

New Civil Code To Make Rules Of Invalidity Of Contracts More Accurate

The new Civil Code's entry into effect as of 15 March, 2014 will bring about numerous changes during the application of law. The earlier fundamental principles of the regulation of invalidity will not vary however, the new act will introduce several more accurate provisions, the expert of Kovács Réti Szeghe Attorneys at Law calls the attention. Dr. Mónika Kapetz pointed out, numerous provisions of the new Civil Code have been determined on the basis of the principles crystallised in judicial practice thus enhancing legal security and rendering the application of law easier for both private individuals and courts.

Within the scope of nullity, for instance, in accordance with the formulated legal practice, it will be set out that nullity may not be called on by any persons but those having relevant legal interest therein or those having statutory authorisation.

The courts must ex officio detect the nullity of a contract and even in the future, no separate proceedings will be required to be carried out in order that it be so found, i.e. on the basis of a null and void contract, the court may not compel to perform even if neither party calls on the ground for nullity.

Challenging Contracts

Within the scope of challenging contracts, the new Civil Code dispenses with the mandatory written form by [providing that] the formal requirements prescribed for the legal statements shall be applicable, therefore a contract for the purchase and sale of a real property may only be challenged in writing, the expert of Kovács Réti Szeghe Attorneys at Law pointed out.

An important change is the abandonment of mandatory order of the ways of contesting hence it will be possible to seek the assistance of courts directly without a declaration of contest addressed to the other party.

Dr. Mónika Kapetz claims it will be worth noting the fact that in general it shall not be possible to validly waive the right to contest in advance, the entitled party may, having gained knowledge of the grounds for contesting, affirm his contractual will or waive the right thereto.

Rules of Gross Disparity of Values

Within the range of mistakes of the intended legal consequences, the rules on gross disparity of values exchanged will also be supplemented. The party who may have realised the gross disparity of the values exchanged or assumed the risks thereof will no longer be entitled to challenge the contract.

A remarkable innovation of the legal rule will be that the parties at the time of entering into the contract may exclude the right of contesting on the ground of gross disparity of values exchange in their contract but such right will not be granted to parties in the case of contracts between the consumers and enterprises.

When Stipulation of the Purchase Right Shall Be Null And Void

Currently in a number of cases, private parties secure repayment of loans between them by transferring the title of ownership or other right or claim, or through setting out the right to purchase. The new Civil Code deems any contract null and void, which is directed for the purpose of securing monetary claims to the transferring of title of ownership or other right or to the establishment of the right to purchase.

Exceptions are such stipulations of complicated nature which, for example comprise rights of purchase that secure project financing or the collateral agreements determined in Directive 2002/47/EC.

Such provision to take effect has been formulated by judicial practice according to which a service shall not be considered impossible because the obliged party does not dispose of the object of the service at the time of conclusion of the contract.

Changes Related To Invalid Contracts

On the ground of an invalid contract, neither party will be entitled to demand performance from the other party however the court will only apply further legal consequences if such is sought by the party. Here a novelty is that even in the case of services provided on the basis of an invalid contract, the risk of damages shall be transferred to the other party, the expert of Kovács Réti Szeghe Attorneys at Law pointed out.

The Civil Code also enables the contractual parties to remedy the grounds for invalidity themselves even in such a way that they remove it later or in case the ground for invalidity should cease for other reason, by affirming their contractual wills; and renders it at the discretion of the parties whether the remedy should be concluded retroactively to the conclusion of the contract or for the future.

Within the scope of restoration of the original state, the Civil Code renders the provision previously sparking disputes unambiguous through determining that the court may restoration of the original state in case it is possible for both parties and in the course of it shall be ensured that the original parity of values be maintained. The obligation of reimbursement shall burden the party seeking restoration of the original state irrespective of whether the period of limitation or adverse possession has been spent.

The rules of partial invalidity and those on pertaining requirements arising in case of invalid contracts are also made more accurate.

Increasing Legal Security and Rendering the Application of Law Easier

It can be concluded from the above that several provisions of the new Civil Code have been determined along the principles crystallised in legal practice thus contributing to the enhancement of the security of law and rendering the application of law easier both for private individuals and courts, summarised finally dr. Mónika Kapetz.