

**Termination of Employment Relationships:
The Legal Situation in Hungary**

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Introduction

(1) The legislative system of the Hungarian labour law

a) The fundamental laws defining the system of the Hungarian labour law came into force on the first of July 1992. Previously, Act II of 1967 (the former Labour Code) had been in effect. It means that the system of labour law created by this latter act survived the economic-political change of regime by two years. The basic feature of the system of labour law created in 1967 was that all legal relations of the so called dependent work were regulated uniformly at statutory level. According to this conception, the scope of the act covered both the labour relations established by socialist economic organisations (economic sector) and the legal relations of the public sector i.e. the legal relations of the civil service. Under this act, at the level of statutory instruments separate rules regulated the particular issues of legal relations. These rules regulated legal relations (the establishment of legal relations, the rights and duties of the parties, the possibility of the termination of legal relations, the legal status of persons in leading positions, the rights of the trade unions against employers etc.) in a very detailed manner reflecting an intensive state interference. Rules in effect until the July of 1992 did not recognize the interest representation organizations of employees of a participatory nature. The starting point of the attitude towards the regulation of collective contracts was that collective contracts are concluded at the certain employers, which means that their scope can always cover only the employees employed by the given employer. This perception followed from the role of the trade unions assumed in the political system of the time.

b) On the first of July 1992, three acts creating the system of Hungarian labour law came into force. Act XXII of 1992 (the Labour Code) contained the regulation pertaining to labour relations existing and established in the private sector in accordance with the legislative conception prevailing at that time – and basically even today. Act XXXIII of 1992 regulated the legal relations of the members of the public service employed by the organs of public administration. Act XXXIII of 1992 regulated the legal relations established with legal entities with a public law legal status financed basically by the national budget (called budgetary institutions in Hungarian law) and providing public services (such as health care service, cultural services, public education and higher education). According to the still prevailing theory and practice of Hungarian labour law, the above mentioned three large areas belong to the area of labour law perceived (construed) in a wide sense. Obviously, this conception places the legal relations called public service relations in the practice of European states into the area of labour law taken in a wide sense, too. In accordance with this conception, the following technical-administrative legal solution was shaped: the Labour Code serves as background law of the legal relations regulated by the other two above mentioned acts, in other words certain provisions of the LC – specified by the legislator – are applicable both in private labour law and in public service law. This system is still

existent today although a number of (government) ideas have been shaped about a separate regulation pertaining to a unified public service law.

c) The regulation of the areas mentioned above shows a diverse picture concerning the system of the sources of law as well. In addition to the LC, the labour law of the private sector recognises lower level state regulation (by decrees) only exceptionally; this is authorized by the LC only in a narrow field. Such decree-level regulations are in effect pertaining to

- defining the mandatory minimum wage,
- the order of the registration of collective contracts by the state,
- the regulation of the so called homemaker legal relation,
- the conditions of the activity of hiring out workers,
- the employment of persons with a reduced ability to work,
- financing the paid leave of the father subsequent to the birth of a child by the state.

The regulations (decrees) pertaining to the implementation of the law on the public service legal relation of persons employed by public administration organizations are not in effect. The scope of this act concerning persons (the circle of public administration organizations) is defined by a government decree – which otherwise is not regarded as a source of law in the system of the Hungarian sources of law. At present the so called civil service legal relations i.e. the legal relations created with organizations providing public services are regulated in the most detailed way (by the state). The implementation of the said Act XXXIII of 1992 pertaining to this area is regulated by approximately thirty ministerial or government decrees in effect. These contain extremely detailed regulations regarding the legal relations of persons employed in the certain public service sectors which are hardly transparent in the course of the administration of the law.

d) In addition to the three said large areas, there are further acts in effect pertaining to certain areas of the Hungarian public sector. There are separate statutory regulations pertaining to

- the legal relations of the judiciary,
- the legal relations of prosecutors,
- the legal relations of judicial employees (assistant staff employed in justice),
- the legal relations of persons employed by the police and the armed forces,
- the rules of employing aliens.

(These areas will not be covered hereinafter.)

e) According to what has been mentioned so far, Hungarian labour law taken in a wide sense is divided into three big areas according to the legal status of employers. The system which was created in 1992 has changed in a number of respects. One significant change is that the employment of persons performing not substantial but basically ancillary activities at public administration organizations which otherwise fall within the scope of Act XXXIII of 1992 are governed by the LC i.e. by the rules of private labour law. (This is provided for by Chapter XII of Part Three of the

LC. The said Chapter XII contains only a few special provisions pertaining to these legal relations to which, otherwise, the general rules of the LC are applicable.) Another significant change was effected by the amendment adopted in 1997, which made it possible for the local authorities to employ civil servants directly under the scope of Act XXXIII of 1992. (Concerning the logic of the system, this could only be possible under the scope of Act XXIII of 1992) It should also be noted that public service legal relations may also be established at the police and armed forces (under the scope of Act XXXIII of 1992). Therefore it is obvious that the system regulatory areas originally separated according to the legal status of the employer is broken and in some cases the nature of the activity performed by the employer is predominant i.e. this determines the nature of the legal relation directed towards employment in a number of cases. (In other words, this determines whether the rules of private labour law, the labour law of public service sector or public service law are applicable.)

f) Besides the above mentioned rules of labour law construed in a wide sense i.e. expanding beyond the private sector, there are several other acts of public law nature and also decrees connected to labour law. Some of these are as follows:

- Act LXXV of 1996 on Labour Inspection,
- Act IV of 1991 on Job Assistance and Unemployment Benefits,
- Act XCII of 1993 on Labour Safety,
- Government Decree No. 67/2004. (IV. 15.) Korm. on the Obligation to Report and Register in Connection with the System of a Unified Labour Registration System.

g) The anti-discrimination regulation which is at stake in several European states should also be noted. Previously Hungarian labour law (in Section 5 of LC) contained relatively detailed rules pertaining to the prohibition of the discrimination against the employee. These provisions were taken over by Act CXXV of 2003 in 2003. This act provides for equal treatment and the promotion of equal opportunities. The provisions of the act are applicable in labour relations too. The act conforms to the regulations of the European Union on anti-discrimination, further it realises the conception of prohibiting negative discrimination in general in the legal relations of private law and administrative law.

h) A special act (Act XXI of 2003) provides for the European Workers' council in Hungarian labour law.

i) Labour law perceived in the traditional European sense i.e. the private law of labour (the labour law of private sector) is regulated by the LC in Hungarian law. The LC realises code-like labour law regulation containing five parts. Part One contains so called introductory provisions which are fairly diverse concerning the issues they regulate. Here the LC provides for its personal and territorial scope, the fundamental rules on the exercise of rights and fulfilment of obligations, the prohibition of discrimination (referring to the act mentioned in point g), the invalidity of legal statements, the method of calculating deadlines, limitation and the

system of the sources of labour law. Rules pertaining to the employee's obligation of non-competition can also be found here (quite improperly regarding systematics). Part Two regulates labour relations. Here the act provides for the institution of national interest reconciliation. A peculiarity of it in Hungarian law is that the representatives of the government, the employees and the employers conduct meetings in the National Council for the Reconciliation of Interests on issues concerning the world of labour. The statutory regulation pertaining to national interest reconciliation is rather vague and its application encounters serious difficulties. Despite of it, the political consensus aiming at the modification of these rules has not been reached in Hungarian labour law yet. The legal status of trade unions and the legal institution of collective agreement are also regulated by Part Two of the LC. Concerning the former, the organs of the trade unions at the workplaces are entitled to rights against the employer which are hardly known or unknown such forms in the practice of European countries. These rights got rooted in Hungarian labour law in the era of the socialist labour law and they were taken over with only a few amendments by the LC at its commencement in 1992. The institution of collective agreement conforms to European traditions insofar as they have rules of so called normative and obligatory nature. The former ones regulate labour relations falling under the scope of collective agreement, whilst the latter ones regulate the relation between the parties to the collective agreement. Hungarian labour law recognises the institution of the expansion of collective agreement, although the number of such agreements is quite small in practice. The longest part of the LC is Part Three, which provides for the rules pertaining to labour relations. It provides for the rules on the establishment, modification and termination of labour relations. The rules pertaining to business transfer are also contained therein. This part further contains provisions pertaining to the content of labour relation, the rights and duties of the parties (performance of work, working hours and remuneration of work) and liability for damages. Now this part of the LC provides for the special labour law rules on the so called atypical labour relations. Labour relations established for the purposes of the hiring-out of workers and teleworking are regarded as such legal relations. Special provisions pertaining to the labour relations of employees in executive positions are also set forth therein. Part Four of the LC contains provisions pertaining to the settlement of labour disputes. Part Five contains miscellaneous provisions mainly on the effect in time of the act. It should be noted that the LC lists the directives which have been transposed into Hungarian labour law (in accordance with the relevant European directives).

j) As regards the directives of the European Union, it can be stated that Hungarian labour law has already been adopted (at least formally) all the directives in effect, partly by the LC and partly by other acts (e.g. the formerly mentioned acts on equal opportunities, labour safety or labour inspection).

k) In the course of reviewing the system of Hungarian labour law, the regulatory role of collective agreements should be mentioned.

l) The so called operative agreement was placed in the system of the sources of law of Hungarian labour law until September 2002. This agreement was a contract concluded between the employer and the workers' council. Pursuant to the regulations in force at that time, the operative agreement had normative force (like e.g. in German law) i.e. it contained rules on labour relations and on the rights and obligations of the parties as well. Hungarian labour law has no such source of law at present (see also paragraphs 8 – 10 of chapter 1).

m) The right to strike is regulated by a separate act, Act VII of 1989 in Hungarian labour law. This act was adopted before the political-economic change of regime and is still in effect basically without any modifications. Its regulation is extremely brief and its application is contradictory, nevertheless, no political consensus aiming at its amendment has been reached since the political transition.

(2) The concept of the legislator and the trends of the legislation from the coming into force of Labour Code to the contemporary situation

a) The LC i.e. the act regulating private labour law – as has already been mentioned – came into effect on the first of July 1992. The rapid changes of the political and economic conditions have led to the amendment of the act forty-nine times. These forty-nine amending acts have affected the rules of Hungarian labour law sometimes substantially but sometimes insignificantly. This extraordinary changeability which has resulted in a rather big uncertainty in the application of law is not only peculiar to the LC. The said act on labour inspection for instance was amended fifty-nine times during the last fifteen years. There are two general reasons underlying the amendments of the two said fundamental acts.

i) On the one hand it should be noted that the change of governments (the change of political power) is always linked with intensive legislative activities. The provisions of labour law are affected especially deeply and frequently by this legislative activity in the background of which diverse legal-political conceptions aiming at regulating the world of labour are concealed obviously. (Their well-foundedness is not touched upon here, though it should be mentioned that this peculiarity of Hungarian labour law leads to a high level of the uncertainty of law.)

ii) The other fundamental factor in the development of Hungarian labour law is the participation of the Republic of Hungary in the process of European integration. This has led to substantial amendment of the LC (and other related acts) essentially influencing the application of law several times. The peculiarity of the development of Hungarian labour law in this respect is that law harmonization was effected in the course of a relatively long (protracted) process in several steps. Thus the Hungarian legislator did not follow the method applied e.g. by the Austrian labour law, according to which the European community rules or a group of them linked together regarding their content were transposed by adopting – as far as possible – one regulation (AVRAG in Austria).

The following steps from the above mentioned intensive legislative process may be regarded as essential i.e. decisive from the point of view of the development of the effective system of Hungarian labour law, in other words the following tendencies get shaped with regard to the regulation of the particular legal institutions.

b) The rules pertaining to the legal status of the trade unions were amended twelve times during the past fifteen years. The legal-political tendency behind the amendments is the strengthening of the position of the trade unions. The rights of trade unions are getting stronger and stronger (especially during the rule of left-wing governments), which is well indicated by the present rule of labour law pursuant to which the employer is obliged to financially support the trade union which has representation at the given employer in certain cases. However, two features of the practice of Hungarian labour law (which significantly differ from European traditions) should be mentioned:

i) Trade unions, despite their strong presence at the work places, do not take part in any way in the employer's decisions directly affecting the particular labour relations (e.g. remuneration of work, termination of employment etc.).

ii) The practice of the Hungarian collective agreements is not based on the system of sectoral or trade agreements but –except for some insignificant cases – it recognises only collective agreements of the particular workplaces i.e. collective agreements with a scope covering only one employer. This makes the system of Hungarian collective contracts dysfunctional. There are hardly any attempts on the side of trade unions to conclude higher level collective agreements.

c) The institutions of the employees' participation have been part of the Hungarian labour law since the commencement of the LC in 1992. The regulation of the institutions is generally regarded incomplete and contradictory, mainly due to the fact that the legislator has not managed to adequately separate them from the interest representation of a trade union type. Workers' councils are excluded from the adoption of rules on working conditions, their sphere of authority is strongly restricted and they have only right to consultation and to information in practice. The so called real right to co-decision-making (*Mitbestimmung*) is recognised in only one area of Hungarian labour law, namely in respect of the welfare institutions bargained for in the collective agreement. Workers' councils are not ensured any rights in respect of the (individual) employer's decisions concerning the particular employees by the LC.

d) As it has already been mentioned the direction of the development of Hungarian labour law after the political-economic change of regime is the direction determined by law harmonization. The first steps in this area were taken in the mid90s. Act LI of 1997 aimed at adopting several community legal institutions (collective redundancies, business transfer). These steps led to partial success only. Act XVI of 2001 was also adopted with the intention of law harmonization and also aimed at the partial adoption of several European community legal institutions (the obligation

of the employer to provide information, the community rules of working hours, provisions pertaining to persons employed abroad in the frame of services and to special rules of protection for young employees). The institution of the hiring-out of workers was recognised in Hungarian labour law by this act for the first time. Its rules were modified several times until they were significantly tightened due to the quick spread of the institution of the hiring-out of workers and their abuse as of the first of January 2006 (see below).

e) Act XXXVI of 2001 brought about a fundamental change in the system of Hungarian labour law which makes its impact felt even today. This act applied the solution of extending the scope of the private labour law rules of the LC to employees employed by public administration organizations previously falling under the scope of Act XXIII of 1992 on public service. Later (right after the next change of government in 2003) the personal scope was narrowed down, nevertheless, a substantial part of the employees are still under the scope of the LC.

f) Act XX of 2003 was one of the most significant milestones of the law harmonization of the Hungarian and European labour law. This act closed down the process of the European law approximation relating to several legal institutions of labour law, which had been going on for quite a long time and established the rules still in effect – e.g. on the regulation pertaining to labour relations established for a definite period, part time employment, working hours or business transfer.

g) Act XXI of 2003 also forms part of the process of law harmonization. The first unsuccessful attempt to adopt the European regulation pertaining to workers' councils was effected in 2001. The operative Hungarian labour law rules were created by the said act of 2003. Originally, the rules on European works council would have been placed in the code-like system of the LC. Finally, the issue was regulated by a separate act in 2003. In practice hardly any European works councils have been established according to the rules of Hungarian labour law. In lack of exact data it still can be stated that such institutions for providing the employees with information have been established in a very small number (in not more than five cases). However, we have knowledge of several cases in which the employees' representatives of an undertaking operating in Hungary take part in the activities of a workers' council operating in another member state (e.g. in tobacco industry, electronics industry, machine manufacturing etc.)

h) Section 5 of LC provided for the prohibition of discrimination in labour relations even at its commencement (in 1992). It should be noted that Hungarian labour law contained even from the start the solution which appeared in the law of the EEC only 1997, namely imposing the burden of proof on the employer in discrimination cases. Act XXV of 2003 brought about a conceptual change in Hungarian anti-discrimination legislation. The area got regulated in a separate act and the requirement of equal treatment was specified not only with regard to labour relations but with regard to

other private law legal relations as well. The provisions of the European community law pertaining to 'equal pay for equal work' can, however, still be found among the provisions of the LC.

i) After the turn of the millennium, the need for the regulation of atypical labour relations has become stronger as a result of the presumption according to which the development of the economy leads to an increase in the need for such forms of employment. These expectations have only partially been met. The hiring-out of workers became abundant after its first regulation in 2001. Teleworking was subsequently included in the LC by Act XXVIII of 2004. The importance of this form of employment, however, is still marginal in Hungarian economy. After the turn of the millennium, the domestic practice of the hiring-out of workers showed that the institution of the hiring-out of workers was used dysfunctionally in a number of cases – mainly by undertakings employing a huge number of employees. These undertakings employed for a long time and in huge numbers employees in this form of employment i.e. they did not satisfy their temporary, short-term labour-force demand in this way. This legal institution spread widely due to the cheaper, faster and simpler possibilities of the termination of this labour relation compared to other general rules. Therefore, several steps have been taken to tighten the conditions of the hiring-out of workers. The latest measure in this process was Act CLIV of 2005, which introduced further tightening from the first of January 2006. (Among others it prohibited the hiring-out of workers between undertakings the owners of which are connected and it also provided for the application of the rules of equivalence with regard to employees employed in different forms of employment.

j) The piece of legislation (Act VIII of 2005) aiming at the adoption of Directive 2002/14/EC is so far the latest step of the harmonization of Hungarian labour law to European law. This act ensures the employees' interest representation the right to consultation and information in the areas defined by the directive. The Hungarian solution is contradictory due to the Hungarian peculiarity that trade unions and representations of participatory nature (workers' councils) are present at the work places together.

k) The statutory regulation of the termination of labour relations has been amended several times since the commencement of the LC (in 1995, 1997, 1999, 2000, 2001, 2002, 2005 and 2006). It is difficult to discover a legal-political direction pointing at the same direction behind the frequent changes. Generally, it can be claimed that the protection of the employees has slightly been strengthened since the commencement of the LC in 1992. The statutory regulatory system of the termination of labour relations has been basically the same since 1992; the only modification concerning the regulatory system was effected in 1999 when the rules on the termination of employment established for an indefinite and a definite period were (structurally) separated. The following should be highlighted from the development of the regulation pertaining to the termination of labour relations.

i) The operative rules on collective redundancies have been formulated in several steps. The first domestic regulation appeared in 1991, then outside the LC. These rules have been contained in the LC since 1997, the present situation complies with Directive 1998/59/EC.

ii) The termination of the labour relation of employees entitled to social security pension has been regulated differently from the beginning; these rules make it easy for the employer to terminate the labour relation. However, within five years preceding retirement, the termination of the labour relation can only be effected due to an exceptional cause. This latter rule protecting the employee was extended to a wider scope of employees after the turn of the millennium.

iii) Since the end of the 90s, the scope of the prohibition of dismissal has been widened especially in fact situations relating to the birth, care and education of children.

iv) The LC extended the duration of the restriction of termination to a period beyond the fact situation of the prohibition of dismissal (in 1999) by providing that in the case of a dismissal subsequent to the prohibition of dismissal, the notice period can commence only at a later point of time (thus the labour relation can be terminated at a later point of time as well).

v) Prior to the notification concerning the extraordinary dismissal by the employer (since 1997), the employee must be given the opportunity to get to know the reasons for the measure taken by the employer. The deadline for communicating the extraordinary dismissal was substantially extended in 1999.

vi) The obligations of the employer towards the employee in the cases of the termination of employment have been enlarged by the LC several times, whilst it has tightened the obligations of the employee at the same time (e.g. accounting with the employer and job transfer).

vii) The legal consequences of the unlawful termination of labour relation by the employer have significantly changed since the decision of the Constitutional Court. Prior to this, employment tribunals had to forbear from restoring the labour relation upon the request of the employer. The restoration of legal relations is at the discretion of the tribunal under the regulations in effect.

1. Sources of labour law

(1) *Constitutional status of the rules on the right to work*

a) The possibility to keep a job is indirectly ensured by the particular constitutions in several wordings. One method of this is to specify the right to freely choose one's occupation and place of work as a fundamental right. Naturally, this article of the constitution presupposes market economy in which generally the freedom of enterprise i.e. the freedom of economic activities is ensured. Moreover, there is one constitution in which one tool of the protection of keeping one's workplace is expressly defined. The Finnish Constitution entered into force on the first of March 2000 contains multi-step regulation with regard to this issue. Pursuant to Paragraph (1) of Article 18, the constitution supports that everyone has the right to ensure his living either by assuming employment or by engaging in entrepreneurial activities subject to his own decision. The state is responsible for supporting labour force. Under Paragraph (2), *the state shall promote employment and the opportunity to work* in order to guarantee the right to work to everybody. Finally, training shall also be supported in order to enhance the effectiveness of the ability to be employed. Paragraph (3) of Article 18 indicates a further dimension of the right to work. It is specified in the constitution that *no one can be dismissed without a lawful reason*.

b) The Hungarian Constitution – like other basic laws – deduces the right to work and the right to freely choose one's occupation from the recognition of human dignity. The co-text of this a priori principle is as follows: pursuant to Paragraph (1) of Article 2 the Republic of Hungary is a ... *constitutional state*; under Paragraph (1) of Article 9 Hungary is a *market economy*... The right to enterprise is specified in Paragraph (2) of Article 9. According to it, the Republic of Hungary recognizes and supports the right to enterprise and the freedom of competition in the economy. The right to enterprise, confirmed by the decision of the Competition Court is unequivocally a *real fundamental right*. It is often emphasized in special literature that being one of its guarantees, the right to enterprise attached to market economy declares the principle of the freedom of competition. Under Paragraph (1) of Article 70/B of the Constitution in the Republic of Hungary everyone has the right to work and to freely choose his job and profession. The Constitutional Court has declared in several of its decisions that the right to enterprise is linked to the right to a job and profession. According to one of its decision, 'the right to enterprise is one aspect of the right to freely choose one's job and profession [Paragraph (1) of Article 70/B of the Constitution], it is one special-level wording of that right. Somewhere else: "various institutional state responsibilities are derived from the right to work as a social right such as employment policy, establishing workplaces etc. The state responsibilities deriving from the right to work and the right to enterprise (to choose one's job and profession) may vary, however, the two rights as subjective fundamental rights are the same."

The Hungarian Constitution, however, does not contain a provision similar to the one of the Finnish Constitution referred to above. In consequence of the significant change in Hungarian labour law in 1992, labour law is also based on the principle of personal autonomy, in other words labour law is also determined by the contractual principle. Labour relation is a contractual legal relation, the cessation and termination system of which is generally governed by the principles of private law. Nevertheless, it does not mean at all that the rules of Hungarian labour law – the codified Labour Code distinct from the Civil Code – does not contain the special rules pertaining to the termination of labour relations which are basically necessary in the interest of the employee.

c) Concerning the constitutional status of the rules on other employment's rights the following characteristics have to be noted. First of all, the Hungarian Constitution also influences directly, by other norms the right to work and the right to freely choose one's job and profession, thus indirectly the protection of other labour relations. One method of outstanding importance is the constitutional declaration of equal treatment thus qualifying it as a fundamental right. Paragraph (1) of Article 70/A provides, "The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or any other grounds whatsoever." Under Paragraph (2), "The law shall provide for strict punishment of discrimination on the basis of Paragraph (1)." Under Paragraph (3), "the Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all." A special implication of the requirement of equal treatment concerning labour law is expressed in Paragraph (2) of Article 70/B, "Everyone has the right to equal compensation for equal work, without any discrimination whatsoever."

The right to work and to freely choose one's job and profession within the protection of keeping one's employment is fundamentally influenced by the institutions of collective labour law in contemporary labour law. It is specified among the 'General Provisions' of the Constitution, "Labour unions and other representative bodies shall protect and represent the interests of employees, members of co-operatives and entrepreneurs." The Hungarian Constitution recognises the existence of collective labour law elsewhere by providing for the right to association and the right to strike. Under Paragraph (1) of Article 70/C, "Everyone has the right to establish or join organizations together with others with the objective of protecting his economic or social interests." Under Paragraph (2), "The right to strike may be exercised within the framework of the law regulating such right."

Finally, the Constitution also provides for social fundamental rights which ensure support in the case of unemployment through no fault of the citizens' own. These rights function as public law subjective rights in the system of the Hungarian Constitution [see Paragraphs (1) – (2) of Article 70/E of the Constitution].

d) As a summary the following may be claimed about the right to work and the right to freely choose one's job and profession. Like other modern European constitutions, the Hungarian Constitution declares the so called right to work. This is complemented by further rights protecting the employee, and this constitutional context serves as a basis of labour law regulation. The Constitution does not expressly provide for the protection against the unlawful termination of employment, these provisions are set forth in the Labour Code.

(2) *International agreements and conventions*

(2.1) Covenant on Economic, Social, and Cultural Rights

In 1976 Hungary promulgated the Covenant on Economic, Social and Cultural Rights adopted at the 21st session of the UNO. Reference is made here to Article 6 thereof, according to which, “*the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*”. To achieve the full realization of this right these steps or measures include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. The wording of this article is ambiguous and the particular delegations construed it form different approaches. The then socialist countries – in the wording by Siegel – saw a symbolic victory in the fact that the obligation to ‘take appropriate steps to safeguard this right’ was at least in words imposed on the states. However, attention is often drawn to the wording of Article 2 of the Convention, pursuant to which the States Parties to the Covenant undertake to guarantee the prohibition of discrimination. The difference between the system of guarantees of Articles 2 and 6 is obvious even from the wording of the document.

Thus the adoption of the Convention meant no political difficulties for the leadership of Hungary in 1976. The idea to ensure the right to strike to the employees in accordance with the Convention did not arise at that time. The system of social protection and the closed nature of existing workplaces had a spectacular impact as dismissal by the employer due to economic reasons had no interpretability at that time.

(2.2) ILO Convention No. 158 (1982)

a) Regarding international treaties and conventions, the adoption of the Conventions of the ILO needs a special analysis. Hungary ratified seventy-two ILO Conventions until 2005. The adoption or more precisely the promulgation of the conventions speeded up after the change of regime. Among others the following conventions have been promulgated since 1990:

- Labour Inspection C81,
- Freedom of Association and Protection of the Right to Organise C87,
- Protection of Wages C95,
- Right to Organise and Collective Bargaining C98,
- Equal Remuneration C100,
- Employment Policy C122,
- Workers’ Representatives C135,
- Minimum Age C138,
- Tripartite Consultation C144,
- Labour Relations (Public Service) C151,
- Collective Bargaining C154.

b) Hungary has not ratified C158 Termination of Employment Convention. Therefore, in this report only the question whether the Hungarian regulation is in accordance with the Convention or not can be answered. As legislation and law enforcement are analysed in detail in the chapters on the particular cases of the termination of employment, the connection between the Convention and Hungarian labour law is only touched upon here.

Article 4 of the Convention specifies the groups of reasons for which the employer can terminate employment (capacity or conduct of the employee and the scope of activity of the employer) Subsection (3) of Section 8 of LC corresponds to it. Section 5 stipulates the reasons which cannot constitute valid reasons for termination in themselves. Section 90 of LC provides for the prohibition or terminations with a similar content, further Section 100 expressly names some of the reasons set forth in Article 5 reasons for as unlawful termination (dismissal based on discrimination, absence from work during maternity leave and workers’ representation). In accordance with Article 7, the LC also stipulates that the employee shall be provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to do so [Subsection (5) of Section 89 of LC].

Hungarian labour law ensures the opportunity to file for legal action against any decision of the employer [Subsection (1) of Section 199 of LC]; therefore Hungarian regulation complies with Articles 8 -9. There is also compliance regarding the regulation of the burden of proof. Article 10 of the Convention provides for the legal consequences of unlawful termination (reinstatement and compensation). Section 100 of LC also provides for the reinstatement of the employee in his original position as a general rule and if it cannot be reasonably expected from the employer, it provides for compensation (specifying the mandatory fact situations of reinstatement). The LC defines the institutions of notice period and redundancy payment [Sections 92 and 95 of LC].

c) Part Three of the Convention (Supplementary Provisions) basically concerns the collective termination of employment due to reasons within the scope of activity of the employer (Articles 13 – 14). Hungary has adopted

Council Directive 98/59/EC, which provides for the approximation of the laws of the Member States relating to collective redundancies [Sections 94/A – 94/G]. The Hungarian regulation basically conforms to the relevant articles of the Convention. The concept of collective redundancy is defined, the obligation to provide information and to consult and the legal consequences of the employer's unlawful conduct are provided for.

d) As a summary it may be stated that Hungarian regulation is in compliance with the ILO Convention No. 158. It is attributable among others to the fact that Hungary promulgated the Employment Policy Convention C122 of the ILO in 2000 and the community legal norm on employment policy and the protection of employees' rights.

(2.3) *Implementation of the Social Charter*

a) The *European Social Charter* adopted in 1961 was almost a breakthrough as regards the recognition of the right to work in Europe. In Part I of the Charter the following requirement is accepted as a general political aim: *Everyone shall have the opportunity to earn his living in an occupation freely entered upon.* It is essential that the Charter gives a political aim and intends to secure an *opportunity* but does not *claim a right*. In accordance with it Article 1 of the Charter – under the title *The right to work* – *does not take this term in the sense of subjective law either but it stipulates the responsibility of the state.* Certain articles of the Charter were adopted by Hungary in 1999. Regarding our theme it is important that Hungarian law adopted Article 1 (right to work) and Article 8 (protection of employed women) in their entirety.

b) Concerning the right to work the Additional Protocol of the Charter describing new dimensions of this right is of special significance. Thus, under Article 1 of the Additional Protocol with a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to take appropriate measures among others in the fields of *access to employment, protection against dismissal and occupational reintegration.* Thus it is apparent that *the rather ambiguous interpretation of the 'right to work' got separated from the right to freely choose one's job and profession at this point.* The Additional Protocol of the Charter was adopted by Hungary in 2005.

(2.4) *Influence of the Charter of Fundamental Rights of Workers and Community Charter of the Fundamental Social Rights of Workers*

a) The "*Charter of Fundamental Rights of Workers and Community Charter of the Fundamental Social Rights of Workers*" (hereinafter *Community Charter*) has not brought about qualitative changes in this field in my view. The fundamental aim of the Charter was on the one hand to consolidate the social development achieved so far, on the other hand – in the course of the implementation of the Single European Act - to declare the importance of the social dimension. The document stipulated that *the*

implementation of fundamental social rights cannot give cause for taking a step back from the already achieved or accepted level to any of the member states. However, the impact of the Community Charter made on the Hungarian legal system cannot be considered insignificant. The Labour Code coming into force in 1992 regulated only the so called minimum standards according to the intention of the legislators and the terms more favourable for the employees were stipulated mainly in the collective agreement. Nevertheless, legislators did not basically deviate from the principles declared by the Community Charter.

b) Later the right to freely choose one's occupation, the right to work and the right to enterprise appeared side by side in a thematic construction in the *Charter of Fundamental Rights of the European Union* (hereinafter EU Charter). Article 15 of the EU Charter deals with the freedom to choose an occupation and the right to engage in work in three paragraphs. Pursuant to Paragraph (1) of the article *everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.* It is emphasized in several commentaries that the content of Article 15 is a re-recognition of the fact that *the gainful activity of men as the form of securing their living in modern society relies both on their own taking care of themselves and the objective presence and role of the society.* Naturally, it has the right to work (*Recht zu arbeiten*) in its heart. The already mentioned Article 1 of the European Social Charter, which is regarded as an *economic fundamental right* by the EU Charter, is often referred to. The content of Paragraph (1) of Article 15 has an interesting past too. The issue of the context of the wording of the freedom of occupation was discussed at the 7th informal meeting of the Convention. Some regarded it as a mere freedom others considered it in an economic context. Later many were of the opinion that *the fundamental right to freely choose one's occupation should be linked with the catalogue of the right to work taken in a wide sense.* The following might have been included: *the system of the protection of the workplace in the event of unlawful dismissal, free access to the means of facilitating employment and the free availability of labour exchange services.*

The right to freely choose one's occupation is *clearly a fundamental right in the spirit of the EU Charter.* This can be demonstrated in a number of ways. Special literature attaches great importance to the fact that *the Convention separated the fundamental rights of dependent and independent work,* thus terminating a sort of asymmetry. The guarantee of independent work is the *freedom of enterprise.* Accordingly, or *more precisely equivalently,* dependent work has a comprehensive system of guarantees such as the freedom of undertaking a job – including its temporal and territorial implications – and the *complex protection of dependent work from its establishment through its performance to the termination of the legal relation.* This leads back to the idea that the right to work as a subjective right is not realised in itself – as such – but is realised in a number of fields by certain special institutions *such as equal treatment, the employment obligation of the employer, the comprehensive protection against dismissal, the obligation of reinstatement of the employer etc.* The undoubted impact of the EU Charter on Hungarian labour law is manifest in the fact that there

has been no step back regarding the termination of employment and securing the stability of the legal relation of the employee since the commencement of the LC.

(2.5) Implementation of the Directives of the European Community

Legislative acts concerning the cessation and termination of employment are highlighted here from the process of the harmonization of Hungarian law to the directives of the European Union:

a) Council Directive 98/59/EC of 20 July 1998 on the harmonization of the laws of the Member States relating to collective redundancies.

The complete harmonization of Hungarian law and the content of Council Directive 98/59/EC of 20 July 1998 on the harmonization of the laws of the Member States relating to collective redundancies were effected by Act XVI of 2001 amending the Labour Code. (This legal institution has been contained in the Labour Code since 1995; whilst previously the Act on Job Assistance and Unemployment Benefits contained rules on collective redundancies.) Accordingly, the preamble of the act of 2001 declared that most of the Hungarian legal provisions pertaining to collective redundancies complied with the requirements of the directive even then, however, concerning the directive the information duty towards job centres and employees' representatives had to be further widened. It had to be declared that in the course of the implementation of a collective redundancy – to determine the number of employees actually affected by the measure – not only the number of ordinary dismissals but the number of the termination of employments for a definite period and the termination of employments by mutual agreement had also to be taken into account. The concept of collective redundancy was re-defined and procedural rules were made more precise in the interest of the introduction of these rules.

b) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP was transposed into Hungarian law by Act XX of 2003 amending the Labour Code. Pursuant to this directive, guarantee rules such as the requirement of equal treatment concerning employees employed for a fixed term, the restriction of the extension of employment established for a fixed term or penetrability between employments established for a fixed and for an indefinite period of time. As the directive includes no provision regarding the cessation – termination of employments established for a fixed term or an indefinite duration, harmonization did not touch this issue.

c) Council Directive 2001/23/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses

The harmonization of Council Directive 2001/23/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses was effected in several steps. Act LVI of 1999 amending the Labour Code introduced into Hungarian law the provision of the directive by virtue of which legal succession concerning the person of the employer cannot be an acceptable reason in itself for the ordinary termination of employment of an indefinite duration. In the course of the process of law harmonization Act XX of 2003 amending the Labour Code provided for the rules concerning the so called change of legal relations i.e. for the change in the rights of employees if the employee gets

– from the scope of the LC under the scope of Act XXXIII of 1992 On Civil Servants (CSA) or – from the scope of the CSA under that of the LC, further

– from the scope of the LC or CSA under the scope of Act XXIII of 1992 On Public Servants (PSA).

Hungarian labour law provides not only for employments getting from the scope of LC under the scope of SCA or PSA, but also for changes in the opposite direction. In fact situations specified by Section 25/A of the CSA and Section 17/A of the PSA, the civil service or public service legal relations of persons employed in the public sector change to labour relations. Concealed behind these fact situations is the ‘privatization’ of public service i.e. the transfer of public service to employers with private law legal status being under the scope of the LC. It should be noted that while the LC regulates the change of legal relations towards both the SCA and the PSA essentially in the same way, the latter ones apply basically different solutions.

(3) Sources of law and their hierarchy

(3.1) Hierarchy of the regulations and the rules of the collective agreement; application of the favourable rules to the employee

The system of the sources of Hungarian labour law is defined by the general rule set forth in Section 13 of LC. (Linked to it are Sections 41 and 76 of LC, too). The basic features of this system of sources of law are as follows.

a) The general rule concerning the legal nature of statutory rules pertaining to labour relations is that the collective agreement or the agreement between the employer and the employee may derogate in favour of the employee.

b) However, there are some cogent rules i.e. rules not allowing derogation among statutory rules. (Such as the rule on the methods of termination of employment, Section 87 of LC.)

c) There are some rules among the statutory rules which allow derogation for the collective agreement not only in favour of the employee, but in either direction. (E.g. the employer may oblige its employee to work

at a place of work other than the contractual one for a period longer than stipulated by the law (44 days), provided this is allowed by the collective agreement.

d) The employment contract (the agreement between the employer and the employee) may derogate from the collective agreement only in favour of the employee.

e) Consequently, the collective agreement cannot contain any cogent provisions, neither any provisions allowing for derogation to the detriment of the employee.

f) Hungarian labour law qualifies derogation in favour of the employee according to the solution known in several countries of Europe. This is the so called Gruppenvergleich, developed by German law, under which the rule most favourable for the employee has to be selected by comparing thematically grouped rules simultaneously. (In other words: a fragment-rule favourable for the employee cannot be taken out from the particular groups of rules.)

(3.2) The role of the institutions of the collective labour law; implication of the rules of collective agreement to the legal system

Part Two (Sections 14-70/A) of LC provides for the rules of collective labour law in Hungarian labour law. The following legal institutions are included in these rules:

- a) national interest reconciliation,
- b) the legal status of trade unions (their organs operating at the workplace),
- c) the rules on collective agreements,
- d) employee participation,
- e) the so called program of equal opportunities.

on a) The forum of national interest reconciliation is the National Council for the Reconciliation of Interests (NCRI) in which the government, employees' representations and the most important trade unions take part. The scope of the NCRI was shaped by lasting practice rather than detailed legal regulations. There is no act or other regulation pertaining to the organization and working of the NCRI in effect; which leads to uncertainty in the working of the NCRI, which at present operates on the basis of an agreement between the organizations having representation. The NCRI does not only take a stand on issues concerning labour law or employment, but also gives an advance opinion about taxation, social security and legal regulations pertaining to other living and working conditions. The scope of the NCRI is provided for by Section 17 of LC. Its features are as follows:

i) The government can establish the provisions, in derogation from the LC, concerning the termination of employment affecting large numbers of employees only with the agreement of the NCRI. No such rules are in effect in Hungarian labour law at present.

ii) The government can establish the provisions concerning the mandatory minimum wage and the so called guaranteed minimum wage depending on qualifications and vocational training only with the agreement

of the NCRI. The latest such regulation is Government Decree No. 316/2005 (XII. 25.) Korm.

iii) Decrees for the supervision of labour relations can be issued only with the agreement of the NCRI. There are no such decrees in effect at present.

iv) The government can submit recommendations to Parliament to define the maximum duration of daily worktime and to determine official holidays only with the agreement of the NCRI.

v) The government – under the LC – may conduct wage negotiations in the NCRI. This power is insignificant in practice as the government has no power to regulate wages (except for the mandatory minimum wage) under Hungarian labour law.

vi) The LC recognises the possibility of the Minister of Economic Affairs promulgating the agreements concluded in the National Council for the Reconciliation of Interests in a legal regulation. There are no such decrees in effect at present (and there has never been one.)

vii) The Minister of Economic Affairs, in agreement with the National Council for the Reconciliation of Interests, may determine the system of labour qualification. There are no such decrees in effect at present (and there has never been one.)

on b) The LC ensures several rights to the organs of trade unions operating at the workplaces against the employer. These are as follows:

- trade unions may operate at workplaces,
- trade union representatives may enter the premises of the employer even if they are not employed there,
- trade unions may act – on assignment - for and on behalf of the employees in their contentious and non-contentious matters,
- the trade union is entitled to conclude a collective agreement – under certain circumstances (see below),
- employers shall co-operate with trade unions,
- trade unions are entitled to the right to information and the right to consultation (Directive 2002/14/EC),
- trade unions may give an advance opinion about actions of the employer affecting a large number of employees,
- trade unions are entitled to monitor the employer's compliance with provisions pertaining to employment,
- trade unions may lodge a demurrer with a suspending effect against the unlawful measures taken by the employer, however, this right cannot be exercised in the cases of individual decisions affecting the particular employees (except for trade union officials),
- trade union officials are entitled to worktime allowance (exemption from work) the amount of which is stipulated by the LC,
- trade union officials enjoy special labour law protection against termination and modification of employment.

on c) See below.

on d) In Hungarian labour law, the legal institutions of employee participation (Sections 42 – 70 of LC) are modelled on German labour law. The organs of participation are: shop steward, workers' council and (in the case of more than one workers' council or shop steward) central workers' council. Although the establishment, operation and termination of the organs of participation resemble the German legal solution (Betriebsverfassungsgesetz), the powers of these organs of participation differ fundamentally from their German models. Workers' councils are entitled to the right of information, opinion-giving and consultation only, they are entitled to real co-decision-making in only one case (see point 1).

on e) Section 70/A provides for a so called Program of equal opportunities. This legal institution was included in the LC as part of the legislation with a new approach in the area of anti-discrimination in 2003. The adoption a program of equal opportunities is not compulsory for the employers. This legal institution does not have a marked impact on legal practice.

Part Four of the LC provides for the settlement of labour disputes. The institutions of reconciliation (negotiation), mediation and arbitration are recognised as means of resolving conflicts between the interest representation organizations of employers and employees.

The rules of the right to strike are regulated by a separate act, Act VII of 1989 on Strike in Hungarian labour law. The extraordinarily brief act attempts to define set forth the fact situations of the prohibition and restriction of the right to strike.

The collective agreement

The rules on collective agreement are contained in Sections 30 – 41 of LC. These rules together with the practice of labour law show that the system of collective agreements is based on the collective agreements concluded at the particular employers. This practice of the Hungarian law was established on the basis of the previous LC of 1967 and has not changed fundamentally since the commencement of the LC of 1992. Collective agreements with a sectoral or inter-sectoral scope are missing from the Hungarian system of collective agreements. According to the (unreliable) data available, approximately one third of the employees are under the scope of collective contracts. The fact that the LC recognises the extension of the scope of collective contracts by the minister does not modify the dysfunctionality of the system of collective contracts basically.

The act painstakingly defines the capacity to conclude a collective contract; however, these rules contain provisions pertaining to the collective bargaining capacity of trade unions in respect of sectoral collective agreements only in an incomplete manner or rather no provisions at all. Thus provisions of the LC basically keep in view the practice of collective agreements concluded locally by one employer.

The regulation pertaining to the possible content of collective agreements is essentially in accordance with the European practice (see point 1).

The agreement between the employer and the workers' council

In Hungarian labour law Section 64/A provides for the agreements concluded between the employer and the workers' council at present. Pursuant to this regulation, the subject of the agreements can only include issues pertaining to the relationships between the parties to the agreement i.e. the agreement may concern only the manner of exercising the rights of the workers' council ensured by law. The legal regulation pertaining to the rights of the workers' council is of a cogent nature; consequently ensuring surplus rights as compared to the law is invalid. An operative agreement thus cannot contain any provisions pertaining to labour relations, consequently it cannot provide for the conditions of the termination of the legal relation (neither about the rights and duties of the parties). Until the commencement of Act XIX of 2002 (12th of July 2002), Section 31 of LC made it possible for the operative agreements to regulate issues relating to labour relations. Since then no such agreement may be concluded. Agreements concluded previously are operative until they expire or are terminated by the parties. It should be mentioned that the number of such agreements is very small, there may be only a couple of dozens altogether in the country. Their role in the world of work is insignificant.

(3.3) Role of the Constitutional Court

For the analyses of the particular decisions of the Constitutional Court see point 4.

(4) Role of the judge-made law and custom

For the analysis of judicial practice see point 4.

The peculiarity of the practice followed by the Hungarian employment tribunals is the existence of the so called divisional positions. These were issued by the Labour Division of the Supreme Court, existing till 2002. Their legal nature is as follows: the position taken on statutory interpretation is binding on the adjudicating courts (lower level courts). The divisional positions issued formerly (mainly numbers 10 and 95) have a significant impact on the administration of labour law especially in the field of termination of employment. For their analyses see point 4.

2. Scope of the rules governing the termination of an employment relationship, special arrangements

(1) Ways of terminating an employment relationship

The system of the termination of employment in Hungarian law is defined in the LC by cogent rules from which the parties cannot derogate. No new fact situations can be defined; neither can cases defined by the law be excluded either in an employment contract or in a collective agreement.

The methods of the termination of employment may be differentiated according to whether an employment established for a fixed or indefinite term is terminated. The former may be terminated by the mutual consent of the employer and the employee, by ordinary dismissal, by extraordinary dismissal or by immediate effect during the trial period [Subsection (1) of Section 87 of LC]. Ordinary dismissal is excluded in the case of fixed-term employment. Obviously, the other methods of termination, i.e. mutual consent of the employer and employee, extraordinary dismissal and dismissal by immediate effect during a trial period are available in such a case, too.

The cases listed above may also be grouped in another way. Labour relations may be terminated by a unilateral or a bilateral legal statement. The termination of employment by mutual consent is a bilateral legal statement, which is a terminating contract regarding its legal nature. Ordinary and extraordinary dismissal and termination by immediate effect during a trial period is a unilateral legal statement. The validity requirement of all legal statements regarding termination is the requirement of being made in writing. The minimum requirement concerning content is that the intention to terminate employment must be clear from the legal statement. With regard to this, it should be mentioned that in the judicial practice for instance ordinary dismissal cannot be subject to a condition.

(2) Exceptions or specific requirements for certain employers or sectors

(2.1) Specific arrangements of termination of the fixed-term employment

a) As it has already been mentioned among the general rules, the opportunity to terminate a fixed-term employment by ordinary dismissal is excluded by the legislator. The termination of the legal relation before the end of the term is possible in two cases: during a trial period and upon the occurrence of an extraordinary event or under extraordinary circumstances. According to the intention of the legislator, the reason for this restriction can be traced back to the purpose of the institution. When concluding the contract, the parties thereto are aware of the fact that the employment relation will exist for an expressly fixed period of time and it will

automatically cease by lapse of that time. Both parties may duly count on being able to exercise their rights arising from the contract and on the other party fulfilling the obligations arising from the labour relation during the period stipulated in the employment contract – but exclusively during that period. Thus the employee may know that he can expect to have a job for a certain period of time in return for which he will get remuneration, while the employer may also know exactly how long the other party is available. This holds even if the term of employment is not fixed by an actual date by other appropriate means (e.g. by defining a project or by referring to the fact that the employee is employed to substitute another employer). According to the reasoning of the legislator, the possibility of ordinary dismissal would undermine this accountability and would contravene the intentions of the parties expressed in the employment contract.

b) The construction created in 1992, however, has been criticised since then. It occurs more and more frequently in practice that the parties intend to be released from their obligations before the end of the period stipulated in the contract. This is especially characteristic of the employer who is not able to employ the worker for the whole duration of the contract for instance due to loss of market or lack of orders. Thus he has to terminate the labour relation because of an economic reason. This may happen only in return for financially compensating the other party. Consequently, if the employer wants to terminate the employment of the employee established for a fixed term, he can do so only if he pays the employee his one year's average salary, or his average salary for the period remaining if such a period is less than one year [Subsection (2) of Section 88 of LC]. This may impose a huge burden on the employer in certain cases, for the avoidance of which the employer employs the employee for a short period of time and extends the employment several times if necessary. Since the adoption of Council Directive 1990/70/EC, stricter restrictions are imposed on this possibility than formerly (see below).

c) If parties decide to keep the legal relation between them even after the lapse of the fixed period of time, they can choose one of two solutions. On the one hand they can change the employment relation to one of an indefinite duration; on the other hand they may decide to conclude another fixed-term employment contract within the limits imposed by law. In this latter case the duration of the first and that of this new employment cannot be longer than five years altogether – with the exceptions stipulated by law – , further the new contract concluded for a fixed term is invalid in the case of the lack of the employer's lawful interest and the conclusion of the contract would harm the lawful interests of the employee. This in particular means that the lawful interest of the employee concerning the payments in connection with dismissal is harmed, consequently, a right is exercised dysfunctionally thus the stipulation of the fixed period of time becomes invalid [LB MK 6. Áf (Position No. 6 of the Labour Division of the Supreme Court); Decision No. BH 1999. 524 of the Supreme Court, BH 1999. 136]. The said Position No. 6 of the Labour Division of the Supreme Court was adopted and extended by Section 79 of LC, which made the provisions pertaining to the repeated extension of fixed-term employment

between the same parties stricter. This is one of the reasons why criticism concerning the solution in effect is becoming stronger. (With regard to this regulation it should be noted that the employee cannot lawfully terminate the employment relation by a unilateral legal statement before the lapse of the fixed period of time – except for termination during the trial period and extraordinary termination – since ordinary dismissal is not possible by the employee either.)

(2.2) Binding grounds for the termination of temporary employment

a) Hiring-out of workers is one of the atypical forms of work which got regulated for the first time in the course of the amendment of the LC in 2001. The reason for it was that the hiring-out of workers appeared in Hungary in the mid80s, however, there were no provisions pertaining to this activity. Under Paragraph a) of Section 193/C of LC, the placement agency hires out the worker who is in an employment relationship with the placement agency to a user enterprise for work in return for a consideration. The hiring-out of workers is – at least in practice – temporary and this temporary nature is expressed - among others – by the rules on termination which deviate from the general rules in a number of ways. Nevertheless, it should be noted that Hungarian provisions do not provide for the fixed duration of the employment relationship established within the framework of temporary employment, neither do they restrict the duration of the contract between the placement agency and the user enterprise. This is underpinned by the amendment of the LC, effected in 2005, which practically adopted the provisions pertaining to equal treatment of COM (2002) 49 final, 2002/0072 COD. As to the remuneration of work, the principle of equal pay for equal work prevails only in employment subsequent to employment of a relatively long duration.

b) An employment relationship established for the purpose of placement can be terminated in four ways: by mutual agreement, by notice, by immediate discharge and by immediate effect. Apparently, the law uses different expressions instead of certain classical ways of termination, namely ordinary and extraordinary dismissal. According to the ministerial reasoning of the LC, the legal institution of notice corresponds to ordinary dismissal and the legal institution of immediate discharge corresponds to extraordinary dismissal. Concealed behind the differences in wording are dogmatic considerations; the legislator – due to differing partial-rules – clearly intended to separate the classical ways of termination from the ways of the termination of atypical hiring-out of workers.

Like in the case of the general system of the termination of labour relations, parties can apply different means in this case too, depending on whether a fixed-term employment or an employment of an indefinite duration is to be terminated. In the case of employment of an indefinite duration both parties may apply the means of notice and immediate discharge and the possibility of mutual agreement is also available [Subsection (1) of Section 193/J of LC]. A fixed-term employment cannot be terminated by notice, only by immediate discharge or by mutual

agreement [Subsection (1) of Section 193/K of LC]. The requirement of being made in writing applies to all forms of the termination of employment.

c) Termination by notice by the placement agency is similar to ordinary dismissal in a number of respects, so are the requirements imposed on justification. The placement agency must attach an explanation to the notice from which the reason for the notice must become clear [Subsection (2) of Section 193/J of LC]. In the event of dispute the placement agency is required to evidence the authenticity of and the justification for discharge. In the case of the hiring-out of workers the LC introduced the so called fixed system of termination by the employer/hirer-out, specifying the facts situations on which the hirer-out may base its discharge in a seriatim manner. The placement agency may terminate the employment relationship by notice if

- the employee's performance is inadequate,
- the employee is unable to perform the tasks required,
- the placement agency was unable to arrange suitable employment for the employee within thirty (30) days, or
- justified by technical reasons in connection with the placement agency's operation [Subsection (3) of Section 193/J of LC].

The notice period is fifteen days which may increase to thirty days if the employment relationship exists for at least three hundred and sixty-five (365) days [Subsection (4) of Section 193/J of LC]. If a placement agency and an employee have had several employment relationships within two years preceding the date when notice of termination is communicated, the duration of such relationships shall be accounted on the aggregate [Subsection (5) of Section 193/J of LC]. The employee shall be relieved from work duty during the notice period and for this period the employee shall be entitled to his average wages. Obviously, the parties may agree otherwise in writing [Subsection (6) of Section 193/J of LC].

With regard to discharge by the placement agency it should be noted that in the case of the hiring-out of workers the special rules on the protection against dismissal do not apply, neither do the prohibitions of dismissal.

d) If the reason for termination is severe, in other words in the event of the employee's violation of any obligation in connection with his employment, the placement agency may terminate the employment relationship with immediate effect [Subsection (3) of Section 193/K of LC]. Any entitlement for termination with immediate effect may be exercised within fifteen days from the date of receipt of notice of the reason, or within a maximum period of sixty days from the date when the reason occurred. Thus the subjective deadline equals to the rules pertaining to employment not established in the framework of hiring-out of workers but the objective deadline is shorter than the general one year. Based on a reason

communicated by the user enterprise termination with immediate effect may take place if the user enterprise notifies in writing the placement agency of the employee's breach of conduct within five working days from the date of receiving notice thereof. In this case the fifteen-day deadline for termination with immediate effect shall be reckoned from the date of receipt of said written notification [Subsection (6) of Section 193/K of LC]. Special rules apply if the placement agency is removed from the register. In this case the placement agency shall - following the ruling for removal becoming legally binding - terminate the employment relationships of employees with immediate effect, with the reason stated, within sixty days of receipt of the ruling [Subsection (4) of Section 193/K of LC]. Like the case of traditional termination, the provisions of termination by notice do not apply to termination with immediate effect [Subsection (8) of Section 193/K of LC].

The employer may terminate his employment by immediate effect in the event of any serious breach of employment-related regulations or of the agreement on the part of the placement agency or on the part of the user enterprise [Subsection (2) of Section 193/K of LC].

e) Following the cessation or termination of an employment relationship the placement agency shall pay the employee's wages, remuneration and all other benefits as due, and shall provide the certificates defined under provisions pertaining to labour relations and by legal regulations within five days from the last day of employment. If the employee did not work before the notice of termination was communicated, or before the date of any agreement for termination by mutual consent or before the reason for the termination of the relationship occurred, the five days shall be accrued from the date when the employment relationship was ceased or terminated [Section 193/L of LC].

f) Special rules apply if the placement agency unlawfully terminates employment relationship. In this case the employee – contrary to general regulation – cannot request to be further employed or from another approach the court cannot order the reinstatement of the employee, it can only order financial compensation. The employee shall be compensated for the lost wage, other benefits and any damages incurred. No compensation is payable for the part of the lost wages, other benefits or any damages incurred which was recovered from elsewhere. If the employee's employment was not terminated by notice, he is entitled to his average wages for the notice period. In the event of the unlawful termination of a fixed-term employment, the placement agency may be obliged by court order to pay any wages due for the remaining period of employment at the time of termination, or maximum six months of average wages. In practice this means paying six months of average wages [Subsections (3) – (5) of Section 193/M of LC].

(3) Exceptions or specific requirements for certain types of contract

Such distinction based on the type of contract does not exist under Hungarian law.

(4) Exceptions or specific requirements for certain categories of employer

There are no specific rules under Hungarian law.

(5) Exceptions or specific requirements for certain categories of employees

Specific termination for employees in chief executive and in other executive position

a) There are several special provisions pertaining to persons in executive positions as a special category of employees contained in the LC. A number of them concern the final phase of employment relationship and its termination. It should be mentioned that these rules do not prevail in a homogeneous way as distinction should be made between two categories of persons in executive positions. By virtue of the LC an employer's executive employee and his deputy are construed as executive employees [Subsection (1) of Section 188 of LC]. Further, the owner or the entity exercising ownership rights may, with respect to the positions of key importance for the employer's operations, prescribe that employees filling such positions are to be deemed executive employees [Section 188/A of LC]. Whilst in respect of the first category all provisions pertaining to executive employees prevail [Subsection (2) of Section 188 of LC], the executive quality of the latter scope of subjects is restricted and only a certain part of special rules – less favourable for the employee - described hereinafter apply to them.

b) In the event of the termination employment relationships the following rules apply to executive employees:

- i) ordinary dismissal by the employer need not be justified;
- ii) prohibitions of dismissal do not apply;
- iii) restrictions on dismissal do not apply;
- iv) the employer may apply termination within a longer period from the occurrence of the reason grounding extraordinary dismissal;
- v) the financial consequences of unlawful termination of employment are more severe.

on i) According to the general rule ordinary dismissal by the employer must meet strict requirements, it must contain authentic and substantial justification [Subsection (2) of Section 89 of LC]. However, if the employer applies ordinary dismissal against an executive employee, he is not obliged to justify his decision [Subsection (2) of Section 190].

on ii) According to the general rule the employee enjoys a so called 'protection' against ordinary dismissal by the employer during certain periods – expressly stipulated by law. The executive employee is excluded

from these protective rules. Such a period is for instance the period of incapacity to work due to illness, not to exceed one year following expiration of the sick leave period and the period of sick leave for the purpose of caring for a sick child [Section 90 of LC]. Thus, for instance even if the executive employee is on a sick leave, this does not prevent the employer from employing the means of ordinary dismissal [Subsection (2) of Section 190 of LC]. This provision is related to the special legal status of the executive employee's labour relation. As e.g. the executive employee does not fall under the scope of the collective agreement either, he is protected only by the content of the employment contract. This protection basically concerns the terms and remuneration of work and – in accordance with the above – not the so called status-protection of the executive.

on iii) Restrictions on dismissal do not prevail either. In respect of certain elderly employees – as this group of subjects has fewer chances of finding a new job on the job market – the employer can exercise the right of ordinary dismissal in particularly justified cases – i.e. in a restrictive manner. As the requirement of justification is not imposed on the employer in respect of executive employees, the executive employee may be given the ordinary dismissal without a justification even if he is within five years preceding the retirement age.

on iv) The period open for extraordinary dismissal is different too. Pursuant to the general rule the right of ordinary dismissal may be exercised within one year of the occurrence of the cause serving grounds therefor. This provision does not prevail in the case of executive employees. If this circle of subjects wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or otherwise engages in conduct rendering further existence of the employment relationship impossible, the right of ordinary dismissal may be exercised against him within three years. Naturally, in the case of committing a criminal offence – like in respect of non-executive employees – the right of ordinary dismissal may be exercised up to the statute of limitation [Subsection (3) of Section 190 of LC].

on v) Finally, the financial consequences of unlawful termination of employment are more severe too. Pursuant to the general rule if the employee does not terminate his employment relationship in accordance with the relevant provisions, that is terminates it unlawfully, he shall be liable to pay compensation to the employer in an amount equal to his average earnings falling due for the notice period [Subsection (1) of Section 101 of LC]. If employment relationship is terminated unlawfully by an executive employee, he is liable up to his average wages for twelve months [Subsection (4) of Section 192/A of LC].

c) As it has already been mentioned, there is another category of executive employees. The owner or the entity exercising ownership rights may, with respect to the positions of key importance for the employer's operations, prescribe that employees filling such positions are to be deemed executive employees [Section 188/A of LC]. In respect of such executive employees only one rule prevails, namely that of the extension of the notice period. The right of ordinary dismissal may be exercised against him within

three years of the occurrence of the cause serving grounds therefore instead of one year. The general rules on the termination of employment are applicable in all other cases. Therefore, ordinary dismissal by the employer shall be justified and prohibitions of and restrictions o termination prevail. The more severe financial consequences of unlawful termination relating to executive employees do not apply either.

3.1 Mutual agreement

(1) Substantial conditions

The possibility of the termination of employment by mutual agreement is specified by the LC without a detailed specification of its rules. Thus the applicable principles have been established by judicial practice. Mutual agreement is conceptually the concordant statement of the parties concerning their will to terminate the employment relationship. The mutual statement of will concerning the termination of an employment relationship is established by the acceptance of the offer put forward by one of the parties to the other.

There are two requirements imposed on mutual agreement. One of the requirements concerns form, namely it must be made in writing; the other concern content, namely it must be made clear that the parties want to terminate employment – at a certain specified point of time – by mutual agreement. [BH 2002. 202.].

(1.1) Requirements of form: agreement in writing

The validity requirement of mutual agreement is that it must be made in writing. In judicial practice if the statement of the employee concerning the termination of employment by mutual agreement is accepted orally by the employer and the employment has accordingly been terminated upon the initiative of the employee, later the employee cannot refer to the unlawfulness of termination because of a formal reason [EBH 1999. 42].

(1.2) Requirements of content: comply with the requirement of good faith and fairness; compliance with the mutual duty of co-operation

The mutual statement of will concerning the termination of an employment relationship is established by the acceptance of the offer put forward by one of the parties to the other. The existence of a mutual will is, however, not always unequivocal. The provisions of the CC are applicable in the course of deciding whether the agreement has been established by the acceptance of the statement or the relevant party has withdrawn his offer prior to it, having regard at the same time to the rule that no civil law provisions may contradict with the principles of labour law [EBH 2000. 258.]. During the period of being bound by the offer, the statement concerning acceptance cannot lawfully be rejected [EBH 2001. 463.]. The mere receipt of the employer's statement concerning mutual agreement by the employee does not qualify as consent, therefore, cannot serve as ground for termination by mutual agreement. [LB Mfv. II.10.573/1998].

(2) Procedural requirements

According to what has been said above, the point of time as of which the parties want to terminate the legal relation must be stipulated in the agreement concerning mutual agreement. Termination may occur with immediate effect or at a later point of time. At the said time of termination the employee is obliged to vacate his position as ordered and settle accounts with the employer. The employer must appropriately ensure the conditions of vacating the position and settling accounts.

If parties agreed on termination with immediate effect, the employee shall be paid his wages and other emoluments and be supplied with the certificates prescribed by provisions pertaining to labour law and other legal regulations in not later than three days of the conclusion of the agreement. If parties agree on terminating employment relationship at a later date, the employer shall ensure payment and the issue of certificates on the last day of employment

(3) Effects of the agreement

The contract is terminated in line with the agreement.

(4) Remedies

General provisions pertaining to the avoidance of legal statements shall apply to the avoidance of mutual agreement [Section 7 of LC]. Pursuant to it the time limit for filing an action for avoidance is thirty days which commences upon recognition of the error or deception or, in the case of unlawful duress, upon cessation of duress. The provisions pertaining to limitation duly apply to the time limit for filing an action for avoidance, with the exception that the right to avoidance cannot be exercised after six months. The other party shall be notified in writing regarding the filing of an action. Thereafter, such proceedings are governed by the procedural regulations on labour disputes. Pursuant to Section 202 of the Labour Code pertaining to filing a lawsuit, a lawsuit may be filed within thirty days of the notification of the action.

(5) Vitiating factors

General provisions pertaining to the avoidance of legal statements shall apply to the avoidance of mutual agreement [Section 7 of LC]. In judicial practice, however, it is not considered as unlawful duress if the employer holds out the prospect of initiating proceedings due to a breach of duty or some other conduct on the side of the employee in case the employee did not consent to mutual agreement. Whether extraordinary dismissal would have been lawful or not is of no significance. The legal statement made due to holding out the prospect of extraordinary dismissal cannot be successfully contested by the employee in either case [BH 1998. 50., BH 2002. 74].

No obligation to pay is imposed on the employer in the event of mutual agreement. In the agreement the parties may provide that with regard to mutual agreement the employee is entitled to a certain amount of money which might as well be called severance pay. There is no cogent rule in respect of the terms and conditions of paying a severance pay the derogation from which in favour of the employee would be prohibited by law. Consequently, in the agreement of the parties derogation in favour of the employee from the provisions as stipulated by law in respect of entitlement to severance pay is not excluded. This may also be effected by conduct [BH2002. 412.].

(6) Penalties

See point 5.

(7) Collective agreements

Collective agreements do not have an effect on mutual agreements.

(8) Relations to other form of termination

See the relevant points on other forms of termination.

3.2 Termination otherwise than at the wish of the parties

(1) Grounds for a contract to come to an early end by operation of law

(1.1) The employee's death

a) Pursuant to Paragraph a) of Section 86 of LC employment relationship ceases upon the employee's death. By virtue of it, there is no legal succession in the employee's subjective position of employment. This rule emphasises the personal nature of employment: the employee's rights and duties are mainly of a personal nature and there is no possibility of replacing its subjects. Pursuant to Paragraph d) of Subsection (1) of Section 103 of LC the employee shall perform his work in person. Apparently, not only the obligation to perform work is of a personal nature, but so are other rights and duties arising from labour relations as well. Therefore, personal nature is emphasised on the side of the employee contrary to the side of the employer. In the latter case personal nature is relegated to the background by the regulation pertaining to legal succession in the person of the employer, in other words a replacement of persons may occur in this subjective position (without the employee's legal statement to this effect).

b) Thus the employee's subjective position cannot be an object of inheritance in its entirety (universality). This general rule, however, does not exclude the possibility that certain rights and duties - of non-personal nature - arising from employment might remain between the employer and the inheritor(s) of the employee. These claims basically of a pure financial nature falling due prior to the cessation of employment may be enforced between the said parties. Wages and other benefits due up to the death of the employee and claims for damages fall especially into this group. In accordance with the position taken up by the Supreme Court if the employee did not enforce a financial claim on the grounds of the employer unlawfully terminating the employment relationship, the successor cannot do it either. The successor of the employee obtains only the financial rights of the employee which may be objects of inheritance. If the employee did not enforce a financial claim against the employer's terminating the employment relationship - on the ground of its unlawfulness -, the successor sues for financial claims not constituting the object of inheritance without a ground [BH 2001. 193.].

Upon the death of the employee, in the field of the employer's liability for damages his close relation may sue for the compensation of the incurred damages and reasonable costs in respect of damages and the dependent relation may claim a compensation substituting alimony. Upon the death of the employee the claim for damages is passed to the inheritor of the employee - with the exception of the claim relating to his person [BH 1990. 118.].

(1.2) The dissolution of the employer without legal successor

a) The dissolution of the employer without legal successor – without the legal statement of the parties to this effect – terminates employment. The dissolution of the employer without legal successor is generally the result of a long process during which period employment relations may naturally be terminated – in accordance with the general provisions (usually by ordinary dismissal by the employer). In the case of the death of a natural person employer, employment is not terminated (since there is always succession). In Hungarian labour law this rule is unconditional and prevails in respect of all employment relationships. A different solution is applied by several other countries: in labour relations where personal nature is also predominant on the side of the employer (fulfilling duties of confidential nature, taking care, secretarial activities etc.), employment is terminated upon the death of the employer. Contrary to this, the rules on the change of the employer by legal succession are applicable in Hungarian law [Section 85/A of LC]. A natural person employer is usually an individual entrepreneur, in other words has a certificate of individual entrepreneurship pursuant to Act V of 1990. The quality of individual entrepreneurship is not attached to the status of entrepreneurship but to the legal capacity of the natural person. Consequently, the cessation of the quality of the individual entrepreneurship due to giving back (withdrawing) the certificate of individual entrepreneurship does not result in the termination of the employer (without succession); in this case the employment relationship remains between the parties with unchanged content. Giving back the certificate of individual entrepreneurship does not mean the termination of the employer without successor [BH 2004. 335.].

b) In the case of a non-natural person employer, termination without successor may occur. In the case of an employer construed as economic organisation under Paragraph a) of Subsection (1) of Section 3 of Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Members' Voluntary Dissolution (BA) dissolution without successor occurs upon liquidation proceedings and members' voluntary dissolution. Pursuant to Subsections (3) and (4) of Section 1 of the BA both proceedings lead to the termination of the legal existence of the economic organisation (employer). Termination is decided on by the court (in the event of winding-up the court of registry). With respect to the time of termination the decision of the court shall be applicable. Legal succession in the person of employer may occur both in the course of liquidation and voluntary dissolution since Hungarian labour law – unlike the practice of a number of European countries – does not contain any special provisions pertaining to the application of the rules of legal succession in proceedings for the dissolution of the employer. Act LXVI of 1994 on the Wage Guarantee Fund provides for the so called outstanding payroll debts incurred during liquidation proceedings and for their settlement.

c) Employers not construed economic organisations (non-natural person) may be terminated without legal succession too. (The BA is not applicable in such cases.) Sections 20 – 21 of Act II of 1989 on the Right of

Association provide for the termination of social societies – in the meaning of the Civil Code (CC). The termination of such societies is provided for by Section 63 of CC. Social organisations cease to exist without a legal successor upon dissolution, being dissolved and by declared to be terminated. Fact situations of legal succession stipulated in Paragraph b) of Subsection (1) of Section 85/A of LC may also occur in these cases. In the event of a merger of a social organisation with another social organisation legal succession (termination with a legal successor) occurs. Provisions pertaining to societies shall be applied to public corporations in the meaning of Section 65 of CC –unless provided otherwise by law [Subsection (6) of Section 65 of CC]. The same applies to national associations of specific sports as well [Subsection (4) of Section 66 of CC]. Pursuant to [Subsection (6) of Section 74 of CC] a foundation as employer is deemed terminated upon removal from the registry (without a legal successor) [Section 74/E of CC]. Provisions pertaining to the legal succession occurring in the person of the employer (transfer of the business unit) may also be applicable under a stipulation – of the charter or the court – pertaining to assets of the foundation upon termination. The merger of foundations [Subsection (6) of Section 74 of CC] realises the termination of foundations with a legal successor; the rules of legal succession in labour law shall also be applied. The above rules apply to public foundations but a public foundation may be terminated by the court upon the founder's request [Section 74/G of CC].

d) All employment relations existing with the employer terminated without a legal successor ceases upon the termination of the employer. Considering that it is a fact situation of termination and not termination of an employment relationship by ordinary dismissal by the employer, prohibitions of dismissal (Section 90 of LC) do not apply, in other words even the employment of employees within the prohibited period is terminated. If termination occurs during the notice period, the employment relationship is deemed to be terminated upon the dissolution of the employer without a legal successor. In this case the employee is entitled to severance payment (Section 95 of LC) and other benefits due to him in the case of ordinary dismissal.

e) The death of a natural person employer has to be treated as an exception. Rules of the change of employer by legal succession shall be applied in the case of the death of a natural person employer. Legal succession may be effected either in the manner stipulated in Paragraph a) of Subsection (1) of Section 85/A of LC, that is by virtue of legal regulation, or by the fact situation specified in Paragraph a) of Subsection (1) of Section 85/A of LC, that is by the transfer of the business unit. The latter case occurs if the business unit (plant, shop etc.; Section 85/A) is transferred to the successor(s) under the order of testamentary inheritance. The rules of legal succession are the same in both cases under Hungarian labour law (erroneously from a dogmatic perspective). It should be noted that upon the death of a natural person employer, if there are more than one inheritors, more than one persons may get into the position of the employer. The person entitled to exercise employer's rights shall be designated in this case too and the employee shall be notified about it.

(1.3) Expiry of fixed-term contract

Since the intention of the parties aimed at the termination of a fixed-term employment at a later point of time at its establishment, the employment ceases at that point of time. Its obvious condition is that the stipulation of the fixed term between the parties be valid. In our judicial practice an invalid stipulation concerning fixed term (partial invalidity) does not entail the invalidity of the whole employment contract, in other words the employment relationship is to be deemed established for an indefinite duration. Position No. 6 of the Labour Division of the Supreme Court (LB MK 6) contains such a provision concerning fixed-term employments established consecutively. The stipulation of a fixed term may be invalid not only in the case of repeated and extended employment but further fact situations of invalidity may also occur which also result that the legal relation established between the parties shall be deemed one of an indefinite duration – due to partial invalidity. In practice in the above cases the employer takes measures to terminate employment, issues the necessary certificates, pays the remuneration, informs the employee about the expiration of the fixed term etc. In judicial practice this conduct qualifies as unlawful termination of employment (Section 100 of LC) as the legal relation of an indefinite period could have generally been terminated in accordance with the rules of ordinary dismissal. Concerning legal consequences, the rules of unlawful dismissal are applicable.

a) Upon the termination of an employment established for a fixed term, the parties may agree on establishing a further employment of a similar nature. The aggregate duration of the first and the new fixed-term employment – with the exception stipulated by law – cannot exceed five years. The agreement on a further fixed term is invalid if it might harm the lawful interest of the employer. In such cases the new employment established for a fixed term shall be deemed invalid (LB MK 6). This principle established by judicial practice was adopted in the provision of the Labour Code stipulating that employment shall be deemed one of an indefinite duration if the repeated establishment or the extension of the fixed-term employment was effected without the existence of the employer's relevant lawful interest and the agreement aims at violating the lawful interest of the employer. The stipulation concerning fixed term is invalid if the fixed-term employment contract and its repeated extension (nineteen times within five years in a certain case) was concluded without the lawful interest of the employer [Theoretical Decision No. EBH 1999. 136. of the Supreme Court].

b) Substitution may occur due to the absence of a particular person (employee) – being in legal relation with the employer. Except for the person employed expressly for a substitute position, it cannot be deemed as substitution if the employer employs one or more employees because certain persons due to one reason or another might not perform work in the future and therefore substitution will be needed. If the employer abuses his

right to establish fixed-term employment, the employment shall be deemed one of an indefinite duration [BH 2003. 34.].

Stipulating fixed term for employment in employment contracts repeatedly without a lawful interest clearly violates the lawful interest of the employee regarding dismissal payments; therefore, it constitutes the dysfunctional exercise of a right [BH 1999. 524.].

If parties agreed on a severance pay in case of a fixed-term employment – in deviation from law – the employee is entitled to the severance pay [BH 2000. 322.]. (See also the comments on the institution of severance pay.)

(1.4) Cessation of an employment in the case of change in legal status of an employee - the transfer from the personal scope of the Labour Code to that of Civil Servant Act or to the Public Servant Act

The legal construction of the transfer with the change of the legal status of employee

a) The provisions of Sections 86/B – 86/D of the Labour Code pertaining to the change of legal status were adopted by Act XX of 2003; they are applicable in cases of transfer and legal succession occurring subsequent to the first of July 2003. The expression of the change of legal status means that in the cases regulated thereby, upon the termination of an employment under the scope of the LC (Paragraph d) of Section 86) – in the course of a prescribed proceeding -, a civil service or public service employment may be established under the scope of CSA or PSA. The reasoning of Act XX of 2003 – referring also to provisions previously in effect – highlights the legislative intention concerning the adoption of the provisions. The relevant part of the Reasoning reads as follows. “Pursuant to the Finances Act (FA) if the activities of a budgetary institution can be performed better and more economically in another organisational form, the founder may terminate the budgetary institution and establish another organisations generally a non-profit organisation or a business association. However, it happens more and more frequently that after out-contracting the public duty, the local authorities intend to fulfil its duties in the framework of a budgetary institution again. Labour law rules in effect do not ensure the right to legal protection for the employee because the LC does not contain any special provisions. Lacking special provisions, general provisions are to be applied. On the ground of these provisions in case an employment becomes a civil service legal relation again because the local authorities establish a budgetary institution for fulfilling the public duty, the employer under the scope of the LC shall proceed in accordance with the applicable rules of dissolution of the employer without legal succession pursuant to Paragraph b) of Section 86 of LC. If the employer is not terminated at the transfer (only certain duties are transferred but the employer continues its operation), the employment of the employees concerned shall be terminated by ordinary dismissal on the ground of a reason concerning the operations of the employer. The budgetary institution receiving the duties may

establish civil service legal relations with the former employees subsequent to the termination of employment. These rules take it into account that the employer under the scope of the LC may transfer duties or resources both to an employer under the scope of the CSA and under the scope of the PSA; Out-contracting from the scope of the LC leads to a change of the legal status in respect of the employee, thus it cannot be considered legal succession. Having regard to the formerly operative rules, the law prescribes that employment ceases upon transfer and provides for the special rules pertaining to transfer and also to legal consequences.”

b) The intention of the legislator was to have the rules conform to the provisions of Council Directive 2001/23/EEC. Although it is still argued whether the provisions of the directive are applicable in respect of the labour relations of employees getting into the public sector (Section 2 of LC), the practice of the European Court of Justice indisputably reflects this approach. Hungarian law – in view of its rules – chose another legal construction for the adoption of the directive than in the case of the change of employer by legal succession (Section 85/A). The fundamental difference is that while labour law legal succession does not entail the termination of employment relation (only the change of the person of the employer by virtue of the law), in the case of the change of the legal status the employment relationship – also by the virtue of the law – ceases and a new civil service or public service legal relation is established - by appointment – at the time of the cessation. Thus in this latter case no legal succession occurs but an employment ceases and a new legal relation is established. An exception from this rule is stipulated in Chapter XII of Part Three of LC providing for the employment relationship with the public administration organisations pursuant to which in such cases the rules of labour law legal succession are (partly) applicable.

c) The decisive factors of the fact situation grounding the change of legal status in Paragraph (1) of Section 86/B are the same as the ones defined in Paragraph b) of Subsection (1) of Section 85/A. In this case too, there is a change in the holder of the ‘business unit’, in other words in the organised unit of material and non-material assets. It has already been mentioned that the term of business unit has to be construed in a wide sense, not only units operating for making profit but other units performing various social, cultural and other activities in the interest of the public as well. From this point of view, the use of the terms ‘organizational unit’ and ‘specific group of duties and competences’ in Subsection (1) seems unnecessary. The transfer of the employer ‘in whole’ also constitutes the transfer of the business unit. In respect of the provisions the further legal fate of the transferring employer, whether it will be terminated without a legal successor (by the termination of its activity) is indifferent. The legal consequence of the termination of the employment relation is attached to the fact of the transfer by the law. The time of termination is the time of the actual change of the holder of the business unit and not the time of the legal transaction aiming at the transfer. Concerning the possible legal transactions, it should be stated that all legal transactions are possible which are suitable for acquiring control over the business unit. An exception from

this rule is the contribution of assets to a business association referred to in Paragraph b) of Subsection (1) of Section 85/A, as Hungarian law does not recognise budgetary or public administration organizations with the legal status of a business association. The legal transactions are effected between employer subjects under the scope of the LC and the CSA and the PSA, respectively. The latter ones are the budgetary institutions established and operating under Act XXXVII of 1992 on Finances (FA).

The following cases may be separated:

- i) employment relation is replaced by civil service legal relation;
- ii) employment relation is replaced by public service legal relation;
- iii) employment relation is terminated without being replaced by another legal relation;
- iv) legal succession occurs in the person of the employer.

(2) Procedural requirements

See the relevant points in this chapter.

(3) Effects of the existence of a ground

(3.1) The duties of the transferor and the transferee

a) The LC provides for the duty to supply information and to hold talks of both the transferring (under the scope of the LC) and receiving (under the scope of the SCA or PSA) employers commencing no later than thirty days prior to the scheduled date of transfer. Pursuant to Subsection (2) both employers owe the duty to supply information and to hold talks to the employees employed by the transferring employer under the scope of the LC, to the local trade union branch and (!) the workers' council (shop steward). These duties differ from the ones set forth in Section 85/B of the LC in that they are owed to each (and every) employee and to the workers' council not only if there is no trade union. Otherwise the rules are the same as the provisions of Section 85/B. The duties to supply information and to hold talks are owed only to employees' representations; but in that circle parallel to the trade union (trade unions) and workers' council (shop steward). If more than one workers' council (shop steward) or central workers' council operate at the employer, the employer's duties are to be performed in respect of each of them.

b) Provisions separately impose an obligation on the transferring and the receiving employer to supply information in writing (also not later than thirty days prior to the date of transfer) to the employee as to whether he will be further employed in civil service or in public service legal relation after the termination of his employment relation. This provision is unnecessary and irrelevant inasmuch as it is impractical for the transferor to make a statement concerning further employment. Pursuant to the LC, the information shall also contain a proposal pertaining to the content of

appointment; such a proposal cannot apparently be put forward by the transferor. It is also considered impossible for the transferor to inform the employee what obligations the employee must fulfil to be promoted and to maintain the legal relation in his civil service or public service legal relation. These latter obligations are typically of two different kinds. On the one hand there are the obligations to obtain certain qualifications. Further employment may be possible only in the positions defined by the provisions pertaining to civil service or public service legal relations the requirements concerning qualifications of which are defined by the same provisions often in such a manner that a special transitory period is ensured for obtaining the qualification. There may also be some fact situations concerning incompatibility which must be eliminated in the future (in a certain period of time).

c) The transferring employer shall notify the employee in writing concerning the termination of employment relation effective between the parties not later than the date of transfer (under the LC ‘as of the day of transfer’). It should be emphasized that the further employment of all employees employed as connected with the business unit in the sphere of the change of legal relations must be ensured, in other words the obligation to make a proposal is owed to all employees that may be employed –unless there is an excluding condition stipulated by legal regulation - under the scope of the CSA or PSA. Thus the LC in effect does not allow the transferee to select the civil servants or public servants they want to employ. It also follows from the provisions of Subsection (1) of Section 86/C of LC. The obligation to further employ is owed to employees whose employment is suspended or who has no obligation to perform work (due to another reason) at the time of the obligation to supply information (make a proposal). It is obvious that even in lack of an express provision of the LC the transferring employer shall inform the receiving employer concerning all essential facts and conditions pertaining to the civil service or public service legal relation of all affected employees in due time prior to the thirty-day deadline. In the cases specified in Subsection (7) of Section 86/B, that is if the establishment of the new legal relation has a statutory obstacle, the transferor and the transferee are not obliged (and not entitled either) to propose appointment, instead they are both required to inform the employee about this circumstance in writing.

Section 86/C provides for the mandatory content of the proposal to appoint. These content elements (being the mandatory content elements of the civil service and public service legal relation as well) are as follows.

i) Firstly, it should be mentioned that the LC does not provide as to what position the proposal to appoint shall concern. Thus the transferee may propose appointment or may appoint the former employee to any position – specified by provisions pertaining to civil service and public service legal relations.

ii) In the case of employment established for an indefinite period of time, the proposal may concern the establishment of civil service or public

service legal relation for an indefinite period of time. Cases in which the law allows only the establishment of legal relation for a fixed term at the transferee are exceptions. Such positions can be found in the public sector, typically for instance in higher education.

iii) In the case of an employment relation established for full time, employment in the public sector shall also be full-time. The employee previously employed part time may be employed full time after the transfer under the LC. (Its contrary is excluded by the LC.)

iv) No trial period can be stipulated in the newly established legal relation.

v) The rules of classification pertaining to remuneration stipulated by the provisions of the CSA and the decrees on its implementation are applicable, but the combined total of the salary and bonuses cannot be less than the personal basic wage of the employee at the time of the transfer. Apparently, the LC treats the civil service remuneration defined by legal regulation as so called guaranteed remuneration, in other words it allows for the civil servant's remuneration to be higher than the classified salary – in the case of a prior higher basic salary. It should be mentioned that in the course of defining the salary, deviation in an upward direction is possible only in the case of the classified basic salary as the amount of bonuses is limited by legal regulation.

vi) In the event of establishing public service legal relation, the rules of the calculation of remuneration and the proposal concerning it differ from those pertaining to civil service legal relations. The difference arises from the fact that the LC considers the provisions pertaining to the remuneration (and their upper limit) of public servants as cogent and allows any deviation from them only to a certain extent - exceptionally. In the course of calculating the salary of public servants the LC does not ensure the right to the former basic wage. If the personal basic wage the employee received at the time of the transfer exceeded the combined total of the basic public service salary, extra pay and executive bonuses, the basic salary can be increased by twenty per cent during classification. The amount of the extra pay and executive bonuses cannot deviate from the amount determined by legal regulation. Therefore, if the previous personal basic wage exceeded the basic salary increased the combined total of the basic salary, extra pay and executive bonuses by twenty per cent, the employee might be employed with remuneration lower than the former remuneration.

vii) Subsection (4) of Section 86/C ensures the 'continuity' of legal relations, in other words it establishes an employee's position which is the same as that of legal succession. It declares (like Position No. 154 of the Labour Division of the Supreme Court, LB MK 154.) that the employment existed at the transferring employer is to be considered as if it had been a civil service or public service legal relation. If the employment relation existed at the transferor was established under the scope of the former LC by transfer or the employment relation between the parties was established

by legal succession, the duration of these previous legal relations shall also be taken into account. If the employment relation was established under Section 25/A of the SCA - in effect till the thirtieth of June 2003 -, the previous civil service legal relation is to be counted in the employment relation pursuant to Subsection (5) of this section. The abovementioned rule pertaining to continuity must be applied unconditionally even if the rule pertaining to civil service or public service legal relations did not provide for the consideration of the previous employment relation in respect of a certain right or benefit (this special rule deteriorates the general rule.)

viii) At the cessation/termination of the civil service or public service legal relation – as a general rule – the rules governing these legal relations are applicable in respect of calculating the notice period and the severance pay and the employment at the transferor and the duration of the civil service or public service legal relation shall be taken into account jointly (shall be added together). However, the rules effective on the day of the transfer are applicable if this would be more favourable for the employee (in respect of the extent).

The proposal and the content of the information supplied are binding on the receiving employer. The state of being bound does not last only till the commencement of the civil service or public service legal relation but it lasts during its whole existence. No deviation detrimental to the employee may be considered valid prior to the establishment of the new legal relations – not even by mutual agreement of the parties. Subsequent to the establishment of the new legal relation, deviation from the content of the proposal or of the information supplied may occur – within the framework of the CSA and PSA – with the consent of the civil servant or the public servant or by the agreement of the parties.

The obligor of the obligations to supply information, hold talks and make a proposal is generally the receiving budgetary institution. If that is not yet established at least thirty days prior to the transfer in accordance with the provisions of the FA, the said obligations shall be fulfilled by the founder or by the organisation acting on behalf of it.

(3.2) Freedom of choice of the employee concerning the transfer

Within fifteen days of receiving the employer's information and proposal of appointment communicated not later than thirty days prior to the transfer, the employee shall make a statement as to whether he accepts or refuses the proposal. The written statement shall be communicated to the transferee. The thirty-day deadline is a forfeit deadline; failure to meet it shall be construed as meaning that the employee has rejected the proposal.

Despite the general obligation of further employment, new legal relations may not be established due to the following reasons.

i) If the employee fails to make a statement in respect of the proposal, he shall be deemed to refuse the proposal.

ii) The employee may refuse the proposal of appointment (by express written statement).

iii) There is a statutory obstacle to the establishment of civil service or public service legal relation (e.g. having a criminal record).

(3.3) The severance pay in the case of the expiry of the employment

In the above a) and b) cases besides the written notification, the transferor shall pay the employee the severance pay due to him or – in the case of the termination of fixed-term employment – the payment stipulated in Subsection (2) of Section 88 of LC. The time of the date due is the day of the transfer (of the termination of employment). In the course of calculating the amount of the severance pay the provisions of Subsection (5) of Section 95 cannot be applied, in other words the employee is not entitled to the increased amount of the severance pay in cases specified therein. Therefore, if the employee does not want to be further employed, he is entitled only to the amount of the severance pay calculated by the general rules. In the event the parties derogated from the provisions of Subsection (2) of Section 88 in their agreement in favour of the employee or the collective agreement contains a provision to that effect, the employee is entitled to the higher amount. In the case falling under the scope of Paragraph c) the employee is also entitled to the said payments. This provision might be inequitable to the employee - in certain cases – since he might lose entitlement to the increased amount of severance pay due to a statutory obstacle. In this case the transferor and the transferee are not obliged to make a proposal but to inform the employee about the statutory obstacle to the establishment of civil service or public service employment.

(4) Remedies

See general legal effects.

(5) Penalties

See general sanctions.

(6) Collective agreements

The collective agreement in effect at the time of the transfer at the transferring employer – unlike under the rules of labour law legal succession (Section 40/A of LC) – is not applicable to the employees concerned. The provisions of the PSA pertaining to public service legal relation do not recognise collective agreement and the rules concerning this legal relation are cogent. Although a collective agreement may be concluded under the scope of the CSA, its stipulations cannot derogate from the law in favour of the employee in an unlimited manner. As the rules pertaining to civil service and public service legal relations are applicable after the transfer, the terms and conditions of work specified in the collective agreement obviously do not apply. Apparently, Subsection (2) of Section 40/A of the LC is not applicable either, in other words the terms and conditions of work specified in the collective agreement operative at the

transferor do not apply even if they are more favourable than the collective agreement operative at the transferee on the grounds of the CSA.

The rules pertaining to the change of the employer due to legal succession (Sections 56/A – 56/B of LC) are applicable in respect of the workers' council (shop steward) operating at the transferring employer till the time of the transfer. These rules are not applicable in the course of establishing public service legal relations under the scope of the PSA. However, if labour relations falling under the scope of Section 86/D of Chapter XII of LC are established – by applying the rules of labour law legal succession -, these rules are applicable to the legal status of the workers' council (shop steward). In practice it means that the representation of the employees, affected by the legal succession, still under the scope of the LC has to be further ensured by applying Sections 56/A – 56/B of LC.

3.3 Dismissal in Hungary: Overview

Both ordinary and extraordinary dismissal is considered as a legal statement aiming at the termination of an employment relationship, although differences regarding weighting may be found between the two types. A simple reorganisation subsequent to which the work of the employee is not needed any longer may serve as ground for ordinary dismissal, while extraordinary dismissal may be applied only in the case of the other party's conduct constituting a grave breach of contract.

(3.3.1) Dismissal contrary to certain specified rights or civil liberties

a) The LC specifies certain prohibitions in respect of ordinary dismissal by the employer and imposes certain restrictions on the dismissal. By virtue of Subsection (1) of Section 90 of LC employers shall not terminate an employment relationship by ordinary dismissal during the periods specified below:

- i) incapacity to work due to illness, not to exceed one year following expiration of the sick leave period, furthermore, for the entire duration of eligibility for sick pay on the grounds of incapacity as a result of an accident at work or occupational disease,
- ii) for the period of sick leave for the purpose of caring for a sick child,
- iii) leave of absence without pay for nursing or caring for a close relative (Section 139),
- iv) during a treatment related to a human reproduction procedure as specified in specific other legislation, during pregnancy, for three months after giving birth, or during maternity leave [Subsection (1) of Section 138],
- v) leave of absence without pay for the purpose of nursing or caring for children (Subsection (5) of Section 138),
- vi) during regular or reserve army service, from the date of receiving the enlistment orders or the notice for the performance of civil service.

on i) The first prohibition of dismissal protects the employee unable to work. The detailed rules concerning sick pay and sick pay for incapacity as a result of an accident are provided for in a separate statute. The essence of the regulation is that during the period of sick leave – but no longer than one year – the employment of the employee is maintained, in other words the employee is in a legal relation giving ground for insurance. In this case, if the employee recovers, the employer must ‘take him back’ and cannot terminate the employment relationship by referring to the previous state of incapacity alone.

on ii) The employee is also entitled to sick pay for the period of caring for a sick child under the rules concerning social security benefits.

The period of time entitling to sick pay per child depending on the age of the child or children is determined by Act LXXXIII of 1997 on Mandatory Health Insurance Benefits.

ad iii) By virtue of Subsection (1) of Section 139 of LC, upon the employee's request, the employer shall permit leave of absence without pay for any extended (foreseeably more than thirty days) nursing or home care (hereinafter referred to as 'nursing') of a close relative for the duration of care, but for a maximum of two years, provided the employee personally provides such care. Extended home care and its justification shall be certified by the physician of the person in need of care. Pursuant to Subsection (2) 'Close relative' shall mean spouses, next of kin, spouse's next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers and sisters, and domestic partners.

on iv) Section 138 of the LC stipulates the allowances women giving birth are entitled to. Section 166 of Act CLIV of 1997 on Healthcare provides for the special rules concerning treatment related to a human reproduction procedure. The employee concerned is under a prohibition of dismissal during the period of such treatment as well.

on v) A woman nursing a child is entitled to child-care allowance up to the age of three of her child. This period also ensures her protection against dismissal.

on vi) This provision is of no practical importance these days. Though the relevant legal regulation is still in force, the minister does not use enlistment for regular military service.

b) The period of the prohibition of dismissal has to be differentiated from the beginning of the notice period. It has significance if the employee returns to his workplace after the periods referred to above. Then the employer may terminate the employment relation by ordinary dismissal but the point of time the notice period commences depends on the duration of the period of the prohibition of dismissal. Pursuant to Subsection (2) of Section 90 of LC, if the notice period of dismissal, if the duration of the period of the prohibition of dismissal

- is more than fifteen days, may commence after another fifteen days,
- is more than thirty days, may commence after another thirty days.

c) There is only one restriction of termination concerning the status of pensioners in the LC. The relationship between dismissal and employees entitled to pension is covered by the point hereinunder, now only the special restriction of termination is analysed. Pursuant to Subsection (7) of Section 89 of LC, an employer shall be allowed to terminate an employee's employment within the five-year period preceding the date when the employee attains the age limit for old-age pension by ordinary dismissal only in particularly justified cases. An exception of this rule is, if the employee is already receiving some form of pension benefits. The term

‘particularly justified cases’ is not defined by the act. Position No. 10 of the Labour Division of the Supreme Court gives information regarding this. According to law enforcement if the employer may terminate employment only in particularly justified cases, a case may be considered as a particularly justified case only if it has such a severe reason which might be unbearable for the employer or further employment would be a disproportionate burden on the employer. Thus it is important to note that the restriction of termination is not the same as the prohibition of termination; that is it does not exclude the termination of the employment relation of the employee concerned by ordinary dismissal.

Protection of the trade union’s official against the dismissal

a) The provisions of Sections 18 – 29 of LC stipulate the rights of trade unions having representation at the employer. No obligation of information and consultation is imposed on the employer in respect of the employer’s dismissal of individual employees. The employer and the trade union may naturally agree to this effect in the collective agreement. (Other rules pertain to collective redundancies: see below.)

At the same time trade unions are entitled to rights which may have an impact on the employer’s right to dismissal. Pursuant to Subsection (1) of Section 22 of LC, trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment. Employers shall not refuse to supply such information, nor the justification of their actions. Furthermore, trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions) and, furthermore, to initiate talks in connection with such actions. By virtue of this provision, in theory, the trade union may request information on the background of any dismissal and the employer must consult with the trade union in the given case. This request, however, has no impact whatsoever on the validity and effect of the dismissal by the employer.

b) A peculiar power of trade unions is specified in Section 23. By virtue of the regulation, a local trade union branch shall be entitled to contest any unlawful action taken by the employer (or his failure to take action) by way of demurrer if such action directly affects the employees or the interest representation organizations of employees. The institution of the trade union demurrer is a very strong trade union right insofar as it suspends effect of the employer’s action. This is expressed in the content of Subsection (5) of Section 23, “Contested actions shall not be executed or, if already in progress, shall be suspended until the negotiations between the employer and the trade union are concluded, or until the court’s final decision”. As a comparison: the employee’s claim against dismissal by the employer has no such legal effect. The demurrer shall be delivered to the employer’s executive director within a period of five working days upon gaining knowledge regarding the contested action. No demurrer may be lodged later than one month following the introduction of an action. Negotiations shall be held regarding any demurrer with which the employer

disagrees. Such negotiations shall commence within three working days following the date when the demurrer was filed. In the event that such negotiations fail to produce a settlement within seven days, the trade union may file for court action within five days of the declaration of failure of such negotiations. The court shall pass its decision within fifteen days in nonlitigious proceedings.

The possibility that a trade union demurrer might paralyse the operation of the employer is supported by what has been described above. The subject of the demurrer is substantially restricted by Subsection (3) of Section 23. By virtue of it, a demurrer may not be lodged if the employee involved is entitled to file for legal action against the action in question. On the other hand, if an employer has terminated the employment relationship of a trade union official by ordinary dismissal without the prior consent of the immediate superior trade union branch, the local trade union branch shall be entitled to lodge a demurrer. The latter fact situation is dealt with in what follows. As to the general limit of the demurrer, on the grounds of the cited wording the trade union is entitled to lodge a demurrer against a decision of the employer affecting the trade union as such and not against a dismissal affecting a trade union official. It has already been mentioned that legal remedy may be sought against all employer's decisions.

c) Some prohibitions are also imposed on the employer by the provisions of the LC pertaining to the rights of trade unions. Pursuant to Subsection (1) of Section 26, the employer may not demand employees to reveal their trade union affiliation. Subsection (2) provides that employment of an employee may not be rendered contingent upon his membership in any trade union, on whether or not the employee terminates his previous trade union membership, or on whether or not he agrees to join a trade union of the employer's choice. Finally, Subsection (3) declares that employment of an employee shall not be terminated, and the employee shall not be discriminated against or mistreated by the employee in any other way on the grounds of trade union affiliation or trade union activity. This more specifically means that if the real reason for dismissal is proved, the legal consequences of unlawful dismissal are stricter compared to the general rule (see explanation of Section 100 of LC).

d) In respect of the relationship between dismissal and trade unions it should be highlighted that elected representatives of trade unions are strongly protected under Hungarian labour law. From among them the following provisions pertain to ordinary dismissal by the employer. Pursuant to Subsection (1) of Section 28 the prior consent of the higher ranking trade union body is required for terminating the employee's employment by ordinary dismissal. The trade union shall communicate its position in writing with respect to the employer's proposed action within eight working days of receipt of notification by the employer. If the trade union does not agree with the proposed action, the statement shall include the reasons therefor. The objection shall be deemed justified if the proposed action is likely

- to burden the operation of the trade union body in which the employee holds an office as an elected official, unless forfeiting the action constitutes unreasonable or substantial detriment to the employer, or
- to result in negative discrimination on account of participation in the trade union's interest representation activities.

Failure by the trade union to communicate its opinion to the employer within the above specified time limit shall be construed as agreement with the proposed action. Officials shall be entitled to this protection for the duration of their term in office and for a period of one year following expiration of such term, provided that the official held the office for at least six months. This provision shall duly apply to the change of the employer (transfer) as well.

The principle of equal treatment

The general prohibition of discrimination applies to the employment relationships as well. Based on the principle of equal treatment there shall be no direct or indirect discrimination whatsoever on the ground of the characteristics listed in Act CXXV of 2003 on equal treatment and the promotion of equal opportunities. These characteristics are as follows: sex, racial origin, colour, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, the part-time nature or definite term of the employment relationship or other relationship related to employment, the membership of an organisation representing employees' interests, other status, attribute or characteristic.

(3.3.2) Dismissal on 'disciplinary' grounds

(1) Substantive conditions

An employer or employee may terminate an employment relationship by extraordinary dismissal in the event that the other party wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or otherwise engages in conduct rendering further existence of the employment relationship impossible. No deviation from this provision shall be considered valid [Subsection (1) of Section 96 of LC].

The employer or a representative of the employer empowered to it is entitled to extraordinary dismissal on the side of the employer. If the extraordinary dismissal is not exercised by an authorized person, the dismissal is unlawful and invalid unless the authorized person confirms the extraordinary dismissal within the deadline. On the side of the employee the employee is entitled to exercise extraordinary dismissal. Although both subjects of the legal relation may exercise the extraordinary dismissal, the employee's extraordinary dismissal occurs more frequently in practice.

Ordinary dismissal cannot be subject to any conditions, it must be made in writing thus extraordinary dismissals communicated orally or on the phone are invalid.

As an extraordinary dismissal is a unilateral legal statement, its legal consequences prescribed by law are effective upon its communication. A communicated extraordinary dismissal cannot be revoked unilaterally. It may occur that after communicating ordinary dismissal the employer exercises extraordinary dismissal during the notice period – since the employee's employment has not ceased yet. In such a case employment is terminated by extraordinary dismissal – by immediate effect – consequently the legal statement containing the ordinary dismissal is destitute of legal effect in respect of terminating employment [BH 2002. 31.].

Subsection (1) of Section 96 of the LC specifies two fact situations. On the ground of the first group of cases extraordinary dismissal may be possible if either party wilfully or by gross negligence severely violates his substantial obligation arising from the employment relationship. All elements of this fact situation should be assessed by special care. The first element is that the conduct must relate to the employment relationship thus any conduct not related to that is irrelevant. The second condition is that the conduct must violate a substantial obligation. The third condition stipulates that the obligation must be violated wilfully or by gross negligence, finally under the fourth element the violation of the obligation must be severe. Damage is wilful if the person causing it foresees, wishes, or acquiesces in the damaging effects of his act (default) [LB MK 25. Áf.]. Thus both direct and contingent intention may ground extraordinary dismissal.

Regarding the first group of cases grounding extraordinary dismissal, the violation of any of the substantial primary and secondary obligations, imposed on the parties, arising from the employment relationship may be relevant. The employee's extraordinary dismissal may for instance be grounded by the employer's failure to fulfil his primary obligation arising from the employment relationship namely by his not paying wages for a considerable period of time. In such a case extraordinary dismissal is to be considered as grounded and the employee is entitled to the financial benefits due in the event of an employer's ordinary dismissal [BH 1996. 127.] (a few-day delay does not constitute a grave violation of obligation). A several-month default on the obligation to employ may also serve as ground for extraordinary dismissal.

An example of the violation of a substantial obligation grounding the employer's extraordinary dismissal is the employee failing to go to work without prior notification and permission. The violation of secondary obligations imposed on the employee may also be of such an extent which grounds extraordinary dismissal. Such as if the employee establishes competition for his employer by violating his non-competition obligation. The employee's active participation in a business association which has the same scope of activities as his employer also grounds extraordinary dismissal as it jeopardises the business interests of the employer [BH 1996. 666.]. In the event that the employee regularly purchased goods in a manner not approved and by violating oral instructions, this conduct also grounds the termination of his employment by extraordinary dismissal (BH 2003. 262.).

A further ground for extraordinary dismissal occurs if although the party concerned violates his obligation not in connection with his employment, this conduct renders the further existence of his employment relationship impossible. Thus in the case of the second fact situation the conduct falls outside the employment relationship, nevertheless the further existence of the employment relationship is impossible due to it. For instance the conduct of a person holding a confidential position, shown during his leisure time in the course of an activity similar to that of his position may be considered as a lawful reason for the employer's extraordinary dismissal [EBH 2003. 894.].

(2) Procedural requirements

(2.1) Deadline of extraordinary dismissal

It follows from the nature and purpose of extraordinary dismissal that both parties may apply it only within certain time limits. There are two deadlines defined by the LC – one shorter subjective and one longer objective deadline (which might even be twenty years in the case of a criminal offence).

The so called subjective deadline is fairly short: it may be exercised within a period of fifteen days of gaining knowledge of the grounds therefore [Subsection (4) of Section 96 of LC]. According to the judicial practice knowledge is considered as gained if the party entitled to exercise the right has a thorough knowledge of the violation of the obligation. The employer gains knowledge of the violation of the obligation serving as a ground for extraordinary dismissal provided the person of the violator, his default, and the gravity of the violation are known (BH 2003. 344.). The right to extraordinary dismissal is quite often exercised by a body and not by a person. In this case 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 [Subsection 4 of Section 96 of LC]. Therefore the arousal of suspicion does not set off subjective deadline. Accordingly, extraordinary dismissal shall be construed as communicated in due time if the facts specified in its justification became certain only at a later point of time in the course of business activities and the employer exercised his right to dismissal within the subjective deadline in relation to this point of time. [BH 1998. 302.]. The deadline shall be calculated from the day of the termination of the violation and from the day of its commencement (EBH 2000. 247.). The deadline open for exercising the right to extraordinary dismissal commences when gaining knowledge of the last violation of obligation in the case of the same or similar violations [BH 2000. 32.].

The other deadline regulated by the LC is the so called objective deadline. The objective deadline lasts for one year from the occurrence of the reason and when calculating it, the continuity of the conducts must also be taken into consideration [EBH 2000. 246.]. The LC contains a special stricter rule regarding executive employees; in their case extraordinary dismissal may be exercised within three years of the occurrence of the reason. The objective deadline is extended in the case of a criminal offence up to the statute of limitation [Subsection (4) of Section 96 of LC]. This rule cannot be applied if no final decision has declared the commission of the criminal offence which is alleged by the extraordinary dismissal to have been committed by the employee. Therefore in

this case it is not the statute of limitations but the general one year (in the case of an executive employee three years) that is to be taken into account. [BH 2000. 323.].

If in the course of the law suit it becomes doubted whether the employer terminated the employment of the employee by extraordinary dismissal by keeping the deadline stipulated by law, this question must be clarified by the court prior to examining the content of the dismissal on the merits (BH 1996. 561.).

The extraordinary dismissal cannot have a retrospective effect. However, such a designation does not make the dismissal unlawful in itself, it only entails that the date of the communication of the extraordinary dismissal shall be regarded as the date of the termination of employment [BH 2002. 244.].

(2.2) Duty of justification of employer's dismissal

Extraordinary dismissal must be justified by the employer and he must prove the authenticity of the facts alleged in the justification in the event of a dispute. Whether the given conduct justifies a reason for extraordinary dismissal or not may be decided by weighing all the circumstances of the instant case: duties arising from the employment relationship, position and conduct. The violation of the obligation defined as the ground for extraordinary dismissal must be examined in respect of the employee's position, expertise and post [BH 2005. 117.]. Several minor violations of obligation added together may jointly serve as the ground for dismissal.

Repeating the wording of the law unequivocally does not qualify as a clear reason. Reference to the fact that 'the employer's trust in the employee has been shaken' is likewise too general unless the employer points out exactly what facts have undermined the fiduciary relation. 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 defence against the complaints raised against him, unless it may not be expected of the employer as a result of all the applicable circumstances [Subsection (2) of Section 96 of LC].

Extraordinary dismissal shall be justified by the employee as well and he is obliged to prove the authenticity of the facts alleged in the dismissal in the case of a dispute.

(3) Effects of the dismissal

(3.1) Effect of the employer's dismissal

In respect of extraordinary dismissal, with the exceptions prescribed in this Act, the provisions pertaining to ordinary dismissal shall not be applied [Subsection (6) of Section 96 of LC]. It follows from this general rule that there is no notice period and employment relationship is terminated by immediate effect upon the communication of dismissal. The employee cannot demand his average earnings due for the notice period or his severance pay. The prohibitions of dismissal shall not apply either.

(3.2) Effect of the employee's dismissal

In the event of an extraordinary dismissal by the employee the employee shall be placed in a position as if his employment relationship had been terminated by the employer by an ordinary dismissal, in other words the provisions pertaining to notice period and severance pay shall apply. The employer shall pay the employee his average earnings for a period the same as in the event of ordinary dismissal by the employer. The provisions pertaining to severance pay shall duly be applied as well and he may also claim compensation for any damages incurred [Subsection (7) of Section 96 of LC].

(4) Remedies

Both the employer and the employee may seek legal remedy against extraordinary dismissal.

In the event the employee challenges the lawfulness of the employer's extraordinary dismissal, he may seek remedy at court. Employment exists until the final decision in respect of granting the remedy is granted.

In the event the employer does not accept the lawfulness of the employee's extraordinary dismissal, the employee may file an action for declaring the lawfulness of the extraordinary dismissal. The employer may suspend the employee until the final decision of the legal dispute. The employment relationship is terminated on the day the decision declaring the unlawfulness of the termination becomes legally binding. Lawsuits are often protracted, which has serious financial consequences. If for instance the lawsuit lasts for two years, the employee who has not been able to find a job yet will be entitled to two years' back pay. In this way the rule originally aiming to protect the existential security of the employee imposes an excessive burden on the employer in practice.

(5) Suspension of the effects of the dismissal

Suspension of the effects of the dismissal is unknown under Hungarian law.

(6) Restoration of employment

As a general rule the legal consequence of an unlawful extraordinary dismissal is the reinstatement of employment. If it is determined by court that the employer has unlawfully terminated an employee's employment, such employee – upon his own request – shall continue to be employed in his original position [Subsection (1) of Section 100 of LC]. In certain cases, however, reinstatement is not possible due to various reasons for instance the position of the employee has been terminated. Trust between the parties might be undermined to such an extent that although it would objectively be possible – due to subjective respects – reinstatement cannot be expected. The provision of the LC under which 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 [Subsection (1) of Section 100 of LC] pertains to such cases.

However, there are cases in which reinstatement in the original position is mandatory (naturally, if this is desired by the employee) [Subsection (3) of Section 100 of LC]. Reinstatement shall not be exonerated if:

- the measure of the employer violates the requirement of the exercise of rights and fulfilment of duties in accordance with the purpose for which they are intended [Section 4 of LC];
- the measure of the employer violates the requirement of equal treatment [Section 5 of LC];
- the measure of the employer infringes the protection against dismissal [Subsection (1) of Section 90 of LC]; or
- if the employer has terminated the employment of an employee protected by the special provisions pertaining to the elected trade union official without the prior consent of the higher ranking trade union body [Subsection (1) of Section 28 of LC] or if termination is realised by infringing the rules of extraordinary dismissal [Section 96 of LC].

(7) Penalties

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 [Subsection (4) of Section 100 of LC]. 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 court ruling to determine unlawfulness becomes definitive [Subsection (5) of Section 100 of LC]. 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. In addition, an employee, if his employment was not terminated by ordinary dismissal, shall be eligible for his average earnings payable for the notice period and severance pay payable in the event of ordinary dismissal [Subsections (6) and (7) of Section 100 of LC].

(8) Collective agreements

An employer or employee may terminate an employment relationship by extraordinary dismissal in the event that the other party wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or otherwise engages in conduct rendering further existence of the employment relationship impossible [Subsection (1) of Section 96 of LC]. This provision apparently

regulates the scope of conducts, events and circumstances only in general. Specifying the concrete regulation may be carried out by the employment contract or the collective agreement [Subsection (3) of Section 96 of LC]. However, it does not mean that either the employment contract or the collective agreement would give a detailed exhaustive list excluding all other cases. Limiting extraordinary dismissal to certain cases is – just as the provision of a collective agreement excluding extraordinary dismissal - null and void.

(3.3.3) Dismissal at the initiative of the employer for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct

(1) Substantive conditions

a) By virtue of the first part of Subsection (3) of Section 89 of LC, an employee may be dismissed only for reasons in connection with his ability or behaviour in relation to the employment relationship. Thus the reasons for dismissal are not defined in a seriatim manner, only two major groups of cases are defined. The validity requirement of ordinary dismissal by the employer concerning formality is that it must be made in writing; its validity requirement concerning content is justification. The employer must define and support by justification why he does not need the work of the employee any longer. The said requirements concerning formality and content are the necessary and adequate validity requirements of ordinary dismissal by the employer. Pursuant to Subsection (5) of Section 89 of LC, 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. It used to be doubted in practice whether the lack of the opportunity of defence would make the dismissal invalid or not. As a general rule the answer is no in judicial practice at present. The 1997 amendment of the Code of Civil Procedure (CCP) introduced mandatory reconciliation in labour disputes. Pursuant to Subsection (1) of Section 335 of CCP, the president of the panel of judges sitting in the case discusses the whole of the legal dispute with the parties by free deliberation of all circumstances. If reconciliation is fruitless, the court immediately conducts a hearing. It is also important that in the cases regarding termination of employment relationship, employment tribunals proceed out of turn.

b) The reason for dismissal shall be authentic and substantial. The fact situations concerning the employee's ability and his behaviour in relation to the employment relationship were established by law enforcement. The method and content of the employer's duty of justification were established in the course of law enforcement as well which were summarized by the Supreme Court in its Position No. 95. According to it in a proceeding initiated due to dismissal the court declares the termination of employment unlawful even if the employer's reason for dismissal is authentic but not substantial. The reason for dismissal must be clearly indicated in the written notification in lack of which the court also declares the termination of employment unlawful. The justification of dismissal meets this statutory requirement if it also contains the actual facts and circumstances on which the dismissal was based by the employer. The reason for dismissal need not be described in detail; the indication of the reason in short suffices.

According to judicial practice the fact situations concerning the employee's ability and his behaviour in relation to the employment relationship comprise facts such as qualitative change, incapability, cessation of confidential relation (loss of confidence), refusal of change over to a new form of responsibility, breach of duties arising from employment relationship etc. It is important that each dismissal shall be treated individually as the employee's ability and conduct may be assessed only in the context of the content of the given employment relationship. It follows that a default in the case of an employment relationship may serve as a basis for terminating employment relationship, whilst in another case not.

c) Pursuant to Subsection (2) of Section 89 of LC in the event of a dispute, the employer must prove the authenticity and substantiality of the reason for dismissal. AS dismissal is valid only if it is made in writing, the court only takes into consideration the reasons indicated by the employer in the document containing the dismissal. The oral supplement of the justification of dismissal is relevant only within the framework of the written justification. Novelties uttered may gain significance in the course of deliberating the legal consequences of unlawful dismissal by the employer (see explanation attached to Section 100 of LC).

(2) Procedural requirements

a) The status of 'pensioner' influences the employer's right to dismissal in a number of ways. Subsection (1) of Section 87/A defines the term 'pensioner' in respect of all forms of pension benefits that are available in Hungary. In accordance with it, for the purposes of the LC, an employee shall be construed as a pensioner

- i) upon attaining the age of sixty-two and if having the service time required to receive old-age pension (entitlement to old-age pension benefits), or if he/she receives
- ii) old-age benefits before the age limit described in Paragraph a),
or
- iii) old-age pension with age allowance, or
- iv) advanced (reduced) old-age pension benefits, or
- v) a service pension; or
- vi) early retirement pension, or
- vii) other pension benefits which are treated the same as old-age benefits, or
- viii) invalidity (accident-related disability) benefits.

The difference between the wording of paragraph i) and the others is of high significance. While the employer qualifies as a 'pensioner' upon acquiring entitlement, in all other cases he has actually to receive the pension benefit. This is expressed by Subsection (8) of Section 87/A, pursuant to which payment of the benefits described in Paragraphs ii)-viii) of Subsection (1) above shall commence when awarded upon request by the beneficiary employee. Further, reference should be made to the restriction

of termination described in the point hereinabove, which does not apply if the employee concerned receives some sort of pension benefit during the period of protection.

The employee shall notify his employer if Subsection (1) applies to him. This obligation forms part of his obligation to inform and co-operate, which among others means that the employee must inform his employer about any circumstances which are important in respect of the employment relationship.

b) The status of 'pensioner' of the employee has an impact on the right to ordinary dismissal of the employer in the following areas. Subsection (6) of Section 89, pursuant to which an employer is not required to explain the ordinary dismissal of an employee if the employee is construed as a pensioner within the meaning of Paragraphs i)-ii) of Subsection (1) of Section 87/A is rather controversial. It might happen that the employer would like to get rid of the employee for a reason which would not be well-founded if the obligation to justify applied. This may be hidden in lack of the obligation to justify. The legislator starts out from the presumption that the 'strict guarantee rules' of dismissal by the employer apply until the employee becomes entitled to old-age pension or actually receives some other form of pension benefit before attaining the retirement age applicable to him. The Constitutional Court has dealt with this issue in several of its decisions. Decision 11/2001. (IV: 12.) AB adopted in 2001 is highly illuminating. The motions were not well grounded in the view of the Constitutional Court. Having examined the institution of the termination of employment relationship by dismissal, the body declared, "By virtue of the provisions of the LC the employer may terminate employment by ordinary dismissal at any time. Subsection (1) of Section 89 of the LC thus does not name any reason for dismissal, it only stipulates the right to mutual free termination of the employment relationship in general and it does not even allow either the employee or the employer to waive this right or to validly restrict in an agreement. Only the obligation of the employer to justify and the framework-like stipulation of the reasons for dismissal in Subsection (3) of Section 89 of the LC limit the full and unrestrictable freedom of the right to dismissal thus protecting the interest of the employee. The Constitutional Court starts out from the principle of free dismissal from which the legislator derogates to protect the employee in several cases. A significant thought of the decision is the qualification of the fact that the dismissal by the employer is tied to reasons. This relative restriction of the dismissal by the employer was even construed as '*positive discrimination*' of the employee by the body. Statutory provisions restricting dismissal by the employer are at the same time extraordinary compared to the general principle of the right to free dismissal. However, the decision of the Constitutional Court and the provisions of Subsection (6) of Section 89 do not mean that the employee could not seek remedy for the legal statement of the employer, as under Hungarian law no legal statement of the employer might be an exception.

c) If the employee qualifies as a pensioner, he is not protected against the termination of his employment relationship. The rule introduced in 2000 was justified by the fact that the opportunity to utilise other benefits does not necessitate the retention of the prohibitions of dismissal otherwise prevalent widespread.

d) Finally, the employee is not entitled to severance pay if he qualifies as a pensioner not later than at the time of the termination of employment. This provision has the same justification as the provision above.

(3.) Effect of the dismissal

(3.1) Notice period

One of the decisive impacts of ordinary dismissal is the notice period. The extent of the notice period is regulated in the LC by stipulating minimum periods within a certain framework. Under Subsection (1) of Section 92 the period of notice shall be minimum thirty days and maximum one year; no deviation from this provision shall be considered valid. Thus regulation is cogent regarding the framework. Pursuant to Subsection (2), the thirty-day notice period shall be extended

- i) by five days after three years,
- ii) by fifteen days after five years,
- iii) by twenty days after eight years,
- iv) by twenty-five days after ten years,
- v) by thirty days after fifteen years,
- vi) by forty days after eighteen years,
- vii) by sixty days after twenty years
of employment at the employer.

This provision more specifically means that parties may agree on a notice period longer than the particular minimum periods listed in the collective agreement or in the employment contract, nevertheless, this period cannot exceed one year. Employment relationship terminates upon the expiry of the notice period – with the exception stipulated in Section 94.

(3.2) Relief of the employee from performing work

In the event of ordinary dismissal the employer shall relieve the employee from performing work. The length of such relief shall be half of the notice period. Any fraction of a day shall be applied a full day. The employer may also relieve the employee from performing work for the duration of the whole of the notice period. An employee shall be relieved from his duties, at least for the duration of half the notice period, in the time and in stages of his choice. For the period of being relieved of his duties the employee shall be entitled to his average earnings. The employee shall not be entitled to his average earnings for the period of time during which he would not be eligible for any wages otherwise. If the employee was relieved of his duties permanently prior to the end of the notice period, and the

circumstance precluding payment of wages occurred subsequent to having the employee relieved of his duties, the wages already paid out may not be reclaimed. The average earnings paid for the duration of the relief period shall not be reclaimed even if the employee establishes a legal relationship for the performance of work during the notice period

The employee may find a job during the notice period but prior to the time of being relieved from performing work and wants to terminate his employment relationship prior to the end of the notice period. This has been made possible by the legislator. Pursuant to Section 94 of LC in the event of ordinary dismissal by the employer, if the employee requests the termination of his employment relationship during the notice period at a time prior to his being relieved of his duties, the employer shall terminate the employment relationship at the time requested by the employee. In this case the employment relationship ceases on the day requested by the employee, but obviously he is not entitled to his average wages for the remaining part of the notice period.

(3.3) Severance pay

a) A further effect of ordinary dismissal by the employee is severance pay. The institution of severance pay is older than the LC in force as it was introduced by Act XLVIII of 1991. This act was one of the last amendments of the former Labour Code (Act II of 1967). It is clear from the amendment that the institution of severance pay was of a social nature in the transitory period of Hungarian economy. The process of privatization started at that time and it entailed the termination of a great number of workplaces. The regulation in effect was built on the provision of 1991 only small amendments were made. One important factor should be noted in connection with it. The regulation of 1991 provided for the so called transfer. Pursuant to the Labour Code in effect then the previous employment of the transferred employee had to be regarded as if having been spent at his new employer. Act XLVIII of 1991 amended this provision providing that the duration of employment preceding the transfer must be excluded from calculating entitlement to severance pay. According to the standpoint of the legislator, “without this an unjustifiable difference would arise between employees having spent the same duration of employment – merely due to the different forms of the termination of previous employment”. This provision provoked fierce debates which were reacted to by law enforcement. Pursuant to Position No. 147 of the Labour Division of the Supreme Court parties could agree in the collective agreement on taking into account employment having been spent at the previous employer in the event of transfer as well as collective agreements might contain stipulations more favourable to the employee. In other words, law enforcement did not construe either the regulation of 1991 or the regulation established by its adoption to the Labour Code in effect as cogent regulation.

b) The title to severance pay is the termination of employment relationship specified by law. By virtue of Subsection (1) of Section 95 of

LC an employee shall be entitled to severance pay if his employment relationship is terminated by ordinary dismissal or in consequence of the dissolution of the employer without legal succession. It should be emphasized that this provision is relatively dispositive, that is deviation in favour of the employee is allowed either in the collective agreement or in the employment contract. Consequently, if parties for instance when establishing fixed-term employment relationship agree on severance pay being due at the time of the expiry of the period of time, the employee may demand this amount of money – in the case they do not conclude a new employment contract.

The dispositive nature of the provision is manifest also in Subsection (2) of Section 95. Pursuant to it, by way of derogation from what is contained in Subsection (1), the employee shall not be entitled to receive severance pay if he/she qualifies as a pensioner [Subsection (1) of Section 87/A] on or before the date on which his/her employment is terminated. This provision does not exclude the possibility of the parties agreeing on severance pay even in such a case or of the employer ensuring such payment to the employee.

c) The condition of severance pay is that the employee shall spend employment at the given employer for a certain period of time. The duration of the periods of time and the amounts of severance pay belonging to them are stipulated by Subsection (4) of Section 95 as follows:

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;
- d) four months for up to fifteen years;
- e) five months for up to twenty years;
- f) six months for up to twenty-five years
of employment.

In respect of the periods of time and amounts only minimum figures are stipulated from which deviation in favour of the employee is possible. However, it is doubted what deviation qualifies as more favourable. IN accordance with judicial practice the whole of the fact situation must be examined in respect of a more favourable condition and in the case of any doubt assessment must be made on the basis of the decision of the employee concerned.

d) The employee is entitled to an increased severance pay in certain cases. Pursuant to Subsection (5) of Section 95 the amount of severance pay shall be increased by three months average earnings if the employee's employment is terminated in the manner specified in Subsection (1) within the five-year period preceding his/her eligibility

- a) for old age pension [Paragraph a) of Subsection (1) of Section 87/A], or
- b) for old-age pension with age allowance.

Concerning this provision, it should be noted that if in the collective agreement or in the employment contract parties agreed on an amount of severance pay higher than specified by law, the amount of severance pay shall not automatically be increased by the average earnings of three months. The employee shall receive only the amount specified in Subsection (5) of Section 95 in this case. Obviously, parties may deviate from it in favour of the employee. Finally, an employee who previously received increased severance pay shall not be entitled to increased severance pay.

(4) Remedies

Under Hungarian labour law the employee may seek legal remedy for all decisions (acts and omissions) of the employer. In other words, there is no discretionary decision of the employer against which no action could be filed on the ground of a reason concerning either form or content. Pursuant to Subsection (1) of Section 199 for the enforcement of employment-related claims, or for the enforcement of their claims ensured by this Act, the collective agreement or operative agreement, employees or trade unions and workers' councils (shop stewards), respectively, may file for employment-related legal action according to the provisions of this Act. Pursuant to Subsection (4) an employment-related legal action may be filed against a decision adopted by the employer within its right of discretion if the employer has violated the provisions pertaining to such decisions.

This principle prevails in respect of ordinary dismissal by the employer. It follows from what has been said so far that the employee may file an action against the decision of the employer even if the employer is not obliged to justify his decision e.g. in the case the employee qualifies as a pensioner regarding the application of the LC

(5) Suspension of the effects of the dismissal

The possibility of such suspension is unknown under Hungarian law.

(6) Replacement or reinstatement of employment

a) The general rule regarding the unlawful termination of an employment relationship by the employer is unequivocal. Pursuant to Subsection (1) of Section 100 of LC 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. Pursuant to Subsection (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. It should be noted in this respect that the Constitutional Court nullified the former Subsection (2) of Section 100 of LC by its Decision No. 4/1998. (III.

1.) AB. Under the former Subsection (2) of Section 100 of LC at the employer's request the court exonerated reinstatement of the employee in his original position if the employer had paid double the amount of severance pay otherwise due to the employee in the case of ordinary dismissal. With regard to this provision the Constitutional Court explained among others that the right of disposal concerning the lawsuit of the employee as winning party was hurt by the fact that the infringing employer could decide on excluding the further employment of the employee.

However, the decision of the Constitutional Court was not unanimous. The current president of the body (László Sólyom) dissented and one further constitutional court judge joined him. According to the dissenting opinion the nullified provision was not unconstitutional. The dissenting opinion contained the following. In the instant case the issue of constitutionality is of a procedural nature only at first sight. The real issue is not the right of disposal concerning the lawsuit but the interrelationship between the provisions of substantive law specifying the legal consequences of unlawful termination of an employment relationship. These provisions contain options for both the employee as the winning party and the employer found liable for the infringement of the law. The legislator intended to keep a balance among various aspects by the different conditions of these options and their consequences with different gravity, especially the aspects of sanctioning the infringement and taking into consideration the confidential nature of employment and the real possibility of maintaining it. In addition, the consideration of Subsection (3) of Section 100 to be described hereinafter is also important. The employee as the winning party has two options. In the cases of grievous violations by the employer specified in Subsection (3), he is unconditionally entitled to reinstatement in his original position; he is also entitled to be reimbursed for lost wages and compensated for damages [Subsection 6]. In all cases he can choose not to request continued employment – in this case he is entitled to double the amount of severance pay in addition to the above [Subsection 4]. As a negative impression of the above, the employer as losing party may also choose between sanctions to be imposed on him: in the case his violation has not breached the basic principles of labour law specified in Subsection (3), he may choose between continued employment and its refusal in the latter case with the burden of the double amount of severance pay. Apparently, the serious violations specified by Subsection (3) are the decisive factors in deciding which of the parties is to be given the exclusive right to choose; and it is counter-balanced by appropriate favours on the other side.

The dissenting opinion emphasizes that there are other examples of the possibility of the losing party choosing between sanctions in substantive law. Except for the extraordinary cases of equity in which the individual weighing of the court is decisive exclusively [e.g. Subsection (2) of Section 339 of CC], generally the actual provision itself prescribes the requirement of the objective compatibility of the choice of the obligor and the interests of the obligee. According to the dissenting opinion it follows from the interrelationship of the four examined subsections that when examining

self-determination - as one of the realisations of the general freedom of action and not as a concept belonging to the rules of court – the allocation of the rights of disposal embodied in the entitlement to choose, especially its being dependent on the gravity of the employer's violation cannot be regarded as the unconstitutional violation of the right to human dignity [Paragraph (1) of Article 54 of the Constitution]. It is more like a rule on reconciliation. If further rules are also taken into consideration, it may be stated that the contested provisions might as well be favourable for the employee in the majority of cases.

b) The decision of the Constitutional Court and the dissenting opinion were described in detail because it shows that the dilemma of restitution of original status vs. financial compensation was also a basic dilemma in Hungarian labour law. Subsection (3) of Section 100, which has already been referred to several times, lists the fact situations in which the employee's request binds the court, that is there is no room for discretion. Consequently, the provision contained by Subsection (2) cannot be applied if

- 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], or
- the employer has terminated the employment relationship of an employee under labour law protection prescribed for elected trade union representatives in violation of the provisions of Subsection (1) of Section 28 and/or Section 96.

Thus in these cases the employer cannot claim that the employee's continued employment cannot be expected of him. It is open to question what cases the courts construe as such in which the continued employment of the employee cannot be expected of the employer under Subsection (2). The reinstatement of the employee in his original position cannot be expected of the employer basically in two cases: continued employment of the employee cannot objectively be expected the employee's position has ceased since the termination of his employment relationship. The other case is in which the maintenance of the employment relationship is impossible due to the extent of the loss of confidence and the deterioration of the relationship. The court may declare the existence of these facts by weighing all circumstances of the case and as these are alleged by the employer, the burden of proof is on him. In the course of analysing judicial practice in respect of the termination of employment relationship a new tendency is to be mentioned according to which courts tend to order continued employment upon the request of the employee even in almost impossible cases as well basically because of the social status of the employee. This recent judicial practice depends on the rate of unemployment of the particular areas and is influenced by the attempt to avoid lasting unemployment.

Finally, it should be noted that the LC only provides for reinstatement in original position. There is no legal regulation obliging the employer to further employ the employee at another workplace or at another workplace

corresponding with his qualifications. The new tendency of judicial practice referred to above sometimes forces this solution.

(7) Legal consequences of an unfair or unlawful dismissal

a) The legal consequences of unlawful ordinary dismissal by the employer are provided for in a fairly clear and detailed manner in Hungarian labour law. Obviously, the LC does not list all the fact situations which constitute unlawful termination of an employment relationship by the employer. The fact situations of unlawful dismissal – with regard to the validity requirements of ordinary dismissal – have been established by law enforcement. This is well properly reflected in the wording of Subsection (1) of Section 100 of LC, “if it is determined by court that the employer has unlawfully terminated an employee’s employment ...” In accordance with it, ordinary dismissal by the employer is unlawful in all the cases in which it does not meet the formal requirements. Also, it is unlawful if the requirements concerning content are neglected by the employer that is if he fails to justify the dismissal. However, if he justifies it, its well-foundedness – i.e. authenticity and substantiality - is determined by court.

b) In the course of the termination of an employment relationship by the employer, the employer may contravene the law pertaining to employment relationship in other ways as well. Such as for instance miscalculating the notice period or the average earnings due for the notice period and violating other obligations imposed on the employer in the event of terminating an employment relationship (issuing certificates, references etc.). In judicial practice these infringements are consistently separated from the determination of the unlawfulness of the termination of the employment relationship. In these cases compensation may be demanded by the employee and employment fine may be imposed by the employment inspectorate in the course of an employment inspection but these fact situations in themselves do not have any effect on the unlawfulness of the termination of the employment relationship.

Compensation and penalties

a) On the basis of what has been said so far it may be claimed that the general rule in the case of unlawful termination of an employment relationship is the restitution of the employment relationship under Hungarian labour law. However, the court may exonerate reinstatement of the employee in his original position upon the employee’s request. Pursuant to Subsection (4) of Section 100 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.

This sum concerning its nature is not compensation. This is shown by Subsection (6) of Section 100, pursuant to which 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. This sum is one of the legal consequences of the so called breach of contract replacing the application of reinstatement in original position. The wording of Subsection (6) takes into consideration the social implications of the unlawful termination of the employment relationship in addition to the gravity of the violation. In several Western European countries the duration the employee has spent in employment and his future employment prospects are taken into consideration in the course of determining compensation. Hungarian law enables the prevalence of these aspects – though covertly – by providing for the consideration of the consequences of the violation in addition to its gravity. It should also be noted that the personal circumstances of the employee have no effect upon the gravity of the violation [EBH 2002. 689.].

b) Besides the sum specified by Subsection (4), the employee may enforce his claim for his lost wages and may demand damages. Concerning compensation, the enforcement of claims for non-pecuniary damages are more and more frequent. Non-pecuniary compensation is mainly associated with the violation of personal rights in relation to the unlawful termination of employment relationships. Consequently, in judicial practice unlawful termination by the employer itself is not substantial ground for a non-pecuniary claim for compensation.

c) The unlawful termination of an employment relationship has a further peculiar legal consequence in the case a legal dispute occurs. In the event of dismissal by the employer, the employment relationship ceases upon the expiry of the notice period. Pursuant to Subsection (5) of Section 100 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 court ruling to determine unlawfulness becomes definitive. This is usually a longer period of time than the notice period - especially if one of the parties has appealed against the decision of the first instance court. The employer is obliged to pay lost wages for this period too. Obviously, if the employee can find a job and his wage is lower than his wage in the previous employment, the employer shall pay only the difference. If the employee has not even tried to find a job, the court shall take into consideration the employee's obligation of mitigation of damages.

(8) Collective agreements

(8.1) The role of the collective agreement in relation to the regulations of the dismissal

a) Pursuant to Section 30 of the LC collective agreements may govern rights and obligations originating from employment relationships, the method of exercising and fulfilling and the procedural order of such relationships, further, the relations between the parties to the collective agreement. It follows from this provision that collective agreements consist of two parts, namely of a part concerning norms and a part concerning obligations. The content and the nature of the content of the normative part are referred to by Section 13 of LC. By virtue of it unless otherwise provided for by this Act, a collective agreement or an agreement between the parties may depart from the provisions set forth in Part Three of this Act on condition that such deviation provides more favourable terms for the employee. The application a rule more favourable for the employee is a general principle of Hungarian labour law.

b) It follows from has been said so far that both the normative and the obligatory part of collective agreements may have a role in regulating dismissal. The obligatory part regulates the relations of the parties to the collective agreement. It cannot be excluded that the employer and the trade union stipulate the procedure of supplying information and holding talks prior to dismissal in the collective agreement. It should be mentioned that it rarely occurs in the case of a dismissal on the grounds of the employee's ability or his behaviour in connection with his employment relationship, though it sometimes occurs in the case of referring to a reason in the operations of the employer and in the regulation pertaining to collective redundancy.

Experience shows that the normative part of collective agreements regulates the following areas in the case of dismissal by the employer. Parties may agree on further restrictions and prohibitions of termination, though they cannot exclude the right of termination as such. They may regulate notice period and severance pay in deviation from statutory provisions – naturally in favour of the employee.

(8.2) The role of the agreement between the employer and the workers' council in relation to the dismissal

Pursuant to Section 64/A of LC the issues pertaining to the privileges of a workers' council and its relations with the employer shall be set forth in an operative agreement. Section 65 of LC specifies the rights of workers' councils and the obligations of employers. No right of workers' councils regarding dismissal by the employer can be found among them. In general it may be stated that operative agreements have no particular role in respect of dismissal by the employer.

(8.3) The trends of the judge-made law (analysis of the decisions)

a) The Labour Code is basically a framework regulation. Due to this nature law enforcement has plaid and still plays an important role its application and in the construction of particular legal institutions. The termination of an employment relationship is one of the most sensitive areas

of labour law. The LC introduced a so called free system of dismissal, in other words it merely specifies certain groups of fact situations and does not seriatim stipulate the reasons for dismissal. The exact content of the terms 'the abilities of the employee' and 'his behaviour in connection with his employment relationship' has been established by law enforcement.

b) Judicial practice is of importance in the following areas:

ba) Courts are consistent with regard to the obligation of the employer to provide justification. In accordance with the aforementioned Position No. 95 it can clearly be seen from several decisions that courts thoroughly examine the authenticity and causality of the ground for dismissal. It may be noticed that courts examine the antecedents of the case and the relationship between the employer and the employee prior to the dismissal.

bb) The relationship between the employer's dismissal and the employee's abilities and his behaviour in relation to the employment. Courts do not examine a dismissal grounded by the employee's abilities or his behaviour in relation to the employment in general but they analyse to what extent the changes occurred in the employer's circumstances of employment affect the employment relationship of the given employee in particular.

bc) The elaboration of the reasons for the dismissal grounded by the so called quality replacement. Dismissal on the ground of the so called quality replacement existed only as a theoretical possibility in Hungarian labour law for a long time. The conditions of market economy and competition enforced the practical realisation of this ground for dismissal in the cases of which courts examine the justification of the dismissal extremely thoroughly [BH 2003. 87, BH 2001. 86, BH 1999. 75, BH 1995. 609, EBH 2003. 968.].

bd) Specifying the legal consequences of the employer's unlawful dismissal. Courts pay special attention to the social situation of the employee with respect to the employee's request. In the event the employee requests the reinstatement of employment relation, courts usually approve of it. If financial compensation is also granted, the social situation of the employee is again taken into consideration as an important factor in the course of determining the amount of compensation.

3.3.4 Dismissal based on economic reason

(1) Substantive conditions

(1.1) Legal definition of economic reason; employer's duty to prove economic reason

a) Pursuant to Subsection (3) of Section 89 of the LC an employee may be dismissed only for reasons in connection with his ability, his behaviour in relation to the employment relationship, or with the employer's operations. All reasons that are not in connection with the employee's ability or his behaviour in relation to his employment relationship may be considered as reasons in connection with the employer's operations. Therefore the employer's scope of activity includes dismissal based on the employer's economic reason.

b) In practice reference to the scope of activity of the employer and within it reference to an economic reason usually occurs in the course of collective redundancy (for the analysis see below). The fact situations are mainly as follows: the termination of the given position or place of work, the merger of the duties of positions, out-contracting some of the duties i.e. performing them in the framework of entrepreneur or assignment legal relation etc. The employer shall also justify dismissal on the ground of a reason in connection with his scope of operation. Under the general rule the justification shall meet the same requirements as the employer's dismissal in connection with the employee's abilities or his behaviour in relation to the employment. The said Position No. 95 contains some remarks in respect of referring to the employer's scope of operation. Thus a dismissal cannot be nullified either on the ground of equity or on the ground of any circumstances which fall outside the framework of the labour dispute (e.g. that the reorganisation was not reasonable). This issue is construed by the Supreme Court in the following way: "Employer's dismissal is prohibited, restricted or made subject to certain conditions by the provisions of Section 90 of the LC to protect the employee on the basis of social considerations. However, the code does not allow for contesting a dismissal not violating the said provisions pertaining to prohibition and restriction on the basis of equitable aspects falling outside the scope outlined above since this would be incompatible with legal security. Thus employer's lawful dismissal cannot be nullified merely on the basis of the equitable circumstances of the case. It also follows from the requirements of legal security that the examination of the ground for dismissal does not entitle the court to interfere in deciding questions under the competence of the management of the employer which fall outside the framework of the labour dispute. For instance in the event of a dismissal justified by the fact that the employee's position was terminated due to a reorganisation at the employer, it cannot be examined in the course of the labour dispute whether the reorganisation was reasonable or not and it cannot be examined either why the employment of

the employee concerned was terminated and not the employment of another employee fulfilling a similar position.”

c) Thus the intention of the legislator did not aim at influencing employer’s dismissal on the ground of all reasons relating to the scope of operation of the employer by the system of the institutions of collective labour law as is shown for instance by the provisions of the German Betriebsverfassungsgesetz. It is also apparent that law enforcement does not extend beyond the dismissal prohibitions stipulated by Section 90 of the LC either. Consequently, the employee is able to defend himself against dismissal communicated by reference to the employer’s scope of operation to a smaller extent than against a dismissal based on his own abilities or behaviour in relation to the employment since law enforcement sharply separates decisions made by the general management and the employer.

(1.2) Specific prohibition of the dismissal in the event of transfer of undertaking

a) Under Paragraph (1) of Article 4 of Directive 2001/23/EC the transfer of the undertaking, business or part of the undertaking or business shall not in itself constitute grounds for dismissal by the transferor or the transferee. In connection with this Subsection (4) of Section 89 provides that 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. The inclusion of this provision was necessary because dismissal in the event of the transfer of undertaking is also in connection with the ground relating to the scope of operation of the employer. However, legislation also took into consideration the content of Point b) of Paragraph (1) of Article 1 of the Directive, by virtue of which there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

b) In accordance with the Directive, pursuant to Section 85/A of the LC, there is a change of employer by legal succession (hereinafter succession)

- i) when the succession takes place by virtue of legal regulation, and
- ii) when an independent unit (such as a strategic business unit, plant, shop, division, workplace, or any section of these) or the material and non-material assets of the employer are transferred by agreement to an organisation or person falling within the scope of this Act for further operation or for restarting operations if such transfer takes place within the framework of sale, exchange, lease, leasehold or capital contribution for a business association.

The expressions ‘further operation’ and ‘restarting operations’ mean that the typical fact situations which otherwise may be considered common in the event of referring to a reason relating to the employer’s scope of activity are not applicable. Thus in the event of succession no reference can

be made to the termination of the given workplace or position since the economic entity – as such – retains its identity at the transferee. In relation to what has been said above it should be noted the law enforcement is consistent in enforcing this prohibition.

(2) Procedural requirements

See general requirements.

(3) Specific requirements for collective dismissals

Collective redundancy was recognised in Hungarian law even before the adoption of the LC. Act IV of 1991 on Job Assistance and Unemployment Benefits (JA) provided for the procedure to be applied in the event of collective redundancy. However, duties arising from law harmonisation necessitated the amendment of rules pertaining to this area as well, thus the provisions of the former JA were included in the norms of the LC in a supplemented form in 1995. Due to the enlargement of the provisions of the directive and the law enforcement of the European Court of Justice, considering the changed situation, the currently effective text was created by the amendment adopted in 2001.

The relatively early regulation of collective redundancy in Hungary is remarkable especially because the privatisation beginning in the early nineties brought about the loss of several workplaces, which necessitated the regulation of this form of terminating employment relationship both by procedural law and substantial law.

(3.1) Qualitative and quantitative criteria of collective redundancy

a) The content of Directive 98/59/EC regarding the qualitative features of collective redundancy was entirely transposed into Hungarian law. In the wording of the Directive 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned. Although Hungarian labour law has not adopted this negative wording, the content of Subsection (1) of Section 94/A of the LC conforms to the content of the Directive. Consequently, collective redundancy occurs if the employment relationship is terminated by the employer on the ground of a reason in relation to the employer's scope of activity. In accordance with what has been described above this includes all reasons for dismissal which are not inherent in the person of the employee. Therefore the termination of employment relationship due to economic reasons and in the event of liquidation or voluntary dissolution falls into this category. It should be noted in connection with voluntary dissolution that if the employer does not terminate its operation due to an economic reason and this affects the status of employees, this also belongs to the fact situation of collective redundancy.

b) Hungarian regulation adopted the provisions set forth in Point i) of Paragraph (1) of Article 1 of the Directive. Accordingly, collective redundancy shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship

i) of at least ten workers, when employing more than twenty (20) and less than one hundred (100) employees,

ii) of 10 per cent of the employees, when employing one hundred (100) or more, but less than three hundred (300) employees,

iii) of at least thirty (30) persons, when employing three hundred (300) or more employees within a period of thirty (30) days (Section 94/C) for reasons in connection with its operations.

(3.2) Legal definition of the employer for the purpose of the collective redundancy - trends

a) In respect of the Hungarian regulation it is important who qualifies as employer in respect of the application of collective redundancy. The notion of the employer brings about problems of construction if the employer consists of more than one places of business (plants or shops). Under the regulation in effect the criteria specified in Subsection (1) shall be assessed, where applicable, separately for each place of business; however the number of workers employed at various locations, but within the jurisdiction of the same employment centre shall be calculated on the aggregate. The employee who works at various places shall be accounted at the location where he/she works in the position registered at the time when the decision on collective redundancy was adopted. By virtue of the regulation in effect prior to the amendment of the LC in 2001 the criteria specified in Subsection (1) had to be assessed separately for each so called independent place of business. All employer's units the heads of which had employer's rights i.e. were entitled to establish and terminate employment relationships qualified as independent places of business.

b) In case the employer has places of business in more than one counties, the effective regulation ensures greater scope for action to avoid the application of the provisions pertaining to collective redundancy. In respect of the affected places of business the employer may postpone the termination of the employment relationships by more than thirty days, in consequence of which he may not be compelled to apply the rules of collective redundancy.

(3.3) Legal statements for the purpose of collective redundancy: mutual agreement at the initiative of the employer; dismissal for reasons in connection with employer's operations; termination of the fixed-term employment by employer before the expiry of the fixed-term

a) Subsection (1) of Section 94/A stipulates one of the criteria of collective redundancy in a comprehensive manner: namely, employment relationship is terminated for reasons in connection with the operations of the employer. However, this wording does not specify what legal statements

fall within this sphere. For the purpose of collective redundancy the following legal statements shall be made:

- i) the termination of employment by the employer's ordinary dismissal based on reasons in connection with the employer's operations;
- ii) the termination of fixed-term employment prior to the expiry of the fixed term in the manner stipulated in Subsection (2) of Section 88 of the LC;
- iii) the termination of employment by mutual agreement at the initiative of the employer.

The termination of employment by mutual agreement was not included in the sphere of collective redundancy by law enforcement even the legislator provides for it, though indirectly. By virtue of Subsection (3) of Section 94/C if within thirty days from the date of communicating a statement for the last termination of employment or from the date of reaching an agreement the employer communicates another statement or concludes an agreement for the termination of employment in a given period, the employees affected shall be included among the number of employees affected in the previous period. It is obvious from this wording that the circle of the relevant legal statements is construed widely.

b) Fixed-term employment cannot be terminated by dismissal under Hungarian labour law. As it has already been mentioned, this solution is heavily debated especially in the light of Subsection (2) of Section 88 of the LC. Pursuant to Subsection (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. Further, Subsection (2) provides that 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.

This provision is applicable in the event of collective redundancy provided the fixed-term employment lasts longer than the thirty days stipulated for implementing the collective redundancy and the employer intends to terminate the employment of the affected employee. Consequently, the case specified in Subsection (2) of Section 88 is to be assessed in the same way as employer's ordinary dismissal.

c) Including mutual agreement in the circle of legal statements affected by collective redundancy is important as it may prevent a number of abuses. It could be experienced in the early practice of collective redundancy that employers avoided ordinary dismissal by mutual agreement thus the rules of collective redundancy were not applied. It was made unequivocal by the amendment of the LC in 2001 that mutual agreement initiated by the employer also belongs to the circle of legal statements affected by collective redundancy.

Since all legal statements concerning the termination of employment relationships are valid only if made in writing under Hungarian law, it must be clear from the document concerning mutual agreement that the agreement has not been concluded upon the initiative of the employee. Under the current practice the agreement concluded upon the initiative of the employee is expressly stated while in its absence it might be presumed that the agreement has been concluded upon the initiative of the employee.

(3.4) Employer's duty to consult the representatives of the employees

a) Pursuant to Subsection (1) of Section 94/B when an employer is planning to implement collective redundancies, he shall begin consultations with the workers' council or, in the absence of a workers' council, with the committee set up by the local trade union branch and by the workers' representatives (hereinafter referred to as "workers' representatives") within fifteen days prior to the decision, and shall continue such negotiations until the decision is adopted or until an agreement is reached. It follows from the regulation that workers' council was specified in the first place among the employees' representatives by the legislator.

Pursuant to Section 43 of the LC a workers' council shall be elected at all employers or at all of the employers' independent operational facilities (divisions) with more than fifty employees. A shop steward shall be elected at an employer or at an independent operational facility (division) of an employer with at least fifteen but no more than fifty-one employees. Naturally, the election of a workers' council or the election of a works committee is only a possibility and not an obligation of the employee. However, in case ten per cent of the employees or at least fifty employees want to put up a candidate, the employer cannot prevent the election and must co-operate in the interest of the successful arrangement of the election. A peculiarity of the Hungarian regulation is that a local trade union branch may also nominate a candidate to the workers' council. According to available statistical data – mainly based on estimates – works councils operate at small percentage of the employees.

In the absence of a workers' council a committee formed by local trade unions and non-union employees is considered as the representative of the employees. According to estimated data local trade union branches operate at the minority of the employers. However, Hungarian regulation does not provide for cases in which no interest representation organisation whatsoever operates at the employer. It should be noted in connection with it that Hungarian labour law has not adopted the possibility specified by Paragraph (6) of Article 7 of Directive 2001/23/EC. By virtue of it Member States may provide that, where there are no representatives of the employees in an undertaking or business through no fault of their own, the employees concerned must directly be informed by the employer.

b) The LC provides for the detailed rules of consultation. According to it at least seven days before the discussions, the employer shall inform the workers' representatives in writing regarding

- i) the reasons for the projected redundancies,
- ii) the number of workers to be made redundant broken down by categories, and
- iii) the number of workers employed during the period specified under Subsection (1) of Section 94/A.

During the course of the consultations the employer shall in good time inform the workers' representatives in writing of

- i) the period over which the projected redundancies are to be effected,
- ii) the criteria proposed for the selection of the workers to be made redundant, and
- iii) the conditions for eligibility and the method for calculating any redundancy payments other than those arising out of national legislation and/or collective agreement.

In order to reach an agreement, the consultations shall cover

- i) the possible ways of avoiding collective redundancies,
- ii) the principles of redundancies,
- iii) the means of mitigating the consequences, and
- iv) reducing the number of employees affected.

Although the purpose of the consultation is to reach an agreement, the process of the redundancy itself depends on the decision of the employer. If, however, the employer and the representatives of the employees reach an agreement during the course of consultation, it shall be communicated in writing and be sent to the competent employment centre.

c) Thus following the consultation either the parties agree on or the employer unilaterally decides on the implementation of the collective redundancy. It is important that the employer is bound both by the agreement and by his own decision. The agreement or the decision shall, at least, specify

- i) the number of workers affected broken down by job categories,
- ii) the date of commencement and conclusion and the timetable of collective redundancy, including a timetable for implementing said redundancies.

(3.5) Employer's duty to inform and report to the Public Employment Services

a) In accordance with Articles 3 – 4 of the Directive 1998/59/EC an obligation to inform of a public law nature is imposed on the employer. Pursuant to Subsection (1) of Section 94/D of the LC at least seven days before the planned discussions with the representatives of the employees, the employer shall notify the employment centre responsible for the place where the affected place of business is located regarding

- i) his intention of collective redundancy;
- ii) the reasons for the projected redundancies;

- iii) the number of workers to be made redundant broken down by categories, and
- iv) the number of workers employed during the period specified under Subsection (1) of Section 94/A;
- v) the period over which the projected redundancies are to be effected,
- vi) the criteria of selection, and
- vii) the conditions for eligibility and the method for calculating any redundancy payments other than those arising out of national legislation and/or collective agreement.

b) The obligation to inform is imposed on the employer at a later stage of the collective redundancy too. The employer shall notify in writing the employment centre competent for the place where the affected place of business is located at least thirty days prior to implementing the ordinary dismissal or delivering the statement defined in Subsection (2) of Section 88. This notification shall contain

- i) the personal data (including social security number),
- ii) the last position,
- iii) the qualification, and
- iv) the average earnings
of the employees to be made redundant.

It should be noted in connection with this obligation to inform that Hungarian labour law has not adopted the possibility specified in Paragraph (3) of Article 4 of the Directive, pursuant to which

Where the period between the notification and the legal statement with regard to the termination of employment is shorter than 60 days, the competent public authority may extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

(4) Effects of the dismissal

Dismissal for economic reasons does not have any specific effect, the general rules apply.

(4.1) Specific rules for the beginning of the notice period

By virtue of Subsection (1) of Section 94/E the employer shall notify the employees affected of its intention of collective redundancy at least thirty days prior to delivery of the ordinary dismissal or the statement concerning the termination of fixed-term employment [Subsection (2) of Section 88]. This in practice means that the notice period – which commences simultaneously with the communication of the dismissal – is extended by thirty days and the fixed-term employment is terminated thirty days later as well. According to the law this rule shall not be applied in the

case of the termination of employment by mutual agreement. However, an agreement to this effect is possible.

(4.2) Effects of the collective redundancy

Employment relationship is terminated by the legal statement communicated within the framework of collective redundancy. Therefore it is of importance that employment relationship is not terminated by collective redundancy – as such – it is terminated by the legal statement formed within the framework of such proceeding. Accordingly, courts examine, among other circumstances, the lawfulness of the dismissal, the mutual agreement and the termination of the fixed-term employment under Subsection (2) of Section 88 of the LC. Thus for instance it is not sufficient to refer to the fact of collective redundancy as the reason for the employer's dismissal; the justification shall be authentic and substantial in relation to the affected employee. This might mean for instance that the position or workplace of the given employee has been terminated etc.

(4.3) Specific rules of the prohibitions of the dismissal

Pursuant to the general rules of the prohibitions of the dismissal the date of the communication of the dismissal shall be taken into account in respect of the prevalence of the restrictions of the dismissal [Subsection (4) of Section 90]. This rule is modified in the case of the fact situation in as much as if at the time of the communication of the information specified by Subsection (1) of Section 94/E the employee is under the protection specified in Subsection (1) of Section 90, ordinary dismissal may be communicated only after the termination of the protection.

(5) Remedies

The general rules on remedies apply.

(5.1) Legal consequences of breach of the employer's consultation duty

a) Under the law in effect if the employer violates his obligations (information and consultation duties) to the employees' representatives, this in itself does not affect the invalidity of the legal relation aiming at the termination of employment relationship. Pursuant to Subsection (2) of Section 94/F if the employer in its procedure violates the rights (defined in Section 94/B) of the workers' council or of the trade union, the workers' council and the trade union may seek remedy in the court of law. The court shall resolve such matters within eight days in nonlitigious proceeding. This provision has been effective since the first of July 2001; previously all violations of the law by the employer in the course of collective redundancy rendered the termination of employment relationship unlawful.

b) Upon the request of the workers' council or the works committee the court may declare the conduct of the employer unlawful. Having

obtained this order, labour supervision may impose a labour fine by virtue of Act LXXV of 1996 on Labour Inspection. Trade unions may exercise their right to demurrer, which has a delaying force until the final decision concerning the demurrer. Finally, the workers' council may request the court to nullify the measure of the employer in case the information duty and the duty to request an opinion have been violated.

In conclusion it may be claimed that omission in relation to these obligations do not automatically render the termination of employment relationship invalid; nevertheless trade unions and workers' councils are in possession of the possibilities which enable them to reach this aim indirectly.

(5.2) Legal consequences of breach of the employer's information and registration duties

If the employer breaches his information and registration duties imposed on him towards the employment centres, his information duty towards the employees or the agreement concluded with the representatives of the employees concerning ordinary dismissal, ordinary dismissal shall be unlawful. It should be highlighted that this rule only pertains to ordinary dismissal and it does not pertain to other legal statements.

Ordinary dismissal communicated without providing information is regarded as violating a dismissal prohibition by law enforcement [BH 1996. 66.], consequently the provisions of Section 100 are applied. In the case of consistent law enforcement – with regard to Paragraph b) of Subsection (3) of Section 100 – the reinstatement of an employment relationship could not be exonerated even upon the request of the employer. In our view the Supreme Court has applied an unreasonably wide interpretation when assessing the breach of information duty as a dismissal prohibition. Subsection (1) of Section 90 of the LC expressly lists the dismissal prohibitions. In order to avoid future uncertainties if interpretation – with special regard to the position of the Supreme Court – it would have been useful to stipulate the legal consequences of the breach of information duty in detail. In this case dismissal is not necessarily unlawful; the employer has infringed the special procedure applicable in the event of dismissal.

(5.3) Legal consequences of breach of regulations in the cases of the certain dismissals

Unlawful dismissal implemented in the course of collective redundancy has no peculiar features compared to general rules. Experience shows that there are fewer labour disputes in respect of dismissals implemented in the framework of collective redundancies than in respect of dismissals affecting individual employees. The main reason for this may be found in the fact that the majority of employers prepare the procedure of collective redundancy appropriately, further conflict situations usually occur at the level of trade unions, workers' councils and employers. For that

matter Section 100 of the LC is to be applied with the remark made in the preceding point.

(6) Suspension of the effect of the dismissal

Suspension of the effects of the dismissal is unknown under Hungarian law.

(7) Restoration of employment

The general rule applies.

(8) Administrative or criminal penalties

There are no criminal penalties available; the administrative sanctions listed in Act LXXV of 1996 on Labour Inspection apply.

(9) The role of the collective agreement

a) Collective agreements are of greater and greater importance with respect to collective redundancy. On the one hand a possible agreement between the employer and the trade union following consultation qualifies as a collective agreement. Under Hungarian labour law, due to its normative content, a collective agreement is considered as a regulation pertaining to employment. Collective contracts which were concluded independent of collective redundancies should be treated separately.

b) More and more of these collective agreements provide for collective redundancies. The content of these agreements may be classified in the following way:

- i)* co-operation of the parties in implementing the collective redundancy;
- ii)* special protection of certain groups of employees in the course of collective redundancies;
- iii)* working out means for avoiding and preventing collective redundancies;
- iv)* social compensation;
- v)* granting priority in the event of re-employment.

c) In accordance with what has been said so far the agreement between the employer and the workers' council has no role in respect of the termination of an employment relationship. This also applies to the procedure of collective redundancy.

(10) Special arrangements

One of the features of Hungarian labour law is that the labour law status of the employees of undertakings under liquidation or voluntary dissolution is granted the same protection as under the general rule. Subsection (2) of Section 94/B also provides for this stipulating that the

obligations imposed on the employer in the case of collective redundancy are imposed on the liquidator when the employer is terminated without a legal successor.

3.4. Resignation by the employee

(1) Substantive conditions

An employment relationship established for an indefinite period of time may be terminated by the employee both by ordinary and extraordinary dismissal. Following from the unique feature of the Hungarian labour law, an employment relationship established for a fixed period of time cannot be terminated by the employee by ordinary dismissal. (This leads to the weird situation that the employee cannot lawfully terminate the employment relationship by his unilateral legal statement – except by extraordinary dismissal - before the expiration of the fixed term.)

(2) Desertion of the post

The desertion of the post in itself does not constitute the lawful termination of the employment relationship by the employee. In accordance with what is described in the point below, dismissal by the employee must meet certain minimum requirements of validity – some of which are of a procedural nature. Accordingly, the desertion of the post qualifies as an unlawful termination of an employment relationship in most of the cases.

(3) Procedural requirements

The general requirement of validity of an employee's resignation is that it must be made in writing. The employee must justify an extraordinary dismissal, but he does not need to justify an ordinary dismissal. In the event of an extraordinary dismissal, the deadlines provided for by Subsection (4) of Section 94 of the LC must be kept. A further procedural requirement is that the resignation shall be addressed to the employer or the person exercising employer's rights. The resignation cannot be tied to a condition.

(4) Effects of the resignation

In the event an employment relationship is terminated by ordinary dismissal by the employee, the legal relation ceases as of the date of the expiry of the notice period. In this case the employer is not obliged to relieve the employee of his duties. In the case of a dismissal by the employee, the employee is not entitled to severance pay. If an employment relationship is terminated by the employee by extraordinary dismissal, the employer shall pay the employee his average earnings for a period the same as in the event of ordinary dismissal by the employer, while the provisions pertaining to severance pay shall be duly applied as well. The employee may also claim compensation for any damages incurred.

(5) Remedies

In the case of a resignation by the employee, the employer may seek legal remedy under general procedural rules. By virtue of Sections 199 and 202 of the LC the employer may file a legal action with a labour court against the employee's resignation within thirty days of its notification. In the event an employee deserts his position without notification, it is considered as an unlawful termination of the employment relationship. In accordance with the judicial practice, an employer does not request the court to declare the unlawfulness of the employee's conduct, but he sues for its legal consequences – e.g. for damages.

(6) Compensation to the employer

Section 101 of the LC defines the fact situations which constitute an unlawful termination of an employment relationship. These are as follows:

- the employee does not put his legal statement into writing
- the employee does not serve his notice period
- the employee does not justify his resignation
- the employee does not vacate his position and does not settle accounts with his employer.

In these cases the employee, shall be liable to pay compensation to the employer in an amount equal to his average earnings falling due for the notice period. In the event of an employee unlawfully terminating his fixed-term employment relationship, the provisions of Subsection (1) shall be duly applied. If, however, the period remaining of such fixed term is less than the period described in Subsection (1), the employer may demand payment of average earnings only for the remaining period. Employers shall be entitled to demand payment for damages if such are in excess of the amount described in Subsection (1) or (2).

(7) „Contrived” resignation

A contrived resignation is deemed unlawful under Hungarian labour law.

(8) Resignation for proper cause

Dismissal on the ground of an authentic, substantial and sufficient reason applies only to dismissal by the employer as in such a case the dismissal shall be justified. A reason is considered substantial, if the employer has wilfully or by gross negligence committed a violation of any substantive obligations arising from the employment relationship, or has

engaged in conduct rendering further existence of the employment relationship impossible.

(9) Collective agreements

Collective agreements do not play an important role in terminating an employment relationship by the employee.

4. General questions relating to all forms of termination of employment relationship

(1) Non-competition agreement

The protection of the employer's business interests, i.e. non-competition, is a fundamental behavioural duty imposed on the employee. This obligation is imposed on the employee throughout his employment, in other words while under employment relationship, employees shall not engage in any conduct by which to jeopardize the rightful economic interests of the employer, unless so authorized by a legal regulation [Subsection (5) of Section 3 of LC]. The prevalence of the duty of non-competition is less significant following the cessation of employment; in this case such an obligation is imposed on the employee only by an agreement to this effect [Subsection (5) of Section 3 of LC]. The establishment of the legal relation may be prohibited only in good faith under fair conditions and in return for proportional consideration [BH 2005. 31.]. A further restriction of time is stipulated by the LC when providing that such a prohibition shall not last for more than a period of three years.

The law does not define the duty of non-competition following the cessation of employment exactly; therefore judicial practice may serve as the starting point of its construction. The non-competition agreement must appropriately define what competition the former employee renounces to stimulate in exchange for a consideration. This may be realised by referring to the sphere of activities or the group of activities or even by naming the competitors with whom the employee cannot be in a business contact. It may also be prescribed that the employee must report in advance when he establishes a new legal relation and the former employer decides whether this new legal relation hurts his lawful business interests or not on the basis of the report [BH 2005. 31.]. It follows from the requirement of exact definition that an agreement which merely repeats the relevant provisions of the LC is not sufficiently concrete, thus it is invalid.

When determining the extent of the prohibition, the prohibition of the abuse of dominant position must also be taken into account. Stipulating a prohibition unreasonably hindering competitors from entering the market is particularly unlawful [Paragraph i) of Section 21 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices]. The prohibition of competition cannot result in a restriction to such an extent which, instead of avoiding jeopardising the business activity of the employer, entails a significant restriction of market competition in a wide scope and territory in respect of the given activity [BH 2000. 84.]. As the provisions of civil law apply to non-competition agreements, the consequences relating to remarkably disproportionate service – consideration may be applied as well. This, however, does not prevail without any restrictions; the risk factor which is typical to a certain extent cannot be eliminated totally (BH 2001. 339.).

Non-competition agreements are concluded in the course of employment, sometimes simultaneously with the conclusion of the employment contract, and in several cases by incorporating it in the content of the employment contract. The non-competition agreement qualifies as an independent agreement in this latter

case too, in other words the parties must provide for it separately. Obviously, the parties may modify their non-competition agreement. In this case the amended agreement shall be governing in the course of adjudicating the rights and obligations arising from the agreement [EBH 2004. 457.].

(2) Agreements to the effect that the employee will not terminate the contract during a certain period

Agreement to the effect that the employee will not terminate the contract during a certain period is unknown by Hungarian law, such an agreement is therefore void.

(3) The issuing of a reference

(3.1) The employee's duty to transfer her/his workplace and to settle accounts with the employer

An employee shall vacate his position as ordered and settle accounts with the employer upon termination of his employment relationship. The obligation to co-operate is imposed on the employer in this case too; he shall sufficiently provide for the conditions of job transfer and accounting [Subsection (1) of Section 97 of LC]. If the employee violates the rules pertaining to job transfer and accounting, the termination of employment shall be unlawful, thus the employee shall be liable to pay compensation to the employer in an amount equal to his average earnings falling due for the notice period and any damages of the employer incurred in excess of that amount.

(3.2) The employer's duty to pay the pay and other expenditure, duty to supply the statements and certificates prescribed by provisions in relation to labour relations

Upon termination or cessation of employment the employer shall settle accounts with the employee. First of all an employee shall be paid his work wages and other emoluments on the last day of employment [Subsection (2) of Section 97 of LC]. The employee's entitlement to reimbursement in cash for paid vacation commences on the last day of his employment. If the employer is in a delay in paying it, the delay shall be counted from this day and he shall pay interest prescribed by legal regulations from this point of time.

Upon cessation or termination of employment the required statements and certificates shall also be issued [Subsection (2) of Section 97 of LC]. The circle of certificates to be issued is prescribed by provisions pertaining to labour relations and other legal regulations. Such as social security certificate, certificate of entitlement to fifty per cent reduced-rate travelling certificate etc. (see details below). These certificates are intended to facilitate the employee's establishing a new employment and are of importance in respect of unemployment benefits.

Upon termination (cessation) of employment the employer shall present the employee with a certificate [Subsection (1) of Section 98 of LC]. There are no legal provisions pertaining to the form of this certificate only the personal data

and the data in connection with the terminated employment are specified which shall be contained by the certificate.

The certificate shall contain:

- a) the employee's personal data (name, maiden name, mother's name, place and date of birth),
- b) the employee's social security number,
- c) the length of time spent in the employer's employment;
- d) any debt to be deducted from the employee's wages on the basis of a final resolution or pursuant to a legal regulation, as well as the entitlement thereto; or that the employee's wages are not encumbered by such debt
- e) the amount of sick leave taken by the employee in the course of the year when the employment relationship was terminated;
- f) the amount of extra severance pay the employee has received;
- g) the name, address and bank account number of the private pension fund that the employee has joined. (If a first-time employee, who is subject to statutory membership, has not joined any fund, it shall be noted on the certificate along with the name and address of the fund responsible for the area indicated.) [Subsections (2)-(4) of Section 98 of LC].

Rules pertaining to the obligation to present a certificate are set forth by the following legal regulations:

- A duty to register and provide information is imposed on the employer by rules pertaining to social security. The employer shall issue a certificate of the length of time of the social security, the amount of the contribution (membership fee) deducted, the amount and base of the health insurance contribution paid by the employer in respect of the given year. If employment ceases in the course of the year, social security shall issue this certificate forthwith [Act LXXX of 1997 on Persons Entitled to Social Security Benefits and Private Pensions and on the Cover of such Services].
- The act on the rules of taxation also obliges the employer to issue a certificate. If the employment of the employee is terminated in the course of the year, the employer shall present the employee with an accounting document in respect of income paid and tax advance deducted by the employer in the tax year [Act XCII of 2003 on the Rules of Taxation].
- The employer is obliged by legal regulation to issue a certificate required for recourse to unemployment benefit [Ministerial Decree No. 4/1997 (I.28) MüM on the Certificate Required for Determining Unemployment Benefit].
- The employee (and the members of his family) who has been in employment for at least three months is entitled to a fifty per cent reduced rate return travel once a year and the employer shall also issue a certificate in respect of this entitlement too [Government Decree No. 287/1997 (XXII. 29.) Korm. on the Reduced-rate Public Passenger Transport and Travel].

- Government Decree No. 67/2004. (IV. 15.) Korm. on the Obligation to Report and Register in Connection with the System of a Unified Labour Registration System regulates the obligation to report and register in connection with labour registration.

(3.3) The employer's duty to provide a reference [work certificate] at the employee's request

Assessing and evaluating the employees is an important personnel right of the employer. Evaluation may be carried out not only in the course of employment but also at its termination. Whilst the employer carries out assessments in the course of employment in order to utilise the available human resources as efficiently as possible, in the event of the cessation or termination of employment assessment serves the interest of the employee. In this case it is not the right of the employer to evaluate and assess the employer but it is his duty to provide a reference.

At the employee's request, upon cessation or termination of his employment, or within a year thereof, the employer shall provide a work certificate. The work certificate shall contain the job profile filled by the employee at the employer and upon the employee's express request an evaluation of the employee's work. Therefore, if the employee does not request an evaluation, the work certificate contains only the job profile [Subsections (1)-(3) of Section 99 of LC]. The reason for this is the protection of the personal rights of the employee. The evaluation shall be supported by facts and cannot be discriminatory, failing which the employee may contest it before a court. In this case the burden of proof is on the employee to prove that the employer has based his evaluation on false facts and that he has suffered a loss (exactly determined) in consequence of it. The deadline for issuing the certificate is not stipulated by the LC. According to practice the employer has to fulfil this obligation stemming from the duty to co-operate without a delay. An unreasonable delay may result in compensation as a consequence.

(4.4) Full and final settlement

See above.

Appendix: Legislation on ‘trial periods’ in Hungary

A trial period may be stipulated upon establishment of the employment relationship. The duration of the trial period is thirty days, however a shorter or longer trial period, not to exceed three months, may be stipulated in the collective agreement, or agreed upon by the parties [Section 81. LC].

An employment relationship may be terminated with immediate effect during the trial period by either of the parties without any justification. No special right to termination is stipulated for this fact situation, only the possibility of the termination of this legal relation is provided. The single validity requirement of the termination of employment during the trial period is that it shall be made in writing. The rules pertaining to the unlawful termination of employment obviously do not apply to this fact situation, except for the case of the abuse of the right, which is nearly impossible to be proved due to the lack of the obligation of justification.

In the event of the unilateral termination of employment with immediate effect by the employer, the employee has no ground to refer to the lack of the reasons for the termination of the legal relation. [BH 1996. 341.].

Employment may be terminated with immediate effect without justification during the trial period without any restrictions. The requirement to duly exercise rights and perform duties in accordance with their purposes is also applicable to this form of the termination of employment [BH 1995. 608.].

The legal statement concerning the termination of employment with immediate effect during the trial period has to be communicated during the trial period. If the employer communicates his statement concerning the unilateral termination of employment established by stipulating a trial period only subsequently to the expiration of the trial period, this statement is unlawful. Therefore, the employee is entitled to lost wage and severance pay, unless he intends to maintain his employment [BH 1999. 526.].