



# MAGYAR ÜGYVÉDI KAMARA

Ungarische Rechtsanwaltskammer  
Hungarian Bar Association

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## Country report - 2012

### Hungarian Bar Association

The year 2012 was again characterized by a continuing economic recession in Hungary, which contributed to an internationally renowned credit rating agency recently reduced Hungary's credit rating from "BB+" to "BB".. The reason cited for this was that the erratic course and continuing unpredictability of the Hungarian Government's policies has reduced investors' confidence.

Other contributing factors for the reduction were cited as including negative economic prospects and Hungary's substantial exposure to foreign debts. The fact that the country's negotiations with the EU for a bailout and with the IMF about a credit line of 15 billion Euros have stalled over disagreements over the conditions attached to the aid has also increased uncertainty.

The situation was aggravated by the Eurozone crisis, because the Eurozone is Hungary's largest trading partner. The legal profession has naturally felt the economic pressure and the legal uncertainty. Transactional work struggled to gain momentum in 2012, while lawyers' fees have also been driven downwards due to client demands and increased competition for work. Despite this, the current economic situation has created some opportunities in the dispute resolution and insolvency law departments of some law firms.

Apart from the short summary offered above, please find below a few comments pertaining to the most important political and legislative events of the year 2012.

#### **1. Political situation**

Last year did not see any major political changes as compared to the year before: Hungary's largest center right party, called FIDESZ, is in a strong position and holds a two-thirds majority of the seats in Parliament, through which it was able to enact a new constitution, called the "Fundamental Law". However, the initial public optimism after FIDESZ was voted into power has waned slightly, due to the government's

handling of the continuing economic crisis. Despite this, it should be noted that the government has successfully managed to reduce the state deficit quite significantly

The pardoning of an Azeri national, who was convicted for murdering an Armenian soldier in Hungary and who was transferred to his native Azerbaijan last year, caused international concern, especially since the Government's decision may allegedly have been motivated by economic factors. Hungary's strengthening of economic ties with the oil-rich Caucasian state and the opening of a Hungarian business centre in the capital Baku have given further weight to such allegations.

There are also lingering concerns with regards to the media: Human rights lawyers and other interest groups claim that legislative changes introduced by the Government endanger freedom of the press. Another round of dismissals in the State Media Support and Asset Management Fund (MTVA), that allegedly favour employees and executives close to the governing party, have given fresh impetus to such claims.

## **2. New legislation and case law**

A few points on the field of legislation, alongside two major decisions of the Constitutional Court, which is Hungary's highest court, will be briefly considered below.

### **2.1 *The New Civil Code***

Last year has seen a few amendments to the existing Civil Code, which have not effectuated any major changes in the field of civil law that are worth mentioning at this stage. However, it is expected that a completely new Civil Code will be adopted in Hungary, most probably in the spring of 2014.

It is beyond the scope of this Country Report to go into any detail regarding the anticipated new Civil Code because discussions are still ongoing and drafts are nowhere near the final stages. However, it is worth mentioning that a few novelties have been or will be introduced into Hungarian law.

First and foremost, trusts will be introduced. Trusts are well-entrenched in common law jurisdictions and are designed to be a legal tool for family wealth, asset management and succession. They can be created by contract, by will or by a one-sided declaration. If created by contract, the settlor will transfer the settled assets into a trust; legal and beneficial ownership will be separated, with the trustee holding legal ownership and the beneficiary the beneficial ownership. This of course has repercussions on taxation and on the claims of the creditors of the trustee, the settled assets and of the beneficiary.

In addition to the introduction of the legal institute of trusts, other novelties will be introduced into the Hungarian Civil Code, such as the incorporation of commercial

law and family law into the new Civil Code, if the current drafts are adopted. The rules pertaining to damages will be overhauled. In the area of inheritance law, the statutory share will in certain circumstances be increased. For these and other fundamental changes specialist texts should be consulted, as they exceed the scope of any summary.

## *2.2 Decisions of the Constitutional Court*

### *2.2.1 Early retirement of judges.*

A controversy was triggered by the forced retirement of more than 250 judges by way of legislation which reduced the mandatory retirement age of judges from 70 to 62 years. This legislation was challenged before the Hungarian Constitutional Court and the Court of Justice of the European Union after the Commission launched an infringement procedure against Hungary over several new laws, among them the legislation directing the forced retirement of judges.

Hungary's Constitutional Court ruled that legislation providing for a lower retirement age of judges was unconstitutional as it threatened the independence of the judiciary and violated EU law. Consequently, it annulled parts of the legislation. The Constitutional Court also held that while the legislator could set the upper age for judges, it was not allowed to lower the mandatory retirement age unless the reduction was gradually introduced over an appropriate transitional period, which was not the case here.

The Commission challenged this legislation next to other laws before the Court of Justice of the European Union. After exchanging several letters with the Hungarian Government while the legislation was in a bill form, the Commission completed a detailed legal assessment of the new legislation and concluded that it violated EU law. The Commission sent Letters of Formal Notice (being the first stage in the EU's infringement procedure) on the grounds that the independence of the judiciary is endangered and that the legislation constitutes discrimination at the workplace on the grounds of age, thereby violating Council Directive 2000/78/EC on equal treatment in employment and occupation.

The Hungarian Government claimed that the reduction of the retirement age of judges was necessary to bring them in line with other public-sector employees and to get a more balanced representation of different age groups in the legal profession. The Court of Justice of the European Union did not follow the Hungarian Government's arguments and ruled that "the radical lowering of the retirement age for Hungarian judges constitutes unjustified discrimination on grounds of age" and criticized that judges weren't given sufficient notice in which to prepare for the decrease in income caused by the early retirement. The EU's highest court also observed that the Hungarian Government planned to gradually increase the retirement age of other public-sector workers from 62 to 65 years.

### *2.2.2 Act on Election Procedure*

The Constitutional Court ruled that certain provisions of the new Act on Election Procedure are contrary to the Fundamental Law (Hungary's new Constitution). Pursuant to the Constitutional Court's decision, the obligation of voters' registration has unjustifiably restricted the right to vote. Certain provisions governing election campaigns have been found contrary to the Fundamental Law as well.

The Act on Election Procedure (as originally adopted by the Hungarian legislator) sets out additional conditions for voting at a general election: If a citizen wishes to exercise his/her right to vote, he/she needs to previously register with a registry. The Constitutional Court examined, whether the Fundamental Law permits any registration prior to an election. Taking the practice of the European Court of Human Rights into consideration, the Constitutional Court ruled that in the case of citizens domiciled in Hungary, the obligation to register prior to elections unjustifiably restricted the right to vote and was therefore contrary to the Fundamental Law.

The State is obligated to ensure the participation of the voters in the election on the basis of its official register (which already exists) without any previous request for registration. The Constitutional Court remarked that the central register is mentioned in the Act on Election Procedure as it contained the voters' data that are necessary for the election, thus there already exists a central register which can be used for elections.

There are groups of the voting population, however, where a registration prior to elections might be justified, such as Hungarian nationals not domiciled in Hungary, members of a minority wishing to vote on a national minority list and those who need help to participate in elections. In its original form, however, the Act was ruled disproportionate. It would also be a disproportionate limitation of the right to vote if voters could only register at their permanent domicile and not at their usual residence. The Constitutional Court found the denial of personal registration of voters living in Hungary without an address discriminatory.

### *2.3 The New Criminal Code*

In June 2012<sup>3</sup> the Hungarian Parliament approved a stricter criminal code which is scheduled to take effect on July 1, 2013 and will replace the current 30-year-old law.

State Secretary of Justice Robert Repassy called the new criminal code "just" and stated that it was "based on the approach that punishment should be proportionate to the crime".

The new criminal code will provide tougher sentences for serious crimes and reoffenders, while it also increases the protection of children, the elderly and the handicapped. It also extends the scope of justifiable self-defence to people attacked at night by armed persons or groups and to those using self-defence against armed burglars or gangs breaking and entering property, including gardens.

Under the new code, those serving a life sentence can only be released on probation after 25 years (the life sentence currently stands at 20 years under the present code). Meanwhile, the court can also impose a 40 year sentence in certain cases.

Furthermore, the new legislation lowers the age of criminal responsibility from 14 to 12 years in the categories of premeditated homicide, voluntary manslaughter and bodily harm leading to death or resulting in life-threatening injuries. Ten civil groups protested against the latter measure, arguing that punishing minors by penal means without the chance of any assistance or rehabilitation is “cynical, harmful and seriously endangers their future”.

#### *2.4 Changes to the Lawyer's Oath*

Domestic bodies and the International Bar Association's Human Rights Institute (IBAHRI) expressed concern at the inclusion of obligations in the new lawyer's oath (enacted through a modification to the Act XI of 1998 on Attorneys at Law, effective from 1 January 2012) to ‘practise the duties and rights of the office of attorney for the benefit of the Hungarian Nation’ and to ‘keep and make others keep [Hungary's] laws’. There was also widespread consternation at the absence of the duty of confidentiality in the new oath.

The IBAHRI declared that the duty to ‘practise the duties and rights provided by the office of [lawyer] for the benefit of the Hungarian Nation’ is inconsistent with the pursuit of justice in individual cases and the nature of the lawyer-client relationship, while the duty to ‘keep and make others keep [Hungary's] laws’ turns lawyers from legal counsel to law-enforcement officials and is inconsistent with the lawyer-client relationship.

The IBAHRI also expressed dissatisfaction that the undertaking in the previous oath, that a lawyer would ‘safeguard all the secrets of which I gain knowledge’ in the course of his or her work, was absent from the new oath. It declared in its report that lawyer-client confidentiality is a prerequisite of a functioning and just legal system, as recognised in Principle 22 of the United Nations Basic Principles, which requires that ‘Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential’.

In its report on Hungary published in September 2012, the IBAHRI concluded with the view that the new lawyer's oath had the potential to compromise the ability of the Hungarian legal system to function independently.

Following pressure from the IBAHRI and others, the new oath was re-modified to restore the duty of confidentiality and to remove the duty to ‘practise the duties and rights provided by the office of [lawyer] for the benefit of the Hungarian Nation’ and the duty to ‘keep and make others keep [Hungary's] laws’. The new oath came into force on 1 January 2013.