

**The Curia has decided: the lien holder creditor is not always entitled to priority**

A recently published decree of the Curia made in a specific case, the Curia took a stand on the question whether the holder of the lien established on a future claim of rent can be satisfied before the other creditors?

Firstly it is necessary to clarify the question whether the lien to be established on future claim was created before the starting date of liquidation since Section 49/D (1) of the Act on Bankruptcy Proceedings and Liquidation Proceedings (Cstv.) excludes the creation of lien and the enforcement thereof after the starting date of liquidation concerning the assets of the debtor.

According to the stand point of the Curia, lien will only be created on any asset which does not yet exist at the time of the establishment of the lien (so for example a future claim), if such asset, namely for example the claim has been created. Therefore lien concerning any rent due after the starting date of the liquidation as future claim will also be created only after the starting date of liquidation. Under Section 49/D(1) of the Act on Bankruptcy Proceedings and Liquidation Proceedings (Cstv.), however, lien may not be created concerning rents due after the starting date of liquidation. **It means that the rent payable for the period elapsed before the starting date of liquidation is encumbered with lien, whereas the creditor does not have right to lien for the rent that becomes due after the starting date of liquidation.**

It means in the practice that not only the lienholder creditor is entitled to the rent becoming due in liquidation but the liquidator is also required to distribute it among the creditors under the rules of the Bankruptcy Act.

If a creditor with lien established on the claim enters into the liquidation procedure, then the liquidator must carefully act and the lien holder creditor must take it into consideration that he is not always entitled to priority towards the other creditors.