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Recognition by the Court of The Legal Effect of a Written Contract On the Transfer of Real Estate

ABSTRACT: *The scope of this article is to consider the validity requirements of effective ownership transfer of real estate through contracts in Hungary. The transfer of movable and immovable property ownership has diverse requirements to be valid in terms of a contract. This article thus determines what regulations and formal criteria need to be met by a seller and a buyer in acquiring the ownership of immovable properties, that is, what makes a contract valid and effective and capable of raising legal consequences and having a binding force. While invalid contracts can also be formulated to be valid and effective in special cases, invalidity rules are diverse, depending on what type of ownership transfer established by the sale contract.*

KEYWORDS: *ownership transfer, invalidity, effectiveness, real estate, property change*

1. Introduction

Article XIII of the Hungarian Constitution¹ states the right to hold ownership by everyone. As a fact, the owner is eligible to hold the power of owning and inheriting. As property, we understand both movable and immovable property. Article XXVIII (1) of the Constitution states, that everyone has the right to exercise his/her (hereinafter, his) rights and obligations in any claim or suit brought against him in the judicial procedure of an independent and impartial court, or tribunal established by law, with fair and public process and within reasonable time. However, in addition to the capability of owning property and the of holding property – possession – the rights of use, of beneficial enjoyment and to dispose over property are also part of the capability. The right of disposition, just like surrendering the possession, use of

1 Fundamental Law of Hungary from 18 April 2011.

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beneficial enjoyment, pledge or encumber or, most importantly for the purposes of this study, abandoning ownership are matters of concern if the disposition of the property transfer is defective. This is because the legal process is subject to formal and substantive obligations in certain cases governed by law.²

In Hungarian private law, legal personalities' private autonomy and positivity are fundamental principles that prevail, especially in the law of obligations. These principles and characteristics have developed alongside the right in rem regime.³ Here, it becomes important to emphasise and highlight that, while the right in rem has a cogent attitude, the law of obligations is more likely to exhibit flexibility. This characteristic of the Hungarian contractual system guarantees that legal personalities – natural and legal persons – are free to dispose of their contractual relations and to choose with who they are being involved in legal relations. However, it is also important to consider that, with private autonomy, individuals – with or without legal representatives – must act with great responsibility and must assume the consequences of their legally effective acts. Similarly, when the other side of a contractual relation claims take the forthcoming judicial procedure, being processed by the court. Liability applies to the right of property ownership and to disposing of the property. Legal acts in our everyday life, even if one sells his immovable property once in a lifetime or does it with frequency, have an impact on others. The way a contract is concluded and the surrounding legal procedure – as previously mentioned – must meet certain formal, substantive requirements, together with the procedure for registering the ownership of real estate. Therefore, the consideration of passing over real estate ownership must be given to morality with a legitimate interest, within legal requirements that mean compliance with regulatory criteria. These circumstances are to be handled within good faith and with legal knowledge.⁴

What can we do if the contract we have entered cannot producing legal effects due to some defect in its binding content or form? How far can we remedy the defect of the contract and with whom and how can we transform our contract into a valid one to fulfil its purpose? What can be done against an arbitrary action challenging our ownership rights? These questions are very important for an ownership acquisition dispute. Infringements are preferably not solved through prohibited arbitrary action but by reasonable agreement between the contracting parties or, as a last step, through judgment thereof.

2 Act CXLI of 1997 on Real Estate Register, Art. 51.

3 Az ingatlan-nyilvántartási joggyakorlat-elemző csoport összefoglaló véleménye, 2016.

4 Referenced acts and national regulations.

2. Real Estate Properties as Regulated in the National Civil Act

A mixed system has been developed in Hungarian law in relation to the acquisition and transfer of ownership rights in general and of real estate in particular case. The valid, effective, and efficient acquisition of ownership rights includes two acts – legal actions – simultaneously. One act is the legal transfer with a contract and the other one is the act of passing over the right of possession. The concept of the acquisition of property means the creation of a right of ownership over a thing – right in rem⁵ – including the acquisition of a new right for new ownership, which is independent of the previous ownership right plus the creation of a right of ownership based on a pre-existing right of ownership. As such, based on this classification, there are two types of acquisition of properties: one which is so-called *original* and one which can be defined as *derivative*.⁶

The original acquisition of property is when a new property right is created, independently from the pre-existing one. Through this type of ownership acquisition, the “new” ownership is independent of the older, pre-existing encumbrances in rem. A separate, new ownership relationship is thus created as a result of legal facts, independent of the rights and obligations of the previous ownership. In this case, there is an acquisition of rights free of any restrictions on the thing – rem – from previous rights or commitments. Derivative acquisition, however, comes when the acquired ownership is based on the pre-existing ownership of the thing. In this case, the new owner inherits and receives the previously existing negative rights and restrictions attached to the newly acquired thing. Real estate property selling, and acquisition are typically derivative acquisition types, where the buyer needs to look after all rights and restrictions attached to the thing which he intends to buy. It can be stated that a real estate acquisition is not only signing a sales contract⁷ – signed by hand or electronic signature⁸ – but also giving over the possession of the property from the seller to the buyer, while meeting all legislative requirements plus proceeding the registration in the national immovable property registration system. The Hungarian system has a constitutive effect by registration; for this purpose, all buyers need to hand in their valid documents – introduced below in sections 2.2 and 4 – to the Hungarian Real Estate Register Office⁹ for constituting a valid ownership acquisition of the ownership right.¹⁰ Besides selling contracts, ownership transfer can

5 Civil Code, Book V, Right in Rem.

6 Lenkovics, 2012, pp. 14–29.

7 Civil Code, Book VI, Law of Obligations, Art. 215.

8 The new regulations are effective from 2024.

9 Hungarian Real Estate Registration Office of the Government Office.

10 Besides ownership rights, other rights can be constituted through the register.

also be established ex-lege for inheritance or widow rights.¹¹ Naturally, these types of ownership need to be registered officially in the same way as an ownership change based on a sales contract.¹²

2.1. Legal Framework Regulating Real Estate Ownership Acquisition

The provisions of rights in rem relating to immovable property are found in Book V of the Civil Code¹³. This section regulates the basis of the Hungarian ownership legal system, the Hungarian regime of property transfer, and the types of ownership rights and limitations. The Law of Obligations regulates the types of property acquisition. The bound normative system of the right in rem and law of obligations differ in that while the previous is a stable system, the other is a dynamic system. The freedom to contract and the freedom to choose the contracting parties are general rules that lead to parties' freedom of contractual actions. The stated principles of land register and the main substantive rules on the creation, modification, and termination of registered rights have been incorporated into the new Civil Code, thus returning to the previous private law solution but bringing it up to date. The Civil Code also serves as a conceptual definition, underlining the integrity and public validation of rights belonging to immovable property with legally relevant facts included in the Code, together with the registered details of the registered owners. However, procedural matters and other detailed rules beyond the Civil Code continue to be governed by it. The article will also introduce these regulations.

2.2. Definition of Real Estate

The main categories of immovable properties are regulated by separate laws and regulations, such as the Act on Certain Rules on the Rental and Disposal of Apartments and Rooms,¹⁴ Act on Transactions of Agricultural and Forestry Lands,¹⁵ Act on Condominiums,¹⁶ Act on the Real Estate Register (hereinafter, Reg. Act). The concept of immovable property is defined in the Reg. Act. The text of the law distinguishes between a plot of land and a separate property other than a plot of land. The definitions

11 Ownership rights besides acquisition Civile Code.

12 Szladits, 1933, pp. 78–82.

13 Civil Code, Book V, Right in Rem.

14 Act LXXVIII on Certain Rules on the Rental and Disposal of Dwellings and Premises.

15 Act CXXII of 2013 on Transactions in Agricultural and Forestry Land.

16 Act CXXXIII of 2003 on Condominiums.

of these terms are found in Act 11§–13§.¹⁷ In the case of real estate acquisition, knowledge of additional legislation is also required, such as the VAT Act and Personal Income Tax Act for fulfilling the eligible procedure from the owner's side.¹⁸

The Civil Code does not contain a definition of immovable property, but in general legal theory, immovable property is defined as property that cannot be moved to another location without damage to its condition or only with a significant loss of value. According to Géza Marton's definition of real estate based on Roman law, "res immobilises"¹⁹ a plot of land – *presidium, fundus* – is a certain delimited part of the land, including its constituent parts, for example, the living plants, the buildings above and underneath the ground, until the limit of the potential utilisation. This is the definition that can be found in the Civil Code.²⁰ However, Article 5:17 of the Civil Code includes limitations in the ownership rights on real estate. Furthermore Article 5:18(1) states that land and the building form parts of the *rem*, with exceptions mentioned in paragraph (2), which states that the land and building can be registered separately in the land register. For the provisions of civil law, immovable property is defined as land that is subject to the land register and everything that is permanently united with the land, that is, permanently connected to it, such as a house, trees, standing crops. As a legal concept, real estate is one of the most important objects of property law; for instance, it is considered a legal *rem*. This is a generic term, derived from the Latin "immobile" standing for things which are land and buildings. Real estate is a spatially and legally delimited part of the land underneath, which in its physical reality, cannot be separated or moved from one place to another at all or, in case of separation, only with substantial damage to its condition. Therefore, its possession is physically bound to a place. In terms of function, it may be considered economically as a means of production in the broadest sense, when it is used as agricultural land for crop production, farming, forestry, or game–wildlife – management. Land can be part of the national strategy and can be, as it has been to a significant extent throughout history, part of the state's revenue in the form of taxes on land. It can also be used as land for private purposes as a residence, as a seat, as a business premises – disposition – and for economic activities and purposes as well.

Property –real estate – can be grouped according to different aspects. It can be distinguished according to the person who owns it, whether it is privately owned and with limitations or state-owned, whether the owner has the right to dispose of it, and what is the purpose of a possible disposition. Property law is the law itself with no

17 Act CXLI of 1997 on Real Estate Register, Art. 11–13.

18 Act CXXVII of 2007 on Value Added Tax, Act XCIII of 1990 on Fee Law, Act CXVII of 1995 on Personal Income Tax.

19 Márton, 1960, pp. 119–121.

20 Civil Code, Book V, Art. 17.

other than the totality of rights and obligations relating to property.²¹ On 18 February 1902, during the analysis of the concepts of movable and immovable properties, the Court of Appeals stated²² that real estate as a subject of civil law belongs to right in rem, as a legal concept which underlies the legal framework. The Court of Appeals in its 8112/1885. judgment stated that buildings belonging to the real estate on which they were built, as acquiring the ownership of the building built on land not owned cannot be established. The Civil Code states in 5:18. § that land and any building built on it can be separated, and legal status is ed as stated under Civil Code 5:19 §,²³ which differs from the old Civil Code.²⁴

2.3. Requirements and Conditions for Concluding Real Estate Ownership Acquisition

When we acquire ownership by sale, we require special attention on who we are contracting with. Contracting parties must possess the following statuses:

- legal capacity as of Civil Code 2:1§ (1) – all persons shall have legal capacity;
- legal competency as of Civil Code 2:8§ (2) – whosoever is competent is entitled to conclude contracts and make other legal statements;
- not being incompetent legally – Civil Code 2:9§ (1).

The following limitations related to a legal person's status are also to be highlighted here as follows:

- minors of limited legal capacity between the age of 14 and 18 who are not incompetent;
- legal statements of minors of limited legal capacity as of Civil Code 2:12§ shall not be deemed valid without the consent of that minor's legal representative;
- legal statements of incompetent minors as of Civil Code 2:14§ (1) whose legal statement shall be null and void, their legal representatives shall proceed on their behalf – aged below 14 or incompetent by authority decision.

Those persons who have the legal capacity to act, can enter contracts and create effective contractual relationships or other juridical acts on their own, but those legal persons who have no legal capacity to act – due to minority or by court judgment on placement under guardianship – will form of their own power only null and void contracts. Therefore, all contracting parties must be aware that acts made by persons who have no legal capacity to act are not null and void in case the content of the act

²¹ Tolnai, 2019.

²² Tolnai and Főnyiné, 2019, II.2.5.

²³ Az ingatlan és az ingatlanjog fogalma I.

²⁴ Act IV of 1959 on the Civil Code of the Republic of Hungary.

implies that the person would have done the same legal act in case of having the capacity to act. This statement is formed by the legislator as an exception to null and void contracts originating from a person's legal capacity. As for juridical acts whose legal capacity is limited due to their minority, consent provided by their statutory representative is required to deem those valid.

The first act of the Hungarian legal framework of real estate acquisition is the Fundamental Law of Hungary, which states both the right to hold ownership and the responsibility arising from ownership right. Then, the Civil Code, Book II states the personal law defining legal capacity and legal competency statuses, as introduced above. Civil Code, Book V then regulates the right in rem and the content of ownership rights in general, specifically and the related limitations. Common rules on the acquisition of immovable property are found in Book VI. The Law of Obligations provides general and specific contract rules, alongside the common rules on the registration process of immovable property at the Land Registration Office. Book VI also deals with the invalidity rules of contracts, including the two broad categories of invalidity: nullity and voidability. The immovable property registration principal and procedure rules are supplemented by Reg. Act and its implementation decree.²⁵ Further, the Transaction in Agricultural and Forestry Land²⁶ belongs to this listing, as these types of lands are also considered real estate within their special rules. Finally, the XXV Principle Civil Decision (hereinafter, Civil Decision) on the validity of immovable property ownership transfer is also a legal source for ownership rights.²⁷

As a contractual obligation, the title of an acquisition – *ius causa, titulus* – is to be determined. The absence or invalidity of the title disqualifies the acquisition of property. The transfer, called tradition or mode of acquisition – *modus* – is the next legal statute that applies. The transfer or mode of acquisition in the case of immovable properties are considered transactions in rem, which conclude with the entry of the change of ownership in the land register. The transfer of ownership does not take place merely by the transfer of the thing, as it must be based on a valid legal title, as previously defined. The importance of the duality of title and transfer mode lies in the fact that title is usually created by a binding contract of obligation, whereas the acquisition and transfer that are distinct from the title are achieved by a transaction in rem which transfers property. It is thus significant which legal acts are subject to the law of obligations and which are subject to the right in rem.²⁸

25 Government Decree No. 109/1999.

26 Act CXXII of 2013 on the Turnover of Agricultural and Forestry Land.

27 Curia, Professional Materials of Civil Collegium, XXV Principle Civil Decision.

28 Civil Decision.

3. Contractual Requirements for Effective Real Estate Ownership Acquisition

Fundamentally, a contract need to meet validity requirements both in terms of its form and content. The Civil Code defines two forms of invalidity types: nullity and contestability. In case of nullity, the fault is considered so serious by the private law regime that its ipso iure renders the legal relationship ineffective meaning by force of law. For contestability, the law requires the validity of the claim's dependent on the rights of the parties. In the case of a successful contestation of the contract, the contract becomes invalid in the part which the parties have contested and from the past. Furthermore, no entitlement can be based on the successfully contested contract, and the risk of damage passes over to the other party upon the performance that has already been provided by the transferring party. The importance of the legal institution of invalidity is that such contracts are not suitable for achieving the legal effect originally intended by the contracting parties. Invalidity essentially behaves as a civil penalty.

3.1. Validity Requirements in Contractual Relations

The Civil Code distinguishes between nullity and contestability from the point of an invalidity sanction. A successfully contested contract with an expression of will is invalid *ex tunc* – from the past – in case of nullity. The contractual will in which the mistake is found, the contractual declaration expressing the will of the parties and the intended legal effect is what the parties intended to achieve. For a contract to be valid, these three elements must meet the effective legal requirements. The formal and substantive requirements are stated in section 6:70 §, while section 6:215 § (2) mentions the requirement of real estate property possession to be passed over additionally alongside a valid contract. Based on these provisions, a simple written form is required, which can be fulfilled through a declaration written by the parties on the minimum content of the contract. In general, no private or public document is needed for a sales contract, but Article 32§ (3) of Reg. Act states that the registration of property rights may only take place based on a public deed or a private deed countersigned by a lawyer – legal advisor – or notary.²⁹ In principle, the land register requires the written recording of the real estate ownership sales contracts; otherwise, there would be no deed or only a complicated procedure to register the acquirer of the property in the land register, which has constitutive power. Documents then

²⁹ Code Civil, Book VI.

must pass and meet all substantive requirements stated in the Reg. Act. A contract for the transfer of ownership of immovable property is in writing if all contracting parties have signed the contract; however, the written contract can be on separate papers, with the signatures of the contracting parties on separate documents as well. The aim and the property must be always defined clearly and identifiable for the land registration process. The validity of the contract is not affected if the declaration of all parties is not contained in the same document but is the result of a mutual and unanimous expression of the parties' scope stated separately by each party. A relatively new Hungarian regulation on real estate registration procedure and³⁰ validity requirement of real estate ownership acquisition contracts is the electronically authenticated e-signature. This is to be placed on the contract in front of the attorney, or notary public, as a high-security electronic signature is based on a qualified certificate or by using a document authentication service traced back to the identification of the signing party.³¹ This new legislation as is based on the Reg. Act and entered into force on 1 February 2024. The e-signature must be created on a form provided for this purpose, which must be authenticated by the affixing of the advanced secure electronic signature based on an AVDH service.³²

3.2. Civil Decision on the Requirements of Real Estate

Beyond the requirements of the Reg. Act. and of the Civil Code, mandatory elements are also defined in the previously cited XXV Civil Decision, which sets mandatory formal and content requirements to be met as binding elements of the acquisition contract. Based on the Civil Decision, it is necessary and enough to include in the contract not only the identity of the parties but also their intention of the transfer of the ownership related to the sellable immovable – real estate – property. In case of a contract containing specifications and considerations on the real estate property – or if the transfer is free of charge – the considerations shall also be determined from the contents of the document. Furthermore, the validity of these ownership change contracts for immovable property do not depend, as a matter of form, on the document being dated, indicating the place and time of conclusion, or on the involvement of witnesses to the transaction, as mentioned above. Section 6:38§ (1) of the Civil Code provides that in case the sales contract is written in several copies on differing documents, the

30 Act C of 2021 on the Real Estate Register.

31 Government Decree No. 179/2023 on the Implementation of Act C of 2021 on the Real Estate Registry, Art. 106.

32 On 15 June 2021, the Hungarian Parliament passed Act C of 2021 on Land Registration that entered into force on 1 October 2024. The meaning and purpose of the new service is the digitalisation of land registry administration in Hungary.

contract is still valid even if each party signs only the copy intended for the other. The signature of the contract is thus a formal condition of validity, as stated in the Decision. Regarding the substantive content of the contract law does not specify the object of the purchase. Therefore, in the absence of a specific provision related to the will of the contracting parties, the immovable property may be recognised if the subject of the sale – the rem – cannot be defined from the deed itself, but it is clear for the parties with no doubt which property is on sale. The XXV Civil Decision gives an example for such cases, using the sentence ‘I sell you my house which is in the 2nd district of Budapest where my parents lived during my childhood’. This definition can only be valid naturally, if both parties are sure on the named property, and if, by determination, no other real estate meets these determinations by the seller. Regarding the aim – will – of the parties, it is sufficient that the content of the deed show that the parties intended to transfer the ownership of the immovable property. For this purpose, sales contracts can also be titled differently – by parties such as natural persons who are not familiar with legal determinations – such as “receipts”, “bonds”. These contracts are also valid if they meet the requirements in content set in regulations.

4. Consequences of Not Complying With Foreseen Regulations

A consequence of not complying with the legal framework is the invalidity of a contract. Other legal effects of invalidity shall be invoked by the court at a party's request, as stated previously. In principle, no right may be established and performance may not be demanded on the basis of an invalid contract.

4.1. Nullity and Avoidance

There are cases that cause nullity and there are absolute cases that cause avoidance. Form defection is the error in the declaration of the legal aim. Defection causes null contracts. The system of invalid contracts by the Civil Code is as follows.

Defection in will: mistake – Civil Code 6:90§, misrepresentation and unlawful threats Civil Code 6:91§, secret provisions and shame contracting Civil Code 6:92§.

Defection in the form of the contract – error in the contractual juridical act – which are to be corrected by the will of the parties as regulated under Civil Code 6:94§. Defection in the intended legal effect would include the following: prohibited contracts, contracts contrary to good morals, usurious contracts, obvious disproportionality, nullity of transferring title as security, consumers statements as waiver, unfair standard contractual terms, and impossible and contradictory contractual aims found under Civil Code 6:95-6:104 §.

Within each group, there are mixed reasons for nullity and contestability. This is defined in the Civil Code as the concept of essential error. It means the error applies to an essential circumstance when the party had known about it or would not have entered the contract with a different content known by him. The legislator does not uphold the rule of error in legal matters. It is also a new provision that the contract cannot be challenged by those who may have recognised their mistake or assumed the risk of making a mistake. The law also defines who is a deceived contracting party as one who is misled in general or is misled by the behaviour of the other contracting party. Under a separate provision, it prohibits the stipulation of fiduciary security, invalidating it. The Hungarian legislation system deals with relative nullity as well. This means nullity based on limited capacity, and incapacity can only be invoked in favour of the person whose capacity is limited or lacking. In cases where a valid contract for the sale of immovable property is not suitable for registration in the land register and the buyer cannot otherwise obtain a suitable document for registration, the court judgment of the dispute between the seller and buyer may be the document that can serve as the basis for registration.

In the case of nullity, the Civil Code states – as an innovation compared to the old Civil Code – that only one party cannot invoke it without a deadline and, when nullity can be invoked, the lawsuit related to it can be initiated only by those who have a legal interest in doing so or who are authorised to do so by law. The legal interest would mean that, due to invalidity, someone acquires a right or is released from an obligation for invoking.

5. Validation of Form-Defective Contracts On the Conveyance of Real Estate

In general, the main legal consequence of invalidity is, that no right can be based on such a transaction. For example, the legal effects intended to reach the parties cannot be achieved. This is a legal consequence that the court must apply *ex officio* in the event of nullity. Such contracts can be invoked, and legal proceedings related to the nullity of the contracts can be initiated by those who have a legal interest in it, in addition to those who are entitled to do so under legal requirements. However, in case of contestability, this general legal consequence exists only for the person entitled to it. A contract must be considered valid until a final judgment declares it invalid. Therefore, lawsuits to establish the validity of a contract are incomprehensible. It is not possible to base a right on an invalid contract and demand the performance of that contract. This fact must be considered by the court *ex officio* in case of nullity. The court only applies the legal consequences of invalidity to a party's request, although the party is not bound by the request in terms of specific legal consequences. The

court may only apply a legal conclusion against which all parties apply. However, the party may not request the invalidity of the contract to apply the legal consequences. An additional legal consequence of invalidity is that the court applies it only based on the party's request, as declared under Civil Code 6:108 § (1)–(2). Other consequences of invalidity contracts are to be listed and introduced. If the cause of the invalidity can be eliminated or has subsequently ceased, the court may declare the invalid contract retroactive to the date of its signature – *ex tunc* from the past. Declaring contract validation is equivalent to restoring the original circumstances. If both would be appropriate, it is at the discretion of the court to decide on the legal consequence of invalidity, as defined under Civil Code 6:110. §. The following consequences can arise from the invalidity of real estate ownership acquisition contracts.

Restoration of the original situation – *status* – is regulated under the Civ. Code 6:112 §. Restoring the original state is possible only in the case of contracts for the transfer of ownership of things – *rem* – which are originally reversible. In the process of a real estate sale, the original state would be the non-change of the ownership right, the reimbursement of the selling price received by the seller, or the return of the real estate possession. In case of originally irreversible services – besides real estate ownership transfer – the restoration of the original situation is conceptually excluded. However, for goods or services, for various reasons, it may later become impossible to return the thing in kind. As an example, subsequent irreversibility may occur in case the purchased thing is resold, processed, or destroyed. The reimbursement of mutually performed services based on an invalid contract can only be done mutually and simultaneously. Only the party who undertakes to reimburse the service provided to him and can do so may effectively demand the service returned to him stated in Civil Code 6:112. § (1). In the name of restoration of the original condition – situation – the claim for reimbursement for the reversible provision of goods is a legal claim in *rem* – *rei vindication* – due to the invalidity of the contract; as such, the other party cannot acquire ownership of the provision of goods. When processing the consequences of invalidity, the court must ensure that the value of the original services is equivalent and maintained, whilst it must also prevent the unjust enrichment of either party. The invalid contract's financial reimbursement means the value of the service provided under the restoration of the original circumstance is not possible in nature or it is possible but it would harm the relevant and essential interest of one of the parties from a legal viewpoint.³³

The legal claim in *rem* can also be asserted against third parties in the case of real estate, within the limits of a cancellation lawsuit. However, the demand for the repayment of the sum of money paid without debt based on the invalid contract is a compulsory demand, as the same amount of money must be returned. As a result, if

³³ Juhász, 2020, pp. 82–98.

the provision of goods is opposed to the provision of money, the temporal possibility of reclaiming the individual services differs, since the compulsory monetary claim expires during the general five-year limitation period. In this case, the ownership claim does not expire but its enforcement is only determined by the acquisition of ownership by possession of the contracting party. The legal consequences of invalidity in the legal relationship of the parties shall be deducted upon request if the performance has already taken place since the invalid contract. If several legal consequences of principle application are possible – for example, in the case of a conspicuous value ratio – the court is entitled to discretion. During its consideration, the court is not bound by the claims or counterclaims of the parties but can decide to apply the different legal consequences of invalidity. Under Civil Code 6:111. §, the contractual aims are confirmed according to which the contract is valid *ex tunc*. If the cause of invalidity is subsequently eliminated by the parties or if it is terminated for another reason, the legislator ensures that the parties, in addition to the court, can decide on the continuation of the contract. As another procedural consequence, if the court has already condemned one of the parties in a service demanded under a contract and did not plead in the lawsuit that the claimant is basing his claim on an invalid contract, he may no longer plead this in a subsequent lawsuit. Judicial practice has established that, in such cases, the court accepts the contract as valid by deciding to contain a penalty based on the contract, as rights can only be based on a valid contract. In such a lawsuit, the obligated would have had the opportunity to plead invalidity, as he would violate contractual security and performance discipline if he would do so later.³⁴

5.1. Recognition of the Legal Effect of a Written Contract For the Transfer of Immovable Property

A contract must be considered valid until a final judgment declares it invalid. Therefore, any lawsuits aimed at establishing the validity of the contract are incomprehensible. Determining the existence or termination of a contract is a different matter, as it takes place on a different legal basis. However, lawsuits to establish the invalidity of contracts are common. It is not possible to base a right on an invalid contract and demand the performance of that contract. The court takes this fact into account *ex officio*. However, the court also applies the legal consequences of invalidity only at the party's request, although it is not bound by the party's request in choosing the specific legal consequence. The court may only apply a legal conclusion against which all parties object. However, a party may also request the invalidity of the contract

³⁴ Tolnai and Fónyiné, 2019, pp. 251–259.

without requesting the application of the legal consequence.³⁵ When the reason for invalidity affects a specific part of the contract, the legal consequences of the invalidity must be applied to this part of the contract. In case of the partial invalidity of the contract, the entire contract is overturned if it can be assumed that the parties would not have concluded it without the invalid part as per Civil Code 6:114. § (1). The word “supposedly” in the named regulation provides the court more discretion in considering all circumstances of the contractual relationship between the parties. The Civil Code after the entry into force of 1/2014. 1/2005 on the procedure to be followed in connection with the ex officio detection of the cause of nullity maintained in force by the civil law unity decision. The VI.15 Civil Collegium Opinion, that is, when the parties do not refer to grounds of invalidity, but the court detects it, the Civil Code maintains that if the grounds for invalidity affect a specific part of the contract, the legal consequences of the invalidity must be applied to this part of the contract. In the case of a partial invalidity of the contract, the entire contract is overturned if it can be assumed that the parties would not have concluded it without the invalid.³⁶ The word “supposedly” gives the court more discretion in considering all circumstances of the contractual relationship between the parties.³⁷

In the Hungarian law on civil procedure, pursuant to section 237§ (3) b, the court agrees to clarify the framework of the legal dispute by informing the parties if, based on the available data, it detects a fact that must be considered ex officio. This can happen if the court notices that the form of the contract is incorrect, conflicts with civil legislation, and so on. Primarily, the preliminary procedure stage is used to clarify such issues, where the party can still relatively freely modify the claim or counterclaim.³⁸

Curia opinion 2/2010³⁹ on certain procedural issues arising from invalidity lawsuits is also maintained by the Court as its opinions such as the party must indicate exactly which legal consequence of the invalidity application of the legal consequence of the invalidity is requested from the court, and with what content, the request for an annulment action – counterclaim – is based on the invalidity of the contract. However, it is not enough to ask the court to restore the original state or to declare the contract effective. Additionally, the court must only recognise an obvious nullity ex officio that can be clearly established based on the available evidence. To establish nullity, the court may not conduct evidence ex officio. In juridical procedures, the court must also detect the non-existence of the contract ex officio prior to examining

³⁵ Kurucz, 2022, pp. 238–248.

³⁶ Art. 114.1.

³⁷ Csehi, 2013, p. 536.

³⁸ Act CXXX of 2016 on Civil Procedure.

³⁹ Curia, Professional Materials of Civil Collegium, 2/2010, Opinion on certain procedural issues in invalidity actions.

the grounds for nullity. The court is also obliged to detect nullity *ex officio* in second-instance proceedings if the existence of the cause of nullity can be clearly established from the data of the first-instance proceedings.

Regarding the question of bindingness to request, it is of great importance that the parties in the invalidity procedure request the annulment of the contract or exercise their rights of contest, often referring to several legal rights. For an invalidity request based on nullity, the court can establish the nullity of the contract – *ex officio* – for a different reason, on the basis of a different legal title than the one indicated by the plaintiff in his claim. In this case, the principle of binding to the application does not apply. If the contract is considered to have been concluded, the court first examines the grounds for invalidity. The court may be the first to establish the existence of a clearly established cause of nullity even without evidentiary procedure. In this way, it becomes unnecessary to examine the cause of nullity raised by the party, which may subsequently need to be proven. Therefore, the court is not bound by the order of the requests presented by the party in the context of the examination of nullity grounds.⁴⁰ The Civil Code only intends to ensure the protection of the perpetuity of the ownership right already acquired. At the same time, during the transfer, the right holder has only a hopeful expectation of obtaining the ownership right based on the contract, as he must validate it with the registration, and the ownership right thus acquired benefits from Civil Code. 5:35§ in the protection provided. Moreover, the decision published under No. 61 states that the continuous possession, use, and burden of the property result in the interruption of the statute of limitations, and this condition exists if the seller disputes the validity of the contract and does not demand back possession of the property.⁴¹

Based on a non-existent contract, no change in ownership can occur, so the owner can use the *rei vindication* claim against the previous owner without a legal basis. However, if a real estate registration transfer or resale has taken place, the original owner can assert a claim against the direct right holder and other authors according to the rules of the cancellation lawsuit. Therefore, as a legal consequence of the transfer of property based on a non-existent contract, the original state is not restored but the basis for the re-arrangement of the performed service of things is re-vindication, possession without a legal basis, and the fact that even in the name of enrichment without a legal basis, and the financial advantage must primarily be returned. As the declaration of validity remedies the invalidity of the contract retroactively to its conclusion, the contract must be considered valid from the time of its conclusion based on the declaration of validity. Therefore, a breach of the contract

40 Csehi, 2013, p. 536.

41 Tolnai and Fónyiné, 2019, pp. 251–259.

is the failure to fulfil any obligation arising from it in accordance with the contract, regardless of whether it is realised before or after it is declared valid.⁴²

6. The Land Register and the Conveyance of Ownership Rights on Real Estate

The land register in Hungary is called the Real Estate Register. Real estate registration is regulated primarily in the Civil Code, Book V, Rights in Rem, after the Ownership and Limited Rights in Rem sections, as the last chapter of the book, with six sections. Besides the Civil Code, the previously cited Reg. Act also introduced governmental implementation regulations listing the obliged content and precise procedural rules of the registration of properties. Opinion 18/2010 of the Supreme Court of Justice explains that the principle of our law on land registration – formerly the Land Registry – has remained unchanged for more than 150 years. This is because the registration of property rights in the Land Registry had a constitutive effect and is also retroactive – *ex tunc* – to the date of the application for registration. The tradition is also included in the provisions of the current Land Registry Act.

The entry in the land register has a constitutive effect. To obtain ownership of real estate, in addition to a valid contract of sale, registration in the land register is required. The registration is a final record of the acquisition of rights in the land register, which, in accordance with its constitutive effect, brings about the change of law directly, irrespective of any further statement by the parties or any confirmation by a third party or authority. The constitutive effect is also strengthened by Civil Code section 5:178 § (5) and (6) extending it not only to the acquisition and creation but also to the transfer, encumbrance, and termination of the right. The registration is retroactive – *ex tunc* – to the date of filing of the application, in accordance with section 5:168 §. The land register is established in Hungary according to the following principles: public access to the real estate register, principle of documentation, principle of registration, principle of ranking, and authenticity of the real estate register found in the Civil Code.⁴³

6.1. The Hungarian Property Registration System and Its Function

The land register is the basic institution for the movement of real estate ownership, containing, for each municipality, the legal data of all real estate in the country and the rights and legally significant facts relating to the real estate. The register also

⁴² Csehi, 2013, p. 537.

⁴³ Civil Code, Art. 160-170.

includes the personal identification and address data of the persons registered therein, as required by law for the purposes of registration. The current land registration system is the result of the merger of two separate registers that existed before the Second World War: the cadastral register, which contained the details of immovable property, and the land register, which was used to record the creation, termination, and modification of certain rights for immovable property. The unified land register fulfils both these roles today. From the viewpoint of private law, the most relevant issues are the impact of land registration on the protection of bona fide authors and the role of registration in the acquisition of property. In real estate registers, all data pertaining to a real property and any associated rights and facts of legal importance, as well as the holders of such rights and the data of right-holders shall be registered, recorded, and updated on the title deed.⁴⁴

7. Conclusions

When considering the legal consequences of invalidity, the court must establish the balance of services and compensation for the parties that existed at the time of the conclusion of the contract. The court must strive to ensure that neither party ends up in a disproportionately more favourable or unfairly heavier financial situation than the other during the settlement of the legal consequences of invalidity, in other words, the unjust enrichment of either party must be prevented. The conclusion of real estate sales contracts requires more care than usual, not only because breaches of the mandatory rules can lead to the contract being invalid or not even result in the buyer acquiring ownership, despite its validity. Caution is also warranted because there is sometimes a longer period of time between the conclusion of the contract and the acquisition of property. Ownership is not acquired by the buyer when the contract is concluded but when the land registry enters the contract into the title deed. For this, the title deed is not enough, as the final and definitive registration of ownership is required. A contract for the sale of immovable property is binding in both form and content, at least in terms of the content and form required by law, which means that a contract may include a clause to the contrary, but must also comply with the conditions required by law. The contract must clearly state the intention to sell and the intention to buy.

44 Szilágyi, 2022, pp. 402–408.

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