

The image shows a construction site at sunset. Two large tower cranes are visible against a bright orange and yellow sky. In the foreground, several large rolls of blueprints are stacked. The text 'CERHA HEMPEL' is prominently displayed in white, with 'CONSTRUCTION PAPERS' underneath it. A small square logo with a diagonal line is centered below the text.

CERHA HEMPEL

CONSTRUCTION PAPERS



Dispute Resolution Radically Changed by Act on Public Works Projects

Hungary's Act LXIX of 2023 on Public Works Projects (hereinafter: "Act") was published in *Magyar Közlöny*, the official government gazette, and will take effect on 8 November 2023. The Act creates a new and unified framework for public works projects. Many rules that apply to various elements throughout the entire lifecycle of public works projects, from pre-design to completion and operation, have been revised.

This article deals with Section 54, which reforms dispute resolution and legal recourse procedures, and which appears to make the involvement of the Certificate of Performance Expert Board (hereinafter: "CPEB") mandatory before a lawsuit can be filed.

Scope of the Act

[1] The Act applies to public works projects with a value equal to or higher than the national public procurement threshold, and to entities that participate in the preparations for, and completion of, such projects. A construction project qualifies as a public works project if its design and completion is funded from



the central budget and/or from indirect EU funds to the extent of more than 50% of its estimated value, regardless of whether it serves a public purpose.

- [2] The Act applies to public works projects where the public procurement procedure concerning the construction phase starts after the Act takes effect, i.e. 8 November 2023.

Dispute resolution and legal recourse – a greater role for the CPEB?

- [3] In disputes associated with the performance of architectural/engineering design contracts and construction contracts concerning public works, the opinion of the CPEB will have to be obtained as a first step. The primary objective of such an opinion is to facilitate an amicable resolution of the dispute between the parties.

- [4] If the parties are unable to reach a settlement and one of them intends to seek legal recourse against the CPEB's opinion, it may do so by filing a lawsuit within six months after receiving the opinion but no later than within thirty days after the completion of the relevant technical handover procedure [Section 54 (3) of the Act]. However, the Act does not state clearly whether such lawsuits qualify as what are known under Act XXXIV of 2013 (hereinafter: CPEB Act) as lawsuits based on CPEB opinions.

- [5] In another new development, the Court of Budapest will have exclusive jurisdiction in cases that are covered by the Act and have a net value of more than HUF 200 million in dispute. Every dispute will be adjudicated by a panel of three professional judges, where one of the judges will have to have an engineering or equivalent degree. However, Section 54(8) of the Act expressly states with regard to such cases that the provisions in Section 5/A of the CPEB Act (i.e. the rules on lawsuits based on CPEB opinions) "must be applied with the deviations specified in this Section".

Designers' liability

- [6] The Section quoted above also has implications for designers' liability. If a court procedure is underway with regard to the activities of a designer, a developer will be able to request the suspension of the designer's license from the Chamber of Hungarian Architects. If the designer's liability for damage is established in a final and binding judgment, the Chamber will suspend or revoke the designer's license in the light of the value of the damage.

Issues that require legislative or regulatory clarification

- [7] The Act states that the opinion of the CPBE must be obtained in the case of all "disputes associated with the performance" of public works contracts. However, it should be noted that the CBPE Act currently does not necessarily bestow adequate powers on the CPBE for this purpose. In procedures conducted



under the CPBE Act, opinions may be issued in matters included in the following exhaustive list:

- definition of works to be carried out by the contractor (subcontractor) in accordance with the technical specifications of a contract,
- identification of works, beyond reasonable doubt, that were performed in a project in terms of quantity and quality,
- identification of works, beyond reasonable doubt, that were not performed,
- determination of the value of the works on the basis of budget items stated in the contract or a pro-rated part of a flat rate fee.

[8] Compared to the above list, the phrase “disputes associated with the performance” of contracts could potentially result in the referral of a much broader set of cases to the CPBE. For example, legal disputes associated with the performance of contracts include disputes concerning late performance, the related penalty or even the costs incurred as a result of the extension of a deadline, none of which falls into any of the categories listed above. In a procedure under the CPBE Act, the activities of the CPBA may not cover these matters.

Therefore, it remains an open question whether the new Act extends the scope of the CPBE’s procedures and all disputes associated with the performance of public works contracts will primarily have to be submitted to the CPBE, or only opinions on certificates of performance will have to be obtained from it in accordance with the CPBE Act.

It is also unclear whether a lawsuit filed after a ‘new’ CPBE opinion is obtained under the Act will always qualify as a lawsuit based on the CPBE’s opinion within the meaning of Section 5/A of the CPBE Act.

Authors:

András Fenyőházi and Csongor István Fillár

If you are interested in more articles on construction law, please visit our website:

[Construction Papers](http://constructionpapers.hu/)

Copyright © 2023 CERHA HEMPEL Dezső Partners – all rights reserved.

Our mailing address:

CERHA HEMPEL Dezső & Partners

CERHA HEMPEL

CONSTRUCTION PAPERS



1011 Budapest
Fő utca 14-18.
Hungary

E-mail:

andras.fenyohazi@cerhahempel.hu

csongor.fillar@cerhahempel.hu