

THE RESOLUTION OF EMPLOYMENT DISPUTES

PREPARATORY QUESTIONNAIRE

HUNGARY

1. There is a formal Labour Court system in Hungary, Labour Courts are separate courts at the local courts level. At the second instance cases are dealt with by County Courts or by the Supreme Court.

2. Labour Courts judiciary panels are composed by a professional judge and two paid lay-judges. Lay-judges are elected by the municipal government, but not appointed or representing either the employers, nor the employees. At the second instance courts cases are dealt with by three professional judges.

3. The Labour Courts have a competence for collective labour disputes (e.g. work council's election, trade union's protest etc.), but it is excluded for interest disputes. On the other hand the next individual disputes belongs to the Labour Courts competencies:

- disputes emerged from the employment relationship, civil servant's relationships, public servant's relationship
- the legal disputes of professional soldiers, policemen, firemen, members of the national security service
- disputes connecting to strike
- Labour Courts have an additional competence for civil disputes in case of a labour dispute already exist between the parties and a civil demand emerges from the employment relationship
- administrative overview of social secure cases
- review administrative decisions made by labour supervisors and controllers etc.

The number of cases connected with individual disputes are definitely higher than the collective labour disputes cases.

4. The principal jurisdictions of the Labour Courts are the cases connecting with:

- violation of labour contracts
- unfair dismissal
- discrimination claims
- violation of the rest periods rules
- wages disputes
- overview of disciplinary decisions
- employers/employees' liability decisions
- administrative overview of social secure and labour supervisors' decision.

5. There are not any qualifying period of employment to bring claims of unfair dismissal. According to the Hungarian Labour Code (Section 89 and 96) the rules of the dismissal are the next:

(Section 89)

(1) Both the employee and the employer may terminate the employment relationship established for an unfixed-term by notice. No deviation from this provision shall be considered valid.

(2) The employers must justify their dismissals. The justification shall clearly indicate the cause therefor. In the event of a dispute, the employer must prove the authenticity and substantiality of the reason for dismissal.

(3) An employee may be dismissed only for reasons in connection with his/her ability, his/her behavior in relation to the employment relationship or with the employer's operations.

(4) A change of employer by legal succession may not serve in itself as grounds for termination by ordinary dismissal of an unfixed-term employment relationship.

(5) Prior to dismissal by the employer on the grounds of the employee's work performance or conduct, an opportunity shall be given to the employee for defense against the complaints raised against him, unless it may not be expected of the employer in view of all the applicable circumstances.

(Section 96)

(1) An employer or employee may terminate an employment relationship by extraordinary dismissal in the event that the other party

a) willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or

b) otherwise engages in conduct rendering further existence of the employment relationship impossible. No deviation from this provision shall be considered valid.

(2) The provisions of Subsection (2) of Section 89 shall be duly applied regarding the reasons for extraordinary dismissals. Prior to the employer's announcement of extraordinary dismissal an opportunity shall be given to the employee to learn about the reasons for the planned action and for defense against the complaints raised against him, unless it may not be expected of the employer as a result of all the applicable circumstances.

(3) The cases for which the legal consequences set forth in Subsection (1) apply may be stipulated in the collective bargaining agreement or employment contract, within the framework of Subsection (1).

(The right of extraordinary dismissal shall be exercised within a period of fifteen days of gaining knowledge of the grounds therefor, but no more than within one year of the occurrence of such grounds, or in the event a criminal offense up to the statute of limitation. If the right of extraordinary dismissal is exercised by a committee, the date of gaining knowledge shall be the date when the committee, acting as the body exercising employer's rights, is informed regarding the grounds for the extraordinary dismissal.)

6. For particular other claims (Hungarian Labour Code, Section 202) a lawsuit may be filed within thirty days of the notification of the action, in connection with:

- an amendment of the employment contract implemented by unilateral decision of the employer;

- the termination of the employment relationship, including termination based on mutual consent;
- extraordinary dismissal;
- the legal consequences applied on account of breach of obligation by the employee;
- payment notice and a resolution for awarding damages, including compensation for inventory shortages.

(The deadline for filing a lawsuit shall be considered met if the suit is sent to the court by mail and dated on or before the last day of the deadline. A party that misses the deadline shall have the option to file an application for extension.)

In other cases there are not such deadlines, but the time limitation for labour cases is three years.

7. Most cases are determined by oral trials at the first instance. The parties have the possibility to prepare or substantiate their point of view in written form before trials. The cases are usually completed in several trials, but 80 % of the cases are finished within 1 year.

8. There is provisions for conciliate between the parties in the Hungarian Civil Procedure Act, but this kind of conciliation is not really effective yet. The Hungarian legal system established recently the mediators system, but demanding on it is not compulsory yet. (There is a special body for arbitrations and mediations in labour cases, organized by the Ministry of Labour.)

9. Applications and the defence must be in writing to clarify cases and save time and to prepare the trials. As a general rule in the labour disputes the parties have exemptions from payment of charges.

10. A party may appear in person or the following persons may proceed as attorneys in a suit:

- a relative of a party;
- a co-plaintiff or co-defendant of a party as well as his legal representative or proxy;
- a lawyers' office;
- an employee of a company (office, factory, another State organ, etc.) in cases that occurred in connection with the company or organs subordinated to the company, coming under its supervision or supervising the company; and the company solicitor (legal executive) may also proceed in suits in which either he or the company is authorized for advocacy;
- a member of the local, municipal (metropolitan district), county (metropolitan) council or an employee of the executive committee or special administrative organ in lawsuits affecting a council;
- a trade union in the suits of its own members as well as in suits defined in a separate legal rule;

- a legal assistance service of trade unions and cooperatives in suits defined in the directives of the National Association of Hungarian Trade Unions - in the case of cooperatives the national business federation organs of cooperatives - published in agreement with the Minister of Justice or other ministers;
- a member or an employee of a cooperative entitled to manage the affairs of the cooperative in the suits of the cooperative;
- an employee in his employer's suits that occurred in connection with the activities of the employer as a private tradesman, his office, consulting room, shop or workshop;
- a person authorized by a separate legal rule.

(The following persons shall not proceed as attorneys: who have not yet turned eighteen; who have been enjoined not to participate in public affairs by a non-appealable judicial sentence; who have been definitively put under a guardian.)

There are state paid special attorneys to give legal assistance for parties.

11. According to the Hungarian Labour Code (Section 100)

(1) If it is determined by court that the employer has unlawfully terminated an employee's employment, such employee, upon request, shall continue to be employed in his original position.

(2) At the employer's request the court shall exonerate reinstatement of the employee in his original position if the employee's continued employment cannot be expected of the employer. (...)

(4) If the employee does not request or if upon the employer's request the court exonerates reinstatement of the employee in his original position, the court shall order, upon weighing all applicable circumstances - in particular the unlawful action and its consequences -, the employer to pay no less than two and no more than twelve months' average earnings to the employee.

(5) If the employee does not request or if upon the employer's request the court exonerates reinstatement of the employee in his original position, the employment relationship shall be terminated on the day when the ruling to determine unlawfulness becomes definitive.

(6) If employment is terminated unlawfully the employee shall be reimbursed for lost wages (and other emoluments) and compensated for any damages arising from such loss. The portion of wages (other emoluments) or damages recovered elsewhere shall neither be reimbursed nor compensated.

(7) An employee, if his employment was not terminated by ordinary dismissal, shall be eligible for his average earnings payable for the notice period (Section 93) and severance pay payable in the event of ordinary dismissal, in addition to the provisions set forth in Subsection.

12. There isn't any compensation limit neither in unfair dismissal nor in discrimination cases.

13. The decision is always given orally at the end of the trial with ex tempore reasons. However, the presiding judge must produce a written decision and reasons in every case within 30 days. The written sentence is have to be sent to the parties.