Summary

This paper focuses on private law **obligations** (chiefly of a labour law nature). This topic was chosen in the first half of 2008. I tried not to limit the interpretation to the substance of valid law only, but to contribute, within the range of the chosen topic, to discussion of labour law issues that are still open (and very important). I chose **two** theoretical issues. **One** was the **method of incorporating labour law into the system of law,** or, more precisely, the system of this branch of law into the sphere of private law – this concerns in particular the relationship to civil law and the relationship between labour law and public law. **The second** issue was **seeking the optimal degree of restriction of contractual freedom** in labour law relationships **de lege lata** as the basis for proposals **de lege ferenda**. The result of this (second) process – the content of the decision on the appropriate degree of peremptory regulation of relationships – has at the same time become a criterion for the evaluation of the statutory text. The above two subtopics were elaborated on top of the standard interpretation of the basic issues of private law obligations, with a focus on labour law obligations. Both individual labour law and collective labour law (both being first and foremost cases of law of obligations) were examined. Little attention was paid to the third important segment of labour law: **public law regulation of the job market.** Its relationships are of a substantially **different** nature. With regard to the scope of the substance, relationships falling in particular under the so-called compensation area were subject to particular analysis [the salary area – entities specified under Section 33(3) of the Labour Code – was mentioned only peripherally].

The paper is divided into **five** parts. Part A is the **introduction** to the paper. Part B is predominantly of a **generally theoretical nature.** Parts C and D focus on **legislative practice,** examining **valid** regulations of individual labour law and presenting proposals **de lege ferenda –** part C focuses on examining **individual** labour law (of obligations) and part D on **collective** labour law (law of obligations). Part E summarises and concludes the paper.

Chapter One (part A) enshrines the basic **assignment** of the paper and formulates the author's **ambition**. This chapter is devoted to the basis, focus, and structure of the paper.

Chapter Two (part B) describes the **historical sources** of current labour-law regulations – from historical background, through the establishment of this branch of law, to the current legislative situation. The general known facts about the roots of individual labour law in civil contracts (specifically work contracts) and the gradual emancipation of obligations, the subject of which is (expressed in today's terminology) dependent employment, are summarised here as are specific conclusions. As **specific** to this chapter, the author considers the method of classification of the periods of development of labour law in the region of what is now the Czech Republic and the attention called to the cause of the development of two legitimate traditions of the branch: **original tradition** – European and cultivated in our territory until 1948 – and **tradition established** and developed after 1948. The author **also considers** the evaluation of the period between 1989 until 2007 to be **his contribution**.

Chapter Three (part B) addresses the **position** (manner of incorporation) of labour law in the **system of law** – both from the point of view of the legislative structure of regulations and from the point of view of the classification of legal sciences. It also examines the **current situation** and its **causes**. The **tradition** of Czech law in the **second half** of the twentieth century is **compared** with **older** traditions, and conclusions **de lege ferenda** are drawn. In this chapter, **the parallel existence of two legislative traditions** [as mentioned above, original tradition (European, cultivated in our region until 1948) and tradition established and developed after 1948 (the causes leading to its establishment are explained in the paper)] is deemed one of the reasons for the protracted discussions in legal science (as well as in practical legislation) about the optimal systematic incorporation of labour law (and the legislative consequences ensuing from it).

Chapter Three refers to the only possible way forward – admitting the current reality (i.e., the legitimacy of both traditions). It is necessary to pursue synthesis of these traditions based on a critical examination of each of the various elements that evolved in both periods. This part of the paper strived to examine each element critically. The examination for the most part convinced the author about the grounds for **returning to original tradition**, **while**, however, **respecting** the distinctiveness of a single labour law incorporating both private law components and public law components (clearly classified), developed within one discipline with the terminological and institutional apparatus that today is already established (legacy of modern tradition). The conclusions

on the relationships between labour and civil law were substantiated, both on the level of the respective codes and on the level of legal science.

Chapters Four and Five (part B) direct attention away from general issues of private law to its important segment, which is the essence of this research: obligation relationship.

Chapter Four examines the nature of an obligation relationship as a social relationship, which is included in legal regulations due to its obligatory force – a relative relationship contrary to absolute relationships. The author considers the independent deliberation of classifying laws executed within a legal relationship and outside a legal relationship – according to majority opinion in legal science – to be **specific** for this paper. I call attention to the limitations of this approach and proposes defining the term **potential** legal relationship to highlight the finer distinction between the described features.

Chapter Five is a standard interpretation of the **concepts and structures of the law of obligation**. The commentary quickly **narrows its focus** on the issue of **labour law obligations** and their specification and classification.

Chapter Six (part C) signifies another step in moving away from **generally theoretical issues** of private law, in particular the law of obligation, toward **the positive regulation of labour law obligations**. The chapter begins by examining the specification of the terms **dependent employment** (the development of the legislative enshrinement of the term in legal regulations is also described). Based on the presented explanation, a standpoint was taken on the **current treatment**. Principally, it was accepted as a step **in the right direction**; however, modification of the definition of the term dependent employment was proposed (differentiating attributes from the ramifications of dependent employment). Attention was further paid to legal acts aimed at **establishing an employment obligation** (relationship: employment contract, appointment, recall, etc.), developing this concept, and comparing the remuneration of employees by wages and salaries, and to presenting proposals **de lege ferenda**. When it comes to a **change in the employment obligation**, the current state was defined and proposals **de lege ferenda** were aimed, on the one hand, at easing unjustified restrictions of contractual freedom of the parties, limitations on the employer's obligation to assign different work to an employee if the parties did not come to prior agreement on such work, and, on the other, eliminating the **risk of an employee being forced** to work. A very extensive topic concerns legal acts aimed at **terminating**

employment obligations. In addition to minor modifications pertaining to almost all of the elements of this legal construct, proposals **de lege ferenda** focus in particular on terminating employment relationships by the employer. The pertinent passage addresses the possibility of limiting a party to the relationship in the period **after the termination of the relationship**. This is a topic with a long history of a search for a solution, which leads to vacillation of legislation. The current enshrinement is acceptable assuming certain corrections **de lege ferenda**. The end of the chapter mentions public law sanctions laid down by the Labour Inspection Act.

Chapter Seven is aimed at examining **specific legal constructs** regulating the **content** of employment relationships in a significant manner (both **de lege lata** and **de lege ferenda**). As in Chapter Six, the optimum **degree of contractual freedom** while retaining reasonable **safeguards** is also used as a **criterion**. (This means that examination begins with a decision on a reasonable degree of restrictions and this conclusion is a criterion for assessing text **de lege lata** and specifying proposals **de lege ferenda**.) A key area to which it was necessary to pay attention was regulation of **working time** (a phenomenon terminologically tied directly to the definition of dependent employment) in all its aspects. Research begins with the definition of **terminology** to the examination of the various forms of working time **patterns** – **uniform, non-uniform** working time patterns (or **other agreed modification** of working time), **flexible** working time **patterns**, **working time accounts** – through to an analysis of the various other constructs, such as work **breaks**, periods of **continuous rest**, **overtime work**, **shorter working time** (and **reduced** working time), **night** work etc. Conclusions **de lege ferenda** are based on the assumption that the working time **specified** by the employee shall remain markedly **peremptorily regulated**; however, room for freedom of the parties will, however, develop for working time **agreed contractually.** Also examined are other key constructs of employment relationships such as **obstacles** to work, **holidays**, **salary**, the aggregate construct of **other conditions** for carrying out work – a fundamental modification **de lege ferenda** is required in particular in the case of **holidays** and employee **skills development**; attention is also paid to examining the leeway given to the employer (within the employment relationship) to **freely manage employees** and classifying the **management instruments** which the employer has at his disposal within this leeway. The author considers this passage of text to be a **distinctive** and **significant** part of the paper – he adopts his own opinion when assessing the employer's managerial act. As

opposed to the majority approach, the author does not consider it to be only an exercise of rights and obligations under the employment contract, but as a **legal act** (or a managerial act with the attributes of a legal act) establishing new obligations on the employee. **Classification of the employer's internal regulations** is also proposed on the basis of this principle**;** even the **term** internal regulations, in both its broader and narrower meaning, was specified. Chapter Seven concludes with an examination of the construct of **labour-law liability**. Together with the standard interpretation, solutions **de lege ferenda**, anticipating more scope for the development of contractual principles, are proposed.

Chapter Eight (part D) is devoted to **collective labour law.** As in the previous passages of part C, when elaborating the text of the chapter, valid law – **de lege lata** – was analysed and proposals **de lege ferenda** were formulated by applying the above criteria (sufficient/optimal rate of contractual freedom). As opposed to part C – examination of individual labour law – the chapter's introduction is devoted to a theoretical issue: higher representation of the public law element in comparison with individual labour law. **Alternatives** for embracing this part of labour law – as a branch of public law with a dominating public law method of regulation or as a branch of private law with a dominating private law method of regulation – are suggested. Reasons were given why the author leans toward developing collective labour law as a **private law** discipline and the **implications** of such approach. Reference is made to the difficulties caused by the failure to reflect the merger of private law and public law methods of regulation.

The difference in the regulation of **individual** and **collective** labour obligations is further explained and the **segments** of collective labour law – **synergy** in the narrower and broader meaning of the work (the term is specified in the text) – are characterised. Special attention is paid to the constructs of **collective agreement**, **collective disputes** and **expansion** of collective obligations. **De lege ferenda**, it is recommended defining the term **trade union activities** as the basis (and obligation) for all entities tied to trade union activities that will be undertaking such activities. In the matter of striking, as the most significant means of pressure to support a position in connection with collective bargaining, attention was called to the discrepancy between the ratio legis of the Collective Bargaining Act and the subsequent development of judicial rulings. **De lege ferenda, further legislative action** was proposed. Even a unifying solution was proposed for resolving disputes about conclusion of collective

agreements and disputes about performance under a collective agreement. An extensive passage was devoted to expanding collective agreements. Developments leading to the current situation – from the original starting points through the deletion of entire passages from the Collective Bargaining Act by the Constitutional Court, to regulation de lege lata – were analysed. The Constitutional Court Ruling Pl. ÚS 40/02 was also analysed – the conclusions from this analysis were used as the criteria for evaluating modifications **de lege lata**. Proposals **de lege ferenda** were an attempt to truly fulfil the purpose of the Constitutional Court ruling (which practical legislation apparently failed to do).

Chapter 9 contains **a final summary and selected evaluative theses.**