

newsletter

MONTHLY LEGAL UPDATE | HUNGARY

MAY 2015

IN THIS ISSUE:

EU law / Litigation Compensation claims against the State for a breach of EU laws	p. 1
Telecommunication / Consumers' rights Telecommunication companies in the spotlight of authorities	p. 2
Intellectual property law / Trademarks Sky wins trademark dispute against Skype	p. 3

EU LAW / LITIGATION

Compensation claims against the State for a breach of EU laws

The State's basic function is to impose new laws and to change old ones in order to fix problems for the future. The economic stakeholders must always try to adapt to the changing rules of play – this is a risk that all investors have to live with. However, there may be cases when a change in law makes it impossible to maintain a certain business activity, or results in serious disadvantages in relation to competitors. The new Civil Code of Hungary seems to let the genie out of the bottle, as it suggests a new litigation strategy for disappointed businesses seeking compensation.

Until now, Hungarian judicial practice did not seem to accept the concept of the State's liability for losses incurred due to legislative changes. Pursuant to the Supreme Court of Hungary, compensation for losses caused by the public administration was limited to administrative decrees taken in respect of individuals. No compensation was payable if the losses resulted from laws having a general effect. The Supreme Court found in several cases that the lawmakers enjoyed full immunity from damages, even if it turns out later that a law was breaching the constitution.

Although the referred rulings originate from the time before Hungary joined the EU in 2004, we are not aware of any successful attempt in front of the domestic courts since then to challenge the concept of the State's immunity for lawmaking. For an investor feeling deprived of his property, the only possibly was to turn to international judicial forums, such as the European Court of Human Rights (ECHR) located in Strasbourg, or, in case of international investors, to the International Centre for Settlement of Investment Disputes (ICSID) located in Washington.

A potential domestic litigation option could have been to base a compensation claim on the "Francovich judgement" of the Court of Justice of the European Union (hereafter: the "CJEU"). In this judgement, the CJEU stated that private individuals and companies are entitled to claim reparation from a Member State of the EU for a loss or damage sustained as a result of the Member State's failure to comply with EU law. Through this judgement and consequent rulings, the CJEU established the principle of state liability.

The new Civil Code seems to remind its readers of this legal remedy. Although not in the main body of the new Civil Code, but in its official ministerial reasoning, it is expressly stated that compensation claims might be initiated against the State if a legislative act breaches the Constitution or obligations imposed by EU law. The reasoning says that the intention of the Civil Code was to change the Hungarian court practice that had been refusing such claims in the past.

Concerning the conditions of State liability, the CJEU has laid down the basic conditions, while leaving it to the national courts to assess whether or not those conditions apply. Firstly, the breach must be obvious and sufficiently serious. This condition is met if the breach was already established as a result of a prior infringement procedure initiated by the Commission, or if the subject matter was already settled by prior case-law. Secondly, a direct causal link must exist between the breach of EU law and the loss or damage. In addition to that, Hungarian courts require that the injured party should prove the exact amount of the loss of profit or damage suffered.

According to the CJEU, it should be irrelevant which State organ is liable for the breach, and as to whether the State acted in good faith (i.e. the liability is objective). If the claimant is successful in proving all the conditions, then the State must fully indemnify its losses, including the loss of profit. It must be noted that, as opposed to this procedure, the ECHR located in Strasbourg awards only a “just satisfaction” that is not always equal to the loss of profits.

To conclude, the new Civil Code seems to open the possibility for anybody to initiate compensation claims against the State in front of domestic courts, in case a legislative act breaches EU law and caused losses. Since several infringement procedures are pending against Hungary in EU law forums, it cannot be excluded that the liability of the State might be sought on that basis in front of Hungarian courts.

TELECOMMUNICATIONS / CONSUMERS' RIGHTS

Telecommunications companies brought under the authorities' spotlight

On 30 April 2015, the Court of Justice of the European Union (“CJEU”) confirmed that a Member States watchdog can monitor whether companies supplying electronic communications services in their territory, but are established in another Member State (such as UPC), comply with consumer protection rules. In a different case, Telenor was fined for HUF 250 million (EUR 850,000) for unilaterally modifying individual subscription agreements.

Concerning the case of UPC, the judgment of the CJEU stems from a preliminary ruling request initiated by the Budapest Municipal Court (Fővárosi Törvényszék) concerning a legal dispute between UPC and the National Media and Info-communications Authority (“NMIA”).

UPC is a company established in Luxembourg. Following some complaints from customers, NMIA requested some information from UPC concerning its contractual relationship with one of its customers. The company refused to provide the information on the grounds that, since its established seat was in Luxembourg, the Hungarian authorities did not have the power to initiate surveillance proceedings.

During the course of the dispute, the Budapest Municipal Court asked the CJEU in a preliminary ruling request whether EU law empowers Hungarian authorities to monitor UPC's business in Hungary.

The CJEU responded that national authorities may request from companies established in another Member State any information required for the verification of compliance with conditions pertaining to consumer protection. In this context, surveillance proceedings may be initiated.

However, Member States may not require such undertakings to set up a branch or a subsidiary in their territory, as this would go against the freedom to provide services.

In a different case, on 15 May 2015, the NMIA established that Telenor Magyarország Zrt. had infringed the rules applicable to electronic communications by unilaterally modifying individual subscription agreements. The NMIA imposed a fine of up to HUF 250 million on the telecommunications company.

Telenor has already indicated that it does not agree with the decision and will appeal against it.

INTELLECTUAL PROPERTY LAW / TRADEMARKS

Sky wins trademark dispute against Skype

Skype applied to register its name as a trademark in 2004 and 2005. The UK-based broadcasting giant, British Sky Broadcasting Group, as the owner of the registered trademark "Sky", subsequently complained to the EU's trademark watchdog.

After a long procedure, the CJEU found that not only did the word "Sky" appear in the name "Skype", but the cloud-shaped line around the Skype logo also "creates associations with the sky". The pronunciation of the vowel "y" is no shorter in the word "Skype" than it is in the word "sky", the court added.

The judgment of 5 May 2015 prevents US-based software giant Microsoft from registering a trademark for Skype's name and bubble-design logo. Microsoft, which purchased Skype in a deal worth 8.5 billion euros four years ago, said it would appeal against the decision.

CONTACTS

FRANÇOIS D'ORNANO

ornano@gide.com

ÁKOS KOVÁCH

kovach@gide.com

FRANCK AUDRAN

audran@gide.com

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