

The Lawful Execution of Employer's Rights is an Important Subsystem of Corporate Governance (a Labour Case Study)¹

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Abstract: In the world of work, the political transition created a difficult situation in Hungary, which has become even less favourable in the 2010s. The employees are exposed to numerous infringements. The case study presented at the previous MEB conferences and continued herein shows the vulnerability of employees. The case study provides an excellent opportunity for the presentation of the special Hungarian labour law (the conclusion of an employment relationship, payment of wages, performance of work, trial period, termination, corporate dismissal, etc.) and for summarising the lessons learned. In addition to the court judgement involving heavy expenditure, it can be also concluded that successful corporate work can only be achieved by respected and skilled employees, and

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the devotion of employees is the key source of results. This, in turn, can be achieved if the representatives of the owners and the management of the company pay great attention, as a subsystem, to the lawful employment and the motivation of employees.

1 Introduction

In the world of work, the political transition in 1990 created an extraordinary situation in Hungary, approx. 1.5 million jobs disappeared, which naturally caused enormous problems for the country entering the path of market economy and for its employees. However, in the economic situation that seemed to be improving until the beginning of the 2000s, no one would have expected that by the 2010s the circumstances on the labour market would become even less favourable.

In addition to the enormous workload of the Labour Courts, also the complaints submitted to the ombudsman show that the employees experience numerous infringements, and however the administration of justice is the task of the Courts, naturally also the ombudsman deals with complaints affecting a large number of citizens. It should be emphasised that the Court is last step of avoiding infringements, as here the authorities responsible for labour affairs, trade unions and civil organisations should also play a major role. It is interesting to note that the former head and chief legal officer of the Labour Inspectorate, the Hungarian authority important in the world of work, was previously arrested on charges of corruption.

The complaints submitted to the ombudsman mostly come from the private sector, but unfortunately labour violations have multiplied lately in the public sector as well, mostly in connection with the wages for the 13th month. Such a complaint may not occur today as in Hungary the wage for the 13th month has been abolished in the public sector. Today, the employees in the public sector rather experience violations of not being categorised in higher wage categories when achieving a higher degree; and the cut of state expenditures results in the freeze of wages and dismissals, which cannot be compensated by the stagnation and fallback of the private sector.

Based on the above, with a co-author devoted to this special topic it is a must to present further developments of the special labour case triggering great attention on the MEB conferences in 2007 and 2008.

The case study presented on the previous MEB conferences and continued herein shows the vulnerability of the employee. Although our case concerns an employer having a foreign-owned parent company, we do not want to give the impression as if foreigners caused most of the problems. Unfortunately, abuses by the employees, black labour, wages paid without taxes and contributions are very common in Hungary, as well as the court proceedings lasting too long mean an

additional problem. The primary purpose of the study is, in addition to providing information on Hungarian labour and corporate governance matters, to draw attention to the phenomena experienced in the world of work. The conclusion, in the end, can be clearly drawn. The right decision for the employers is to comply with the law.

2 Circumstances of a special employment²

X Foreign Company (FC) group intended to employ a highly qualified Hungarian employee in Hungary after a foreign training period, thus in April of the year T0, after several recruitment interviews and tests they concluded an employment contract for an indefinite term with a Hungarian employee for the position of chief commercial officer of X1 Ltd. belonging to the group of X FC, then after almost 6 months they intended to employ the employee as managing director³. Due to the obvious discretion in such cases, T0, T1.. indicates the calendar years of the case, while X and Y indicates the various foreign company groups and X1, Y1, XY, etc. their subsidiaries, joint subsidiaries.

In July, T0 the employee becoming the claimant later on was appointed as managing director according to claimant based on an oral agreement also by X2 Ltd. of the X foreign company group.

In November, T0 the employee was appointed also as branch manager by the X3 branch office of the X company group.

In February, T1 the employee was appointed also as managing director by Y company group's Y1 Ltd.(a company owned by a third nation), due to the oncoming fusion of the parent company groups. As a result of this, also in Hungary a fusion could be expected with regard to X1 and Y1 Ltd.

The employee requested orally and also in writing wages and employment contracts by each company, on the request of his attorney, who said the following about this later on during his personal hearing before the Court: *"I told the claimant ... to conclude an employment contract separately by each company... Therefore, I advised the claimant to enter into an employment contract or other employment relationship with the companies in connection with each formation... The Claimant therefore worked simultaneously by X2 and X1 Ltd. at the end of the year T0."* (Quote from the testimony).

On 29 December, T1 the fusion between X2 and Y1 Ltd. was realised, which continued its operation after a name change under the name XY Ltd.

² Based on the direct authorisation and documents of the claimant and court records

³ For the contract of employment see bibliography (1) pp. 168-170.

On May 1, T2 the claimant was appointed as managing director also by X1 Ltd. (the only written employment contract concerned this company, originally concluded for the position of chief commercial officer). Simultaneously, with a contract amendment a 2% premium was offered for the claimant for the recovery of the overdue claims of 1.4 billion HUF ceded to X1 Ltd., as well as a one-time payment of 100 thousand DM was also offered for the recovery of 3 million DM.

On the first of June, T2 the employee was dismissed from XY Ltd. by a corporate decision.

Considering, however, that the employer performed parallel payment of wages only partially (partially in the form of premiums), the employee was thinking of filing a lawsuit as he had not been paid by X1 Ltd. since October, T0, and he had not received any payment at all by Y1 Ltd. and X3 branch office. In October, T3 the employee filed a lawsuit by the labour court. The first hearing was held after 9 months, where the attempt of the Court for reaching a settlement was unsuccessful.

3 An unexpected turn

In October, T4 the employer dismissed the employee with a corporate decision based on section 88 of the Labour Code⁴:

“ Resolutions of the Member, X1 Limited Company,(hereinafter referred to as the Company)

X FC as the sole member of X1 Limited Company (hereinafter referred to as the “Member”) hereby adopts the following resolutions:

Resolution No. 1/T4 (07.10.)

Effective as of this day, the Member hereby dismisses the managing director appointed for 3 years by the founder’s resolution No. 1/T2 (04.30.) and effective as of this day the Member terminates the employment relationship of the

⁴ Termination of fixed-term employment
Labour Code 88 §

- (1) An employment relationship established for a fixed term shall only be terminated by mutual consent or by extraordinary dismissal or, if a trial period applies, with immediate effect.
- (2) An employer may terminate the employment relationship of an employee employed for a fixed term under conditions other than those stipulated in Subsection (1); in such case however, the employee shall be paid one year's average salary, or his average salary for the period remaining if such period is less than one year.

employee in accordance with section 88 subsections (2) of Act XXII of 1992 on the Labour Code (BH 1999.574).

Having regard to the above, clause X of the Deed of Foundation of the Company is hereby amended.

..., 10.7.T4 X FC Member, Represented by:... “

The lawsuit filed for the payment of wages was thus supplemented by a claim for unlawful termination.

4 The claim of the claimant with regard to all companies after the dismissal

4.1 Claim against X1 Ltd. after the dismissal until the end of the employment relationship according to the defendant (until 30 April, T5)

It was not debated by anyone in the lawsuit that on 6 April, T0, with an effective date of 1 May, T0 an employment relationship was concluded between X1 Ltd. I. degree (d) defendant and the claimant for an indefinite term, with a 3-month trial period⁵, indicating chief commercial officer as primary position.

The employment contract also contains that it may be amended or supplemented only in writing according to the agreement of the parties. For the event of termination of employment it requires the termination to be justified even during the trial period, obviously imposing an obligation on the employer that is more onerous than average and requiring an even more cautious proceeding than average.

⁵ Labour Code: Trial period

81. §

(1) A trial period may be stipulated under the employment contract upon establishment of the employment relationship.

(2) The duration of the trial period shall be thirty days. A shorter or longer trial period, not to exceed three months, may be stipulated in the collective agreement, or agreed upon by the parties. The trial period may not be extended; no deviation from this provision shall be considered valid.

(3) During the trial period either of the parties may terminate the employment relationship with immediate effect.

As far as we are aware today there is no such document that would have terminated lawfully the employment relationship entered into with the contract of 6 April, T0.

It is undoubted that on 21 October, T4 the employer made it physically impossible for the claimant to carry on his work by depriving him from his work tools. His keys were taken and it was expressly said to him that his work would not be needed in the future either and that the claimant should not even try to do so. It should be noted that all of this happened without the cooperation of the claimant and despite the explicit objection of the attorney present.

It is a vain attempt from I. r. defendant to pretend as if this lawsuit concerned only the dismissal from the position of managing director – which, by the way, was unlawful also by itself –, considering that the employment relationship of the claimant with I.d. defendant was continuous, which had not been terminated lawfully, and proving this would be the task of the I.d. defendant anyway and not of the claimant.

The reference of the I.d. defendant, X1 Ltd. alleging that the employment relationship commencing on 1 May, T0 was replaced later by the employment relationship entered into with the then X2 Ltd. (III.d. defendant) is also untrue, as the claimant started his job as managing director by II.d. defendant on 6 July, T0, while I.d. defendant even at the end of July, T0 wanted to extend– unlawfully - until 31 October, T0 the trial period of the employment relationship existing with it. Even the termination attempt on 27 September, T0 proves the parallel existence of the two employment relationships. The act on 21 October, T4 making it physically impossible to continue his work and the assertion of the gentlemen being present on behalf of the employer that his work was no longer needed are considered by the claimant as unlawful termination. In addition to the personal statement of the claimant, this fact is proven in the lawsuit also by a witness testimony.

The claimant requests the Honourable Labour Court to establish that the I.d. defendant terminated the employment of the claimant unlawfully, to reinstate him in the position of chief commercial director and to order I.d. defendant to pay the allowances due to the claimant pursuant to the unlawful termination. As the I.d. defendant has not paid, even compared to its own – in our opinion wrong - point of view, the average wage due to the claimant because of the termination, the claimant still requests the Honourable Labour Court to order the I.d. defendant secondarily, even in the unexpected case of dismissing the primary claim, to pay the average wage as of 22 October, T4 in X1 Ltd., with regard to, in particular, section 152 of the Labour Code and its subsection (3)⁶. Naturally, the claimant

⁶ Labour Code 152.§ (1) If an employee's remuneration is established as an average wage, it is to be calculated on the basis of the commensurate wages paid for the relevant period (hereinafter referred to as "normative period").

upholds his claim for average wages even on the basis of the opinion of the appointed expert, he just corrects the calculations of the judicial expert, and he supplements the averaging with the premiums unpaid yet due at the time of the calculation of the average.

In consideration of the premium stipulated in the HUF 2.5 million contract and the 2% premium unpaid yet already performed as recovery, the experts of the claimant calculated a monthly average wage of HUF 2,756,398 per month. (Based on the payments performed by the employer, the average wage is HUF 2,461,236; together with the premium of HUF 2.5 million: HUF 2,671,197; together with the premium of HUF 2.5 million and the 2% premium due: HUF 2,756,398; while the expert appointed by the Court calculated an average wage of HUF 2.391.950 based on the performed payments.)

Including also the unpaid premiums in the average wage, the claimant is entitled to $6 \times 2,756,398 \text{ HUF} = 16,538,390 \text{ HUF}$ average wage for the termination period + daily average wage for 7 days from 21 till 31 October, $7 \times 125,290.8 \text{ HUF}$ daily average = 877,035.8 HUF. This is altogether HUF 17,415,425 minus the HUF 6,125,297 transferred by X1 Ltd. later for the termination period = 11,290,128 HUF + interests, which sum the X1 Ltd. has failed to pay when transferring the average wage.

The claimant requests the Court, furthermore, to order I.d defendant to pay 2% of the HUF 13,578,566 recovered by the claimant between 1 June, T0 and 30 September, T4, that is HUF 271,571 and its interests from 22 October, T4. The last payment of premiums by X1 Ltd. was made on 16 June, T4 based on the staff report of 30 May, T4. In the last staff report of 30 September, T4 the amount recovered is HUF 433,787,308. The 2% premium was paid according to the situation at the end of May, T0 (after HUF 420,107,742). Thus, the claimant is

(2) In respect of the calculation method described in Subsection (1) above, wages paid at a time other than the regular payday shall be construed as if paid on a regular payday.

(3) In respect of time wages, for the calculation of average wages, the personal basic wage shall be applied in the sum applicable for the date when the average wage is due.

(4) The average wage shall be calculated on the basis of the wages paid for the last four calendar quarters.

(5) If the period of an employee's employment is less than the four calendar quarters, the average wage of such employee shall be calculated on the basis of the wages paid for the relevant calendar quarter(s), or for the last calendar month(s), as appropriate.

(6) In respect of the calculation of average wages, only the commensurate portion of wages paid during the normative period as being due for a specific period which is in excess of the normative period, and the portion of wages paid outside of the normative period which is applicable only as the basis for the calculation - with due consideration of the factor set forth in Subsection (8) - of the average due for the work performed during the normative period shall be included in the amount of paid wages.

entitled to the 2% premium after HUF 13,578,566. 2% of this sum is HUF 271,571 based on the signed staff report.

Irrespectively whether the I.r. defendant terminated the employment of the claimant unlawfully, the claimant requests the Honourable Labour Court to order it to pay to the claimant the wage due for the period between 1 November, T0 and 30 April, T2 (HUF 17,131,733) and its interests in such way that it shall pay for the year T0 HUF 700,000 per month, thus altogether HUF 1,400,000, while for the year T1 HUF 756,000 per month, altogether HUF 9,072,000, and in addition to this, HUF 2,500,000 promised premium, thus HUF 11,572,000. And for the year T2, HUF 831,600 per month, altogether: HUF 3,326,400 and HUF 833,333 premium stipulated for the partial period, thus altogether for the year T2: HUF 4,159,733. (The unpaid wages between 1 November, T0 and 30 April, T2 altogether: HUF 17,131,733.)

Considering the three-year limitation period, the claimant filed a claim against I.d. defendant, X1 Ltd. only for the period starting from 1 November, T0.

The claimant requests, furthermore, the I.r. defendant to be ordered to pay 2% of HUF 37,542,538; i.e. HUF 750,847 and its interests from 22 October, T4, on the basis that during his employment the employer instructed the employee to recover several additional claims that had been overdue for a shorter or longer period of time and had not been included in the original premium agreement (as they qualified as overdue by less than 90 days on 29 December, T1), in the course of which the claimant recovered claims in an amount of HUF 37,542,538 but he did not receive any premium thereafter. All of these claims were overdue by more than a year when recovering them but on 29 December, T1 they had qualified as being under 90 days, and usually the claimant received instructions for their recovery in such way that the same debtor had debts that had been overdue by more than 90 days as of 29 December, T1 and in these cases, contrary to their original agreement, the claimant recovered those debts as well that had been under 90 days in the basis period. Originally, the recovery of the debts that had been overdue on 29 December, T1 by less than 90 days would not have been the task of the claimant. The amount is based on the so-called weekly report of the end of September, T4:

HUF 37,542,538 2 % of which is HUF 750,847

The claimant requests the I.r. defendant to be ordered to pay to the claimant the annual HUF 2,500,000 premium due for the period between 1 May, T2 and with the reservation of rights 30 April, T5 but not yet paid to the claimant (for the part of year T2: HUF 1,666,666; for the year T3 HUF 2,500,000; for the year T4 HUF 2,500,000; for the part of year T5 HUF 833,333), thus HUF 7,499,999 and its interests calculated pro rata from 1 September, T3. (The basis of this is the so-called 2.5 million HUF premium stipulated in the employment contract concluded on 06.04.T0.)

Considering that the previous claims of the claimant against I.d. defendant, X1 Ltd. in connection with the average wage were based on the attached notification of I.d. defendant stating that it had indicated 30 April, T5 as the end of the employment relationship, the claimant requests the Honourable Labour Court to order I.r. defendant to pay the unpaid average wage, calculated according to the averaging described above and in his previous submission, also from 1 May, T5 until the final and binding decision.

According to the claimant, the appointment as managing director by X1 Ltd. and the withdrawal of this appointment by itself cannot be considered as a fact from which conclusions could be drawn regarding the conclusion and termination of the employment as chief commercial officer. It is still the opinion of the claimant that X1 Ltd., the I.r. defendant has not terminated lawfully the employment at X1 Ltd. as chief commercial officer, as the dismissal of the executive officer by a resolution of the supreme body (exercising the owner's rights) does not obviously entail the termination of the employment relationship. Especially, if it does not even concern the employment as chief commercial officer. This statement is of corporate nature, thus it results in the secession from the representation of the company and not from the company itself, so it does not result in the termination of employment. The fact that the claimant had been appointed also as the managing director of X2 Ltd. previously, could not have prevented and did not prevent claimant to work simultaneously also by X1 Ltd. but most importantly, it did not terminate its previously concluded employment contract and employment relationship, as the earlier employment contract could not have validly dealt with the employment relationship concluded with X2 Ltd. (with another entity, for another position).

The claimant still cannot accept the de facto succession mentioned by the defendant as a valid argument, but the facts and documents contradict this argument as well. For the sake of the protection of employees only de jure succession is possible.

4.2 Claim against X1 Ltd. from the end of the employment according to the defendant (from 30 April, T5) till the lawful termination

Further legal basis of the claims against X1 Ltd. is the unlawful removal (unlawful termination of employment) of the claimant, thus the employment relationship of the claimant for the position of chief commercial officer still exists. We refer to the indefinite term employment contract of the claimant not terminated lawfully to date. The rules of the Labour Code from section 89⁷ until section 95 were not observed during the dismissal by the defendant.

⁷ Ordinary dismissal

Primarily the claimant requested the Honourable Court to reinstate him, pursuant to section 100 subsection (1)⁸ if the Labour Code in his original position as chief commercial officer.

Having regard to the unlawful termination, until the reinstatement the defendant shall pay the claimant his average wage. Should the Court not reinstate the claimant in his original position despite subsection (1) and subsection (3) point a)⁹ of section 100 of the Labour Code, then the claimant claims in accordance with subsection (4)¹⁰ of section 100 of the Labour Code additional compensation for 7 months, as well as average wage for the termination period that would be due in case of lawful termination and severance pay that would be due in case of lawful termination (subsection (7)¹¹ of section 100 and subsection (1)¹² of section 101 of

89. § (1) Both the employee and the employer may terminate the employment relationship established for an indefinite duration by notice. No deviation from this provision shall be considered valid.

(2) With the exception stipulated in Subsection (6), 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 behaviour in relation to the employment relationship or with the employer's operations.

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

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

⁸ Labour Code 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.

⁹ Labour Code 100. § (3)) The provisions of Subsection (2) shall not be applied if a) the employer's action violates the requirements of the proper execution of law (Section 4), the principle of equal treatment (Section 5), or restriction of termination [Subsection (1) of Section 90],

¹⁰ Labour Code 100. § (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.

¹¹ Labour Code 100. § (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 (6).

¹² Labour Code 101. § (1) The employee, if he does not terminate his employment relationship in accordance with the provisions of this Act [Subsection (2) of Section 87,

the Labour Code). The claimant files these claims as secondary claim compared to the reinstatement.

The wage for year T5, between 30 April – 31 December, T5 reduced by the returns: HUF 19,594,934 and its interests from 01.09.T5.

For the years T6 - T13 the calculation followed the same method. The claim of the claimant until the lawful termination:

Altogether 210 million HUF!

For the event if the Court did not reinstate the claimant to X1 Ltd., the claimant requests the X1 Ltd. defendant to be ordered to pay:

- compensation for 7 months, that is HUF 19,294,786
- average wage for the 6-month termination period set forth in the contract, that is HUF 16,538,388
- considering my employment existing from 1 May, T0 until the decision of the court, severance pay of 3 months, that is HUF 8,269,194.

4.3 Claim against X2 Ltd., Y1 Ltd. and XY Ltd.

Not debated by II.d. defendant, the claimant was employed from 6 July, T0 as managing director first by X2 Ltd. then after its transformation by XY Ltd. which was owned by X and Y FC in 50-50%.

According to the claimant this employment relationship – although the contract was not put into writing for reasons not attributable to the claimant – was concluded for a definite term, namely according to the attached memorandum of association for the expected term of the position of managing director, that is until 6 July, T3, which was extended once until 31 December, T3 as certified by the document submitted previously. On 13 October, T0, the claimant had to sign a rules of procedure in X2 Ltd. in which the rules of carrying out the tasks as managing director were set (responsibilities of the managing directors, informing the parent company, rules of procedure of members' meetings and management meetings, rules of contracts, etc.) from which it was clear that claimant had to carry out tasks in X2 Ltd. different from his employment contract with X1 Ltd., while at this time he received salary parallel from both companies separately. The rules of procedure can be essentially considered as a contract with regard to X2 Ltd.

Section 92, Section 96, and Subsection (1) of Section 97], shall be liable to pay compensation to the employer in an amount equal to his average earnings falling due for the notice period. Where the termination of employment is deemed unlawful due only to the employee's failure to work in any portion of the notice period, the employee's liability for compensation shall be commensurate thereunto.

Claimant received salary only until the end of May, T2, for which reason the claimant requested the Labour Court to order II.d. defendant to pay the monthly wage received by the claimant for the last time, that is HUF 831,600 for the period between 1 June, T2 and 31 December, T3. According to the law such payment can be requested for a maximum of one year, thus the claimant requested the court to order the II.d. defendant to pay HUF 9,979,200 for 12 months and its interests counted from 16 March, T3.

It is interesting that the managing director following the claimant in XY Ltd., who was the managing director of II.d. defendant only between 1 June, T2 and 28 February, T3, received a compensation of HUF 16,603,000 upon his dismissal. It also follows from this fact that the claimant's claim against II.d. defendant can by no means be exaggerated.

The claimant requests the II.d. defendant again to be ordered to pay the debt of Y1 Ltd., a company owned in 100% by another foreign-owned Y FC and merged into X2 Ltd., stemming from a legal relationship concluded before the merger, as follows.

The claimant became the managing director of Y1 Ltd. in the year 2000, according to the intentions of the claimant against remuneration and within the framework of an employment relationship. The appointment of the claimant as managing director was given for five years, but following the merger of the company on 29 December, T1 it was not possible to carry out the tasks of the managing director of the merged company.

Considering that the claimant did not agree with Y Ltd. in a different amount and contrary to the statement of II.d. defendant, neither in the work being free of charge, the claimant requested the Honourable Labour Court to order II.d. defendant to pay to the claimant the average wage paid by its predecessor, Y1 Ltd. to the other managing director by Y1 Ltd. and its interests. From 1 March, T1 requests the claimant the Labour Court to order II.d. defendant, Y1 Ltd. – as the successor of Y1 Ltd. – to pay for the year T1 a monthly gross wage of HUF 700,000, that is HUF 7,000,000 and its interests calculated from 1 August, T1 until the payment. With regard to the year T2, the claimant claims from Y1 Ltd. a monthly gross wage of HUF 840,000, that is HUF 10,640,000.

Simultaneously the claimant requested the Court to order the defendants to submit in the proceeding the document from which the sum can be seen which the other managing director received in the first half of T2 as premium from its employer for the year T1. The data supplied by the defendant was closed in April, T2 thus it does not contain the premium.

4.4 Claim against X3 Branch Office

According to the attached decree and deed of foundation the claimant was the manager of the branch office of II.d. defendant from 3 November, T0. Here also the tasks were not undertaken by the claimant free of charge and although despite the written request of the claimant no employment contract was concluded, the claimant here also intended to carry out his work within the framework of an employment relationship.

The claimant actually filled the position of the branch office manager until 21 October, T3, when the representatives of X FC, with their conduct of 21 October, T4 described previously, made it impossible for the claimant to carry out the work also as branch office manager.

Despite performing work the claimant never received any wage, eve despite the fact that prior to starting his activities he had discussed it on the phone that he would receive a monthly gross wage of HUF 200,000 and he had presented also by the HR department of X FC his claim of concluding a written employment contract with the abovementioned wage.

Considering that this employment relationship was concluded for a fixed term, until 24 May, T6, and that claimant considers the events of 21 October, T4 as unlawful termination, he requested the Honourable Labour Court to establish that an employment contract was concluded – even if not in writing - between the claimant and III.d. defendant for the position of branch office manager for the fixed term between 3 November, T0 and 24 May, T6, and we also request to order III.d. defendant to pay a monthly wage of HUF 200,000 for the period between 3 November, T0 and 24 May, T6, altogether HUF 13,367,000 HUF 13,341,506 and its interests calculated pro rata from 1 September, T4.

5 Other important working conditions

The claimant attached the document as of 7 March, T2 also with its Hungarian translation, in which the representatives of X FC confirmed that his legal relationship with X1 Ltd. was continuous, the conditions dated 28 February, T2 only supplement it. There was not a word that the legal relationship would have been replaced by another legal relationship with regard to neither the premium nor any clause of the contract, but according to the documents, and also in reality the parties agreed on the partial supplementation of the conditions of the legal relationship existing continuously with X1 Ltd. One of the representatives of X FC wrote himself in the document: “as a supplementation in the annex.. (als Ergänzung im Anhang) ...”.

In connection with the companies affected by the employments of the claimant and the work contributions of the claimant it is an important fact that the annual turnover of X2 Ltd. was 10 billion HUF in T0, while the annual turnover of Y1 Ltd. was 6-7 billion HUF. During the activity of the claimant the indicators of the companies employing him improved by almost 2 billion HUF merely in the filed of claim recovery, compared to which the claims of the claimant are almost insignificant.

As referred above, in an already submitted notification even I.d. defendant itself acknowledges that my employment relationship had not been terminated on 21 October, T4, as I.d. defendant itself marks 30 April, T5 as the last day of employment. The claimant obviously accepts this document only in terms of proving that the employment with I.d. defendant existed also after 21 October, T4.

Nobody may think that within the framework of an employment proven to have been established it would be the obligation of the claimant in the litigation to prove when and how he performed his contractual obligations, and similarly the burden of proof regarding the fact that the defendants had not given him a job description does not lay on the claimant either.

6 Work performed, tasks carried out in X1, Y1 Ltd. and X3 Branch Office

In X1 Ltd. the claimant filled a separate position of chief commercial officer even after 1 May, T2 (after his appointment by X1 Ltd. as managing director). To prove this, the claimant has presented more than 50 documents regarding the years T0-T4, and several witness testimonies supported his statements as well. The claimant was all along a bank signatory by X1 Ltd., in his position as chief commercial officer he substituted for the foreign managing director as representative.

The employment of the claimant by X2 and XY Ltd. was not debated by the defendants either.

In Y1 Ltd. the claimant presented a dozen documents and several witnesses proving his performance of work.

Most of the documentary evidence proving the tasks carried out by the claimant were attached to the submissions of 12 August, T4 and 22 April, T6, as well as we have sent them also separately in an organised form to the Court for facilitating the work of the judicial expert as documents to be sent to the expert.

The claimant presented several documents and witnesses in X3 branch office as well, where by the way he had independent signatory right.

The witnesses coming from the parent company of course confutes the witnesses of the claimant and the defendants disputed the documents proving the performance of work.

7 Legal grounds of the claim

The claimant bases his claim against all defendants primarily on section 141¹³ of the Labour Code, it is his firm position that it could not have been an expectation of the defendants that is either lawful or is in line with the intention of the claimant that the claimant should work for free. It should be noted that also the defendants were aware of this, no wonder that they were making promises of putting the employment contracts in writing and sending them to the claimant.

The claimant particularly refers to the requirement of exercising the right in accordance with their intended purpose, set forth in section 4¹⁴ of the Labour Code.

The claimant also refers to subsections (1) and (2) of section 8¹⁵ of the Labour Code, subsections (1), (2) and (4) of section 76¹⁶ of the Labour Code as in force at

¹³Labour Code 141. § Employees shall be entitled to a wage from the employer on the basis of employment; any agreement to the contrary shall be considered null and void.

¹⁴ Labour Code 4. § (1) The rights and duties prescribed in this Act shall be exercised and fulfilled in accordance with purpose for which they are intended.

(2) Exercise of rights shall be construed improper if it is intended for or leads to the injury of the rightful interests of others, restrictions on the assertion of their interests, harassment, or the suppression of their opinion.

(3) Appropriate remedy shall be provided for any detrimental consequences resulting from improper exercise of rights

¹⁵ Labour Code 8. § (1) An agreement which violates any legal regulation pertaining to labor relations or any other statutory provision shall be null and void.

If invalidity of an agreement cannot be remedied within a reasonable period of time without causing injury to the parties and to public interest, it shall be recognized ex officio.

(2) An employee shall not waive his rights in protection of his wages and his person in advance, nor shall he conclude a preliminary agreement which may prejudice his rights to his detriment.

¹⁶ 76. § (1) Unless otherwise prescribed by law, an employment relationship is deemed established by an employment contract.

(2) Employment contracts shall be concluded in writing, which shall be provided for by the employer. Invalidity on the grounds of failure to set the contract in writing may only be cited by the employee within a period of thirty days from the first day on which he commences work.

(4) The parties to an employment contract may settle any issues in the contract. The employment contract shall not be contrary to law and the collective agreement, unless it stipulates more favourable terms for the employee

the time of the establishment of the legal relationships, and to subsection (1) of section 79¹⁷ of the Labour Code.

The claimant particularly refers to subsections (1) and (3) of section 82¹⁸ of the Labour Code, and to section 83¹⁹ to the extent that even if the argument of the defendant regarding the change in positions – which is debated by the claimant and contradicts the facts as well – could be accepted, claimant would be entitled to wages by X1 Kft. based on his position as chief commercial officer after his dismissal as managing director. Considering the long duration of the lawsuit (the first instance judgement can be expected after 8-9 years), this is a significant amount even with an annual return of several millions.

The claimant refers to all provisions of section 86²⁰ and 87²¹ of the Labour Code as provisions not implemented. When reading these sections it seems clear that none of the established employment relationships have been terminated lawfully and they are still in force – except for the lapse of time in case of legal relationships concluded for a fixed term.

For the event if according to the Court any of the legal relationships established for a fixed term was terminated by the explicit written declaration of the person exercising employer's rights – containing justification -, the claimant refers to subsection (2) of section 88 of the Labour Code.

¹⁷ Labour Code 79. § (1) In the absence of an agreement to the contrary, an employment relation is established for an indefinite duration

¹⁸ Labour Code 82. § (1) Employment contracts may only be amended by the mutual consent of the employer and the employee. 3) The provisions on the conclusion of employment contracts shall be duly applied for the amendment thereof

¹⁹ Labour Code 83. § If, on the basis of an agreement, the employee is employed for a fixed term in deviation from the employment contract, his employment shall be continued in accord with the employment contract beyond the expiration of such period, and his wages shall be adjusted as per the wage improvements implemented in the meantime.

²⁰ Labour Code 86. § An employment relationship shall cease

- a) upon the employee's death,
- b) upon the dissolution of the employer without legal successor,
- c) upon the expiration of the fixed term,
- d) in the case defined under Subsection (1) of Section 86/B.

²¹ Labour Code Termination of an employment relationship

87. § (1) An employment relationship may be terminated

- a) by mutual consent of the employer and the employee;
- b) by ordinary dismissal;
- c) by extraordinary dismissal;
- d) with immediate effect during the trial period;
- e) as per the provisions of Subsection (2) of Section 88.

(2) Agreements and statements for the termination of an employment relationship shall be made in writing.

(3) No deviation from the provisions of Subsections (1)-(2) shall be considered valid.

The claimant refers to section 89 of the Labour Code regulating ordinary dismissal also as provisions not implemented.

Among his claims the claimant refers to subsection (1), point a) of subsection (3) and subsection (6) of section 100 of the Labour Code.

Regarding the claim and also in connection with the calculation of the amounts of the claims the claimant reserves his rights. He requests the defendants to pay him all remuneration due to the claimant.

8 Judgement

In the judgement the Court establishes that on 21 October, T4 X1 Ltd. terminated unlawfully the employment relationship of the claimant. It orders X1 Ltd. to pay the Claimant within 15 days gross 93,500,474 HUF and interests after gross 54,255,129 HUF from 1 May, T9, after gross 9,073,229 from 22 October, T4, after 7,500,000 from 1 January, T4, after gross 1,022,418 HUF from 22 October, T4 until the day of payment, and HUF 9,622,088 without any deductions.

(So, because of the unlawful termination the Court awarded HUF 54,255,129. The defendant has to pay also its statutory interests counted from midterm (section 159²² of the Labour Code).)

The employment of the claimant was not terminated by ordinary dismissal, his employer intended to terminate the legal relationship that it wrongly considered as a fixed term employment with a settlement according to subsection (2) of section 88 of the Labour Code.

According to subsection (7) of section 100 and point c) of subsection (4) of section 95²³ of the Labour Code the claimant is entitled to severance pay equal to 3 months of his average wage as managing director. It shall be established that I.r. defendant terminated the legal relationship of the claimant as managing director unlawfully; his legal relationship terminates upon the decision establishing unlawfulness becoming final and binding. (The amount of severance pay is HUF 7,216,566).

In excess of this the court dismisses the claim filed against I.d. defendant.

The court dismisses the claim filed against II.d. defendant.

²² Labour Code 159. § Interest prescribed by civil law regulations shall be payable for any delay as appropriate.

²³ Labour Code 95. (4) Severance pay shall be the sum of the average earnings of

a) one month for up to three years;
b) two months for up to five years;
c) three months for up to ten years;

The court dismisses the claim filed against III.d. defendant.

The court orders X3 Branch Office (IV.d. defendant) to pay, on the basis of the meritorious claim:

For the period between 3 November – 31 December, T0 (for 28 workdays) gross 93,333 HUF (half of the claim submitted by the claimant based on the monthly wage of HUF 200,000);

years T1-T3: gross 3,600,000 HUF;

January-October, T4: gross 970,000 HUF; altogether HUF 4,663,333.

The judgement means an expenditure of approx. 160 million HUF for the defendants together with the social contributions and default interests. This is an expenditure of approx. 570 thousand Euros. From this the claimant receives approx. net 75 million HUF, 270 thousand Euros.

9 Reasoning

The claims against I.d. defendant, X1 Ltd.:

The claimant based his claims against I.d. defendant, X1 Ltd. on the one hand on the statement that following and in addition to his role by X2 Ltd. during the summer of T0, until 31 May, T3 he carried out his duties by X1 Ltd. as chief commercial officer as a full time employment.

His legal relationship by these two companies existed simultaneously, in connection with which – according to the claimant – he was entitled to wages from both employers. In this regard the following should be noted:

The infallible starting point is that an employment relationship was established between the claimant and the defendant of first degree for an indefinite term starting from 6 April, T0. According to his contract the claimant was the expectant of the position of managing director of the company, but according to the decision of the parent company, from the summer of T0 his work was needed by X2 Ltd., another company belonging to the group.

Contrary to the concept of the claimant regarding the parallel nature of the employment relationships, I.d. defendant claimed the realisation of succession of employers. With regard to I.d. defendant X1 Ltd. and X2 Ltd. the court also found the continuity of the legal relationship proven. Although the document certifying the fulfilment of the classic criteria of employer's succession, thus containing the agreement of the affected companies in this regard, is not available, the continuity of the legal relationship of the claimant can be established also by an approach from other aspects.

In labour law the concept of displacement is known. Although the provisions of the Labour Code in force at the time of the period in question did not contain this legal instrument *expressis verbis*, the process that the previous employer and the employee agree on the termination of the employment with mutual consent, then to new (the receiving) employer employs the employee further on under the same conditions, by acknowledging the continuity of the previous employment relationship, is in accordance with the provisions of the Labour Code as in force in the period in question and with the fundamental principles of labour law.

In this case the claimant acknowledged that contrary to his original contract his work is needed further on by another company of the parent company and that he may fill the position of managing director that was promised to him also by this new company. The claimant was aware of and acknowledged that X2 Ltd applied the contractual terms concluded previously by I.d. defendant, X1 Ltd.

Although the lack of documents proving the changes (termination of employment, employment contract, displacement, etc.) makes it harder to evaluate the labour situation of the claimant, the continuity of the employment relationship can be clearly tracked.

The statement that besides his work at X1 Ltd. the claimant would have worked full time, like being in an employment relationship for I.d. defendant as chief commercial officer is not convincingly proven by the findings of the case.

Claims against II.d. defendant, X2 Ltd. :

First of all, the claimant [refers to] his position as executive officer (managing director) by Y1 Ltd., one of the predecessors of II.d. defendant.

The claimant exercised his rights and performed his obligations as managing director by X2 Ltd. under an employment relationship, and he received wages in accordance with the terms of the contract concluded with the defendant of first degree, i.e. another company of the group.

In the lack of an employment relationship with Y1 Ltd., claims in connection with its termination cannot be enforced against the successor either.

The matter of work and remuneration by the branch office

The claimant was the representative of the Hungarian branch office of X FC since 3 November, T0 with independent responsibility. Although the claimant himself urged it several times, no employment contract was written for carrying out the tasks by the branch office.

According to the conclusion by the court, the work of the claimant by the branch office was performed within the framework of a relationship similar to employment, according to terms corresponding to the legal requirements of temporary assignment.

Conclusions

The judgement means an expenditure of approx. 160 million HUF for the defendants together with the social contributions and default interests. This is an expenditure of approx. 570 thousand Euros. The loss of the defendants is, however, even bigger if it is taken into consideration that the litigation going on for almost 10 years turned their reputation as being a bad employer. Their companies has realised great losses in the last years. There was a case when the chief financial officer, hired after much searching in one of the companies of the defendants, left the company on the 3rd day of his trial period. Successful corporate work can only be achieved by respected and skilled employees, and the devotion of employees is the key source of results. This, in turn, can be achieved if the representative s of the owners and the management of the company pay great attention, as a subsystem, to the lawful employment and the motivation of employees. A well-functioning foreign parent company can always find an attorney for actions against its own employees, but this should be saved for cases when the employee violates the law. If this is not the case then it is better if the employer keeps in mind that usually it is the employees who create value, profits for the company and not the outsider law offices in a labour lawsuit with an uncertain outcome. Compared to the not so small amount awarded, the damage to the reputation of the company is an even bigger loss.

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