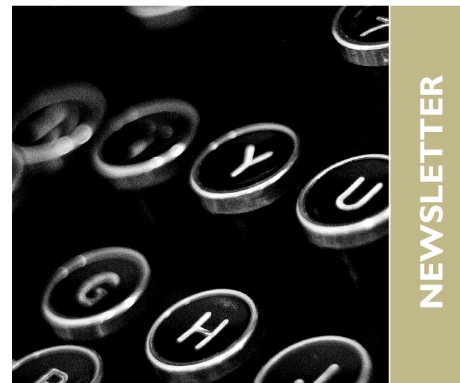


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Liens under Section 402 of the Hungarian Civil Code ruled unconstitutional

As of July 7, 2007, in order to secure their claims, construction contractors were able to register liens on the real properties on which they were contracted to perform construction works.

The purpose of the above provisions was to avoid the debt circle of construction contractors, which according to the reasoning behind the Constitutional Court's decision served a public interest and was compatible with the constitution, however, the method implemented under the Civil Code resulted in a disproportionate restriction of the clients' property rights and was, therefore, ruled unconstitutional by the Court.

In addition to expressly stating in the decision of the Constitutional Court that the relevant provisions had indeed resulted in legal uncertainty for the reason that it was unclear whether they could have been applied with retrospective effect (*"it is uncertain whether the rules only apply to contracts concluded after the relevant provisions' entry into force or prior to that as well"*), the Constitutional Court declared the term „claim” unclear. The decision of the Constitutional Court, however, failed to resolve the current legal uncertainty, since it annulled Sections 402 (2)-(3) of the Civil Code only with the effect of the decision's publication date (March 31, 2010).

There is no doubt that in case of claims arising out of and in connection with contracts concluded after March 31, 2010, construction contractors may no longer register liens. However, the question at issue is whether liens can still be registered in case of claims arising out of construction contracts concluded prior to the date of annulment.

It should be noted that construction contractors will foreseeably be entitled to register liens again following January 1, 2011, when the currently adopted text of the new Civil Code, containing a provision nearly identical to the annulled one is expected to enter into force since this new provision was not subject to the review of the Hungarian Constitutional Court.

Decision No. 35/2010. (III. 31.) of the Hungarian Constitutional Court deemed Sections 402 (2)-(3) of the Civil Code unconstitutional. These provisions entitled construction contractors to register liens in the land registry on the client's real property up to the amount of their claims. As a result of the decision, the aforementioned provisions of the Civil Code were annulled effective March 31, 2010.

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