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THE ACQUISITION OF REAL ESTATE BY TIMESHARING CONTRACT IN EUROPE

Abstract: *Timeshare agreement is a contract that aims to the acquisition of the right to use an accommodation for a period of time on a rotating basis and according to this agreement the consumer, in return for consideration, directly or indirectly acquires the right from the marketer for more than one year to use one or more properties repeatedly for recreation or housing aims for a definite period of time. As for the characteristics of the right of utilization acquired by timeshare agreement, from the aspect of using this right, there is the direct and indirect type: in the first case apart from the title nothing is needed in order to use timeshare, but in the latter case a legal instrument (e.g. membership in an organization) must be applied beside the title in order to live with the right of utilization (the right of utilization is attached to the mentioned legal instrument). The direct right of utilization can be considered as right in rem, contract law and it can be special right of use. The economy prefers the character of right in rem of the timeshare because it is attached to the quality characters (value) of that thing as an article in use. During the regulation of timeshare agreements in Europe the protection of the consumer came into the limelight (see: Scandinavian countries, Benelux states, United Kingdom, Germany, Austria, Hungary, Serbia, Croatia, Bosnia Herzegovina, Montenegro, Romania, Czech Republic, Italy) or the market and tax law aspect became important (see: Greece, Portugal, Spain, France). There is a chaotic situation of timeshare in Europe: similarly to the Hungarian legal situation, in many other European states the private law must face challenges considering the right of use acquired by timeshare agreement, only few countries make a stand for only one legal solution.*

Keywords: *timeshare contract, contracts system, direct and indirect types of timeshare, right in rem, RTU, tenancy of land, group ownership, fractional ownership, European timeshare regulation, nature of right to use.*

1. THE TIMESHARE CONTRACT IN HUNGARY¹

Timeshare agreement is a contract that aims to the acquisition of the right to use an accommodation for a period of time on a rotating basis and according to this agreement the consumer, in return for consideration, directly or indirectly acquires the right from the marketer for more than one year to use one or more properties repeatedly for recreation or housing aims for a definite period of time.²

By the contract the consumer:

- acquires the right of use for a definite aim (recreation/housing) for one year (or for a longer – maybe definite period of time);³
- in a definite period of the year which was laid down before (e.g. for a week or for 10 days), repeated annually (in general at the same time, for the same period so in the definite hotel on the same days of the same month every year);
- covering one or more buildings (e.g. hotel) and its rooms and accessories (e.g. tennis court, swimming pool, sauna etc.);
- acquired from the owner of the property (that can be a company too) directly or indirectly from the marketer (if different from the owner) or agency dealing with resales (RDO-Resort Development Organization- a company with membership that deals with secondary selling).⁴

The right of use with a special aim and which can be applied in a special way is not the only one which belongs to the regulation of the timeshare agreement, but also the transfer of the timeshare and the assignment of its application.⁵ The transfer of the timeshare can happen in two ways:

¹ See also: Tekla Papp Röviden a timesharing-szerződésről (Shortly about the timesharing contract) *Európai Jog* (European Law) 4/2006, 24-28.; Tekla Papp The timesharing contract in Hungary and in Europe. *Acta Juridica Hungarica* 12/2008, 483-494.; Tekla Papp Über den Timesharing-Vertrag (About the timesharing contract). *De Iurisprudencia et Iure Publico* 1/2009, http://www.dieip.hu/209_1_05.pdf; Tekla Papp Der Timesharing-Vertrag in Ungarn: eine rechtsvergleichende Analyse (The timesharing contract in Hungary: a comparative law analysis) *Zeitschrift für Gemeinschaftsprivatrecht* 6/2009, 141-147.; Tekla Papp Der Timesharing-Vertrag im 21. Jahrhundert (The timesharing contract in the 21th century). *Debreceni Jogi Műhely* (Legal Workshop of Debrecen) 4/2011, http://www.debrecenijogimuhely.hu/aktualis_szam/2_2011/der_timesharing_vertrag_im_21_jahrhundert; Tekla Papp Az ingatlanra vonatkozó timesharing szerződés néhány jellemzőjéről (About some aspects of the timesharing contract on real estate) *Res Immobiles, Ingatlanjog a gyakorlatban* (Real property law in practice) 12/2011, 11-17.; Tekla Papp Der Timesharing-Vertrag in Ungarn – eine rechtsvergleichende Analyse (The timesharing contract in Hungary: a comparative law analysis) *Collected Papers* 9/2009, 393-408.; Tekla Papp Der Timesharing-Vertrag in Ungarn (The timesharing contract in Hungary) *Osteuropa Recht* 6/2011, 154-159.

² 141/2011. (VII. 21.) Government decree § 2 (1) 9., 10. points

³ 114/2010. VJ (Decision of the Office of Economic Competition)

⁴ Tekla Papp *Atipikus szerződések* (Atypical contracts) Szeged 2009 84.

⁵ Zala Megyei Bíróság Polgári és Gazdasági Kollégiumának 14/2000. sz. véleménye (Opinion of the Civil and Economic Division of the Court of County Zala); EBH 2006. 1519. (Judgement of the Supreme Court); 114/2010. VJ (Decision of the Office of Economic Competition)

- On the one hand, the consumer has the possibility to convert his right to use on the 'timeshare market' run by the company: he can change with another consumer in order to practice the timeshare referring to the real estate of the company at the same place but at different time or at different place but at the same time or at different place and time (that is to say the direct object of the timeshare is transferred mutually between two consumers);
- On the other hand, the consumer can rid of the contract by assignment therefore there will be a change of subject in the position of the person who has the right of use.⁶

The assignment of timeshare means the conversion of timeshare: the members of the exchange organizations dealing with timeshare can choose among the timeshare rights of the organization up to the value of their own right to use (so the character, value and in general the period of this right to use does not change, only the place changes).

If the acquisition of the timeshare is not the only aim of the timeshare agreement but it also contains the assignment of its use and the transfer of the right, this situation can be solved by having more contracts related to one another and the timeshare agreement appears as a part of this system of contracts. The simplest variation of this contracts system can be constructed by the following:

- The company selling the timeshare buys a land by a contract and then it has another company build the hotel (resort) and related installations by a construction contract;
- Then it creates the background for realizing the timeshare: it becomes a member of an exchange organization, it contracts with companies providing subsidiary services (travel, insurance) and secondary sellers (this is how the timeshare can be convertible and transferable);
- The company makes agreements with other companies for different aims that can help its activity (e.g. for the operation of the property, its maintenance, advertisement or for financial administration);
- In the end they conclude the basic contract with the consumer according to which he can have the special right of use.⁷

According to the above mentioned it can be established that the specialty of timeshare agreement is in:

⁶ Petra Jenovai – Tekla Papp – Krisztina Strihó – Ágnes Szeghő *Atipikus szerződések* (Atypical contracts) Ed.: T. Papp, Szeged 2011 145.

⁷ Tekla Papp *Opuscula civilia, Magánjogi láttelet, Report on Hungarian Private Law, Befundbericht über das ungarische Privatrecht* Szeged 2013 91-94.; Fővárosi Törvényszék P/2011/14. (Decision of the Municipal Court of Budapest); SZIT Pf.I.20.061/2012/3. (Decision of the High Court of Appeal of Szeged); Csongrád Megyei Bíróság 2.P.21.948/2011/3. (Decision of the Office of Economic Competition); 114/2010. VJ (Decision of the Office of Economic Competition)

- on the one hand the special characteristics of the right of use that can be acquired;
- on the other hand in the system of the contracts that is around the application and disposition of the acquired right of use;
- thirdly in the different services (travel, holiday) available for the consumers.

By the basic contract the direct object of the timeshare agreement is to acquire or transfer the right to use, the indirect object is the right itself according to which the consumer can have,⁸ use or exploit (conversion) and dispose of the property (or a part of it) for a definite period annually.⁹ The contract referring to the timeshare usage of the properties provides the entitled person the usage, its assignment and the use of this right as a replaceable quota. The right referring to the conversion of use within this exchange system can only open to the members of the system.¹⁰

As for the characteristics of the right of utilization acquired by timeshare agreement, from the aspect of using this right, there is the direct and indirect type: in the first case apart from the title nothing is needed in order to use timeshare, but in the latter case a legal instrument (e.g. membership in an organization) must be applied beside the title in order to live with the right of utilization (the right of utilization is attached to the mentioned legal instrument).

The direct right of utilization can be considered as right in rem, contract law and it can be special right of use.

The economy prefers the character of right in rem of the timeshare because it is attached to the quality characters (value) of that thing as an article in use.¹¹

According to the Government order 141/2011. (21.07.) about contracts referring to the acquisition of timeshare, the timeshare can be a part of the property right.¹²

When analyzing the character of the right of use even the joint ownership can be mentioned according to no. 1 of section 139. of the Hungarian Civil Code¹³ but in case of timeshare agreement

- the entitled people don't have the right of the owner at the same time but in turns for a short period of time (special joint ownership sectioned in time);
- the defined proportions of the consumers doesn't refer to the same subject (e.g. different rooms of the hotel) and in general not on the whole subject (but rather on a part or the real property);

⁸ 141/2011. (VII. 21.) Government decree § 2 (1) 10., 13. points, §. 12. (1), § 17; Zala Megyei Bíróság Polgári és Gazdasági Kollégiumának 14/2000. sz. véleménye (Opinion of the Civil and Economic Division of the Court of County Zala); BH 1999. 514. (Court Order); BH 2008. 71. (Court Order); FIT 4.Pf.20.559/2012/3. (Decision of the High Court of Appeal of Budapest)

⁹ 141/2011. (VII. 21.) Government decree § 2 (1) 10., 13. points

¹⁰ LB Gfv IX. 30.193/2006. (Decision of Supreme Court)

¹¹ László Drábik – András Fábán *Utazásszervezés és timesharing tevékenység az EU-ban és Magyarországon* (Travel organizing and timesharing activity in the EU and in Hungary) Budapest 2004

¹² 87/2001. Számviteli kérdés (Accounting question): at buying of timeshare the customer doesn't purchase ownership.

¹³ Act V of 2013. 5:73. § (1)

- the right of pre-emption (and pre-lease) of the co-proprietors prevents the construction of the above mentioned complex contract system and the transfer and assignment of the timeshare;
- the many co-proprietors makes the operation of the timeshare system very difficult (e.g. for 1 hotel room there are 52 entitled people in week turns, in case of 50 rooms of 1 hotel there are 2600 consumers need to be satisfied by the contract).

The timeshare based on the usufruct can't make the contractual system possible as the transfer of the right of utilization is impossible within the framework of timeshare agreement because the usufruct is non-marketable its utilization can be assigned only;¹⁴ so the entitled could only have the possibility for conversion of the timeshare.

The right of use is not only unsuitable for achieving the goal of the timeshare because, similarly to the usufruct, it is non-marketable but also because the use and utilization 'not exceeding the needs of his own and the family members living together' doesn't adapt to the need of the entitled of the timeshare.¹⁵

From the aspect of contract law, the lease is not really suitable to indicate how many shades the right of use has in case of timeshare:

- unlike the lease in case of timeshare there is not a permanent and continuous utilization;
- unlike the rental the entitled for timeshare is obligated for a complex consideration with a different deadline;
- the proportion of the burden, costs, expenses between the leaseholder and the lessor and between the company and the consumer is different;
- the leaseholder (a without the permission of the lessor) cannot transfer the right of lease freely and he cannot assign it to another person (sub-lease);
- additional services (see: table 1, in connection with both the company and the consumer) cannot be attached to the lease as a part of the contract in opposition of the complex contractual system of the timeshare.¹⁶

The Government order¹⁷ referring to timeshare, the financial law¹⁸ and the case law¹⁹ considers timeshare as a special right (that contains elements of property, utilization, contract law, civil law and elements of law of business associations).

Within the group of indirect right of utilization, timeshare applied on condition of association membership is not prevalent in Hungary, but the one based on

¹⁴ § 159 (2) Hungarian Civil Code; Act V of 2013. 5:148.§ (1)

¹⁵ § 165 Hungarian Civil Code; Act V of 2013. 5:159. § (1); PAPP (2009). p. 89.

¹⁶ § 426. (1), § 427 Hungarian Civil Code; Act V of 2013. 6:334. §, 6:335. §; PAPP (2009). p. 89.

¹⁷ 141/2011. (VII. 21.) Government decree § 2 (1) 10. point

¹⁸ 87/2001. Számviteli kérdés (Accounting question)

¹⁹ BH 1999. 514. (Court Order); 14/2000. Zala Megyei Bíróság Polgári és Gazdasági Kollégiumának véleménye (Opinion of the Civil and Economic Division of the Court of County Zala)

the membership in a cooperative society for building and maintenance of holiday apartments is wide-spread. In the apartment owned by the cooperative society the member has the right to use the resort unit temporarily for a fixed period of time every year.²⁰ By transferring this holiday ‘bond’ (which is neither a classical share nor a stock) it can be sold and presented, but in order to have this right of utilization he must be a member in the cooperative society.²¹

To have this right that can be used by having a share in the company the consumer needs to buy share within the frame of the contract referring to the utilization of the holiday resort: he compensates the value of the right by buying shares with preferred dividends.²² From a legal aspect this construction is not secure if the dividend that the consumer as a shareholder gets after the share is the timeshare itself as the share is not a stock incorporating property rights (in this case the utilization of a unit of a resort), but it incorporates membership rights.²³

With respect to the character of this right of utilization gained by the timeshare agreement the direct types are wide-spread in the practice, but the legislator prefers the indirect form. In my opinion

- in case of direct timeshare the character of right in rem appears stressfully,
- if the basis of the right of utilization is the membership of an organization, the character of the civil legal association is more dominant,
- in both types the services that can be used by the contract also complicate the regulation,
- and the stress is always on the contractual relation of the parties (the company and the consumer).²⁴

2. THE TIMESHARE CONTRACT IN THE UNITED KINGDOM

The timeshare in the United Kingdom developed initially for the domestic market, and generally took as a model for this novel multi-ownership holiday concept, the common law incorporated leisure club, with the legal title to the immovable property being vested in trustees.²⁵

²⁰ Act CXV of 2004. § 40/C. (1)

²¹ BH 1998.295. (Court Order); Act CXV of 2004. § 40/C (3), § 40/D (1)

²² BH 2007.57. (Court Order); 247/1995. VJ (Decision of the Office of Economic Competition); 14/2000.; Zala Megyei Bíróság Polgári és Gazdasági Kollégiumának véleménye (Opinion of the Civil and Economic Division of the Court of County Zala)

²³ Papp (2009) 95-96.

²⁴ Papp (2009) 86.

²⁵ Encyclopaedia of Forms and Precedents/TIMESHARE&FOREIGN PROPERTYvol41(1)/Part2:TIMESHARE STRUCTURES IN SELECTED EUROPEAN COUNTRIES/(4)UNITED KINGDOM/(A)Commentary/A: GENERAL/92 Introduction and early history; Timepoint of download: 2013. 05. 23.

In general, however, the timeshare agreement will give the purchaser the exclusive use of a furnished accommodation for a particular week or weeks every year for an agreed number of years in return for a lump sum. There is also normally an obligation to pay an annual service charge to a management company for the duration of the agreement.²⁶

The initial problem of timeshare is to identify any legal form which responds to the commercial idea. Among forms there are: offering of shares in a public limited company, lease, license, club/trustee, company limited by guarantee (it is possible to create a membership system not involving the issue or transfer of shares); no English scheme is known to have attempted to use a freehold form.²⁷ The timeshare agreement is for the acquisition of a tenancy of land,²⁸ and entitles one party to the exclusive occupation of immovable property assumed by the contract to be owned by the other for a specified period in return for a sum of money, it follows that they are tenancies of immovable property.²⁹

Two types of ownership share with timeshare create the basic structure: group ownership and fractional ownership. Group ownership as an arrangement might involve 12 people buying a holiday home and each person having the use of it a month in each year. Where there are only 4 owners involved, group ownership is known as quartershare. The fractional interest concept is defined as the selling of resort real estate in intervals of more than 1 week (usually referred to as resort timesharing), but in less the whole ownership. Shares or 'fractions' range from a 1/26 (2 weeks of ownership) to a 1/4 (3 months of ownership). Limited term fractional ownership products, set up as right-to-use with security of ongoing occupancy rights provided by an independent trustee (a form of club/trustee structure) are now beginning to appear in various parts of Europe.³⁰

The timeshare agreement in respect of UK land will depend on the nature of the interest which it represents; may also apply in respect of rights over land which does not include living accommodation, for example shooting or fishing rights.³¹ To cover situations where there may be joint proprietors or timeshare schemes of

²⁶ HMRC Manuals, BIM60135 Timeshare Schemes; Timepoint of download: 2017. 06. 24.

²⁷ Keith F. C. Baker *Timeshare '88, The English Viewpoint* Heinonline, Citation: 14 Int'l Legal Prac. 14 1989; Timepoint of download: 2017. 06. 24.

²⁸ Office of Fair Trading v Lloyds TSB Bank plc and others (2006) 2 All ER 821 (2006) EWCA Civ 268, All England Law Reports; Timepoint of download: 2017. 06. 24.

²⁹ Jarrett and another v Barclays Bank plc and another, Jones and another v First National Bank plc, Peacock and another v First National Bank plc (1997) 2 All ER 484, All England Law Reports; Letöltés ideje: 2017. 06. 24.

³⁰ Encyclopaedia of Forms and Precedents/TIMESHARE&FOREIGN PROPERTYvol41(1)/Part2:TIMESHARE STRUCTURES IN SELECTED EUROPEAN COUNTRIES/(4)UNITED KINGDOM/(A)Commentary/I: GROUP AND FRACTIONAL OWNERSHIP/188 Group and fractional ownership; Timepoint of download: 2013. 05. 23.

³¹ HMRC Manuals, SDLTM10022-Timeshare; Timepoint of download: 2017. 06. 24.

salmon fishing, with several persons owning fishing right in the same fishery. „Proprietors” is therefore defined as meaning any person, partnership, company or corporation which is the proprietor of a salmon fishery or which receives or is entitled to receive the rents of such fishery on its own account or as trustee, guardian or factor for any person, company or corporation.³²

The concept of timeshare in England and Wales is now well established with a large number of developments, both conversion and new build across the country, but with concentration in favoured tourist locations; additionally the timeshare concept has spread to other forms of leisure such as boating (and fishing). The basic concept is that a development company provides dwelling units and periods of time on boat are sold to purchasers who acquire rights to occupy, sell, let, exchange and bequeath³³ (timeshare interest in houseboat).³⁴

In Scotland the timeshare units should be treated for valuation purposes as dwelling houses with the timeshare owners of each unit of accommodation being joint rateable occupiers. The unit of assessment in Scotland therefore each individual timeshare unit – each lodge/flat etc. On the basis of the decision of the Lands Valuation Appeal Court there is no any applicability to the rating of timeshare complexes in England and Wales.³⁵

3. THE TIMESHARE CONTRACT IN OTHER EUROPEAN COUNTRIES

During the regulation of timeshare agreements in Europe the protection of the consumer came into the limelight (see: Scandinavian countries, Benelux states, United Kingdom, Germany, Austria, Hungary, Croatia, Bosnia Herzegovina, Montenegro, Romania, Czech Republic, Italy) or the market and tax law aspect became important (see: Greece, Portugal, Spain, France).³⁶

In connection with the regulation of the timeshare agreement more methods were applied: it was regulated in the Civil Code (The Netherlands, Germany) or it was regulated expansively (Austria, Liechtenstein, Great Britain) and by an act or simply the regulations of the related EU directive were implemented (Belgium, Ireland, Romania) or regulated only occasionally (in the regulations of consumer

³² Stair Memorial Encyclopedia; Timepoint of download: 2017. 06. 24.

³³ Valuation Office Manuals, Capital Gains & Other Taxes Manual; Timepoint of download: 2017. 06. 24.

³⁴ Specialist Case Digest, Canaltimes Developments Ltd LNB News 22/04/2004 69; Timepoint of download: 2013. 05. 22.

³⁵ Valuation Office Manuals, Capital Gains & Other Taxes Manual; Timepoint of download: 2017. 06. 24.

³⁶ http://www.timesharingproblems.org/Timesharing_GB/index.html; Timepoint of download: 2013. 05. 22.

protection, tax law or contracts providing services etc.; Finland, Portugal, Spain, Sweden, Italy, France, Croatia, Bosnia Herzegovina, Montenegro).

There are more legal solutions in Europe for the question of the direct object of the timeshare contract, but in majority the regulations are similar to the regulation of the Hungarian government order. According to the Hungarian regulation, the direct subject matter of timesharing contracts is the transfer of the right-to-use by the marketer to the consumer.³⁷ The direct object of timeshare agreement in some European countries:

- transfer/acquisition of the right of utilization in Germany, Spain, Italy, Portugal, United Kingdom, Sweden, Finland, Liechtenstein, Romania, Poland;
- assignment of the right of utilization in Holland, Austria, Liechtenstein, Croatia, Montenegro;
- acquiring a proportion of the joint ownership in Belgium;
- ownership right/referring to real estate transfer of other right in Ireland, Greece;
- acquiring the right of utilization by lease contract in Bosnia Herzegovina.³⁸

The common feature of the European timeshare regulation is that the direct object of the agreement is merchantable, can be acquired in return for payment and can serve for housing and holiday purpose too (the latter one is extended widespread therefore the time share is often identified as holiday ownership).

The preambles of the directives 94/47/EC and 2008/122/EC indicate that timeshare agreement is not a lease (and its direct object, the right of use, is not a lease right) based on the fact that the right to use is transferable and on its characteristics in connection with time and because of the different payments methods regulated by the two contracts.

The European Court of Justice agrees with the directives: in *Klein v. Rhodos Management Ltd.* case the Court held that if the timeshare right of an apartment is related to membership rights of a club (conversion, additional hotel services and holiday discount), the basic contract is not a lease. However according to the directive 2006/112/EC about the value added tax system in the *MacDonald Resorts Ltd v The Commissioners for Her Majesty's Revenue & Customs* case the European Court held that from tax law aspect the services related to the real property (accommodation, right to use temporarily the resort, participation in optional program) – that are provided at the same place where the hotel/resort is located – are considered as leasing the property in question.

The European regulation referring to the direct object (the nature of right to use) of the timeshare contract. In Spain, the so-called *escritura* system was formed

³⁷ Papp (2009) 65.

³⁸ Papp (2013) 119.

(Owners Community/Club), which is based on holiday ownership (multiple ownership), however, in the agreement the word 'propriedad' shall not be used.³⁹ In Belgium the timeshare-entitled persons are regarded as common owners.⁴⁰ German and Austrian law categorizes timeshare as *Teilzeitwohnrecht/Teilzeitnutzungsrecht* (timeshared holiday ownership/timeshared right-to-use). In both countries, this special right-to-use may appear as property law, association membership and as a company interest, as well. In the Netherlands, timeshare can be property law (ownership, or right-to-use) and personal right as well: association membership or company interest. The Irish and Greek legal definitions mention ownership and other rights (this latter category is not determined). In Portugal the real legal nature, timeshared right-to-use (DRHP, *direito real de habitação periódica*) and holiday ownership (DRT, *direito de habitação turística*) are distinguished. In France, the company of shareholders-construction is spread: the timeshare-entitled persons are preference shareholders in the company. For timesharing, the French often, but not appropriately, use the phrase 'Multipropriété' (because those having timeshare are not the owners). In Sweden, Finland and in Italy, timeshare is regarded as a special right-to-use.⁴¹ Summing up the nature of the direct object of timeshare contract in some European states:

- RTU (special right of use) has the nature of right in rem in Austria, Liechtenstein, Sweden, Finland, Italy, Portugal (DRHP);
- RTU has the character of right in personam: Austria, Liechtenstein, Portugal (DRT);
- right in rem is deeded property in Germany, Spain, Ireland, The Netherlands, Finland, Poland;
- right in rem is fee simple in Belgium, Spain, Germany;
- right in rem is other right (than property right) referring to real estate in Ireland, Poland (*usufruct*);
- right in personam is an association membership in Germany, The Netherlands, Austria, Liechtenstein, Poland;
- right in personam is a share in company in The Netherlands, France, Austria, Liechtenstein, Poland, Germany (can be mixed with *Treuhand-Model*), United Kingdom (mixed with trust);
- lease, leasehold (contractual feature) in Germany, Austria.⁴²

This short overview demonstrates well the chaotic situation of timeshare: similarly to the Hungarian legal situation, in many other European states the priva-

³⁹ <http://ote.hu/index.nof?o=O&k2=18&nyelvid=1&k1=3>; Timepoint of download: 2013. 05. 22.

⁴⁰ http://www.timesharingproblems.org/Timesharing_GB/index.html; Timepoint of download: 2013. 05. 22.

⁴¹ <http://europa.eu.int/youreurope/nav/hu/citizens/factsheets/at/consumerprotection/timeshares/de.html>; Timepoint of download: 2013. 05. 22.

⁴² Papp (2013) 121.

te law must face challenges considering the right of use acquired by timeshare agreement, only few countries make a stand for only one legal solution.

* * *

The timeshare-sector – in which more than 4000 companies are working worldwide – went through a profile-exchange:

- on one hand, among the most significant timeshare companies, leading public catering companies appeared (e.g. Four Seasons, Hilton, Ramada, Hyatt),⁴³
- on the other hand, exchange companies often provide preferential travel service (insurance, air-ticket, car hire etc.) for their club members,⁴⁴
- thirdly, timeshares connected to holiday-parks and bathhouses became conspicuous.

The expanding timeshare-system became one of the dominant means of tourism, it concretized the opportunity, utilized more often by consumers, because of the flexibility and accordance to the legal regulations.

⁴³ Drábik – Fábíán 14. p.

⁴⁴ <http://ote.hu/index.nof?o=O&k2=18&nyelvid=1&k1=3>; Timepoint of download: 2013. 05. 22.

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Стицање непокретности уговором о тајм-шерингу у Европи

Сажетак: Уговор о тајм-шерингу је уговор који има за циљ стицање права на коришћење смејтаја на одређени временски период по принципу ротације. У складу са овим уговором, потрошач, у замену за накнаду, непосредно или посредно стииче право од прџовца, за једну или више година, да користи једну или више непокретности, у више наврата, у циљу рекреације или сјамене потребе, на одређено време. У погледу карактеристика права коришћења стеченог на основу уговора о тајм-шерингу, са аспекта вршења овог права, постоје директан и индиректан тип: у првом случају, осим правног основа ништа друго није потребно за коришћење тајм-шеринга, али у другом случају правни инструменти (нпр. чланство у организацији) мора бити примењен поред правног основа ради његове коегзистенције са правом коришћења (право коришћења је везано за поменути правни инструменти). Директно право коришћења може се смањати стварним правом на туђој ствари, облигационим правом и може бити посебно право употребе. Економија преферира оптију према којој тајм-шеринг има карактер стварног права на туђој ствари с обзиром на то да је повезан са ознакама квалитета (вредности) те ствари као предмета у употреби. Током регулисања уговора о тајм-шерингу у Европи, у центар пажње је дошла заштитна потрошача (потрошачи: Скандинавске земље, земље Бенелукса, Уједињено краљевство, Немачка, Аустрија, Мађарска, Србија, Хрватска, Босна и Херцеговина, Црна Гора, Румунија, Чешка република, Италија) или је на значају добио аспект пржитија и пореског права. (потрошачи: Грчка, Португал, Шпанија, Француска). У Европи је ситуација у вези са тајм-шерингом хаотична: слично правној ситуацији у Мађарској, у многим европским земљама приватно право мора да се суочи са променама имајући у виду право употребе садржано у уговору о тајм-шерингу, само неколико земаља се одлучило за само једно правно решење.

Кључне речи: уговор о тајм-шерингу, уговорно право, директни и индиректни тип тајм-шеринга, стварно право на туђој ствари, RTU, закућ земљишта, жруна својина, делимична својина, Европска регулатива о тајм-шерингу, природа права употребе.

Датум пријема рада: 19.07.2017.