

## INVALIDITY, INEFFECTIVENESS, AND NON-EXISTENT LEGAL SANCTIONS IN LABOUR LAW

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**Abstract:** Validity and invalidity are not synonymous concepts; they cover different legal content and result in different legal consequences as well. In the case of non-existent contracts, there is no consent between the parties on the essential elements of the contract. In such cases, contracts either have no legal effect at all or we can speak about some special legal effect.

Though the invalidity system of labour law is based on civil law, specific characteristics of labour law as an independent field of law are also taken into account. It is a fundamental difference that, unlike civil invalidity, the restitution of the original situation is not possible because of the long-term nature of the legal relationship. Instead, labour law imposes a remedy on the parties and if it is not possible, termination of employment is mandatory. Incidentally, invalidity under labour law also means incapacity to produce the intended legal effect and we distinguish between two different types of invalidity: nullity and voidability. In the event of termination of a contract, an agreement between the parties shall be concluded and shall remain in force, however, for some reason, it can not produce legal effects between the parties. Therefore, the existence and validity of the contract is a precondition for invalidity.

**Keywords:** *labour law, invalidity, ineffectiveness, termination*

### 1. INTRODUCTION

In the process of concluding an employment contract, similarly to civil law, three concepts have relevance: non-existent, invalid, and ineffective contracts.

The invalidity system of labour law is based on civil law, but it also takes the features of labour law as an individual branch of law into consideration (Berke and Kiss, 2014, p. 121). In general, invalidity means unenforceability before the court, when the state does not provide the right to pursue a claim before its authorities. Nevertheless, invalidity can also be regarded as a special sanction, since invalid agreements or unilateral acts do not give rise to any obligation.

In civil law, the legal system aims at *in integrum restitutio*, while labour law, due to its special features, strives for the obligation to remedy, instead of restitution.

Under Article 31 of the Hungarian Labour Code in force (*Act I of 2012*, the fourth Labour Code, hereinafter referred to as *HLC*), legal statements of labour law are required to be governed by the exhaustively listed provisions of the Hungarian Civil Code (Act V of 2013, hereinafter referred to as *HCC*), unless otherwise provided for in the HLC. This legal technical solution was criticised by the commentary literature of labour law, stating that structurally it does not conform with the provisions of the HLC, and regarding the content, other provisions of the HCC (e.g. penalty) may also be applicable instead of the exhaustively listed provisions (Pál et al., 2012, p. 79; Berke and Kiss, 2014, p. 135).

## 2. PROVISIONS OF THE HUNGARIAN LABOUR CODE IN FORCE

Chapter IV of the HLC regulates the details of invalidity.

One type of invalidity is nullity, which is regulated by Art. 27 HLC. Under the provisions of the HLC, not only the terms and conditions violating the law are regarded as null and void, but also those which violate collective agreements, work agreements, or the binding decisions of the conciliation committee. Agreements entered into by way of circumvention of any of the abovementioned sources of employment law, or are contrary to accepted principles of good morals, shall be regarded as null and void. However, reference to nullity is no longer optional to anybody, just for the concerned part, but for them, alleging the nullity of an agreement is possible without a time limit. Courts have to observe the nullity of the agreement of its own motion (*ex officio*). The legal consequence of nullity is that the contract does not and may not give rise to any positive legal effect intended by the contracting party, i.e. it is invalid. According to Art. 27(3) of the HLC, '[a]n agreement if annulled shall be considered void unless the relevant employment regulation stipulates another legal consequence'. However, we are also going to mention other consequences as well. The HLC also regulates sham contracts, which are invalid, except if sham contracts disguise other agreements, these need to be judged upon the disguised agreements, for example, if parties conclude a sham agency contract to circumvent the mandatory rules on employment contracts.

Contestability (or avoidance) means conditional or relative invalidity, compared to nullity, which latter is the unconditional or absolute type of invalidity. Agreements can only be avoided based on specified reasons (mistake, misrepresentation, unlawful threats), and solely by the person who 'suffered' from them. The other party needs to be notified within thirty days that the agreement is contested, and in case of a negative answer or a lack of answer, the party is free to bring an action before the court. The time limit for contesting is of absolute type, and it terminates after six months.

Rights and obligations deriving from or in connection with a legal relationship based on an invalid agreement are required to be regarded as if they originated from a valid agreement, i.e. employees are entitled to receive the remuneration for their work. If the reason for invalidity can be remedied, the court declares the contract to be valid (Berke and Kiss, 2014, p. 132), otherwise, the employer has to terminate the legal relationship with immediate effect without any delay. In case of partial

invalidity, the employment regulation needs to be applied, but only in case, if the parties would have concluded the contract without the invalid part. Damages resulted in by the invalidity of the contract shall be judged according to the provisions of the HLC on compensation, instead of taking into account the provisions on disguised contracts (Rác, 2021, p. 167).

### 3. QUESTIONS OF EFFECTIVENESS IN LABOUR LAW

In this article, we are not going to present the questions of invalidity in labour law, because our opinion on this issue was already published in another article as we have indicated previously. (Rác, 2021)

The legal literature has already dealt with the issue of ineffectiveness in labour law relating to a labour law institution, the instruction of the employer (Kiss, 2000, pp. 112–117; Román, 1977, pp. 72–76). The author thinks that the instruction, in general, comes into effect upon delivery, specifically when the employee becomes aware of it. It means that a valid instruction can be ‘perceived’ by delivery, so it is effective upon this date.

Regarding the effectiveness of the employment relationship, *György Kiss* studied the issues of the formation and starting date of the employment relationship, the further conditions of the effectiveness of the employment relationship, and finally the determination of the duration of the relationship or the term of the contract (Kiss, 2000, pp. 112–117). We need to highlight that these issues fall within the scope of the effectiveness of the employment relationship, not of the effectiveness of the employment contract. In labour law, compared to civil law, the processes of entering into an employment contract and entering into an employment relationship are closely connected.

According to the current literature in connection with ineffectiveness, only valid legal statements can be ineffective or effective. An ineffective legal statement can cause the intended legal effect, but rights and obligations not yet or no longer derive from it (e.g. because of suspensory or resolutive condition). An effective legal statement is not only potentially, but actually able to cause the intended legal effect. (Kun et al, 2018, p. 15; Nádas, 2017, p. 404).

Under the provisions of the HLC, a unilateral statement takes effect upon its delivery to the recipient and can be amended or revoked only upon the consent of the recipient [We will return to this point below, with the conditions of the wording of the provision in Art. 15(4) HLC].

Under the provisions of the HLC, the parties may render the conclusion, amendment, and termination of an agreement contingent upon certain future, uncertain events (conditions). It is obvious that relating to the regulation of condition precedent, the HLC used the solution of the HCC. (Cf. Art. 6:116 HCC) In addition, as it is provided for in the HLC, any condition that is contradictory, impossible, or unintelligible shall be considered invalid, and the agreement shall be treated as if it does not contain the condition in question [Art. 19(1)(2) HLC].

#### **4. NON-EXISTENT EMPLOYMENT CONTRACTS**

Not only in theory but also in practice it is often confusing what constitutes an invalid and a non-existent employment contract. As an example for it, we present a current decision of a court of first instance.

Under Act XXXIII of 1992 on the legal status of public servants and Act LXXXIV of 2003 on some questions related to medical activities, the defendant, i.e. the employer appointed the plaintiff to a fixed-term, full-time, 40-hour per week job as specialised nurse, for replacement of a civil servant, who was absent due to incapacity for work, from 11 January 2021 until 10 April 2021, with the probationary period from 11 January 2021 until 10 April 2021.

At the beginning of February 2021, the defendant's director general convened the employees and explained to them the circumstances and process of the transformation of their relationship into a health service legal relationship, including the draft of the employment contract. The plaintiff received the draft of the health service employment contract, which he had to return signed to the defendant by 5 February. By signing on 2 February 2021, the plaintiff acknowledged that the defendant had offered him further employment, had read the information on the terms and conditions of the employment, and had read and understood the draft of the employment contract. In possession of this, the plaintiff stated that he agreed to be further employed by the defendant.

The plaintiff returned the Draft signed by him to the defendant. In February 2021, the plaintiff signed a document called a 'statement on the conflict of interest', according to which there is no conflict of interest regarding him under Article 4 of Act C of 2020 on Healthcare Service Relationship (hereinafter referred to as HSRA). He returned the document to the defendant on 24 February 2021.

On 24 February 2021, the plaintiff received his health service employment contract, which he had to return signed to the defendant by 26 February 2021 (hereinafter referred to as 'Contract').

The plaintiff indicated by handwriting on the Contract that it had a different content from the Draft. The plaintiff returned the Contract signed to the defendant on 26 February 2021 (on Friday).

The plaintiff appeared before the defendant for work on 1 March 2021 (on Monday). The defendant terminated the relationship with the plaintiff with immediate effect on 1 March 2021, during the probationary period.

In its non-final judgment, the court of first instance found that it was necessary to examine whether a health service legal relationship had been established between the parties and whether the contract on which it was based had been validly concluded by the parties. As a result of the examination, the court of first instance concluded that the parties' statements did not result in a health service employment contract between them due to the lack of clear, mutual, and consistent will on both sides to establish a health service legal relationship. The date of the transformation of the legal relationship was 1 March 2021, therefore, in the absence of a contract

concluded on that date, the plaintiff was not in a health service legal relationship, so it could not have been terminated during the probationary period.

In our view, the court of first instance did not take sufficient account of the legal statements reflecting the plaintiff's contractual will in determining whether or not the parties had a health service employment contract. The plaintiff stated that he gave his consent to his further employment with the defendant. The plaintiff also signed the statement, in which he declared that there was no conflict of interest specified in HSRA. Moreover, the plaintiff signed the draft of his employment contract. Finally, the plaintiff signed his health service employment contract. In our opinion, these documents reflect the employee's contractual will. The fact is that the plaintiff wrote comments on the health service employment contract, but he signed the contract itself. The differences were only contractual terms laid down by law, which became part of the contract even if the parties had not expressly agreed to do so. The HLC does not regulate the conditions of the non-existent contract, therefore Article 6:63(1–3) of the HCC applies to it pursuant to Article 31 of the HLC. Under Art. 6:63(3) of the HCC, parties do not have to agree on matters which are settled by law. Under Article 45(1) of the HLC, parties must agree in the employment contract on the employee's basic salary and job, which are mandatory elements of the employment contract. If the parties agree by their mutual and concurrent will to these terms and conditions, the contract exists.

## 5. SUMMARY

In the process of entering into a contract, civil law examines the expression of the mutual and concurrent will of the parties. To enter into a contract, the parties must agree on the relevant issues or on issues declared to be relevant by one of the parties. Otherwise, the contract will not exist. If the contract is entered into, but due to reasons of form or substance the legal statement is not suitable for causing its intended legal effect, it constitutes invalidity. The essence of the ineffectiveness of a contract is that parties entered into an agreement, which is valid, but it is not suitable for causing its intended legal effect between the parties.

In labour law, we can also make a difference between non-existent, invalid, and ineffective employment contracts. Labour law defines invalidity on the grounds of civil law, however, regards it as a specific category of this branch of law, while compared to civil law, labour law has a different concept for effectiveness. The most obvious example is the issue of the revocation of termination by notice.

Studies on non-existent employment contracts have only begun recently (Herdon, 2020, p. 14); labour law literature has not given it a great relevance, and judicial practice seems to be unsteady in decision-making on it.

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