



COVID-19 – Hungary (Part 2)

Measures concerning employment, collective labour law and social security

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1. The show must go on...

Since the completion of the manuscript of the first part of our paper several new Government decrees have come into force. On the one hand, this legislation makes it even more flexible for the employer to define working conditions. On the other hand, new decrees of the Government provide support for part-time employment and make a social security guarantee for those employees, who agree with the employer an unpaid leave. And – as at the end of the news programs – sports: football clubs can unilaterally decide to reduce the salaries of the employed football players. This possibility, authorized by a Government Decree, can be deemed as an unparalleled interference in the contractual (private law) relations of labour law. The details are as follows.

2. The maximum duration of working time banking

As a foreword, a short terminological explanation has to be provided. According to the Hungarian Labour Code (Act I of 2012 on the Labour Code, hereinafter LC) the so-called *working time banking* conforms to the legal institutions of *reference period* regulated by Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. The 104/2020. (IV. 10.) Government Decree¹ supplemented the 47/2020. (III. 18.) Government Decree on immediate measures to mitigate the effects of the coronavirus pandemic on the national economy, which was described and analysed in the first part of our paper (*COVID 19 Hungary. Measures concerning employment, collective labour law and social security*). The amendment extended the unilateral decision-making power of the employer even more. It gives all employers an unparalleled flexibility regarding the organisation of working time and not just for the duration of the epidemiological emergency. To understand this ‘unparalleled flexibility’, it is advisable to review briefly the LC regulation in advance.

2.1. Duration of working time banking in LC – up to 36 months in a collective agreement

The duration of *working time banking* shall be determined unilaterally by the employer according to the following rules. According to the general rule of LC the maximum duration of *working time banking* is 4 months or 16 weeks. By way of derogation from the general rule, the maximum

¹ Magyar Közlöny (Official Hungarian Gazette) 2020/71, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20071.pdf>.

duration of *working time banking* is 6 months or 26 weeks in the case of employees working in continuous shifts, working in shifts, employed for seasonal work, working in stand-by jobs, and in in certain jobs in transport² (LC Article 94, Section 1–2).

In addition, according to LC where justified by objective or technical reasons or reasons related to work organisation, the maximum duration of *working time banking* fixed in the collective agreement is 36 months (LC Article 94, Section 3). By reading that provision, it can be concluded that it is not in accordance with the rule of Article 19 of the Directive 2003/88/EC relating to reference periods. That referenced Article 19 namely states: “[...] Member States shall have the option [...] of allowing [...] collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months”. However, according to the LC's rules on work schedule, the Hungarian labour law regulation satisfies the requirement of Article 19. According to the provision of the LC: in the case of an irregular work schedule, the duration of scheduled weekly working time shall be taken into account on the average where justified by objective or technical reasons or reasons related to work organisation, within 12-month period according to the collective agreement [LC Article 99, Section 7 b)].

Why does a 36-month *working time banking* still make sense, if the weekly working time shall be taken into account within 12-month period? The answer is one proverb: time is money. In this case time is money to the employers. According to the LC the accounting of working time and wages are different. In Hungarian labour law one possible case of overtime is the work performed over and above the hours covered within the framework of *working time banking* [LC Article 107 b)]. According to the general rules of remuneration for work, employees shall be entitled to a 50 per cent wage supplement – *inter alia* – over and above the hours covered within the framework of *working time banking* [LC Article 143 Section 2 b)]. Contrary to working time, the remuneration shall not be taken into account within 12-month period, if the duration of *working time banking* is longer than 12 months, only following the expiry of the working time banking. Thus, the employers must pay the 50 per cent wage supplement for the overtime only if the 36 months *working time banking* is expired. The question arises: why is it in the interest of the trade union to conclude a collective agreement that provides for such a long working time banking?

2.2. The emergency and its aftermath – employers shall order up to 24 months working time banking

According to the new Government Decree the employer may unilaterally determine a 24-month working time banking. In addition, the employer may also extend the *working time banking* imposed before the entry into force of the 104/2020. Government Decree (April 11, 2020) for a period of 24 month (104/2020. Government Decree Article 1 Section 1–2). An employer has the right to introduce a 24-month *working time banking* even if there is a trade union represented at the employer. Moreover, provisions of collective agreements derogating from the rules laid down in the Government Decree shall not apply during the period of the validity of the 104/2020. Government Decree (104/2020. Government Decree Article 1 Section 4).

The cessation of the state of emergency does not affect the 24-month *working time banking* ordered by the employer as authorized of the 104/2020. Government Decree (104/2020. Government Decree Article 4). This provision may be contrary to Article 19 of the Directive 2003/88/EC, which

² These jobs are as follows: a) employees working as navigators, flight attendants and aviation engineers or engaged in providing ground handling services to passengers and aircraft, and participating in or providing direct support for navigation services, b) employees working in travel-intensive jobs in the domestic or international carriage of passengers and goods by road, c) carriers and traffic controllers working in a local public transportation system for the carriage of passengers or in a scheduled intercity transportation system inside a fifty-kilometre radius, d) traveling employees and traffic controllers working in the carriage of passengers by rail and in the carriage of goods by rail, e) employees working in harbours.

regulates the limitations to derogations from reference periods. According to this rule the option to derogate may not result in the establishment of a reference period exceeding six months [2003/88/EC Article 19(1)]. It may also be contrary to Article 19(2) which prescribes that the reference period of more than 6 months, up to a maximum of 12 months shall be laid down only by collective agreements or agreements concluded between the two sides of industry.

According to the first ‘emergency decree’ of the Government³ the employee and the employer may deviate from the provisions of the LC in a separate agreement (47/2020. Government Decree Article 6, Section 4). At the same time the 104/2020. Government Decree restricted the possibility of deviation by an agreement between the parties: it is not permitted to derogate from the rules of maximum working hours (daily and weekly working time) and minimum rest periods (daily rest period, weekly rest day or period) (104/2020. Government Decree Article 1, Section 3).

3. Part-time employment – wage subsidy for the employee

There have been two Government Decrees promulgated on wage subsidies for employees in the event of a reduction of working time. The 105/2020. Government Decree on support of reduced working time during the emergency within the framework of the Economic Protection Action Plan⁴ entered into force on April 16, 2020. This regulation was amended very soon by the 141/2020. Government Decree⁵ (in force from April 29, 2020), which made the conditions for support more reasonable. However, the possibility of reduced working time does not mean that all employers can avoid redundancies. This is the case in those sectors where employers cannot provide even a part-time work for the employees instead of full-time (e.g. tourism, restaurants, some cultural institutions or industrial companies). In this case, the possibility of unpaid leave, for which a favourable social security rule has entered into force, could be a kind of ‘lifeline’ (see 4.). An agreement on unpaid leave depends on a number of circumstances for the employee (such as the existential situation of the employee, the financial situation of the family, or whether the unemployment benefit of up to three months is preferable to unpaid leave).

It is important to note that the scope of the 105/2020. Government Decree does not apply to the civil service. This can be a problem for local governments, for example, because those with low incomes may soon have liquidity problems. This spring the Government withdrew car tax from the local governments, which according to a survey by the National Association of Municipalities, causes budget liquidity problems in 63.7 per cent of municipalities.⁶

3.1. Conditions of support – joint application of the employer and the employee

The government office shall provide support at the joint application of the employer and the employee for economic reasons related to the emergency. The allowance is paid to the employee on a monthly basis. Main conditions of the support can be summarised as follows.

³ Magyar Közlöny (Official Hungarian Gazette) 2020/47., <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20047.pdf>.

⁴ Magyar Közlöny (Official Hungarian Gazette) 2020/71., <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20071.pdf>.

⁵ Magyar Közlöny (Official Hungarian Gazette) 2020/82., <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20082.pdf>.

⁶ See <http://www.budaorsiinfo.hu/blog/2020/04/26/toosz-felmeres-az-onkormanyzatok-tobbsegenel-likviditasi-problemat-okoz-a-gepjarmuado-elvonasa/>.

a) Conditions of the support on the employee side

The employee

- does not receive any other part-time allowance for the same employment relationship,
- has been employed by the employer at least from the date on which the emergency is declared, and
- does not spend her/his notice period (105/2020. Government Decree, Article 2).

b) Conditions of the support on the employer side

The employer

- shall employ the employee – with whom the employer submits the joint application – in reduced working time (including teleworking and home office) in order to prevent any reduction in the number of employees,
- has been in operation for at least six months, and
- does not receive an employment aid for employees engaged in research and development activities or EU-funded job-preserving or job-creating wage subsidies with regard to the co-applicant employee [105/2020. Government Decree, Article 2 b), as amended by 141/2020. Government Decree].

What does *reduced working hours* mean? This is a part-time work, which was stipulated in the amendment of the employment contract after the declaration of the state of emergency (March 11, 2020) reaching in the average of 3-months

- at least 25 per cent,
- but not more than 85 per cent

of the former working time [105/2020. Government Decree, Article 1 a), as amended by 141/2020. Government Decree]. E.g. if the employee had a regular daily working time (8 hours) employment contract before the declaration of the state of emergency, the part-time work has to be at least 2 hours per day and at most 6.8 hours per day.

An additional condition is that the employer complies with the '*requirements of the orderly industrial relations*' [105/2020. Government Decree, Article 5 Section 1 b)]. What does the '*requirements of orderly industrial relations*' mean? The 368/2011. Government Decree adopted by authorization of Public Finances Act⁷ sets this requirement in a negative way. Thus e.g. the employer does not comply with this requirement if it

- fails to fulfil its obligation to notify the National Tax and Customs Administration regarding the establishment of the employment relationship,
- violates the requirement of equal treatment, or
- violates the provisions on the rate of wages and the deadline for payment set out in employment regulations (e.g. the LC or collective agreement) (368/2011. Government Decree, Article 82).

The employer's infringement must be established by a final judgement or administrative decision.

The employer may not be under liquidation, bankruptcy or other proceedings aiming its termination are not in progress. The employer must prove in the application that

- the economic rationale for part-time employment is directly and closely linked to the emergency, and
- provides credible evidence that the retention of employees is in the national economic interest in connection with its continuous economic activity [105/2020. Government Decree Article 5, Section 1]. In our view, it is an interpretation problem that the term of '*national economic interest*' is not defined by law. Thus, in the case of a specific application compliance with the eligibility conditions

⁷ See <https://net.jogtar.hu/jogszabaly?docid=a1100368.kor>.

is rather uncertain in this respect. In the absence of a legal definition it is questionable how the rejection of the application on the grounds of lack of national economic interest can be justified.

3.2. Duration and amount of the support – and the sanctions

The duration of the support is 3 months. The amount of the support is 70 per cent of the proportion of the basic salary due to lost working time (the difference between previous working time and part-time work stipulated in the amendment of the employment contract). This amount must be reduced by personal income tax advances and contributions. In determining the monthly amount of the support, the maximum amount of the basic salary, reduced by taxes and contributions, that can be taken into account shall not exceed twice the mandatory minimum wage reduced by taxes and contributions in force at the time of application (105/2020. Government Decree Article 3 Sections 1–4).

In 2020 the amount of twice the minimum wage is 322,000 HUF in Hungary. This is 906 EUR based on the exchange rate⁸ at the time of completion of this paper. By comparison, in January 2020, the average net earnings in the national economy were 249,500 HUF/month (702 EUR/month).⁹

The employers must undertake a commitment to maintain the staff for the duration of the support and for an additional period of one month. If the employer does not fulfil this obligation, it is obliged to pay the support provided to the employee to the account of the National Employment Fund. The employer shall be released from this obligation to pay if it proves that the employment relationship has been terminated

- due to dissolution of the employer without succession,
- by summary dismissal (dismissal without notice) of the employer or resignation of the employee [105/2020. Government Decree Article 4, Section 3 a), Article 9, Section 1 and 5]. It must be noted as a critique that the legislation does not exempt the employer from the obligation to pay if the employee's behaviour in relation to the employment relationship justifies dismissal by the employer (e.g. in cases where a less serious breach of obligations arising from employment are needed than it is necessary for the dismissal without notice), or if the employee terminates the employment relationship by unlawful dismissal without notice. The employer could not be held responsible for these...

4. Entitlement to health care during unpaid leave

According to the 140/2020. (IV. 21.) Government Decree¹⁰ the employee on unpaid leave is entitled to health care during the period of the emergency. During the unpaid leave the employer is obliged to pay the health service contribution for this employee entitlement [140/2020. Government Decree Article 20, Sections 1–2]. In our opinion, this is not a special burden for employers, because the amount of the contribution in 2020 is 7,710 HUF (approx. 22 EUR/month; 257 HUF/day, approx. 70 Eurocents/day). At the same time, it is an important entitlement for the employees without income because they do not have to pay for health services.

⁸ See <https://www.mnb.hu/arfolyamok>.

⁹ See <https://www.ksh.hu/docs/hun/xftp/gyor/ker/ker2001.html>.

¹⁰ Magyar Közlöny (Official Hungarian Gazette) 2020/82., <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20082.pdf>.

5. And finally: sports – the possibility of unilateral wage cuts in football

According to the 142/2020. (IV. 22.) Government Decree¹¹ the football club (employer) may unilaterally reduce the regular monthly remuneration of a football player and a coach during the period of emergency. The rate of reduction may not exceed 70 per cent of the remuneration [142/2020. Government Decree Article 2, Sections 1 and 3]. As we wrote above, this is an unparalleled interference in the contractual (private law) relations of labour law. The reason for this lies in its financial background: businesses associations can offer a portion of their corporate tax to football clubs. This is public money in their budget, because the clubs receive a portion of the tax payable to the state.

It would be good to shout together: goal! Not in front of the TV – watching a repeat of an earlier match...

Official news about COVID-19: <https://koronavirus.gov.hu/>

47/2020. Government Decree:

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20047.pdf>

104/2020. (IV. 10.) Government Decree:

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20071.pdf>

105/2020. Government Decree:

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20071.pdf>

140/2020. Government Decree:

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20082.pdf>

141/2020. Government Decree: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20082.pdf>

142/2020. (IV. 22.) Government Decree

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20083.pdf>

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¹¹ Magyar Közlöny (Official Hungarian Gazette) 2020/83., <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20083.pdf>.