



CERHA HEMPEL

CONSTRUCTION PAPERS



The treatment of additional work in Hungarian judicial practice

The distinction between extra work and additional work is one of the most enduring dilemmas in construction disputes. The significance of this issue lies in the fact that in addition to the fixed fee, a contractor can generally claim compensation for extra work but not for additional work. This article attempts to provide answers to the most frequently asked questions about additional work in the light of the relevant judicial practice.

1. Fees for additional work

- [1] Under Section 6:244(2) of Hungary's Act V of 2013 on the Civil Code ("Civil Code"), extra work is work that is ordered after the conclusion of the underlying contract, and particularly work that is necessary due to a modification of the design. On the other hand, Section 6:244(1) of the Civil Code defines additional work as any work that was not taken into account in the assessment of the fee but is covered by the construction contract, whether because it is expressly stated in the technical specifications or because the building would not be fit for purpose without it.
- [2] Section 6:245(1) of the Civil Code states that if the parties agree on a fixed-fee arrangement, the contractor can claim compensation for extra work but *not for additional work*. However, the employer must reimburse the contractor for *costs that were incurred in connection with additional work and could not be foreseen when the contract was concluded*.
- [3] Therefore, the contractor's right to be reimbursed for additional work will hinge on the issue of foreseeability.



[4] This article discusses three cases where the contractor was entitled to a reimbursement of the costs of the additional work performed, and three where it was not. While the judgments in some of these cases were issued before 2015 while the old Civil Code was in effect, we believe that their findings may still be relevant under the rules of the current version of the Civil Code.

2. Cases where the costs of additional work were reimbursable

[5] In the following three cases the contractors were successful in claiming fees for additional work.

2.1. Unforeseeable work [Budapest Court of Appeals, Gf. 40.106/2024/11]

[6] There were four separate sets of unforeseeable additional work that served as the basis for the contractor to claim additional fees.

[7] The contractor and the employer signed a construction contract under which the contractor agreed to complete the turnkey renovation of a building. The fee quote covering all activities that were required in the renovation was a part of the contract.

[8] Disputes arose between the parties with regard to whether certain works had to be treated as additional or extra work and whether the contractor was entitled to a reimbursement of its additional costs.

[9] The Certificate of Performance Expert Board ruled that the works in question qualified as extra work, but a court later found that four of them were in fact additional work on the grounds that the original purpose had never been modified; simply more work and more costs than originally anticipated had been required to achieve it.

[10] The costs associated with one of the additional works were incurred because the employer was late in selecting the rope access technique that was to be applied. Additional cost that had been unforeseeable on the contract date was incurred when the employer rejected the type of boiler that was included in the fee quote, which in turn forced a change in how the related works had to be completed. The third item of additional cost was due to the fact the installation of the originally proposed air handling unit was not possible because a thicker floor slab had to be used, which meant that different equipment had to be used. The fourth additional work had to be performed because the contractor had originally only agreed to paint a firewall, but in the end it had to replaster and colour the wall, which could not be foreseen.

[11] Although the court found these to be additional rather than extra work, it concluded that they had not been foreseeable and ruled that the contractor's claim for additional fees was rightful.



2.2. Ground risks [Supreme Court, Pfv. 21.214/2010/7]

- [12] In this case, the contract concerned the construction of an apartment building and the strengthening of the foundations of several adjacent buildings in a fixed-fee arrangement.
- [13] Archaeological excavations carried out on the worksite caused a modification in the plans. This obviously had an impact on the construction work, which mean that the contract also had to be modified. However, the parties could not determine how and to what extent the technical specifications would have to be modified, and therefore they agreed on the following solution.
- [14] The parties agreed that alterations that were eventually going to result from unexpected circumstances and design changes would be subject to a time and materials arrangement besides the general fixed-fee arrangement. Therefore, the parties agreed on two ways of payment: a fixed-fee arrangement for the originally determined works and payment on a time and materials basis for works stemming from the alterations.
- [15] The parties later had a dispute about the fees. The contractor filed a lawsuit for the recovery of unpaid fees. In its counterclaim, the employer sought the repair of construction defects.
- [16] The court held that the contractor was not only entitled to the original fee plus the fees for the extra works, but also to fees for the additional works, because the employer had agreed in the modification of the contract to pay the consideration for such works. However, the court also pointed out that the fact that certain tasks had had to be performed at a higher or lower cost than what had been stated in the original budget could not in itself have any bearing on the fixed fee payable for parts of the building that had not been affected by the archaeological excavation, and therefore, by the alterations. Therefore, additional works that had had to be performed regardless of the archaeological excavation had to be examined in terms of whether such works and the associated costs had been foreseeable.

2.3. Change in employer's requirements [Győr Court of Appeals, Gf. 20.070/2021/7]

- [17] In this case, the contractor agreed to refurbish a gluten storage system in the employer's factory, which included the preparation of permission and execution plans, participation in the permission procedures, completion of the refurbishment and a test run, and the compilation of the as-built documentation. The contractor included materials in its designs in the light of its own standards and prepared its quote on this basis, and the parties concluded the contract in accordance with the above.
- [18] However, the employer informed the contractor while the work was in progress that it required the installation of a Siemens electrical system instead of the Yokogawa system originally requested. The contractor informed the employer that this meant



that the original deadline could not be kept and requested a modification. The employer did not accept the contractor's request. The parties then held discussions in connection with extra works and the additional costs of materials that had to be purchased, but these were unsuccessful. The employer's refusal to accept the additional costs resulted in a dispute between the parties about the fees owed.

- [19] The dispute was eventually resolved by a court, which held that a situation where a contractor is forced to redesign a certain section the project and to buy more expensive materials as result of change in the employer's requirements must be examined in the context of additional work.
- [20] The court also established on the basis of correspondence between the parties and witness testimonies that the decision on the type of radar level sensor, uninterruptible power supply unit, variable frequency drive and control system (Yokogawa or Siemens) that the employer required was made after the employer accepted the contractor's fee quote and while the work was in progress. The contractor could not have been aware of such requirements when the contract was signed. Therefore, the contractor could not foresee that the equipment and parts included in its fee quote would not be acceptable for the employer or that it would be forced to buy more expensive materials and to redesign certain sections of the project as a result. Consequently, the court ruled that the contractor was entitled to a reimbursement of its additional costs.

3. Cases where claims of additional work were without basis

- [21] The contractors claiming additional fees on the basis of additional work were unsuccessful in the following three cases.

3.1. Work foreseeable on contract date [Budapest Court of Appeals, 3.Pf.20.107/2023/7-II]

- [22] The parties concluded a fixed-fee construction contract after a public procurement procedure. The contract stated that no fees would be payable for additional work and that the fixed fee could only be increased on the basis of extra work.
- [23] The parties had a dispute in connection with additional work required to demolish a fence. In the lawsuit, the court primarily focused on examining the extent to which the demolition of the fence had been foreseeable on the contract date.
- [24] It found that the demolition had been technically necessary and entirely foreseeable, as the contractor could not have gained access to the worksite without demolishing the fence. The contractor knew the site before it signed the contract, and therefore it had to be able to foresee that the demolition of the fence was necessary before it could start working on the project.
- [25] Consequently, the court ruled that the demolition of the fence had been necessary in order to perform the contract in accordance with the technical specifications;



therefore, the demolition qualified as additional work, and the contractor was not entitled to a reimbursement of the related additional costs.

3.2. Unfounded claim of additional work [BH2016. 85]

- [26] The contractor and the employer concluded a construction contract after a public procurement procedure for the technological modernisation of the employer's pig farm. The contractor agreed that it would carry out all works that were required in order to ensure that the subject matter of the contract was fit for the purpose intended, even if any particular work was not included in the plans or in the parties' agreement. They also agreed that any extra work would only be performed if the contract was modified.
- [27] The contractor informed the employer several times during the project that it had a claim for additional fees due to additional works. The employer responded that additional fees could not be charged on the basis of additional work under a fixed-fee contract. The employer argued that the contractor had not performed any extra work, and the works it identified were part of the technical specifications described in the contract, and therefore part of the end result agreed by the parties.
- [28] The court ruled that the contractor was not entitled to claim fees for the additional work in the light of the fixed-fee arrangement, and that it could not prove that it had performed any extra work – i.e. work that had been completed on the basis of a written instruction beyond the scope of the contract and that could have served as the basis for charging additional consideration via the modification of the contract. Similarly, it could not prove the existence of unforeseeable additional costs that it could not have anticipated even with due care, and therefore its related claim was also found to be without basis.

3.3. Additional work rather than extra work [EBD2013. P.15]

- [29] In the last case, the parties concluded a contract regarding the construction of a steel frame hall.
- [30] The dispute between the contractor and the employer concerned the issue of whether the contractor was entitled to a fee for extra work on the grounds of moving soil off the site.
- [31] The contractor claimed HUF 3,336,000 for extra work, arguing that the "necessary earthworks" stated in the contract did not include exporting the soil from the site.
- [32] However, the court held that the placement of the excavated soil, whether by spreading out or by exporting, was obviously and necessarily part of the earthworks. The indivisible work that the contractor had agreed to perform included earthworks. The court argued that it did not have relevance that the contractor had failed to properly include soil removal in the preparation of its budget, because if that was so, the removal qualified as additional work and no fees could be charged for it as it was clearly foreseeable.



- [33] The court ruled that the claim made on the grounds of extra work was without basis, because the contractor's fee quote had included landscaping and earthworks, and therefore all types of similar work were covered by the contract and had been foreseeable for the contractor. The court also noted that that the contractor was not entitled to a reimbursement of any additional costs regardless of whether the work qualified as additional or extra work.

4. Summary

- [34] Courts often encounter the dilemma of additional work versus extra work. Contractors face a heavy burden of proof no matter if they want to assert claims based on additional work or extra work. The chances of asserting a claim successfully will be better if the claim is backed up by meticulous pre-project preparations and precise administration. You can read more about these issues and find suggestions in several articles published previously on this site.
- [35] Please see: [Hogyan lehet eredményesen kezelni a pótmunkával kapcsolatos kockázatokat?](#), [What is the difference between additional and extra work?](#), [What is the difference between additional and extra work? Part 2](#), and [Opportunities to realise additional profits in fixed-fee arrangements, or value engineering in Hungarian judicial practice](#)

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