

KRS: real estate property purchased from gifts of money is reclaimable within five years

A recently published resolution of the Curia deems real estate property purchased from money donated for the purpose of buying such property reclaimable within five years – informed the legal expert of Kovács Réti Szegheő Attorneys at Law the legal column of Origo about the important resolution. Dr. Enikő Vida pointed out: reclaiming the gift is deemed a contract claim even if the object of the donor’s claim is the ownership title of the real property purchased from the money donated for the purpose of buying such property. Consequently, based on the new Civil Code the donor is not only entitled to recover gifts of money but also to recover the replacement value of those, for example the real estate property purchased from cash gift.

The new Civil Code entitles the donor not only to recover gifts of money but also to recover the replacement value of those, e.g. the real estate property purchased from the cash gift. The prerequisite for such recovery is the disappearance, subsequent to the act of donation, of the assumption known to both parties at the time of concluding the contract of gift which provided the sole basis of the donation, and without which assumption the donation of the gift would never have taken place.

The donor is entitled to reclaim the gift if the donee or his resident relative commits a serious infringement to the detriment of the donor or one of his close relatives. Furthermore, the donor is also entitled to recover the gift insofar as the gift is considered essential for his livelihood on account of changes in his circumstances after the conclusion of the contract and returning the gift does not jeopardize the livelihood of the donee.

Deadline for claim enforcement

In its resolution no. BH2014.211 the Curia expressed its standpoint on the matter whether reclaiming of gifts falls within property or contract law – said the legal expert of Kovács Réti Szegheő Attorneys at Law.

The above is a decisive factor when it comes to the time limitation of enforcement, since compliant to the Civil Code no statute of limitation applies to property law claims, i.e. these remain enforceable without limitation in time. On the contrary, qualifying the asset replacing the gift as a claim falling within contract law implies that the general rule of a five-year period of limitation will be applicable to the enforcement of such claims.

The Curia has unequivocally pronounced that claims concerning the claiming back of gifts are deemed contract claims, and are therefore enforceable at the court of law within five years of the due date of the claim.

The uniform judicial practice regarding the due date is that the claim becomes due with the opening of the judicial procedure of enforcement, and the actual due date coincides with the date of expiry thereof. The date of expiry is the time when the obligor is bound to perform its obligation, and the obligee to accept such performance. It follows that in cases where neither the



contract, nor the statutory provisions determine the due date of performance; it may fall due with immediate effect, or can be made effective.

With view to the above, the five-year time period within which the donor may take his or her claim to court commences with the definitive disappearance of the assumption serving as the ground for the donation of the gift – said dr. Enikő Vida.

Delaying enforcement for five years is inadvisable

As the legal expert of Kovács Réti Szegheő Attorneys at Law pointed out, reclaiming the gift is unfounded where the donor has condoned the injury. The donor's unjustified failure to reclaim the gift over an extended time period qualifies as condonation, or waiver of the donor's right of claim enforcement.

From the foregoing it follows that the donor's failure to exercise his or her right to reclaim the gift on grounds of the disappearance of the assumption serving as the base of the donation, if such failure persists without adequate grounds and over an extended period of time, may result in the perishing of his or her entitlement to do so.