

Conclusions of the summary report on the courts' jurisprudence in cases related to protection-of-possession proceedings instituted before local government notaries

On 1 February 2017 the President of the Curia of Hungary set up a jurisprudence-analysing working group under the leadership of Mr. Árpád Orosz (Head of Panel, Deputy Head of the Civil Department of the Curia of Hungary) for analysing the courts' jurisprudence in cases seeking the reversal of a local government notary decision taken in protection-of-possession proceedings.

The relevance of the subject-matter derives from the fact that the legislature enacted the special procedure for the reversal of local government notary decisions taken in protection-of-possession proceedings in Chapter XX/A of Act No. III of 1952 on the Code of Civil Procedure ("the 1952 Code of Civil Procedure") on the day of the entry into force (15 March 2014) of Act No. V of 2013 on the Civil Code ("the Civil Code"), and it was also enacted as a special procedure in Chapter XLI of Act No. CXXX of 2016 on the Code of Civil Procedure ("the Code of Civil Procedure").

The jurisprudence-analysing working group reviewed the relevant Hungarian court practice on the basis of case files. The aspects to be examined had been determined on the basis of study materials and questionnaire replies obtained from the heads of departments of county-level courts.

In its summary report the jurisprudence-analysing working group has made the following major findings:

- As to the application of the Code of Civil Procedure, where a statement of claims contains a definite and specific request which, however, is not in conformity with the substantive rules, the statement of claims should not be dismissed but should be regarded as suitable for being communicated to the defendant, and the court should guide the plaintiff, via the conduct of the proceedings, to specify his claims in the hearing.
- In an action for the reversal of a local government notary decision taken in protection-of-possession proceedings, only reversal of a decision on the merits may be sought. The notary's decision may not be quashed even if the notary has seriously violated a procedural rule in the proceedings, or improperly conducted the taking of evidence, or passed a decision which cannot be enforced, or failed to determine all claims, or violated the rules set forth in Government Decree No. 17/2015. (II. 16.) or Act No. CXL of 2004 on the General Rules of Administrative Procedure and Services or Act No. CL of 2016 on the Code of Administrative Court Procedure.
- It was found to be a widespread practice that in lawsuits seeking the reversal of a notary decision the courts regarded the determination of a claim for registering ownership or a servitude right in the Land Register as a related preliminary issue to be adjudicated first, and therefore in such cases they, as a rule, suspended the proceedings pending the final determination of those related proceedings. The working group was of the opinion that such a practice should only be followed where a party invoking a

right unregistered in the Land Register expressly requested to register that right in the Land Register.

- Where a plaintiff requests the reversal of a notary decision but in addition to that request he also specifies further conducts violating possession, the case should be treated as involving cumulated claims. Since in such cases material cumulation occurs, the payable court duties should be calculated on the basis of the cumulated value of the claims.
- Whether the issue requested to be reviewed was or was not dealt with in the proceedings conducted before the local government notary should always be examined separately, because in case it was not, the existence of any other ground for dismissing the request should be examined separately, *ex officio*.