

KRS: Is it possible to validly limit our liability for a breach of contract?

According to the expert of Kovács Réti Szegheő Law Firm, the opportunities for limiting or excluding liability for a breach of contract are significantly broadened in the new Civil Code, as the legislation no longer requires the provision of appropriate consideration. Dr. Arvid Hauck emphasized that the liability for wilful misconduct or breach of contract resulting in loss of life, or damage to physical integrity or health may not be validly limited or excluded according to the new Civil Code, either. However, the legislator did not wish to retain the prohibition regarding damage or loss caused by gross negligence or resulting from offences.

In respect of an onerous contract, all contracting parties become obligees and obligors at the same time, as – when we consider - for instance in purchase and sales contracts, the beneficiary of the object of a service is at the same time the party liable for payment. If either party fails to perform his obligation according to contract, he will be held liable for it.

To what extent are the parties entitled to limit or possibly exclude their liability for breach of contract? Has there been any change in this regard upon entry force of the new Civil Code? - The expert of Kovács Réti Szegheő Law Firm raised these main issues.

Disputes in practice

Upon conclusion of a contract, all parties hope that their contractual partner will perform in accordance with what has been agreed in the contract, namely that they will not breach the contract. In practice, however, disputes often arise between the parties whether the conduct or default of any party has constituted a breach of contract or not - Dr. Arvid Hauck hinted.

The need often arises on behalf of the contracting parties to determine in advance the scope of their liability, the limit of their liability, the maximum amount that can be claimed from them in case of late or faulty performance, if any, since in negotiating a contract, the parties often cannot and could not see in advance the damages (and in particular the consequential damages) they can cause to the other party.

The old Civil Code imposed rather strict regulations regarding the exclusion or limitation of liability, as it stated that liability for breach of contract committed by wilful misconduct, gross negligence or resulting from offences, or resulting in loss of life, damage to physical integrity or health cannot be validly excluded. As a general rule, any further limitation or exclusion of liability beyond that is only permitted if the concomitant disadvantage is counterbalanced by an adequate reduction in the consideration or by some other advantage.

In practice, the parties addressed this by incorporating a clause into their contract providing that the money (fee, purchase price etc.) to be paid to the obligor was determined considering the degree of limitation of liability. However, in case of any dispute, the court often did not accept it and declared the part of the contract limiting liability invalid - The expert of Kovács Réti Szegheő Law Firm emphasized.



Change and Broadening

In the new Civil Code, the opportunities for limiting and excluding liability are significantly broadened, as the legislation no longer requires the provision of an appropriate consideration. Accordingly, the parties almost have unlimited right actually to determine the degree of their liability, and this way – like in the practice of Western countries – it can be attached to the amount of the money paid to them or to a fixed sum determined in advance.

Finally, Dr. Arvid Hauck emphasized that the liability for wilful misconduct or breach of contract resulting in loss of life, or damage to physical integrity or health may not be validly limited or excluded according to the new Civil Code, either. The legislator, however, did not wish to retain the prohibition regarding damage or loss caused by gross negligence or resulting from offences.