

## Conclusions of the summary report on the courts' jurisprudence on the applicability of the legal consequences of invalidity to loan agreements

The need for setting up a jurisprudence analyzing working group for the examination of the applicability of the legal consequences of invalidity to loan agreements arose in December 2013, in the context of lawsuits instituted in connection with foreign exchange consumer loan contracts. This was so because in the process having resulted in the adoption of uniformity decision no. 6/2013. PJE the question arose whether in case a foreign exchange consumer loan contract proves to be invalid the court can or cannot apply the further legal consequences of invalidity, and if yes, with what content. From among the further legal consequences the possibility of declaring the contract valid was contained in the uniformity decision itself and the applicability of the legal institution was confirmed in the Kásler case (Case no. C-26/13) by the European Court of Justice. Therefore the jurisprudence analyzing working group, set up by the President of the Curia upon the proposal of the Head of the Civil Law Department in March 2014, was charged with the primary task of examining whether in such cases the original situation could be restored or the contract could be declared effective.

In addition to this primary task the jurisprudence analyzing working group has examined the following related questions:

- The notion of partial invalidity and the legal consequences applicable in case of partial invalidity.
- In restoring the original situation or declaring the contract valid or effective how should the statutes of limitation be applied in determining the services to be returned or to be performed in the future?
- What is the relationship between the duty of taking notice of voidness *ex officio* and the principle of the parties' procedural autonomy?

The jurisprudence analyzing working group, however, could not accomplish its original task because, on the one hand, no relevant litigation experience was available as lawsuits seeking only declaration of invalidity under Section 239/A subsection (1) of Act No. IV of 1959 (henceforth: Ptk.) but not seeking the application of further legal consequences had been instituted. On the other hand, the direction and effect of the new legislation prompted by the gravity of the economic and social problems caused by foreign exchange consumer loan contracts were, by enacting Act No. XXXVIII of 2014, Act No. XL of 2014 and Act No. LXXVII of 2014, to create, in addition to eliminating some uncertainties in the application of Ptk., a legislation containing a balanced regulation acceptable both for borrowers and lenders, and more specific rules than Ptk. on settling the accounts and on converting foreign exchange loan amounts into Hungarian Forint amounts.

Based on Section 37 subsection (1) of the amended Act No. XL of 2014, the jurisprudence analyzing working group has concluded that in the context of foreign exchange consumer loan contracts judges will not be faced with the dilemma whether to restore the original situation or to declare the contract effective, since the regulation – as *lex specialis* to the relevant rules of Ptk. – specifies the cases in which a contract may be declared effective for the period preceding the adoption of the final decision.

For the foregoing reasons the members of the jurisprudence analyzing working group have not perceived an “emergency situation” warranting the adoption in the context of foreign exchange consumer loan contracts of an Opinion or another uniformity decision in order to ensure jurisprudential uniformity.