

## **Legal Aspects of Terminating Employment Contract by Employer – Foreign Elements or Cross-border Aspects of Labour Law – Part III**

In Part I an employment relation case was described with cross-border elements. In Part II of the case we tried to determine the applicable law and eliminate the ones that can be excluded (Chinese law) to narrow down to one material law and one jurisdiction.

However, at the end of Part II we came to the conclusion that a German court would with great probability apply German law, while a Hungarian court would apply Hungarian law regarding the case, and the letter of termination, respectively. This raised the question: which jurisdiction shall be preferred...?

### **1. Place of jurisdiction**

To determine the place of jurisdiction, i.e. which court shall and is entitled to decide in the case, the EU Regulation 1215/2012/EC („Brussels I”) is applicable. According to Article 21:

„1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; **or**

(b) in another Member State:

(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

(ii) ...”

Therefore a suit may be brought either in Germany, as the employer is seated in Germany; or in Hungary, if it can be proved without a doubt that the habitual place of work of the employee is indeed in Hungary.

### **2. A case in Germany**

In Germany the court will check its jurisdiction and the applicable law *ex officio* in accordance with § 48 ArbGG (Act on Labour Courts). If it decides on lack of jurisdiction, the case will be dismissed.

Can the German court apply Hungarian law? Yes, but in such a case the German court would tend to dismiss the applicability of the Hungarian labour law and apply German material, labour law.

However, there is a small loophole in Rome I, under Art. 8 Sec 1 second sentence. Even if the overall applicable law is German labour law, the German court may decide to apply certain parts of the Hungarian material law that are obligatory (i.e. the parties cannot deviate from such stipulations) and aim to protect the employee.

### **3. A case in Hungary**

The Hungarian courts are obliged to check their own jurisdiction at all times too, ex officio, in accordance with § 4 of the Act XXVIII. of the year 2017 on International Private Law. If the Hungarian court decides on lack of jurisdiction, the case will be dismissed.

Can the Hungarian court apply German Law? Yes, it can. If the court decides that the employment is not subject to Hungarian law but German law, in such a case the court will request the German authorities to provide information on the applicable German material law, and the case will still be held in Hungary. Yes, such cases tend to be solved on the long haul.

### **4. German or Hungarian material labour law shall be preferred?**

The core question is, if German law is to be preferred to Hungarian law to the termination letter. Beforehand it shall be noted that neither under Hungarian law nor under German law is a verbal termination or a not signed termination letter sent via chat (which was the case in our example) is in compliance with the law.

(To be continued in Part IV)