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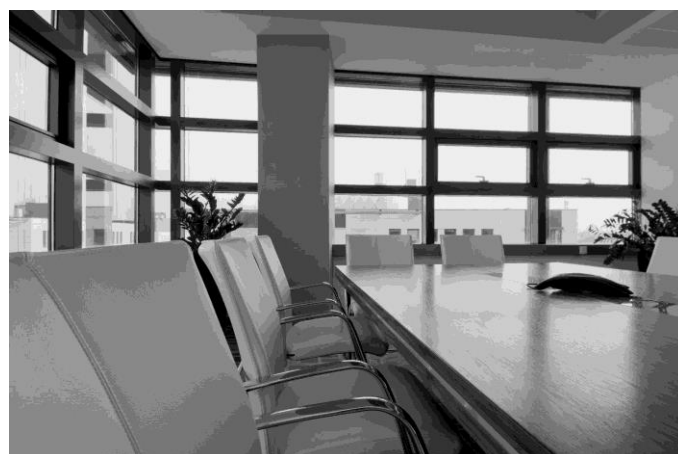
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Filing problems

Since January this year, it's been more difficult than ever to litigate in Hungary. Courts have been rejecting countless petitions, filed by even the most experienced lawyers, citing professional inaccuracies or formal errors. The stringent policy is likely to prompt parties with grievances to use alternative forums for the settlement of disputes.

The new Code of Civil Procedure ("new Pp."), which took effect on 1 January this year, has placed the procedure of civil lawsuits on a completely different footing. For example, it has introduced a divided structure for lawsuits, under which the parties have to reveal all their trump cards in the preparatory stage of the lawsuit. Another important change introduced by the new Pp. is that the range of cases in which parties can request a review of decisions from Hungary's supreme court has been narrowed.

The new Pp. has also made the process of launching lawsuits, i.e. filing of petitions, exceedingly difficult. In the past few months, experience has shown that the courts are throwing back a high number of the petitions filed by lawyers. The rejections are sometimes due to formal, and sometimes substantive, errors.



Lost in the maze of technicalities

It's infuriating to have a claim rejected due to a minor technicality, whether it's an error that is specifically described in the law or just indirectly inferred. For example, petitions have been rejected because they did not contain the subheadings "Introductory Section", "Substantive Section" and "Closing Section". It may seem absurd, but a petition has also been rejected because the plaintiff did not state the international dialing code of a telephone number.

What's more, the formal requirements are often illogical and unrealistic. For example, a plaintiff that is a legal entity must include a company registration certificate in its petition to prove that it has legal capacity, which seems unnecessary given that anyone can get access to this information in the official public records. Under the current practice, it is no longer sufficient for the lawyer to simply attach his or her power of attorney to the petition – according to the new rules it must be exhaustively proven, in the petition, that the power of attorney has been lawfully issued.

Know exactly what you're asking for

Under the old procedural rules, it was enough to describe the injury in the petition, with no need to name the specific passage of law involved. Under the new Pp., however, the party that is being represented by the lawyer must specify precisely, in the petition, which legal right (passage of the law) they are basing their claim against the other party on. If this is not indicated, the court will immediately reject the petition. In many cases, however, even towards the end of the lawsuit it is not clear whether a given injury should be qualified as a matter of compensation, indemnification or unlawful enrichment. It is also far from self-evident what rights of a contracting party have been injured due to the breach of a contractual provision, if such provision is not specifically contained by the law. But if a lawyer indicates several passages of a law in the petition in the hope that "at least one of them will work", then the facts of the case, the evidence and legal arguments have to be presented separately for each alleged offence, which can make for an extremely lengthy petition and which, in turn, may prolong the proceedings.

Not without consequences

Like any error, the incorrect filing of a petition can have many consequences, some of which are minor, but others may be more serious. Although the petition can be resubmitted – this time with the correct form and content – following a rejection, a repeat filing of this nature incurs an

additional duty payment obligation. Besides this, trust between the lawyer and his or her client can be eroded if the lawyer "can't even get such a simple task right".

Where is all this leading?

All this begs the question of whether there is any point in a litigation system where even the most experienced lawyers have such a high failure rate when filing their petitions. Hopefully, after the initial teething problems, the courts and lawyers will sooner or later come to an understanding.

Another aspect is that the current developments are paving the way for other solutions for the settlement of disputes. Seeing the difficulties involved in filing a claim, a growing number of contracting parties may think about stipulating arbitration, as opposed to the national courts, as the forum for settling any disputes. Also, the difficulties of filing a suit may pave the way for the more widespread use of mediation services, which are still very much in their infancy in Hungary.