

CAREFUL PLANNING WITH A PROFESSIONAL LITIGATOR

The impact of the new Civil Procedure Code on litigation in Hungary

Following almost four years of codification, the new Code of Civil Procedure in Hungary (Act CXXX. of 2016) took effect on 1 January 2018 as the first stage of the big "Legal Procedures Recodification Action Plan" of the Hungarian Government.

PRINCIPLES

The new Civil Procedure Code brings a comprehensive and structural change in the litigation process rhyming with the recodification tendencies of the Hungarian Civil Code, supposing the "reasonable business man" in common law relationships, who is responsible for his own litigation and who needs a litigation infrastructure that provides a professional framework for the settlement of disputes.

Together with making the legal representative mandatory in civil law litigation, the new Civil Procedure Code brings a regulation that is substantially **more stringent** in line with the principles of professional, concentrated and well-prepared litigation with an aim of establishing the basis of prompt court procedures.

THE NEW RULES

The new rules of going into litigation have introduced heavy formal and substantive requirements. Therefore, an increased number of actions filed have been rejected since the new law came into effect. An important new rule is that not only the **claim** but also the **legal ground** to it must be specified at the very beginning of the trial, which cannot be amended later. Furthermore, the court is prohibited to base its judgement on another legal ground, which it thinks appropriate.

In order to be effective, the new litigation structure is divided into a preparatory and a merits phase. An evidence, information or declaration must be provided during the preparatory period and no amendments to previous documents may be made later (with very limited exemptions). Meaning that there is no possibility to drip-feed the information throughout the process and thereby play the long-drawn-out protraction tactics. Therefore, a new concept of planning and structuring is needed to be able to succeed.

The former passive status of the defendant is ceased, since it is not enough to appear on the first hearing any more. Substantial defence or counterclaim with reasoning to the merits together with legal title must be provided in the preparatory phase, otherwise, the court shall issue an order with the content requested in the claim served which can easily lead to a final judgment.

Personal hearing is not automatic any more, but must be asked for, and the plaintiff (its representative) must personally attend these hearings. Absent parties are further deemed to agree (unless otherwise provided in writing) and be aware of the actions taken, information provided and documents presented at the court hearing they missed. Possibilities of the court to impose procedural fines are also broadly widened. In addition, new rules of evidencing (such as "evidence emergency") and a heavier burden of proof harden the position of the "stronger" party, affecting in particular the employers.

CONCLUSION

In sum, it can be concluded that - because of raising the new strict and professional litigation model as base model of the civil procedural law -, there is a lot bigger chance of failing procedural rules (and loose the case). We expect demand to rise for highly qualified professionals having a thorough understanding of the new system and a considerable routine in litigation planning and winner tactics.



Péter Köves
Senior Partner,
Head of Dispute Resolution
Group

peter.koves@lakatoskoves.hu



Péter Lakatos
LL.M. Managing Partner

peter.lakatos@lakatoskoves.hu



Balázs Fazakas
Senior Associate

balazs.fazakas@lakatoskoves.hu

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