2. ORGANISATION JUDICIAIRE, COMPETENCE ET PROCÉDURE JURIDICTIONNELLES

Les médiateurs ne sont pas les seuls à avoir fait l'objet d'un encadrement légal; les attachés de justice ont également vu leur statut modifié par la loi du 7 juin 2012 sur les attachés de justice (Mém. A n° 125 du 21 juin 2012) complétée par le règlement grand-ducal du 25 juin 2012 sur le recrutement et la formation des attachés de justice (Mém. A n° 133 du 2 juillet 2012). Les postes d'attachés de justice sont réservés aux ressortissants luxembourgeois. Les modalités de formation et de fonctionnement des attachés de justice sont détaillées pour déboucher sur véritable concours de la magistrature rompant avec le statut antérieur (V. loi du 6 décembre 1991 sur les attachés de justice Mém. n°82 du 19 décembre 1991). Cette réorganisation de la profession emporte indirectement modification d'autres textes existant en faisant des attachés de justice un statut nouveau et structurant au sein de l'organisation judiciaire.

Ainsi, la même loi du 7 juin 2012 modifie également la loi du 7 mars 1980 sur l'organisation judiciaire notamment en modifiant à l'article 2 le nombre de juges de paix notamment par la création des juges de paix directeurs adjoints et la suppression des juges de paix suppléants. Le nombre de magistrats des tribunaux d'arrondissement est également augmenté tant ceux du siège que du parquet. Et il en va de même pour les magistrats de la Cour supérieure de justice. Les juges suppléants sont supprimés dans toutes les juridictions. Pour importante qu'elle soit puisqu'elle modifie la composition des juridictions, la loi n'apporte pas de bouleversements structurels à l'organisation judiciaire et à la loi du 7 mars 1980 dont les modifications sont fréquents (la dernière en date était celle apportée par la loi du 3 août 2011 permettant l'adjonction de magistrats dans certaines affaires). On peut souligner néanmoins que les échanges d'information avec Eurojust sont expressément consacrés (article 75–4 de la loi sur l'organisation judiciaire telle que modifiée).

3. PROCÉDURES D'EXÉCUTION ET CONTENTIEUX SPÉCIAUX

Aux marges du droit processuel, mais dans un domaine particulièrement important, on relèvera la loi du 21 juillet 2012 portant transposition de la directive 2010/24/UE du Conseil du 16 mars 2010 concernant l'assistance mutuelle en matière de recouvrement des créances relatives aux taxes, impôts, droits et autres mesures (Mém. A n° 149 du 26 juillet 2012). En particulier son article 13: "A la demande de l'autorité requérante, l'autorité requise luxembourgeoise recouvre les créances qui font l'objet d'un instrument permettant l'adoption de mesures exécutoires dans l'Etat membre requérant". Le titre exécutoire n'est plus constitué par le seul titre de recouvrement mais par un instrument uniformisé émis par l'État membre requérant, permettant l'adoption de mesures exécutoires et reflétant la substance du titre exécutoire initial.

4. CONTENTIEUX INTERNATIONAL

Après le droit pénal européen avec loi du 3 août 2011 précisant les contours du mandat d'arrêt européen et des procédures de remise entre Etats membres de l'Union européenne (Mém. A n°175 du 12 août 2011), c'est au tour du droit pénal international d'influencer le contenu de la procédure pénale luxembourgeoise. Le 26 janvier 2012, le Grand-Duché du Luxembourg qui est Etat partie à la Cour pénale internationale depuis 2000, désigne le Procureur Général d'Etat comme autorité centrale au sens de l'article 87 du Statut de la Cour et se déclare disposé à recevoir des personnes de nationalité luxembourgeoise ou résidant légalement sur le territoire luxembourgeois condamnées par la Cour, à condition que la peine imposée soit exécutée conformément à la législation luxembourgeoise sur l'exécution des peines privatives de liberté. La loi du 27 février 2012 vient porter adaptation du droit interne aux dispositions du Statut de Rome de la Cour pénale internationale (Mém. A n° 41 du 7 mars 2012) modifiant à la fois le Code pénal et le Code d'instruction criminelle. La même loi réglemente les modalités de la coopération avec la Cour pénale internationale.

Séverine MENÉTREY

MAGYARORSZÁG/HUNGARY

The legislative changes enacted in 2011– including some reform legislation being effective only as of January 1, 2012 – were mostly determined by the adoption of the new Fundamental Law of Hungary and related statutes adjusting the previous laws and regulations to the New Constitution. These fundamental changes had the most impact on the judicial system, however, due to the reform of courts also the law of civil procedure could not remain unaffected. According to the new legislation related to the New Constitution, Parliament had enacted an entirely new Act on the organization and administration of courts (Act CLXI of 2011 on the organization and administration of courts; hereinafter the "Act on court administration"). Minor changes on some institutions of civil procedural law (e.g. reestablishment of mandatory pre-trial consultation procedure) and more significant innovations (e. g. Part V on high priority cases) were introduced as well. In addition, the fundamental reforms affected the field of state-party arbitration as well.

1. THE IMPACT OF THE NEW CONSTITUTION

Under Part 'State' of the New Constitution the chapter relating to 'Courts' states that courts shall administer justice. Accordingly courts shall decide on criminal matters, civil disputes, and the legitimacy of administrative decisions. Courts are additionally provided with the power to examine and annul local ordinances based on their conflict with other laws and to establish the local government's neglect of its statutory legislative obligation. Other matters defined by laws may be further attributed to the courts.

The supreme judicial body shall be the Curia, the successor of the former Supreme Court. Uniformity in the judicial application of laws shall be supervised and ensured by the Curia and maintained by its decisions binding lower courts. The implementation of this provision resulted in different new forms of harmonization. In accordance with the New Constitution the Act on court administration shall also determine the renewed multi-level organization of courts. The New Constitution only states the election procedure of the President of the Curia and determines the term of his office in 9 years (instead of the former 6 years). Accordingly the President is released from the new controversial rule prohibiting judges to serve who are older than the general retirement age (65 years).

Special courts may be established for particular groups of cases, especially for administrative and labour disputes. Administrative and labour courts have been established by the Act itself and will start work in January 2013, so that a new, separate administrative judiciary has been introduced instead of the now functioning system of administrative justice integrated in civil courts.

The New Constitution establishes a general obligation that courts shall primarily interpret the text of any law in accordance with its goals and The New Constitution itself. The interpretation shall be based on the assumption that they "serve a moral and economical purpose corresponding to common sense and the public benefit".

a) Restructuring the organization and administration of courts

Pursuant to the emerging need for the reorganization of the judicial system the detailed rules together with determining the legal status and remuneration of judges had been regulated by the Act on court administration. The New Constitution states this act as a "fundamental Act". This means that in the future its amendment will need the strict 2/3 majority of the Parliament; while the former rules required only the 2/3 of the members present at the voting.

Central administration of the courts

The new Act on courts administration resulted in an organizational split between the professional and the administrative management of the judiciary. From 1 January 2012, the administration of the courts falls in the competence of the President of the National Office of the Courts (hereinafter: NOC), under the supervision of the National Council of Judges (hereinafter: NCJ), the latter being a mainly consultative body. The professional management remains in the hands of the President of the Curia as the chief guardian of the uniform application of the laws.

The legislator has decided to replace the former system of direction by the National Council of Justice. The reasoning of the amendments held that the former body, convening once a month, was unable to deal with situations requiring immediate decisions. Accordingly the new legislation transfers the tasks of central administration to the President of the National Office of the Courts whose work will be assisted by the NOC. The tasks of the President of NOC will encompass the whole range of central administration. They can be divided into the main categories of

- general central administration tasks, administration of the courts and providing information to the public,
- direction and the budget of NOC, personnel management tasks and training,
- collection of statistical data, measuring of workload and distribution of cases.

Under the field of the latter task the President of the NOC had been entitled to distract cases from the competent judge and reassign it to another to ensure the reasonable time of the adjudication. The rules determine that the President may only assign the case upon the motion of presidents of the high courts or the county courts or upon motion of the Chief Executor within 15 days upon receipt of the case. Accordingly a new provision in the Act on Civil Procedure had been introduced under Section 47. The peculiarity of this innovation is that this was already a feature of Hungarian procedural law until 1989; placed under the exact same section in the procedural act.

The President of NOC is nominated by the President of the Republic and elected for 9 years. Prior to the election by the Parliament, the nominated person is heard by the standing committee of Parliament dealing with the judiciary and by the National Council of Judges. The President of the NOC cannot remain without control. This control shall be guaranteed by way of supervision exercised by the NCJ and by the personal removability of the President of the NOC. Members of the NCJ will be elected by judges from among themselves. The President of the Curia will be a member ex officio. The NCJ supervises the central administration activities of NOC, controls the financial management of the courts. One of the most important powers of the NCJ is the possibility to submit a motion to Parliament initiating the President of the NOC's removal from office. This power is shared by the President of the Republic (who also has the right to nominate the President of NOC).

In line with the establishment of the NOC and the NCJ, the professional direction remains connected to the Curia. The new legislation revised the work of the Curia by the changing rules of the harmonization procedure and the setting up of the so called "teams for analysing the judicial practice". As a result, those specialised teams are responsible to monitor the adjudication and publish decisions of the judicial councils of the Curia as a decision of principle. These decisions shall be concerned with the public interest or affecting a large scale of society. Apart from the above, the specialised teams may also decide to publish a decision made by a lower-level court as a decision of principle bearing such level of importance.

Judiciary in the field of public administration and labour

According to the New Constitution the renewal of the judicial system includes the field of public administration and labour disputes. As of January 1, 2013, administrative and labour courts will be set up on the basis of the organisational system of the labour courts that has also enjoyed independence so far. This means the establishment of a new, separate administrative judiciary in Hungary.

These administrative and labour courts shall not be confused with the so called regional judicial divisions of public administration and labour. These divisions also had been newly introduced in the judicial system in order to guarantee professional background. They offer help for the judges involved in the relevant field and maintain uniformity of application of the laws.

2. AMENDMENTS TO THE ACT ON CIVIL PROCEDURE

The explained changes to the Hungarian judicial system enacted in the New Constitution and in the new Act on court administration obviously left their mark in the regulation of civil procedure. In order to reconcile the rate of workload distribution between courts; pecuniary rights actions do not fall under the jurisdiction of county courts unless the amount of claim enforced exceeds the sum of 10 million HUF. (According to the former rules they had to be valued only 5 million HUF.) As mentioned above a new rule on the power of the President of

the NOC to reassign cases from the competent court had been introduced to the Act on Civil Procedure; parallel to the provisions in the Act on court administration.

a) Mandatory Legal Representation

Mandatory legal representation had been introduced even in the first instance of cases under the jurisdiction of county courts. The legal representation shall be continued in the higher instances of the proceedings as well. Exceptions where legal representation remains optional are limited to

- pecuniary actions where the amount of claim enforced does not exceed the sum of 30 million HUF,
- actions for damages caused by an administrative authority,
- judicial review of certain company resolutions and other corporate actions,
- actions related to administrative actions,
- proceedings related to press correction and other civil rights actions,
- actions for damages caused by unreasonable delay of a civil proceeding,
- other actions prescribed by law.

Where legal representation is mandatory the plaintiff is only allowed to amend its claim within 30 days after the defendant had presented his objections. Similarly, the defendant is only allowed to present his counterclaim or setoff within 30 days after the first hearing.

b) Administrative actions and proceedings relating to local governments

The general rule concerning formal hearing of administrative actions had been reversed. Therefore judges are only obliged to hold a formal hearing upon request of either party; who may present such request in their first petition. Judges may also decide to hold a hearing if they deem necessary.

Together with its reorganization the judiciary had been given a few new tasks, as stated in the New Constitution. In the future the courts may initiate the annulment of a local government decree with the Curia on the ground that the decree is contrary to another rule of law. This kind of review has previously been exercised by the Constitutional Court. (The examination of conflicts with the Constitution remains within the competence of the Constitutional Court.) Courts may also establish the failure of a local government to comply with its law-making obligation based on the New Constitution. The latter proceeding may be filed by citizens in the competent court according to the provisions of the Act on Civil Procedure as it is deemed a special administrative action.

c) High Priority Cases

A new category of "high priority cases" has been introduced. This is the case, if the controversy falls within the competence of a county court where the amount of claim enforced in a pecuniary action exceeds the sum of 400 million HUF. The special provisions concerning high

priority cases aim to reach decisions in the quickest possible way. The court of first instance is obliged to order priority proceeding even without being requested and this obligation remains to the courts at the following stages. Thereby the courts examine the statement of claim within eight days from the time of delivery to the court. In high priority cases, due to the high litigated amount expert evidence will presumably take place quite often. Parties should bear in mind that there are special deadlines for submitting the expert opinions in high priority cases which is 30 days as a main rule, 60 days in particularly complicated cases, and may be prolonged once only upon request of the expert.

In high priority cases, the court is obliged to render a partial or interlocutory judgment when any of the parties initiate it. The court may only dismiss the proposal if the procedural conditions of such judgment are not met. According to these conditions the court may resolve certain claims, or certain segments of an action claim that can be adjudged separately by means of separate judgments, the partial judgments. Accordingly no further hearing shall be required in that respect. Partial judgments may be set aside by a later decision. Interlocutory judgments may be rendered as separate judgments recognizing the right enforced by the claim, while the hearing may be continued concerning the amount or quantity of the claim only after the interlocutory judgment becomes final and binding.

3. EXCLUSION OF ARBITRATION IN CASE NATIONAL ASSETS ARE CONCERNED

Apart from the abovementioned changes which obviously have direct effect on the Hungarian civil procedural system a very peculiar single provision in the new National Assets Act (Act No. CXCVI. of 2011 on the National Assets, hereinafter: NAA) is of outstanding importance and practical bearing. The provision (see Section 17(3) of NAA) orders that in case of civil law contracts relating to "national assets" (defined in the same act) that are located on the sovereign territory of Hungary, any authority that is authorized to dispose of those assets shall only stipulate that Hungarian law be the governing law, Hungarian language be the governing language and the exclusive jurisdiction of Hungarian state courts be competent for any disputes arising from such contracts. The named provision emphasizes that any authority that is authorized to dispose of national assets is prohibited to agree on an arbitration clause referring the disputes arising from such contracts to arbitration. It is more than questionable whether protection of national assets can really be accomplished by denying arbitrability.

István Varga/Istvan Légradi

ÖSTERREICH/AUSTRIA

Durch das 2. Stabilitätsgesetz 2012 (2. StabG 2012, BGBl. I Nr. 35/2012) wurden zahlreiche zivilverfahrensrechtliche Bestimmungen novelliert. Beginnend mit 1.1.2013 werden die Normen über die sachliche Zuständigkeit der Bezirksgerichte geändert. Nach der bis zum Inkrafttreten der Änderungen geltenden Rechtslage entscheiden die Bezirksgerichte in erster Instanz über alle Zivil- und Handelssachen, sofern der Streitwert im konkreten Fall den Betrag von € 10.000 nicht übersteigt; andernfalls entscheidet das jeweils zuständige Landesgericht