

Communication concerning the decision of the Curia of Hungary  
in labour case number Mpk.II.10.027/2022

By its order, which was upheld by the court of second instance, the court of first instance ruled that the indefinite strike called by the applicant from 00:00 a.m. on 10 March 2022 was lawful.

Acting upon the defendant's petition for judicial review, the Curia of Hungary upheld the final order. The judicial review proceedings, based on the petition for judicial review, were only concerned with the legality of the decision taken in connection with section 3, subsection (1), point d) of the Strike Act [see section 423, subsection (1) of the Code of Civil Procedure in that regard].

By interpreting the provisions of the parties' agreement and single wage agreement in accordance with the applicable pieces of legislation, the court of second instance held that the only collective wage agreement concluded in respect of the defendant employer and its employees was for the years 2022 and 2023. The provisions of the agreement were not implemented in the case of the defendant on the basis of its being a collective agreement, but on the basis of the owner's commitment (section 16 of the Labour Code), and therefore it does not constitute an execution of the concurrent will of the parties to the non-litigious proceedings at hand, namely the applicant and the defendant, who were not parties to the agreement. Nor can it be established that there was an oral agreement between them, as the parties did not make any statement to that effect in the non-litigious proceedings. In view of the above, the second sentence of section 22, subsection (4) of the Labour Code, which provides for the remedy of formally invalid legal declarations, is not applicable and the defendant's argument in that regard is unfounded.

The single wage agreement, dated 17 January 2022, did not establish rights and obligations for the year 2021, but only stated that the agreement had been implemented for 2021. The parties' agreement, dated 25 June 2021, is a collective agreement only in respect of the owner, according to the signatories thereto. The court of second instance, by lawfully applying section 279, subsection (5) of the Labour Code, has held that a collective agreement – in the case at hand, the single wage agreement with collective effect – cannot establish rights or obligations for a period prior to its entry into force. According to section 3, subsection (1), point d) of the Strike Act, a strike is unlawful if it is carried out during the period of validity of a collective agreement in order to change the provisions stipulated therein. The aforementioned legal provision was not infringed by the court of second instance, since it is not only the existence of a collective agreement in force that is relevant to the unlawfulness of a strike, but also the fact that the latter is aimed at changing the content of such collective agreement. The applicant's claim is a wage claim for the year 2021, for which, as explained above, there is no collective agreement in force at the defendant. The single wage agreement with collective effect in force at the defendant for the years 2022 and 2023 does not prevent the applicant from holding a strike for the 2021 wage claim, regardless of the fact that, if successful, the earliest date for payment would be 2022. The basis for the calculation of the wage claim is, as determined earlier, the average wage development in the years 2020 and 2021 and the actual and expected annual value of inflation in 2021.

Budapest, 29 April 2022

Civil Department of the Curia of Hungary