective Agreements Act (CAA), while workers' participation and the right to strike fall under the material scope of the WPMA and the Strike Act,[87] with the latter dating all the way back to 1991 and with some of its provisions still in force 30 years after had Slovenia gained independence.

Upcoming paragraphs further examine the regulation and nature of collective agreements, key wide-scale sources of autonomous labor law, their hierarchy and relationship to the employment contract and employers' autonomous legal acts (employer's general acts), and their validity or scope of application, as well as the representativeness and trade union coverage in Slovenia. Additionally, the regulation of works councils, employees' representatives, and workers' participation in management is briefly reviewed under this section. The paragraphs do not discuss individual agreements, concluded at the company level, since both the ERA and the CAA afford

82 See Kresal Šoltes, Strban and Domadenik, 2020.
83 Kresal Šoltes, 2011, p. 95.
84 Ibid., p. 96.
85 Ibid.
86 Ibid.
87 Official Gazette of the SFR Yugoslavia, No. 23/91.

normative power only to collective agreements.[88] Strikes, picketing, lockouts, and other forms of industrial action are not discussed.

4.1. The Collective Agreement: Between Autonomy and Obligation

According to Vodovnik et al., the Slovenian collective bargaining system has developed spontaneously, based on the 1991 Constitution and based on the relevant ILO conventions in the field.[89] Until the enactment of the CAA from 2006, the then-applicable ERA prolonged the application of the Basic Rights from Employment Act[90] from 1989. Kresal Šoltes notes that during that period, all collective agreements passed at the level of the state or industry *de facto* applied to all employers since on the one hand the government acted as the public-sector employer and representative while on the other hand membership in the Chamber of Commerce and the Chamber of Craft was mandatory for all employers.[91] Noticing important drawbacks to private autonomy and the freedom *from* association regarding that period, the author points out that until the 2006 CAA was passed, the legislature's general orientation was to empower the system of collective bargaining as much as possible after a long period of no free employers' association. Such orientation led to the situation in which some of the key aspects of collective agreements, like mandatory arbitration, levels of collective bargaining, etc., were regulated by heteronomous legislation. It is only after the CAA was passed that the principle of free and autonomous conclusion of collective agreements came into force.[92] According to art. 32 of the CAA, employers' organizations with compulsorily membership, like chambers can, as of 2009, due to a three-year transitional period in place then, no longer conclude collective agreements. However, as observed by Kresal Šoltes, the important change of legislation had only little effect since the Chamber of Commerce, the major employers' representative in Slovenia, already moved away from compulsory to voluntary membership with other legislative amendments from 2006.

According to Vodovnik et al., who in this regard refer to Cvetko,[93] contemporary Slovenian regulation of collective bargaining and collective agreements in generally based on social partners' autonomy and does not impose on them the duty to regulate particular elements regarding their employment relationships. Autonomy is strongest in the private sector, where social partners can freely regulate all employee-related social or economic issues.[94] However, as the authors point out, statutory legislation like the ERA commonly imposes on the employer to govern aspects of employment relationships by autonomous regulatory acts. Concerning internal regulation, statutory legislation favors bipartite autonomous acts, like the participatory agreement or internal

88 Kresal Šoltes, 2018, p. 218.
89 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 292.
90 Official Gazette of the SFR Yugoslavia, No. 4/91 to 43/06.
91 Kresal Šoltes, 2011, p. 47.
92 Ibid., pp. 47–48.
93 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 293.
94 On the role of social partners in *social security* see Strban and Mišič, 2018, pp. 43 et seq.

collective agreement, before unilateral general enactment by the employer, according to the statue.[95] Statutory legislation may demand, on the one hand, for specific rules to be governed by internal, autonomous legislation passed at various levels, or may on the other hand allow for additional or different provision of rights and obligations by means of autonomous law-making. In the public sector, however, the content of collective agreements is regulated more precisely,[96] mostly concerning conditions for their conclusion, enshrined in art. 41 and the following of the Public Sector Salary System Act.

Art. 22 of the ERA for example stipulates that the employee, concluding an employment contract, must fulfill statutory or other conditions, prescribed by a collective agreement or employer's general act. Art. 55(4) for example provides that *project work*, representing lawful grounds for concluding a fixed-term employment contract, is defined within a collective agreement, concluded at the level of the industry. According to art. 59(3), an industry-level collective agreement may provide for a higher percentage of posted workers performing work for a single user undertaking. The three brief examples point to cases in which autonomous legislation may stipulate additional rights and obligations. If it does, the latter apply next to statutory provisions. Next, to cases in which a collective agreement, concluded at the particular level of the industry, must determine specific rights and obligations or legal institutes as such, and to cases, in which it may do so. Similar are the provisions of the ERA, stipulating a particular right or obligation under the condition that the said right or obligation is not governed differently by a collective agreement, concluded for example at the level of the industry. This for example applies to the regulation of a minimum notice period (art. 94) severance pay (art. 108). In some cases, a lack of autonomous regulation triggers the application of bylaw regulation, like in the case of art. 130, stipulating work-related cost reimbursement. If the amount of reimbursement is not provided by an industry-level collective agreement, the latter is governed by implementing legislation. The examples also show a vivid interplay between statutory legislation or the normative power of the general legislature and autonomous legislation or the normative power of both the employer and employees' and employers' organizations. All of the examples also point into the direction of the overriding, but not absolute *in favorem laboratoris* principle of Slovenian labor law, securing a higher level of labor law protection for the employee as the commonly weaker party to the employment contract. The relationship between labor law regulation, more precisely, the relationship between the ERA and collective agreements, from which the limits of the *in favorem laboratoris* principle can be derived, is governed both by the ERA itself in art. 9 and the CAA in art. 4.

Art. 9, which sets limits to the private autonomy of the parties to the employment contract, stipulates that an employment contract or collective agreement may provide only for more favorable employees' rights than the ERA. However, in several cases provided by art. 9(3) of the ERA, collective agreements may regulate rights differently from the act itself, meaning also less favorably. Less favorable treatment for example

95 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 294.
96 Ibid.

stems from additional grounds for the conclusion of a fixed-term contract, additional grounds for overtime work, or additional disciplinary sanctions. According to Vodovnik et al., the basic principle concerning parties' autonomy is that autonomous sources of law cannot diminish the level of employees' rights, safeguarded by statutory legislation, collective agreements, or international law, unless such possibility is explicitly anticipated by those legal acts.[97]

The relationship between the application of the *in favorem laboratoris* and the *in peius* principle is also determined by the abovementioned art. 4 of the CAA, stipulating that, unless otherwise provided by the ERA, a collective agreement may only stipulate provisions that are more favorable for the employee than statutory provisions. Similar to art. 9 of the ERA, art. 4 of the CAA also sets limits to parties' (private) autonomy concerning the content of an autonomous legal act, of course not of the employment contract but of the collective agreement. The hierarchy between collective agreements concluded at different levels is regulated by art. 5 of the CAA. Employers, bound by a collective agreement, may within a lower-level collective agreement only provide for more favorable employees' rights and working conditions. Less favorable treatment may only be provided under the conditions, prescribed by a higher-level collective agreement. However, as observed by Kresal Šoltes, the CAA does not stipulate mandatory levels nor types of collective agreements. The levels and types are left to the collective bargaining autonomy.[98]

Additionally, art. 10 of the ERA, regulating two types of employer's general acts must be considered. Not only do trade unions, organized with the employer, issue an opinion on the general act, this type of one-sided autonomous regulation may also regulate employees' rights and obligations with the respect of the ERA and the applicable collective agreements. As observed by Končar back in 2008, the regulation of employer's general acts, either acts on work organization, or acts, stipulating rights and obligations, has been subject to several revisions and changes during the processes of drafting the then applicable ERA due to a specific societal and political background of the time.[99]

4.2. The Collective Agreement: Parties and Validity

The CAA represents comprehensive statutory legislation governing the collective agreement system in Slovenia. It stipulates parties to the agreement, its content, split into the normative part of the collective agreement and the part, concerning parties' rights and obligations (i.e., obligatory part), the form and means of conclusion, termination, collective labor dispute resolution, records and publication, and supervision. Even if, as pointed out by Kresal Šoltes, the CAA does not define a collective agreement as such, it regulates all of its key elements.[100] Vodovnik et al. note that only normative

97 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 294.
98 Kresal Šoltes, 2011, p. 101.
99 Končar, 2008b, pp. 57–58.
100 Kresal Šoltes, 2011, p. 98.

parts of the collective agreement provide for a legally binding effect.[101] The validity of that conclusion depends on how we are to understand the notion of *binding effect* in law as such, since the obligatory part of the collective agreement of course does have a binding effect for the parties, who have concluded the agreement. Without such an effect, any party to the agreement could at any time revoke its consent. However, what Vodovnik et al. must have had in mind, also following their further deliberations, is the fact that employees' and employers' rights and obligations, binding due to their provision within the normative part, stem only from the latter part of the collective agreement. As they very well point out, the normative part of the collective agreement cannot be considered a set of contractual clauses but rather autonomous regulation of the specific subject of working conditions. To apply, they must be published.[102] Additionally, some collective agreements consist of what the authors refer to as *hybrid* clauses, which concern both the obligatory and the normative parts. They also contain *institutional* clauses, determining bodies and procedures necessary to secure communication between the parties.[103]

After the already mentioned 2009 transitional period had expired, only voluntary employers' organizations are allowed to act as parties to a collective agreement. Art. 2 of the CAA lists the following legal persons, possessing the capacity to conclude a collective agreement: trade unions and trade unions' associations and employers and employers' associations. The government, a ministry, or other authorized public authority carrier acts as a public-sector employer, including also public commercial institutions and other public organizations, if enjoying indirect public funding from the general budget of the Republic of Slovenia or local communities' general budgets. Kresal Šoltes points out that the Constitutional Court of Slovenia found no violations of the Constitution because works councils, established according to the WPMA, cannot act as parties to collective agreements.

According to the general rule of art. 10(1) of the CAA, a collective agreement applies to its parties and their members. According to art. 10(2), whenever employers' or trade unions' associations sign a collective agreement, the latter determines to which of their members it applies.

Arts. 11 and 12 regulate the general and the extended validity of the collective agreement, the latter representing a novelty of the CAA. According to Kresal Šoltes, the institution of extended validity would have even been redundant prior to the 2006 legislative change, since its role was then already taken by the *ex lege* general validity of collective agreements for all employees and by the *de facto* general validity for all employers due to their mandatory membership in employers' organizations. Even so, the institute of extended validity, also known in the majority of EU MS, did form part of pre-wartime Yugoslav legislation.[104]

101 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 294.
102 Ibid.
103 Ibid., p. 298.
104 Kresal Šoltes, 2011, p. 99.

According to art. 11(1) of the CAA, a collective agreement that is concluded by one or more representative trade unions, applies to all employees employed with employers, who are bound with that collective agreement, i.e., employers, who are members of the employers' organization that has concluded the agreement, regardless of trade union membership. Art. 11(1) regulates the so-called general validity on side of the employees, not employers, since the latter still must be members of the contracting organization. If, according to art. 11(2), an employer is bound by several collective agreements of the same type and concluded at the same level, provisions that are more favorable for the employees apply.

If, according to art. 12(1), an industry or multi-industry collective agreement is concluded by one or several representative trade unions and one or several representative employers' organizations, a party to the agreement may propose to the minister of labor to extend the validity of the collective agreement or its part to all employers in a given industry or industries. According to art. 12(2) the minister recognizes the extended validity if the employers concerned, employ more than half of the employees employed with employers, to whom the collective agreement is said to extend. In such cases, the collective agreement applies not only to the employers but also their employees, with no need of trade union membership on their side.

Next to the important introduction of extended validity, the 2006 CAA abolished the statutory obligation of arbitration in cases of collective labor disputes. The act now recognizes voluntary arbitration and several other voluntary means of dispute resolution.[105]

Kresal Šoltes notes that so far, all state- and industry-level collective agreements enjoyed general (not extended) validity in line with art. 11(1), since they were concluded by representative trade unions. According to the author, this also applies to the level of the company.[106] However, from 2006 onwards, Slovenia is showcasing one of the most negative trends of collective agreement coverage in the EU.[107] Even if 80% of employees are said to enjoy collective agreement protection due to general and extended validity, trade union membership is also dropping rapidly.[108] According to the collective agreements records, 47 state-level collective agreements were applicable in Slovenia on 26 January 2021. Additionally, during the past few months Slovenian trade unions were protesting a common lack of social dialogue,[109] also within the three-tier Economic and Social Council of the Republic of Slovenia, in which social partners and the government discuss social and economic policies, goals and measures. Coupled with the rather common practice of concluding successive

105 Ibid., p. 100.
106 Kresal Šoltes, 2011, p. 99.
107 Kresal Šoltes, 2018, p. 218.
108 See https://rgzc.gzs.si/Portals/rgzc-gzs/Analiza%20socialni%20dialog.pdf (Accessed: 12 July 2021).
109 See for example https://www.epsu.org/article/slovenia-unions-protesting-lack-social-dialogue-and-disregard-trade-unions (Accessed: 12 July 2021) or https://www.efbww.eu/news/weakened-social-dialogue-in-slovenia/1730-a (Accessed: 12 July 2021).

fixed-term employment contracts, the practice of performing work on the grounds of civil law contracts or by relying heavily on student workers or false self-employed persons, a further breakdown of bonds between employees' (at least in the private sector), needed for a long-term effective social dialogue and industrial action, might become the bleak future of Slovenian collective labor law or industrial relationships. In 2018, Vodovnik et al. noted that no independent trade unions of atypical workers existed. However, the Precarious Workers Trade Union, established in 2016 as an internal organizational unit of the Association of Free Trade Unions of Slovenia, is one of the most trade unions dedicated to reducing the number of precarious forms of work, the active inclusion of precarious workers, the improvement of their social status and legal certainty, etc.[110]

Even if CAA is considered the key piece of statutory legislation when it comes to collective agreement regulation, one should always keep in mind the provisions of the ERA: the two acts, combined, set out the central parameters of the collective agreement system in Slovenia. It is the ERA, not the CAA, that determines the relationship between minimum standards of labor law protection and collective agreements and employer's general acts and, finally, the relationship between collective agreements and individual employment contracts.[111] Additionally, constitutional provisions and international law obligations must be considered. Collective agreements or other autonomous legal acts cannot depart from what Kresal Šoltes considers the Slovenian *social public order* or set of central binding provisions of labor law.[112] The notion, further developed by judge-made law, comprises basic rights and basic constitutional and other principles of labor law regulation like equal treatment, freedom of work, dignity and health and safety at work, the aforementioned *in favorem* principle, different means of employees' participation, as well as due process of law concerning labor disputes.[113] However, to get a full picture of the collective bargaining system or even the system of industrial relationships as such, additional statutory legislation like the abovementioned Trade Unions' Representativeness Act, Strike Act, or the WPMA must be taken into account.

4.3. Representative Trade Unions

Due to spatial constrains, the chapter only briefly addresses conditions[114] under which a trade union may gain the status of a representative trade union. It is representative trade unions that, among others, have the competence to conclude collective agreements of a general validity. To obtain the status, a trade union must fulfill both qualitative and quantitative conditions. According to art. 6 of the Trade Union Representativeness Act,[115] trade unions ought to be democratic and should exercise

110 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 269.
111 See Kresal Šoltes, 2011, p. 97.
112 Ibid., p. 173.
113 Ibid., pp. 171–173.
114 For a comprehensive overview see Vodovnik, Korpič-Horvat and Tičar, 2018, pp. 269 et seq.
115 Official Gazette of the RS, No. 13/93.

the freedom to join trade unions, the freedom of their activities, and the freedom to exercise members' rights and obligations. They also must be independent from public authorities and employers, financed mainly from membership fees and other independent sources, and must be established for at least six continuous months. Art. 8 stipulates particular conditions concerning membership quotas for trade unions' associations or confederations at the level of the state, while art. 9 stipulates conditions concerning trade unions, established different levels, e.g., at the level of the industry level, the occupational level, or the local community level. They either gain the status of a representative trade union via their membership within a state-representative trade unions' association or confederation, or if including at least 15% of employees of a particular level of its establishment. The inclusion of the state or local municipalities' level should not come as a surprise since trade unions' structure follows the common European practice of vertical lines of organization, comprising different types of associated trade unions that are active at different levels, and the horizontal lines, aggregating trade unions or their units within a specific territory or geographical area.[116]

4.4. Employees' Participation

Vodovnik et al. describe employees' or workers' participation as a phenomenon that occurs in different types of work units and encompasses both employees' financial participation and their participation within different decision-making processes. Both types of participation have its basis in the social state principle (art. 2 of the Slovenian Constitution);[117] however, they could also be derived from the basic principle of a democratic society. According to the authors, social dialogue is the essential element of what can be considered as *industrial democracy*.[118] Since art. 75 of the Slovenian Constitution refers directly to employees' participation in the management of commercial organizations and institutions, Vodovnik et al. also refer to the rather particular principle of *universality*, according to which the general legislature should pass legislation that provides all employees with the right to influence employer's decision-making processes.[119] Their right should be independent of the fact whether they are employed with public- or private-sector employees and independent of the type of organization of a particular undertaking. However, as observed by Franca and Strojin Štampar, major differences appear for example in cases when a joint stock company is transformed into a limited liability company, since the Companies Act[120] provides no obligations for the establishment of a supervisory board or a multi-member management board.[121] From this perspective, special legislation, e.g., in the

116 Vodovnik, Korpič-Horvat and Tičar, 2018, p. 270.
117 Ibid., p. 305.
118 Ibid., p. 306.
119 Ibid., p. 309.
120 Official Gazette of the RS, No. 65/09 to 18/21.
121 Franca and Strojin Štampar, 2019, p. 518.

field of corporate law, must be considered alongside collective labor law regulation, at least in cases of employees' participation in management.

The WPMA provides in art. 2 for the right to pass initiatives and opinions and to obtain the employer's reply, the right to information, the possibility or obligation of common consultations, the right to joint decision-making, and the right to withhold an employer's decision. Participatory rights can be exercised individually or collectively, via works councils, assemblies, employees' trustees, and employees' representatives in management. The WPMA, as pointed out by Vodovnik et al., represents the basic act concerning employees' participation in a variety of decision-making processes, while defining the scope of participation by means of defining the demarcation line between trade unions' activities and the activities of employees' elected representatives.

5. Conclusion

The aim of the chapter was to provide the reader with a brief overview of the Slovenian system of individual and collective labor law, together with its main characteristics. Among the most important ones of course lies the rather detailed definition of an employment relationship provided in art. 4 of the ERA, together with the presumption of its existence in cases where its defining elements or indicators emerge. With its shift to contract-based employment relationships with the passing of ERA, Slovenian labor law is now also characterized by a vivid mix of public and private law influences. On the one hand, employment contracts and other autonomous legal acts, either passed by the employer or concluded within social dialogue processes, must respect minimum labor law standards as determined by international law, the Constitution, and basic statutory legislation, like the ERA. From this point of view, labor law seems strongly embedded within the wider field of social law. Specific rights and obligations are also governed in other pieces of statutory legislation, e.g., in hitherto unmentioned Vocational Rehabilitation and Employment of Persons with Disabilities Act[122] or the Employment, Self-Employment, and Work of Foreigners Act.[123] To get a full picture of the (binding part) of the legal subsystem, one must consider at least 10 acts next to the ERA, the majority of which have been mentioned. Additionally, due to the epidemic, countless (and countlessly amended) umbrella pieces of emergency legislation passed mostly during 2020 and 2021 must be considered to get a full overview of social law provisions currently in force.[124] On the other hand, parties to the employment contract possess a rather high level of private autonomy, once minimum standards or more favorable rights for the employees—for example, those stipulated in collective agreements—are met.

122 Official Gazette of the RS, No. 16/07 to 18/21.
123 Official Gazette of the RS, No. 91/21.
124 For a variety of measures, aimed at preventing closure of businesses, unemployment, social exclusion, etc., during the COVID-19 epidemic in Slovenia see, for example, Strban and Mišič, 2022.

Even so, the Slovenian labor market, marked by high numbers of outgoing posted and frontier workers, is not immune to challenges of enhanced precarization and flexibilization of labor in all shapes and sizes, from the on-call student work, commonly turning into full-time disguised employment, to false self-employed persons or contract workers performing work for a *de facto* employer, with all defining elements of the employment relationship present. In general, the labor market also seems marked by low levels of elderly peoples' participation or economic activity, and early retirement, possible under conditions of pensions' negative indexation after 60 years of age and 40 years of the pension period.[125] In 2014, Slovenia still remained below average in the category of employing workers, older than 55, with low levels of in-work training, education and skill development.[126] At the same time, younger employees commonly find themselves within unsteady, fixed-term employment relationships.

Regarding EU law, Slovenia seems to have been a model Member State so far, transposing all the necessary directives into the domestic legal order—for example, by amending the ERA or by passing the new Health and Safety at Work or the Protection against Discrimination Act. Necessary pieces of legislation were also passed in the field of workers' participation concerning, for example, cross-border mergers and European cooperative societies and limited-liability companies. However, a great legislative delay in the transposition of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services,[127] and the bypassing of EU rules on the coordination of unemployment benefits in favor of frontier workers residing in Slovenia[128] might indicate a recent change of heart of the Slovenian legislature. This also applies to the abovementioned breaches of the ILO Convention No. 158 and the ESL concerning age discrimination regarding dismissals, which came with a rather great ease.[129] Once the amendment to the Transnational Provision of Services Act[130] enters into force as to transpose the Directive (EU) 2018/957, the next big conformity test might come in the form of a timely transposition of the Work–Life Balance Directive in 2022.

125 See art. 29 of the Pension and Disability Insurance Act, Official Gazette of the RS, No. 96/12 to 51/21. If 60 years of age are accompanied by 40 years of pension period, comprised only of periods of active insurance, then old-age retirement (with no negative indexation) is possible. General old-age retirement conditions are the following: 65 years of age, min. 15 years of insurance, or 40 years of insurance for a full old-age pension. Later retirement is awarded by positive indexation of pension rights and their general yearly increase. Occupational insurance is mandatorily available to persons, performing hazardous jobs or work that cannot be carried out professionally after reaching a certain age.

126 See Jelenc Krašovec, pp. 56 et seq.

127 OJ L 173/16 from July 9 2018.

128 See https://europeanlawblog.eu/2021/04/07/unemployment-benefits-in-the-eu-is-slovenia-fighting-the-good-fight-or-just-trying-to-get-away-with-a-free-lunch/ (Accessed: 14 July 2021).

129 See, for example, Mišič, 2021, pp. 79 et seq.

130 Official Gazette of the RS, No. 10/17. The amendment entered into force in July of 2021, after this chapter had been initially submitted for publication. See Official Gazette of the RS, No. 119/21 from 20 July 2021.

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