

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

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. In Part III we came to the conclusion that a German court would with great probability apply German law, while a Hungarian court would apply Hungarian law. In our Part IV we examine which material law is preferable for the employee in case of an unlawful termination of the employment relation.

### **1. 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 (which was the case in our example) or a not signed termination letter sent via chat is lawful.

### **2. German material law**

Under German labour law the written and signed termination letter received by the employee via courier can be considered formally lawful:

- stated the name of employer, employee
- included the fact that it is a termination
- included the terms “ordentlich (regular)” and “fristgerecht (in due time)”: corresponding, it terminates as of the legally next possible date. It shall be noted that the ending date was miscalculated in the letter, however, such miscalculation does not make the termination ineffective.
- The termination letter did not include a reasoning, but it is not necessary under German law;
- it was signed by the person entitled to sign such notices.

As the termination letter was lawful, a suit at a German court aiming to declare the termination unlawful would with great probability be dismissed.

It also could be considered to request the German court to apply the favourable Hungarian stipulations regarding reasoning (more to that underneath) in accordance with Art. 8 Sec. 1 second sentence of Rome I. However, it is a very marginal and particular stipulation and the interpretation of the court and outcomes could not be adjudicated beforehand, therefore it would have been risky to base an entire suit on a loophole.

### **3. Hungarian material law**

Under Hungarian labour law a termination letter must contain the following elements in our case:

- name of the parties
- the fact of termination
- a reasoning for the termination, which reasoning must be clear and true, and in doubt must be proved by employer.

As the termination letter in our case did not contain a reasoning, under Hungarian law it would have been considered unlawful. To reason a termination letter is an obligatory, binding stipulation, the parties of an employment relation may not divert from reasoning.

The Hungarian Labour Code only allows deviations from this stipulation, if it is i) done in a collective labour agreement, and ii) it is more favourable for the employee than as stipulated by law (§ 85 and § 66 of Hungarian Labour Code).

This stipulation of the Hungarian law regarding the reasoning of a termination letter is imperative and therefore corresponds to the requirements of Art. 8 Sec. 1 second sentence of Rome I.