

Conclusions of the summary report on the courts' jurisprudence on dismissals by notice and immediate dismissals

The labour section of the Administrative-Labour Department of the Curia of Hungary has analysed the courts' 2014 jurisprudence on dismissals by notice and immediate dismissals. The analysis has covered almost two thousand labour disputes conducted at first, appellate and review instance. The most important findings of the jurisprudence analyzing working group can be summarised as follows:

The number of cases in which unlawful dismissal was established was roughly identical with the number of cases in which the action was dismissed. The jurisprudence evolved on dismissals under the 1992 Labour Code, including the principles laid down in Opinion No. MK 95 as issued by the Supreme Court, remained relevant and applicable to dismissals made under the new Labour Code as well. The most frequently cited grounds for dismissal were reorganization and redundancy. In a number of actions related to these grounds employees contested the expediency of their employers' decisions, the redistribution by their employers of the tasks, and their employers' choice in selecting specifically them for dismissal. Under the courts' jurisprudence, lawful dismissals were not to be declared ineffective for circumstances falling outside the scope of a labour dispute, for example, for reasons related to profitability and expediency. The examination of the grounds cited for a given dismissal did not entitle the court to adjudicate issues falling in the employer's managerial competence and outside the scope of a labour dispute.

The statutory grounds specified in the new Labour Code for immediate dismissal and the new Labour Code provisions on the time limit within which immediate dismissal may be exercised are identical with those contained in the former Labour Code, therefore the well-established, comprehensive jurisprudence existing in this field continued to be applicable. Based on the analysis of the decisions, the working group has concluded that the formerly evolved jurisprudence was applied both to issues related to sentencing and to issues related to the assessment of employer conducts. It must be mentioned as a deficiency on the part of the courts that instead of examining whether the joint statutory conditions – namely an intentional or grossly negligent, significant breach of a material duty – were fulfilled, they evaluated the grounds cited in the immediate dismissal cases solely in the context of the statutory grounds specified in the law for such dismissals. Employer statements made in the context of immediate dismissals should also be criticized, as they tended to fail to specify why the invoked breach of duty was regarded to be material by the employer, why the degree of the breach was significant and why the employee's conduct was regarded to have been committed intentionally or in a grossly negligent manner. As to the fifteen days time limit, the jurisprudence analyzing working group is of the opinion that this time limit relates to the exercise of the right of immediate dismissal and not to the communication of such dismissals.

The reasoning of Decision No. 17/2014.(V.30.) AB of the Constitutional Court on prohibition of dismissal of pregnant women attests to the continued applicability of the Supreme Court's jurisprudence. As to the interpretation of the statutory rules governing changes in the person of the employer, domestic jurisprudence correctly relied on the great number of decisions given on this issue by the European Court. The jurisprudence analysing working group is of the opinion that solely on the ground of unlawful dismissal, in the absence of any additional elements constituting a violation of personality rights, no payment for the violation of personality rights (which replaced non-pecuniary damages) can be claimed.

Based on the jurisprudence analysis carried out by the working group it can be concluded that labour jurisprudence in the area under survey was well-balanced, judges were familiar with and applied those Supreme Court and Curia decisions which laid down legal principles, and the existing extensive court practice continued, for the most part, to be relevant.