

Can Compensation Be Claimed in Addition to Eliminating Unnecessary Disturbance in Cases of Possessory Infringement?

A recent ruling by the Curia (Supreme Court of Hungary) sought to determine whether eliminating unnecessary disturbance, as an unlawful and possessory infringing act, can be applied alongside a compensation claim.

The plaintiff filed a lawsuit based on a neighbor law violation, requesting that their neighbors—who had built a terrace next to the plaintiff’s fence—be ordered to remove the structure due to possessory infringement. Additionally, the plaintiff sought compensation for damages caused by this unlawful act, arguing that the terrace’s construction had led to the deterioration and aesthetic degradation of their fence.

The plaintiff claimed that the unlawful situation arose because the defendants failed to maintain an adequate distance between their terrace and the plaintiff’s fence during construction. If the terrace were dismantled, rainwater could properly drain, preventing moisture damage to the fence, and allowing for better ventilation. The compensation sought would allow the plaintiff to repair and properly insulate the fence.

The first-instance court largely ruled in favor of the plaintiff. Although it reduced the requested compensation amount, it still ordered the defendants to dismantle the terrace and pay compensation.

However, the second-instance court ruled differently, stating that compensation and an order to dismantle the structure serve the same purpose, making them mutually exclusive claims. The court referenced multiple Supreme Court rulings (Pfv.I.22.191/1999 and EBH2001.517), which established that if a property owner receives compensation for a decrease in market value due to unnecessary disturbance, they cannot also demand the cessation of the disturbance itself.

The Curia disagreed with the appellate court and sided with the first-instance ruling. It noted that the facts of the present case differ from those cited by the appellate court. In the referenced cases, the plaintiffs had sought compensation for loss of view and reduced privacy caused by a neighboring construction, in addition to requesting the termination of possessory disturbance. In such cases, the courts ruled that if the owner claims compensation for the market value reduction of their property, they must choose between compensation and cessation of the disturbance—both remedies cannot be applied simultaneously.

However, in the current case, the plaintiff’s compensation claim aimed at covering the costs of replacing damaged fence elements, which constitutes a separate financial loss rather than the same harm addressed by the order to dismantle the terrace. The two claims do not aim to eliminate the same legal disadvantage.

The Curia ultimately concluded that the dispute could only be resolved by ordering both the dismantling of the terrace and the payment of compensation. If the terrace structure remains unchanged, moisture damage will inevitably reappear within a year (or even sooner, depending on precipitation levels), making dismantling the only effective solution.