

Conclusions of the summary report on the courts' jurisprudence in condominium-related cases

On 1 January 2014 Hungary had a population of 9,877,365 persons, out of whom more than 2,6 million persons lived in condominiums. This ratio has only grown since then, due to an increase in the housing units, mainly of flats in newly-built residential condominium complexes. The legal status and operation of condominiums and the rights and obligations of condominium owners are governed by Act No. CXXXIII of 2003 on Condominiums. The Act had entered into force on 1 January 2014 and albeit subsequently several amendments were made to it, changing living situations constantly raised new condominium-related legal problems, the judicial evaluation of which was not uniform. The aim of the jurisprudence-analyzing working group was to offer aspects and possible solutions for the judicial determination of certain disputed issues by analyzing the courts' jurisprudence.

Under Hungarian law, a condominium is established when certain parts of a building (having at least two separate flats or non-residential units) erected on a piece of land are in the separate and distinct ownership of the owners of the condominium units ("condo owners") whereas parts of the building not owned individually by the condo owners as well as the building equipment are owned together by the condo owners. A condominium is a special form of joint ownership of the common areas, in respect of which numerous substantive and procedural legal problems exist.

The working group consisted of 17 lawyers (mainly judges and attorneys), who were well-acquainted with the issues analysed by the working group. At its 5 February 2016 inaugural meeting the working group identified 25 aspects to be examined in final court decisions delivered from 1 January 2014 to 31 December 2015. The jurisprudence analysis focused on the previously selected aspects, and the working group attempted to reach a common position on the examined issues by voting.

The main questions addressed by the working group included the following:

- In case a condominium unit (flat, commercial unit) owned separately by the condo owner is sold, from whom should outstanding condominium common charges be claimed by the condominium: the seller or the buyer?
- In case a condominium flat or commercial unit is used by a usufructuary, should outstanding condominium common charges be paid by the usufructuary or the condo owner?
- In case a condominium is still in the process of formation, that is, the would-be condo owners have already signed the condominium's foundation deed but the condominium has not yet been registered in the land register, should the condominium community operate under the Civil Code rules applicable to common property or under the special rules set forth in the Act on Condominiums?

The working group has unanimously held that the courts may not apply a condominium bylaw or rule which is contrary to a mandatory statutory provision; that a condominium assembly may not pass a decision binding on a "third party" (that is, a person not being a member of the condominium community, for example, a tenant) since a condominium assembly may only pass decisions binding condo owners; third parties, however, may, voluntarily, comply with the decisions of the condominium assembly.

The further questions examined by the working group included the following: invalidity grounds having most frequently occurred in condominium assembly decisions; issues related to condominiums having less than six units; the legal status of condo owners' representative.

The working group also addressed procedural issues that had frequently arisen in condominium-related litigations (for example, the filing and content of statements of claims, payment of court fees, suspension of proceedings, suspension of the enforcement of decisions given by the general assembly of condo owners).

On certain issues no agreement was reached but the 32-page long summary report attempted to answer most of the addressed issues. The summary report is not binding on the courts, it only contains proposals in order to help judges' work.