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Principles and System of the Judgement of Labour Disputes in Hungary

I

The Hungarian labour law distinguishes between individual and collective labour disputes. The first ones may arise from the labour contract made between the employee and the employer and/or from the labour relation established on the basis thereof. The latter ones may arise between the trade union representing the interest of the employees or some elected organ of the employees and the employer, or they may come into being, because the existence or the lawfulness of the action of the first ones became disputed. In the sphere of these latter ones we can distinguished – as regards the subject-matter of the dispute – legal disputes and extra-legal disputes, the so-called interest disputes. In the first scope belong the cases, when the existence or non-existence of a right of one of the parties is disputed, or its violation or non-performance or non-satisfactory performance gives rise to the dispute. The latter ones are constituted by the cases when the dispute arises in the interest of the protection, enforcement of the interest of one or the other party – which is not secured by law.

In the framework of this study I shall deal only with the legal disputes.

II

In connection with the definition of the system relating to the jugdement of labour disputes, the science of the Hungarian labour law takes for starting point the fact that the law has to promote the quick and unimpeded realization of the rights and obligations resulting from both the individual labour relation and from the

collective legal relations. Therefore, in the course of legal regulation a system has to be defined which promotes that the disputes, the conflicts get to the surface, and ensures their quick and fair judgement. Accordingly, the system of the jugdement of the legal disputes must be based on the following principles:

a) The possibility of the unimpeded enforcement of the claim arising out of or connected with the individual labour relation or some – collective legal relation must be ensured.
b) In any other case, if a legal dispute arises, it has to be ensured for all of the interested parties that they can go to law in connection therewith. From this point of view it is indifferent whether the dispute has arisen in the framework of individual or collective legal relation.
c) The system of the organs judging the labour disputes must be defined so that they should be near to the places where the disputes arise. This facilitates the quick settlement of the dispute. A basic advantage is, however, that the organs deciding the dispute can get acquainted better with the circumstances which led to the dispute.
d) The rules of procedure must be established so that they should allow the quick decision of the dispute.
e) It has to be ensured for the trade unions that they could intervene in the course of the labour disputes in the interest of the employees.

Before I would commence to make known the present situation, I would like to give a short overview, how the judgement of the labour disputes was formed and developed in the past.

III

The regulations of the judgement of the labour disputes began to get formed in the second half of XIXth century in Hungary. The regulation is made in the framework of several Acts relating to industry, trade, agriculture etc. The essence of the system of judging disputes can be summarized as follows:

– In the individual labour disputes arisen in the industry and trade, partly the organs of state administration, partly conciliating boards formed from the employers and the employees acted. After

their decision the parties could turn to the ordinary court.
- In the agriculture, the judgement of individual disputes was definitively within the jurisdiction of the local and/or regional organs of state administration. It was possible to turn to the ordinary court only in case of compensation for damages due to the employee.
- In case of domestic servants and of some other professions of similar character the local and/or regional organs of state administration acted.
- The labour disputes of the officials of state administration are judged in the official way. In several cases, there was a possibility to turn to the administrative courts.
- The court could not act in the disputes of collective character, they were decided in the course of conciliation through the parties and/or the organs of interest representation.

After the first World War a more or less unified system was formed and in the framework there of the judical way was ensured in a larger sphere. At the same time, labour courts were organized for the judgement of the individual legal disputes. They were organized with the courts of first instance. The character of the labour court appeared in the feature that the judge administed justice with two assessors. One of the assessors was delegated by the interest representation of the employers, the other by that of the employees. At the same time the legal rule prescribed, too, that it is precondition of judgement with assessors that it should be requested by one of the parties. The party who requested the co-operation of the assessors, had to deposit the presumable costs of the assessors. The legal rules take out of the jurisdiction of the labour courts a number of categories of employees. Thus the disputes related to the salary of the employees of the state railways, the workers of the state-owned factories (iron, steel and machine works, coal mines) were judged in the official way. In the disputes of domestic servants and farm-servants decision was made by the public administration authority, in certain cases by the administrative court in the last resort. Only the claims for damages could be brought before ordinary court.

After the second World War one of the first measures was the one that permited the judicial way in each labour dispute, except for the disputes of the employees of state administration and judicature. The collective labour disputes, however, did not further on got within judicial jurisdiction.

The Labour Code, which came into force in 1951, established a double system for the judgement of individual labour disputes. For the judgement of the labour disputes, it prescribes the use of a system of conciliating committees of two instances. The conciliating committee of first instance functions with the employer, two members were delegated by the employer, and two members by the trade union. The conciliating committee of second instance was organized by counties, its members were delegated partially by the county council, and partially by the trade union. During the subsistence of the labour relation all labour disputes had to be addressed to the conciliating committee. Following the conciliation procedure, as well as in the disputes arisen after the termination of the labour relation, the parties could go to law. In certain matters defined in the legal rule (e.g. fixing of the salary, relocation, disciplinary punishment), the judicial way was excluded. In these cases the conciliating committee of second instance decided definitively. In the court procedure the court of general jurisdiction of first instance, at second instance the county courts of general jurisdiction proceeded.

This system subsisted with smaller modifications for about two decades.

An essential change supervened from 1972. At this time the conciliating procedure of second instance ceases to exist. The labour courts come into being within the framework of the judicial organization. They are organized by counties. They decide definitively in the labour disputes brought before them, with two exceptions. In the matters concerning the financial liability of the employee and the employer, the parties could appeal to the court of general jurisdiction of second instance. Simultaneously, the legal rule defines provisions for the judgement of the labour disputes furthering the quicker judgement. At the same time a Labour College was formed at the Supreme Court for the direction at the level of principles of sentencing.

The situation does not change in the case of legal disputes of collective character. These ones continued not to be coverted by court jurisdiction, but they were essentially decided in the course of concilition conducted by the minister excercising supervision over the employer and the superior organ of the trade union.

IV

The change of political and state regime supervened at the end of the 1980s, as well as the commencement of the transition to the market economy made necessary the reform of labour law and, in this framework, also the new regulation of the system of labour disputes. This was particularly required by the circumstance that in the course of the codification, in respect of the regulation of the labour relation, the collective and other agreements concluded in the course of the collective bargainings were stressed much more. An Act provides for the exercise of the right to strike and such new institutions are introduced as the factory councils elected by the employees. All this makes indispensable the arrangement of the sentencing of labour disputes of collective character. The system of sentencing the individual labour disputes also required a certain alteration. This had two reasons. On the one hand, the single-instance character of the court procedure largely disputed by both the science and the practice until then had to be terminated. On the other hand, the previous conciliating system proceeding the court procedure had to be changed as well, as this was not workable due partially to the pluralism of the trade unions, and, on the other hand, to the rapid increase in the number of the small employers.

V

1. The Labour Code that came into force in 1992 attempted at realizing the above-mentioned principles formed in the sphere of the science of labour law. The rules of the Code mean progress from two points of view in comparison with the former situation. On the one hand, it makes possible with general character to bring to court both the individual and the collective legal disputes. On the other hand, it regulates in a uniform manner the system of conciliation preceding the court procedure.

Section 199 of the Act prescribes that the employee, the trade union, the works council can initiate labour dispute against the employer's measure, omission violating a rule relating to the labour relation, as well as for the enforcement of the claims resulting from the labour relation. This right is due also to the employer, unless the law makes exception therefrom. The court acts in the dispute.

2. On the basis of the regulations of the Code the domain of the individual labour disputes is the following:

Those disputes can be considered as labour disputes which are in

connection with the validity or invalidity of the labour contract between the employee and the employer or with the existence or non-exsistence of the individual labour relation, or with the violation or not satisfactory performance of some right or obligation that came into being on the basis thereof or in connection therewith.

It ensues from the above definition that if there exists between the employee and the employer also another legal relation besides the labour relation – e.g. mandate or contracting –, the dispute arising therefrom does not belong to the sphere of labour disputes. (E.g. the employer concludes a contract with an engineer being in labour relation with him, saying that he should translate outside of his work time an article published in a special magazine; or if the employer takes on lease the home of his employee.) Similarly, the disputes arising from the apprentice-ship relation between the apprentice and the employer do not belong to the sphere of labour disputes either.

It ensues from the above definition, too, that the science of Hungarian labour law does not consecrate enough attention to the individual disputes of interest, and it leaves the solution of such disputes to the parties. Though in the course of the legal regulation we find apparent exceptions therefrom.

Section 199 subsection (4) of the Labour Code provides therefor. In accordance therewith, a legal dispute can be initiated by the employee against the decision of the employer made within his sphere of discretion, if the employer has contravened the rules governing the formation of his decision. Those decisions, measures are within the sphere of discretion which belong to the sphere of instructions of the employer. (E.g. he defines the work to be done by the employee within the framework of the labour contract, he decides what salary system he uses, whether he gives reward or not etc.) If the employer takes measure within this sphere, the employee cannot do anything against it, or he can explain that he would prefer to work in task-wage system instead of time rate system or that he would merit reward in his opinion, but he cannot initiate any labour dispute for this reason. The legal rule does not make any allusion, which are the rules to be taken, into consideration by the employer when forming his decision, or measure. It is obvious that here the general rules included in Part I of the Labour Code are meant. These are especially the following: the prescription of Section 3 subsection (1) saying that the parties have to co-operate in the course of the exersice of the rights and the performance of the obligations. The provision of Section 4 of the Act prescribes the proper exercise of the rights and it

prohibits the exercise of the right directed towards impairing the lawful rights of others or causing another disadvantage. Section 5 of the Code provides for the prohibition of discrimination.

This case is only an apparent exception from the individual legal dispute. The basis of the dispute is namely not that the decision does not correspond to the real or presumed interest of the employee, but that the employer disregarded the rule to be taken into consideration when forming his decision. The employee, on his part, can require with good reason that the employer should exercise the discretionary right due to him in accordance with the legal rule. Thus the dispute is directed to the request that the court should quash the decision. This in itself does not mean that the dispute of interest is drawn into the judicial jurisdiction. (It is conceivable that the new decision to be made by taking into account the relevant legal rules shall be indentical to the previous one on the merits.)

The labour disputes of collective character can be classified into several groups. Thus

a) A legal dispute concerning the activity of the trade unions can take place:
- in the question whether a given organization is qualified as trade union or not, or whether it can be considered as representative in a certain sphere, branch, or with a certain employer,
- because the employer or some state organ violates the rights of the trade union defined in the Labour Code.

b) A legal dispute can arise in connection with the collective negotiations and/or the collective agreement:
- in the question, whether a given negotiating party, either the trade union or the employer's organ of representation of interest in entitled to negotiate (e.g. whether it qualifies as an organ of interest representation or whether it is representative in the given case).
- Is the collective agreement valid as to the contents or from the formal point of view, whether it subsists or not.
- Is the termination of the collective agreement by notice conform to the legal rules.

c) A legal dispute concerning the participation right of the employees can arise in the following cases, if:
- the rules prescribed for the works council have been violated,

- the employee finds prejudicial that he has been left out of the list of the electors against the rules, or he has been unlawfully prevented from participating in the election,
- the employer violates the rights ensured for the works council, either so that he does not ensure the conditions necessary for the labour contract prescribed by the legal rule, or so that he does not perform in the questions belonging to the competence of the works council the obligation of joint decision, consent, requesting of opinion or information prescribed for him.

d) In connection with the exercise of the right to strike, a legal dispute can arise in the following cases:
- whether the strike serves the purpose defined in the relevant legal rule (Act VII of 1989), that is, the protection and/or the enforcement of the employee's economic and social rights, and especially whether it does not qualify as political strike,
- whether the strike is organized by the entity entitled there to (this right is due according to the legal rule only to the trade union or to the group of employees) and whether it is organized on a voluntary basis,
- whether in the given sphere, branch the strike is not prohibited or whether it does not jeopardize the functioning of important public utilities.

4. A special case of the legal disputes has to be mentioned which constitutes a transition between the legal dispute and dispute of interest or the individual and the collective dispute. According to Section 23 of the Labour Code, the trade union having representation with the employer is entitled to submit an objection to the employer because of the unlawful employer's measure affecting directly the employees and/or their organs of interest representation and/or because of the unlawful omission of measure. The deadline thereof is five work days from the objected measure or omission, but latest from obtaining knowledge of it, one month to be counted from taking the measure of from the omission. No objection can take place, if the employee can initiate a legal dispute against the measure.

If the employer does not agree with the objection, and the conciliating talks have no result within 7 days, the trade union can go to law within five days. The objected measure cannot be executed until the successful termination of the conciliating procedure or until the final and binding decision of the court.

VI

1. The law prescribes in case of both the collective and individual disputes that – before going to law – the parties have to attempt at the decision of the dispute through conciliation. The Act designates three ways thereof. The conciliation can be made in the course of the negotiations of representatives of the parties appointed in equal number – in general two for each of them. On the other hand, by having recourse to the mediating activity of a person invited jointly by the parties who is independent of them and is uninterested in the dispute. At last by the decision of an arbitrator invited jointly by the parties. If the parties have previously submitted themselves – by declaration in writing – to the decision of the arbitrator, this is binding for them. The conciliating procedure cannot have for result the unjustified delay in the dispute. Therefore, according to the provision of the Act, if the previous conciliation in the individual dispute had no result within eight days, the party initiating the dispute can go to law within the time of prescription. In the legal disputes of collective character, departing rules are governing with regard to the initiation and duration of conciliation, depending on the character of the disputes. Thus, e.g. the deadlines for commencing the conciliation are shorter.

2. The court procedure has two instances. At first instance, the labour court organized by counties has to act. (With the exception of the disputes of civil servants, in which the administrative court acts.) In the appeals against its decision, the divisions specialized for the labour disputes, organized within the framework of the ordinary court having appellate jurisdiction (county court) have to act. This takes final decision. In cases defined by legal rule, according to the rules of civil procedure, an application for review can be lodged against the final and binding decision of the court to the Supreme Court. A Labour College is functioning within the framework of the Supreme Court for the direction of sentencing in labour matters and for the judgement of the applications for review.

VII

In accordance with the aforesaid, until to-day the unified system of the labour disputes has been formed. The experiences shall show, how, with what results the conciliating system preceding the court procedure shall function in the practice, as this system containing a plurality of possibilities and based on the mutual agreement of the parties was unknown until now in Hungary.