

How can lease agreements be modified by court?

As shown by experience, several cases occur, due to the economic crisis, when either party has to resort to changing some provisions of a lease agreement. In fortunate cases, the parties are able to agree, but in absence of such an agreement, there is a legal institution in Hungarian law that is, amendment of contracts by courts, which may be of help to the party desirous of modification, said to [origo] the expert of Kovács Réti Szegheő Attorneys at Law.

According to Dr. Arvid Hauck, since the beginning of the economic crises, it seems the lease fees of certain real properties have significantly altered and the market relations have been reorganised. As far as lease contracts are concerned – especially those concluded for an indeterminate period of time – both the lessor and the lessee may come to wish to change the rental fee during the term of the legal relationship.

In most cases the parties agree on the amount of the modified lease fee, but what is the right course of action when no such agreement is made while the parties do not wish to terminate the contract either?

As the expert of Kovács Réti Szegheő Attorneys at Law elaborates, pursuant to the effective Civil Code of Hungary the court – on request – may amend the contract concluded between the parties provided that circumstances incurred – following the conclusion of the contract – in the durable legal relationship of the parties and consequently the contract infringes the rightful material interests of either party.

Criteria for modification

The above detailed criteria need to be fulfilled at the same time in order that the lessee or the lessor can rightfully file to the court for amendment of the contract in respect of the lease fee. Court practice evaluates the lease relationship as a durable legal relationship (be it for a determinate or indeterminate period of time) moreover, it has done so in the case of a lease contract concluded for a determinate period of time when the lessee paid the lease fee in a lump sum in advance.

According to Dr. Arvid Hauck, the lessor or the lessee, provided that certain conditions are fulfilled, may justifiably file on grounds of changes having taken place in the market conditions for modification by court of the lease fee determined in the contract.

The party desirous of amending the contract first needs to file an action to the competent court having authority against the other party and needs to prove that since the conclusion of the contract (or since the last amendment to the contract) such changes have taken place which cause infringement of his/her rightful material interests.



Market conditions in general shall not be deemed sufficient grounds

Pursuant to the current practice of jurisdiction, it is not sufficient for the party filing the action (plaintiff) to cite the changes in the market conditions in general. The plaintiff, in order to justify its claim should prove how exactly these conditions affect the litigated leased property and to what extent they influence the amount of the lease fee – emphasised the expert of Kovács Réti Szegheő Attorneys at Law.

The plaintiff shall also furnish such evidence that justify his/her claim. This means in practice that in order to establish whether the market conditions have in fact changed since the conclusion of the lease contract and to what extent these changes have affected actual legal relationship, the court typically orders an expert.

The modification of the lease fee may be requested from the time of filing the action

The plaintiff should specify the amount in his/her action to which it wishes that the court modify the amount of the current lease fee. It is an important rule that the modification of the lease fee can be requested as of the day of filing the action and not earlier.

In order to avoid that the plaintiff, lacking the necessary expertise, should incorrectly or inaccurately specify his/her claim, he/she may consider, prior to filing the action, conducting a preliminary finding of facts or hiring a private expert for the sake of obtaining a private expert's opinion. Thus the plaintiff can enhance the chances that the court finds, entirely or substantially, in his/her favour.

An interesting difference shows in practice between the leased business and housing properties that is, at the establishment of lease fee, for a business property, the court exclusively considers the market value irrespective of how it affects the business activity of the lessee, while in the case of a housing property the court strives to avoid the modification being substantially detrimental to the interests of the lessee, as dr. Arvid Hauck pointed out