European Integration Studies, Volume 18, Number 1 (2022), pp. 70−83.
https://doi.org/10.46941/2022.e1.70-83

THE INVALIDITY OF ASSET MANAGEMENT CONTRACTS

JÁNOS DÚL

assistant professor, Ph.D.
Department of Civilistics, Faculty of Public Governance and International Studies,
University of Public Service, Hungary
dul.janos@uni-nke.hu; janosdul@gmail.com
https://orcid.org/0000-0001-5445-687X

Abstract: The paper addresses the issue of validity and invalidity of the asset management contract of national property. The definition of 'national property' covers both state property and municipal property, therefore the asset management contract is regulated by Act CXCVI of 2011 on the national property, Act CVI of 2007 on state property, and Act CLXXXIX of 2011 on Hungary's local governments. Those must be taken also other legal acts into consideration such as Act V of 2013 on the Civil Code because the above-mentioned legal acts use certain legal terms regulated by the Civil Code. The contract shall be considered as a contract on the borderline of private law and public law; one must pay attention to every aspect of this contract. One aspect of it is the validity and invalidity of the contract.

I will outline the issue of validity primarily along the grounds for invalidity regulated by the Civil Code. However, certain grounds cannot be taken into account. They are, in principle, related to the performance of a public task as the purpose of the asset management contract, or to the subjects of this contract, or the contract is valid due to other special features.

Keywords: *validity, invalidity, nullity, contestability, national property, asset management contract*

1. INTRODUCTION AND GENERAL NOTES

In this paper, I deal with the validity and invalidity of asset management contracts related to national property. I outline the issue of validity and invalidity primarily along the grounds of invalidity, namely, whether and to what extent each ground of invalidity applies in the context of the asset management contract.

At a theoretical level, several works (journal articles, studies, and books) have dealt with issues related to the asset management contract, but have not defined the concepts of asset management, right of asset management, and asset management contract. (B. Szabó et al., 2018; Csehi, 2001–2002; Diczházi and Macher, 2000; Drinóczi and Frank, 2008; Németh and Sík, 1997). The previous sentence should be interpreted restrictively in that way the term 'asset management' has been used to refer to a wide range of legal institutions and definitions, but not many such concepts are associated with state and municipal property, which are essentially related to the

professional management of property by natural persons and legal entities, typically in the course of their business. Concepts that refer to the management of national property are not sufficiently comprehensive or are too general.

In my view, an asset management contract is a legal relationship under which the person exercising the property rights commits the state or municipal property by *Act CXCVI of 2011 on national assets* (hereinafter NPA) to an asset manager for a period or until the occurrence of a condition specified in the contract. So, the exercise of property rights and the performance of ownership obligations are transferred within a certain scope, whereby the asset manager is granted the rights of the owner and is subject to the obligations of the owner, in particular, the rights of possession, use, and utilisation unless otherwise provided by law or the contract, while the right of disposal is limited under the NPA. The asset manager is obliged to ensure the preservation, good maintenance, and operation of the property, to fulfil its other obligations under the law and the contract, and to use the property in accordance with the purpose specified in the NPA and the contract, and, in the event of termination of the asset management contract, to return the property taken into asset management/received and to account for it.[1]

Before discussing the topic in more detail, I will make a few remarks, partly methodological and partly related to the content. Based on the current state of my research, this topic has not yet been dealt with comprehensively in Hungarian legal literature, and therefore I cannot present a legal literature position closely related to this topic to support some of my statements, as no relevant partial studies have been produced. I do not wish to argue here with literary positions of nature on civil law invalidity, if only because, where I have no specific comment in this context, I accept the position(s) and wish to make them part of my thoughts.

In my research so far, I have found only a small number of court decisions on the asset management contract, and this is even truer for the invalidity of this contract. However, it is also true that there are other decisions, which are only loosely connected with this contract, but the ideas expressed in them can provide powerful support in answering certain questions. These decisions are related to national property. However, it should be avoided that any similar decisions or legal instruments, which they bring within the scope of the examination, should be considered equivalent to an asset management contract: they should be taken into account only *mutatis mutandis*.

Based on the legal environment, I am convinced that, apart from certain special rules, the common rules of contract law laid down in *Act V of 2013 on the Civil Code* (hereinafter CC) should and may be applied to asset management contracts without any further exceptions. In my view, if any private law element of it is removed, the public law part is almost unintelligible, whereas if the public law elements are removed, the asset management contract in its present form loses its *raison d'être* and becomes a special legal relationship not governed by the CC. Therefore, the contract has strong elements of civil law, but is also subject to significant public law

[1] For more detailed conceptual approaches to asset management contracts, see Dúl, 2019.

interference, and can be classified as a mixed contract with substantial civil law elements. Overall, this contract shall be considered as a contract on the borderline of private law and public law.

As a matter of principle, I do not intend to deal with the distinction between nullity and voidability, nor with the doctrinal issues relating to the various grounds of invalidity, but will merely deal with them to the extent that I consider them to be indispensable in the discussion of the grounds of invalidity of trust contracts.

In addition to declaring the right to property and inheritance, Article XIII(1) of the Fundamental Law of Hungary also notes that property means social responsibility. The declaration of social responsibility about property at the level of the Fundamental Law was not unfamiliar to Hungarian constitutional law and constitutional court practice, as it had been present since 1993. (Téglási, 2013, p. 69) The significance of this social responsibility in relation to state and municipal property is of a higher level of content than that of social responsibility compared to private property. (Bende-Szabó, 2014, p. 4) *Adrián Fábián* notes, in the context of municipal property, *'[e]stablishment of the right of asset management does not affect the local government's statutory duty to perform its functions and its responsibility for the performance of those functions. This means that if the asset manager is unable for whatever reason to perform the public task, the local government is obliged to ensure that the task is performed by other means. The transfer of the right of asset management is linked to a specific purpose, the purpose being to ensure the effective performance of the municipal functions, to preserve and protect the condition and value of the property, and to increase its value.'* (Fábián, 2021) In the case of state property, the legal institution of asset management also implies involvement in the performance of public tasks, and the ideas quoted are valid in the context of state property. These must be considered at all times, e.g. in the invalidity of the contract.

2. FURTHER NOTES ON THE VALIDITY OF CONTRACTS

According to *Gábor Kiss* and *István Sándor*, *'[a] contract can be considered valid if the parties make a declaration in accordance with their will, i.e. their will and their declaration are consistent with each other, their declaration is made in a form and content that complies with the legal requirements, and the declarations made by the contracting parties are identical, and the parties' declaration of will is capable of producing the legal effect they intend'*. (Kiss and Sándor, 2014, p. 15)

András Osztovits approaches invalidity from a negative direction, giving the basic concept, i.e. we speak of invalidity *'[i]f an essential element of the contract (intention, legal declaration, legal effect) is defective, not capable of producing the intended legal effect. In the case of such contracts, the civil law rules declare the legal relationship between the parties to be invalid, thereby precluding the legal effect which the parties intended to obtain.'* (Osztovits and Hajnal, 2014, p. 210)

The category of non-existent, invalid contracts is of course not only relevant from a legal and jurisprudential point of view. Based on the case published in BH 2017.60., a non-existent contract must be distinguished from an invalid contract.

This is because while a non-existent contract cannot have any legal effect at all, an existing but invalid contract may have legal effect. A non-existent contract cannot give rise to contractually enforceable claims, whereas a void contract gives rise to contractually enforceable legal consequences. However, this does not make the two doctrinal categories identical. In my view, Curia has summarised the quintessence of these legal concepts in a very precise manner.

I will not examine all the grounds of invalidity, because certain grounds cannot be connected to the asset management contract. For example, there are obviously no consumers in this contract in the sense of the CC. [Point 3 of Art. 8:1(1) CC]

3. THE GROUNDS OF INVALIDITY

3.1. Error of contract will

3.1.1. Mistake, common misconception, deception

Regarding mistake, the CC provides that anybody mistaken upon the conclusion of the contract concerning a substantial circumstance may contest his contractual juridical act if his mistake was caused or could be recognised by the other party. The mistake concerns a substantial circumstance if the party would have not concluded the contract if he had been aware of it or would have concluded the contract with different content. [Art. 6:90(1) CC] In my view, it is perfectly conceivable that either party was in a mistake about any part of the asset management contract. If the mistake is conceivable, and in my view, it is already possible, then if, as a consequence, the parties could have been in the same erroneous assumption on a material point at the time of the conclusion of the contract, that is also a ground of voidability. [Art. 6:90(2) CC]

In a court decision (ÍH 2014.149.) the local government provided a directly enforceable suretyship and created a mortgage on the property for a debt equal to the amount of a tender. The municipality complained that the president of the public benefit association that had invested in the project and the then mayor were the same person, and that, as time went on, the construction itself did not progress, the tender was not won, the subsidy was not paid, the loan had expired, and the loan was claimed from the local government because of the provision of the directly enforceable suretyship. The case shows that the investment itself served an essentially noble purpose, the development of the municipality. A lease contract was also concluded in connection with the investment, and the court held that the lease itself was not in bad faith (having been pleaded in addition to the mistake), because it was not in bad faith at the time the contract was concluded, having been concluded for the good cause set out above.

A question was raised as to whether the representatives were mistaken when making decisions on municipal property, before taking a decision, when making a decision, or whether they were mistaken because they were not well informed on certain details. In my view, the court before which the matter was brought correctly adopted the view that such a question was irrelevant, since the adoption of a decision

by a body of representatives is a matter of public law, whereas error and the duty to cooperate (in the decision-making process) are concepts unknown in public law and cannot, therefore, be relied on to prevent a decision which they define from having the legal effects which they imply.

The very fact that the mayor 'interprets' the decision of the body of representatives to the outside world is based on public law, Article 65 of Act CLXXXIX of 2011 on Hungary's local governments (hereinafter LGA).[2] Nevertheless, the judicial practice has also established the thesis that the body of representatives has the right to exercise ownership rights over the municipal property. Within the scope of these rights of disposal, the mayor may be authorised in the rules of organisation and operation to determine the rights, which the body of representatives may exercise, and the scope of the property, which it may dispose of.[3] (BH 2009.302.) Under the principle of imputation (Auer, 2018, p. 44), the acts of the mayor as a representative (in the civil law sense) must be imputed to the municipality, so ultimately it is the mayor acting in his representative capacity who must be at fault and not the members of the body of representatives.[4] No question arises as to the application of this principle because, under LGA, the local government is a legal person, and the provisions of the CC relating to legal persons apply to the exceptions provided for in the Act. [Art. 41(1) CC] The error is, of course, not only in the case of local governments but also in the case of the asset manager and the person exercising the property rights over state property.

Since, in my view, a mistake can exist regarding any element, on the theoretical level even misrepresentation can have its place, namely in the sense that the other or third party can play a role in the creation of a different consciousness from reality.

3.1.2. Unlawful threat

The unlawful threat is also defined as a ground for invalidity; under the CC, if someone has been induced to conclude a contract by the other party by using unlawful threats, he may contest his contractual juridical act. [Art. 6:91(2) CC] In my view, this ground for invalidity is less conceivable for asset management contracts. The threat can be exerted at the outset only in the direction of the asset manager or the person exercising the property rights, but not specifically towards the legal person. Nor do I consider it possible to conclude a contract under the influence of a threat, which involves the transfer of a public task.

---

2 Art. 65 LGA The body of representatives is chaired by the mayor. The mayor convenes and chairs the meetings of the body of representatives and *represents the body of representatives*. (Author's emphasis.)

3 It is worth noting that the wording could be misunderstood in the sense that the right to dispose is part of the ownership triad, instead it would be more correct to refer to the exercise of property rights. My thanks to the proofreader for this comment in connection with my other paper.

4 I am grateful to Professor Tekla Papp for the professional discussion on this issue.

3.1.3. Secret provisos, sham contracting

Secret provisos or hidden motives are also possible in the case of asset management contracts by either party, but based on Article 6:92(1) of the CC, the validity of the contract shall not be affected by these circumstances.

A sham contract is an exciting and interesting legal institution, to the point wording of the CC gives room for countless theoretical discussions. Sham contracts shall be null and void. If a sham contract disguises another contract, the parties' rights and obligations shall be assessed based on the disguised contract. [Art. 6:92(2) CC][5] In the case of the asset management contract, in my view, this ground for invalidity cannot expressly arise: it could be examined either in such a way that the contract is a sham, that is to say, it is a disguised contract, or in such a way that the asset management contract becomes the disguising contract. If it is a disguised contract, then the purpose of the disguise is to transfer a public task and could be for national property for which no asset management contract can be concluded, nor any other legal instrument, but the disguised contract is legally possible. The rules of Article 6(1) of NPA – it is precisely based on the rules of the law on trusts that an asset management contract can be concluded for assets in respect of which many other legal instruments are not applicable. Among the cases that could have arisen (Vékás, 2019, pp. 120–121), there may be some relevance in the case where there is a sham in respect of legal entities to allow a person who does not meet the legal requirements for the possible person of the asset manager to participate in the asset management contract. This can, however, be 'remedied' by the asset manager leasing the property to such a person, for example.

3.2. Error in the contractual juridical act

Based on Article 6:6 of the CC, if form-related requirements are prescribed by law or by the agreement of the parties, the juridical act shall be valid in that form. *'Failure to put it in writing renders the entire contract invalid. (...) The essence of the mandatory form is that, for reasons of public interest or trade safety, contractual statements must be recorded in such a way that their creation and content cannot subsequently be the subject of dispute or be a matter of proof.'* (Kiss and Sándor, 2014, p. 120) In light of the above, the question of whether there is a mandatory formality for asset management contracts, and whether they should be in writing, is a further relevant question.

As the CC does not provide any guidance in this context, since it is not a contract regulated in the CC, it is necessary to look at other legislation. Pursuant to Article 25(4) of *Act CVI of 2007 on state property* (hereinafter SPA), a contract for the utilisation of public property must be in writing. The question arises as to whether the asset management contract constitutes utilisation in the context of national

[5] Article 207(6) of the former Civil Code, Act IV of 1959, regulated this legal instrument in the same way. In the legal literature see for example: Gellén, 2005; Gellén, 2006; Gellén 2008.

property, a question which I will refer to another rule to answer. Under Article 23(1) of SPA, the person exercising property rights manages it himself or, based on a contract, in particular a lease, a leasehold, or a mandate, transfers it for use or places it under asset management or beneficial use. Based on a grammatical interpretation of the text, it seems to me that, since it lists by way of example certain contracts which are to be regarded as contracts of use and the asset management is expressly separated from them in the legal act, it may be concluded that no equivalence mark can be placed between the asset management and utilisation. It is in the sense that SPA does not in any way exclude the possibility of the use of property, is not a form of utilisation under this Act, and therefore does not need to be written concerning the relevant paragraph, i.e. the legislation does not impose a formal requirement. The same conclusion can be drawn from the NPA. The NPA explicitly excludes that the transfer of property into asset management is included in the scope of utilisation: the transfer by the person exercising property rights or user of national property of the right to possession, use or benefit from a national property by any legal title which does not result in a transfer of ownership, excluding the transfer into asset management and the creation of beneficial use, is considered to be a utilisation. In this respect, the NPA, which covers a larger category, and SPA, which regulates one of its elements, are consistent with each other. Because of the grammatical and taxonomic interpretation of these laws, asset management does not constitute utilisation and there is no explicit legal provision in the context of the need to put it in writing.

Based on *Act CXLI of 1997 on Real Estate Registry* (hereinafter REA), in the case of state-owned real estate, the person exercising the property rights of the state and the asset manager; and in the case of municipal property, the right of asset management and the right to operate an exclusive economic activity and the asset manager may be entered in the Real Estate Register. [Point a), Art. 16 REA] Unless otherwise provided by law rights may be registered, on the basis of public documents, private documents with full probative force, or a notarized copy thereof, which certifies the creation, modification, or termination of the right or fact which is the subject matter of registration and contains a declaration by the right-holder of record or potential right-holder to be registered in the real estate register as an interim beneficiary. (Art. 29 REA)

In the context of state property, pursuant to Article 7(1) of Government decree 254/2007. (X. 4.) on the management of the state-owned property (hereinafter referred to as Govt. decree), the right of asset management over real property based on an asset management contract is established by registration in the real property register. Article 7(2) of the Govt. decree provides that the asset manager shall ensure the registration of the right of asset management in the real property register (...) within thirty days of the conclusion of the contract. In my view, this should be understood to mean that if the public property is not registered as under asset management, the asset manager cannot exercise the right of asset management. The declaratory language of paragraph (2) of the quoted article may be read as imposing an obligation on the asset manager. If this is so understood, then, in conjunction with

Article 29 of REA, an appropriate deed is required; if there is a statutory obligation to register the property, then the asset management contract on the state property must be written down in advance. In the case of an asset management contract established on municipal property, LGA does not contain any rules of this kind. Such an obligation may be laid down in municipal ordinances adopted based on the LGA. In the light of the above, it is my view that the asset management contract will be in writing: given the totality of the rules governing national property and the totality of the requirements for an asset management contract, I see little reason why such a contract, linked to the performance of a public task, should not be in writing. However, for the reasons set out above, I do not consider that this ground of invalidity is applicable at present, since, as a matter of law, it does not have to be in writing, so its form cannot be infringed. As a *de lege ferenda* proposal, it would be worthwhile to formulate clearly, in NPA as a specific provision, that the asset management contract must be in writing.

3.3. Error of intended legal effect

3.3.1. Prohibited contract[6]

A recent case law correctly follows the provisions of the CC in the context of a contract in breach of law: the nullity of a contract may be based not only on a breach of civil law regulation but also on a breach of another legal provision. The contract is null even if the other legal rule does not expressly so provide, but it can be established that the purpose of the rule is to prohibit the legal effect, that the contract is intended to produce. (BDT 2020.4227.) Although not so rich in case law, nullity contrary to the law on the national property can provide several starting points, which may also be relevant in the context of asset management contracts. The municipality may manage the assets forming part of its common property within the limits of the law on the national property, and therefore cannot lawfully convert the common property into a condominium (KGD 2015.183.) since this would allow the property, which would otherwise be common property, to be owned not only by the municipality but also by others.

The unmarketability of the national property is underlined by the fact that the sale contract for the alienation of the property is invalid, even though the authorities have approved the land conversion. It is irrelevant whether the property meets the technical characteristics of a public road, since, in the absence of such characteristics, it does not become marketable. (PJD 2017.20. I.) The fact that the contracting party was aware of the status of the property as national property at the time the contract was concluded does not alter this position and is irrelevant to the invalidity of the contract. (PJD 2017.20. II.)

The problem with the national property, which was the exclusive property of the local government, was that it was not recorded as such in the land register, but was

[6] In the context of prohibited contracts, see also in particular: Auer, 2012; Auer, 2018a; Auer 2018b; Auer 2021.

otherwise part of the common property and a sale agreement was nevertheless concluded. In the case under appeal, Curia said that the courts had correctly held that the property at issue, which was described as a 'disused road and building', was not covered by point a) of Article 5(3) of NPA, the court had correctly held that the land and the public road, and the public road at issue in the proceedings in question belonged to the national property of the local government, which is the exclusive property of the local government. Property of this nature is defined in Article 6(1) of NPA, the property is therefore unmarketable, and the contract of sale concluded for its sale is therefore void under Article 6:95 of CC.[7] However, the reasoning of the judgment did not include the provisions of Article 15 of NPA, according to which the mere fact that a contract or other legal transaction or provision is void in contravention of the provisions of that Act confirms the invocation of the relevant provisions of the CC, while at the same time rendering the provisions of the CC null and void. (Second sentence of Art. 6:95 CC)

In the context of state property, the nullity of a contract for breach of the SPA is confirmed by Article 5/A SPA, which states that a contract concluded in breach of the substantive and procedural rules of the Act is null and void. If an asset management contract is in breach of the law, it is necessary to look at the type of property (state or municipal) and the law to which the specific provision of the contract is in breach. If it conflicts with a provision of the NPA, it is void as a prohibited contract under the CC, but it is also void under the NPA and since the NPA. does not provide for a legal consequence different from the CC, the CC can be fully applied. Some of the provisions related to state property are contained in the SPA. As the nullity of a contract that conflicts with the provisions of the SPA is also specifically provided for in the special rule, the fate of the contract is similar to the fate of the former.

The LGA does not contain any general or special rule on the nullity of a contract, but in my view, there is no need for such a rule: on the one hand, the municipal property counts also as national property; the asset management contract is also regulated by the NPA, and a contract that is in conflict with the NPA is null and void. On the other hand, in its absence, the prohibition on prohibited contracts in the CC could be used as a basis in these situations.

3.3.2. Contract contrary to good morals

'The prohibition of violation of morality can be seen as an open-ended general clause, formulated at a high level of abstraction, which does not prohibit or make obligatory certain specific behaviours. By its very nature, it marks the moral limits of private freedom (private autonomy), and within these limits, it seeks to influence

[7] Contracts violating the law or concluded by circumventing the law shall be null and void unless the law attaches other legal consequences to it. Despite these other legal consequences, the contract shall also be null and void if it is specifically provided by the law, or if purpose of the law is to prohibit the legal effect intended to be reached by the contract.

the conduct of legal persons and the direction and content of their decisions. (...) In the general rule of the prohibition of conflicts with morality, the requirements of the moral norms of society are reflected.' (Points 3.2. and 3.3. of Decision 801/B/2002. AB of the Constitutional Court of Hungary) Decision published as BDT 2016.3604. summarises laconically the maxims of judicial practice in connection with contracts that are manifestly contrary to morality, according to which, in general, contracts are considered to be such if, although not prohibited by law, the objective to be achieved, the nature of the obligation undertaken, the consideration offered in return or the subject of the contract are manifestly contrary to generally accepted moral standards or customs, and are therefore clearly unfair and unacceptable in the general social perception.

In my view, accepting the previously cited decision published as ÍH 2014.149, and taking the introductory ideas of the present study into account, there can be no question of a conflict of morals in the case of asset management contracts. The reason for the conclusion of such contracts is that the State or local government thought that the public task to be achieved by the property could be performed more efficiently by the asset management. The performance of a public task cannot be contrary to morality and, in this regard, in my view, the manifest conflict of morals is not a relevant ground for invalidity of asset management contracts.

3.3.3. Obvious disproportionality – Usurious contracts

Proportionality between service and consideration (Cf. Art. 6:98 CC) is known in the context of national assets. National assets exceeding the value thresholds set by law or by local government ordinance under the NPA may be exploited, unless an exception is provided by law, only by competitive bidding to the highest overall bidder, with the proportionality of service and consideration. [Art. 11(16) NPA]

The same rule applies to the transfer of ownership. [See Art. 13(1) NPA] If the transaction does not meet this criterion, it shall be considered null and void under the general rule of law. (Art. 15 NPA) It was in the light of this provision that, in a certain case, the court held that the requirement of responsible management of national assets precluded the kind of economic risk-taking that would allow the transfer of ownership of the property at a price below its value. If the transfer of the ownership of the national assets in return is not for value, the transaction is void. (BDT 2018.3882. I.)

It is questionable, however, when proportionality is achieved or, to put it the other way round when there is disproportionality between the service and the consideration. According to the court, since there is no further special restriction on disproportionality of value in the Art. 6:98 CC, the definition declared in the CC must be used. (Auer, 2021) Although to a large extent, private law instruments (e.g. transfer of property, use, etc.) are involved in both laws, the whole regulatory system of the NPA is governed by different, special principles and rules for national assets than for private property, and proportionality may not be upheld in the same way. While it would be desirable to use the same set of concepts, the obvious

disproportionality, and the unmarked, without adjective, proportionality cannot be identified, and if they were to be understood as the same, the legislator would have had to ensure consistency between the laws.

'As a general rule, an asset management contract can be concluded as a contract for consideration. An exception to this general rule is where the national property is entrusted exclusively for the performance of a public task, in which case the asset management contract may be concluded free of charge to the extent necessary for the performance of that public task.' (Bende-Szabó, 2014, p. 14) The NPA provides for proportionality in the case of contracts for the use of the property (not including, in the present case, the transfer), but, I think that this provision does not apply *ab ovo* to an asset management contract, since it cannot be considered as a use of the property. It should also be noted that, in the case of asset management, this provision does not apply because it provides, in relation to utilisation, that proportionality must be observed and that asset management cannot be understood as exploitation concerning the systematic interpretation of NPA. However, this does not mean that the possibility of invalidity under the CC can or should be excluded. In my view, if the level of the asset manager's fee can be determined in the case of an asset management contract for consideration, the practice developed in relation to the CC should make obvious disproportionality determined. '*In the field of public service provision, local authorities may, in principle, be exempted from paying the asset manager's fee, but in practice, MNV Zrt.* (i.e. the Hungarian National Asset Management Inc.) *concludes free of charge asset management contracts for all local governments*.' (Boros, 2018, p. 68)

For usurious contracts, in addition to the existence of obvious disproportionality as defined in the CC, the situation of the other party and the exploitation of that situation – by 'one of the parties' is required. (Art. 6:97 CC)[8] Again, I must refer to the performance of a public task, since there can be no question of a situation of distress in the case of asset management contracts: the asset manager receives the assets to participate in the performance of a public task, while the person exercising the property rights transfers them to ensure that the public task is properly performed. Asset management is only one of the possible ways for this performance. The need to perform a public task is not a situation that, in my view, should exist in usurious contracts and the public task must be performed.

3.3.4. Impossibility of performance. Incomprehensible, conflicting clauses

As regards the types of impossible services (Barzó et al., 2015, p. 223), contracts impossible for legal reasons may arise in the case of asset management contracts if the contract is not concluded in full compliance with the NPA and other related legal acts. Objectively, an asset management contract would be impossible if the asset manager could acquire the property rights after a certain period, while subjectively, it would be impossible if the person exercising the property rights

[8] In the context of usurious contracts, see also Menyhárd, 1999, pp. 223–240.

concluded the contract with a person who does not belong to the possible asset managers under the NPA.

The incomprehensible and conflicting clauses [Art. 6:107(2) CC] are not of such a special nature, nor is there any criterion in the asset management contract that would preclude the existence of such clauses in asset management contracts, and this ground for invalidity can be applied without further ado.

4. CONCLUSION

Summarising the results of the paper, it can be said that most of the examined grounds for invalidity regulated by the CC can be applied to asset management contracts. In my opinion, this is because of private law embeddedness of the asset management contract, which has elements of both private and public law, is well founded, and further examination of the issues is justified.

The grounds of invalidity, which cannot be taken into account in the light of the above analysis, are essentially either unrelated to the performance of a public task, as the purpose of the trust contract, or are not justified by other characteristics of the asset management contract. I am convinced that, even if some of the reasons could be applied on a theoretical level, they will not be applied in practice along other lines linked to the legal instrument.

Several grounds of invalidity can be used. However, there are certain grounds that cannot be taken into account. They are, in principle, related to the performance of a public task as the purpose of the asset management contract, or the subjects of this contract or the contract is valid due to other special features.

REFERENCES

[1] Auer Á. (2018). Betudás elve. In: Dúl J. et al. (eds.). *Társasági jogi lexicon.* Budapest: Dialóg Campus.

[2] Auer Á. (2012). Lehet-e semmis a közbeszerzési szabályok megsértésével megkötött szerződés? *Közbeszerzési Szemle*, Vol. 2, No. 12, pp. 47–57.

[3] Auer Á. (2018a). Megjegyzések a tilos szerződések polgári jogi dogmatikájához a közbeszerzési szerződés kapcsán. *Jogtudományi Közlöny*, Vol. 73, No. 11, pp. 486–494.

[4] Auer Á. (2018b). Versengő közérdekek a közbeszerzési szerződés semmissége kapcsán. *Pro Publico Bono – Magyar Közigazgatás*, Vol. 6, No. 4, pp. 4–25.

[5] Auer Á. (2021). Gondolatok a nemzeti vagyon visszterhes áturházásának értékarányosságáról. *Gazdaság és Jog*, Vol. 29, No. 9, pp. 1–5.

[6] Barzó T. et al. (2015). *Kötelmi jog.* Miskolc: Novotni Alapítvány a Magánjog Fejlesztéséért.

[7] Bende-Szabó G. (2014). *A vagyongazdálkodás jogi keretei*. Budapest: Nemzeti Közszolgálati Egyetem.

[8] Bende-Szabó G. (2014). *Állami vagyonjog – civilisztika*. Budapest: Nemzeti Közszolgálati Egyetem.

[9] Boros A. (2018). Az állami és az önkormányzati vagyongazdálkodás kapcsolódási pontjai az aktualitások tükrében. In: Auer Á., Boros A., Szólik E. (eds.). *Az önkormányzati vagyongazdálkodás aktuális kérdései*. Budapest: Dialóg Campus, pp. 65–76.

[10] B. Szabó G. et al. (2018). *A bizalmi vagyonkezelés.* 2nd edition. Budapest: HVG-Orac.

[11] Csehi Z. (2001–2002). A vagyonkezelés jogi formái és az önállósuló vagyontömege. *Jogállam*, Vol. 9, No. 1–4, pp. 103–152.

[12] Diczházi B. – Macher Á. (eds.) (2000). *Állami vagyonkezelés Európában és Magyarországon: Utak és lehetőségek.* Budapest: GJW-CONSULTATIO konzorcium.

[13] Drinóczi T. – Frank Á. (2008). Az állami vagyon kezelésének egységesülő jogi szabályozása. *Közjogi Szemle*, Vol. 1, No. 4, pp. 14–22.

[14] Dúl J. (2019). A vagyonkezelési szerződés fogalmáról. *Pro Publico Bono – Magyar Közigazgatás*, Vol. 7, No. 4, pp. 46–79.

[15] Fábián A. (2021). *Kommentár a Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvényhez.* (Wolters Kluwer Jogtár), 109. §, https://uj.jogtar.hu/#doc/db/337/id/A13Y1324.KK/ (Accessed: 15 December 2021).

[16] Gellén K. (2005). *Jogelméleti Szemle*, Vol. 6, No. 4, http://jesz.ajk.elte.hu/gellen24.html (Accessed: 15 December 2021).

[17] Gellén, K. (2006). A színlelt jogügyletek kauzalitása. *Jogelméleti Szemle,* Vol. 7, No. 1, https://jesz.ajk.elte.hu/2006_1.html (Accessed: 15 December 2021)

[18] Gellén K. (2008). *A színlelt szerződés.* Szeged: Pólay Elemér Alapítvány.

[19] Kiss G. – Sándor I. (2014). *A szerződések érvénytelensége.* Budapest: HVG-Orac.

[20] Menyhárd A. (1999). Az uzsorás szerződésről. In: Kisfaludi A. – Peschka V. (eds.). *Liber amicorum. Studia L. Vékás dedicata. Ünnepi tanulmányok Vékás Lajos hatvanötödik születésnapjára és egyetemi oktatói működésének harmincötödik évfordulójára*. Budapest: ELTE ÁJK Polgári Jogi Tanszék, pp. 223–240.

[21] Németh A. – Sík L. (1997). A vagyonkezelési szerződések típusai és biztosítékai. *Pénzügyi Szemle*, Vol. 42, No. 2, pp. 97–112.

[22] Osztovits A. – Hajnal Zs. (2014). VI. cím Az érvénytelenség. In: Osztovits A. (ed.). *A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok nagykommentárja, III. kötet.* Budapest: Opten, pp. 209–292.

[23] Siklósi I. (2014). A semmisség és a megtámadhatóság distinkciójához a magyar polgári jogban, különös tekintettel e distinkció csorbulásának legújabb tendenciáira. *Magyar Jog*, Vol. 61, No. 6, pp. 329–333.

[24] Téglási A. (2013). A tulajdonhoz való jog korlátozása és elvonása magyar és nemzetközi tekintetben. In: Antal T. – Papp T. (eds.). *Az alapjogvédelem nemzeti, nemzetközi és jogösszehasonlító aspektusai.* Szeged: Pólay Elemér Alapítvány, pp. 67–80.

[25] Vékás L. (2018). *Szerződési jog: Általános rész*. Budapest: ELTE Eötvös Kiadó.