HUNGARY

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THE FIRST JUDGMENT ON PLATFORM WORK IN HUNGARY

Below a case will be presented in which the Hungarian courts ruled for the first time on the qualification of platform work. Hungarian law follows a binary model regarding work relationships, which means that a work is either under the Civil Code as a self-employment or an employment relationship under the labour law, with no third category (employee-like person) in between. The court of first instance ruled that the legal relationship was under civil law, but the court of appeal stated that it was an employment relationship. In the review proceedings, the Curia (Hungarian Supreme Court) ruled similarly to the court of first instance and held that the platform worker is self-employed[1].

I - FACTS

The platform company is the operator of a website and a mobile application that provides an intermediary service between customers ordering food and beverages and the restaurants that produce them, and also provides a delivery service. From 18 October 2019 to 15 January 2020, the platform worker carried out courier duties as a self-employed entrepreneur for the company based on a civil law contract. The legal relationship between the parties was established by signing the document called « Special Terms and Conditions of the Contract of Agency », in which the worker, as an agent, undertook to deliver the food orders placed to the specified delivery address, and to be available to the company during the so-called active periods, waiting for individual orders received via the Roadrunner app. The remuneration was governed by the « General Terms and Conditions of the Framework Contract ». After signing of the contract, the worker received a delivery box and garments containing the company's branding, which he was obliged to wear during deliveries. The worker was required to use his own phone and car to carry out his duties.

The worker had to apply one week in advance for periods when he wanted to carry out his duties. He could choose between 2, 4 or 8-hour periods per day. If the worker took a consecutive 8-hour period per day, the company gave him a paid 30-minute break. During the active periods, he had to log in to the application. The automated system sent him a sequence of numbers, which he had 75 seconds to accept. If accepted, the app sent the information from which restaurant the food

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1 The courts agreed that the Joint Guideline of the Ministers of Labour and Finance on classification of contracts for work no. 7001/2005., which has been repealed in 2012, continues to serve in qualification cases as a comprehensive summary of the relevant case law.

should be delivered. Once the parcel was picked up and recorded in the app, he was given the delivery address. If he did not accept the number sequence, the system automatically looked for another courier in that zone.

In 2019, the couriers' remuneration consisted of a basic fee[2] based on the number of hours undertaken and completed during the active period and an « address fee »[3] for deliveries, which was paid to the worker by the company. The worker authorised the company to invoice him on his behalf every two weeks[4]. After the worker had an accident in December 2019, he had few active periods. When the company's customer service contacted him on 15 January 2020 to ask him whether he wished to continue working, he said no, so the relationship between the parties ended.

II - CLAIM AND COUNTERCLAIM

In his claim, the worker sought a declaration that he was employed by the company, working 40 hours a week, at a gross monthly basic salary of HUF 161,000[5]. He argued that he was obliged to carry out the courier work personally and on a regular basis, as instructed by the company, using the equipment provided by the company. In the counterclaim, the company sought dismissal of the claim. According to the company, the parties did not have the intention of creating an employment relationship when they concluded the contract. The worker carried out his work with his own vehicle and phone and took care of their maintenance and operation himself. The worker was not subject to a general and permanent obligation of availability, as he was free to call in during the time slots convenient to him if he wished to carry out work, so the worker was an individual entrepreneur.

III - FIRST INSTANCE JUDGMENT

The Debrecen Regional Court dismissed[6] the action. The fact that the worker had to perform his duties in person was not in itself decisive, nor did the fact that the employer supervised the couriers to a certain extent and determined how they performed their individual duties, wore their uniforms and expected them to be available during the period of the activity. The right to give instructions did not cover all phases and elements of the work. The worker did not carry out his duties within the company's organisation and there was no hierarchical relationship and dependency between the parties. The work performed on the platform did not represent a significant weight in the worker's subsistence which would have justified his subordinate, vulnerable and economically dependent status. The assignment of tasks via app is not sufficient to establish subordination.

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2 850 HUF (appr. 2.6 EUR at that time).

3 350 HUF (appr. 0.94 EUR at that time).

4 During the entire period of employment, the company paid the worker 1,039,749 HUF (appr. 3,150 EUR at that time).

5 Appr. 488 EUR at that time.

6 Debrecen Regional Court 13.M.70.070/2021/27.

The worker himself allocated the time he wished to perform his tasks. The possibility of taking active periods was influenced by the ranking of couriers, but the worker determined how many active periods he would take. The court explained that even among atypical employment relationships, Hungarian labour law does not recognise a type of employment relationship where the number of hours of employment is solely adapted to the needs of the employee. Nor was the form of remuneration and the two-weekly settlement of accounts of decisive importance, since regularly recurring remuneration is also typical of long-term assignment relationships. The resources necessary for the performance of the worker's tasks were not provided by the company. The company did not conclude an exclusivity agreement either, the worker was free to establish further employment relationships without prior notice and without the company's authorisation.

IV - SECOND INSTANCE JUDGMENT

The judgment of the Debrecen Court of Appeal[7] reversed the decision of the court of first instance and found that the worker was employed by the company by for 40 hours a week on a full-time basis with a gross monthly basic salary of HUF 161,000.

From the worker's obligation to be available and to carry out courier duties, the court concluded that his employment was for the purpose of performing a job. The company sanctioned the absence and the breach of the obligation to be available by demotion in grade, exclusion from the active period and withdrawal of the hourly rate. If the company was unable to provide work within the active period, it still paid the courier the basic fee.

The company unilaterally determined the terms and conditions of the employment (remuneration, transport tasks, place and time of the performance, active periods). The fact that the worker was able to choose the active periods only gave him an apparent freedom of choice, since if he wanted to be paid, he had to report for work. The worker was obliged to keep the GPS switched on and, if it was switched off or the GPS became unavailable, his active period was automatically terminated, so that the company constantly monitored his whereabouts and availability. The use of his own vehicle and phone does not in itself preclude an employment relationship and, in addition, he was required to wear clothing in keeping with the company's image. He received his instructions via an app, and the company also supervised and monitored his work via the app. As the agreement between the parties was a sham,[8] the court found that an employment relationship had been established between them.

V - JUDGMENT OF THE CURIA

In its judgment[9], the Curia clarified that it had not ruled on platform employment in general, but only on this individual case. In accordance with the rules of civil

7 Debrecen Court of Appeal Mf.I.50.063/2022/7.

8 I Act I of 2012 on the Labour Code, art. 27(2), 42, 45 and 51.

9 Curia Mfv.VIII.10.091/2023/7.

procedure, Curia pointed out that in the case the worker bears the consequences of the failure or inability to prove. The Curia stressed that the company had not intended to establish an employment relationship and had employed the couriers on the basis of an entrepreneur licence, which the employee knew about and did not object to.

In accordance with the terms of the contract, the worker's only task was to deliver food or beverages from a specific address to a designated destination, and it could not be inferred from this that the tasks were defined by the company as a job. The Curia agreed with the court of first instance that Hungarian legislation does not recognise any method of atypical forms of employment in which the number of hours is solely based on the needs of the employee. The worker was able to apply for work at the times and for the periods which he indicated and was entitled to determine whether or not he wished to be available during an active period. The parties did not agree on working hours; the worker undertook to work occasionally of his own free will. The company's algorithmic determination of the number and length of the active periods does not establish the existence of a broad right to give instructions or a duty to employ, since the decision to sign up for them was the worker's choice. There was no expectation on the part of the company as to the number or length of the active periods undertaken. The worker was not obliged to work throughout the entire active period, as he could sign off on it without providing reasons or consent and could refuse any individual assignment and was not under any obligation to be available. The company was not under an obligation to provide work during the active periods either: it was entitled to terminate unilaterally the period, e.g. if it was unable to give an individual assignment.

If the worker interrupted an active period or became unavailable, this affected his ranking, so he could only apply for the desired time slots later. However, the time spent on the duties was still determined by the worker and his remuneration was not affected by the ranking. According to the Curia, this was in the company's economic interest, as it only wanted to give preference to workers who regularly and reliably signed up for longer periods of active service and worked throughout.

The worker did not work within the company's organisation, there was no evidence of a strict relationship of subordination or of a broad unilateral power of direction and instruction vested in the employer. The worker organised the delivery activity himself, he could choose the route and the means of transport, which also indicates a high degree of autonomy of the work. The fact that the company used a GPS system does not in itself establish supervision by the employer, since its function was to check whether the delivery was being carried out correctly and to find the nearest courier to a given address to whom the delivery could be offered. The worker carried out its work using its own equipment, which also demonstrates the existence of an entrepreneurship. The mere fact that the worker was obliged to use the clothes and delivery box provided by the company and to comply with basic ethical standards does not prove the existence of an employment relationship (this was considered by the Curia as a « marketing ploy »).

In view of the above, the Curia held that there was no evidence of a broad right of instruction and control by the company, which also covered the place, time and manner of work, justifying the subordination between the parties. The Curia stated that the worker did not carry out his activities in an employment relationship and

therefore set aside the judgment of the court of appeal and upheld the judgment of the court of first instance.

Conclusion

The judgments have generated a lively interest in the Hungarian labour law discourse. One criticism was that the Curia attached too much importance to the absence of an agreement on working hours, whereas according to Hungarian case law, when classifying a legal relationship, the court must weigh the various delimiting criteria individually and as a whole, and assess them in the light of all the circumstances of the case[10]. In my view, the Curia has examined a number of classification criteria, including the issues of subordination, autonomy, the right of direction and control, remuneration, exclusivity and the provision of working facilities. It can also be noted that it has attached particular importance to the contractual will of the parties[11].

Undoubtedly, the decision has created relative predictability for the « platform industry » in Hungary[12]. In the light of the judgment, it will certainly be easier for platforms operating in Hungary to develop their business model in such a way as to avoid being classified as employment relationships[13]. However, it is possible that this is only a temporary situation, as the transposition of the presumption of employment relationship in the Platform Directive[14] may change the way cases similar to the facts of this case are assessed in Hungarian judicial practice.

10 T. Gyulavári et P. Sipka, « The first Hungarian platfrom work judgement: "self-employment" », May 28, 2024 : https://global-workplace-law-and-policy.kluwerlawonline.com/2024/05/28/the-first-hungarian-platform-work-judgmentself-employment/ ; T. Gyulavári, « The first platform work judgment in Central and Eastern Europe », *European Labour Law Journal* : https://journals.sagepub.com/doi/10.1177/20319525241260869

11 P. Szabó, « A platformalapú foglalkoztatás minősítésével kapcsolatos hazai bírósági ítéletek bemutatása, különös tekintettel a Kúria Mfv.VIII.10.091/2023/7. számú ítéletére », *Munkajog*, no. 2, 2024, p. 68.

12 *Ibid.*, p. 69.

13 T. Gyulavári, P. Sipka, « The first Hungarian platfrom work judgement: "self-employment" », *op. cit.*; T. Gyulavári, « The first platform work judgment in Central and Eastern Europe », *op. cit*.

14 European Commission Brussels, 9.12.2021 COM(2021) 762 final 2021/0414 (COD) Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work.