

## Conclusions of the summary report on the courts' jurisprudence on parallel litigation

Under the Hungarian Code of Civil Procedure debtors may file a civil action for the discontinuation of the enforcement proceedings pending against them. Where enforcement has commenced not under a final court decision but under a, normally notarial, document to which an enforcement clause has been attached, in the lawsuit seeking discontinuation of enforcement not only the circumstances having arisen after the issuance of the enforcement order but also the failure of the underlying transaction to have validly come into existence may be invoked [Code of Civil Procedure, Section 369 (a)]. This is so because in such cases (that is, when proceedings are started by attaching an enforcement clause to the document) the enforcement order is not preceded by a civil lawsuit in which the legal relationship between the parties as well as the existence and the precise amount of the debt can be examined.

Under the Hungarian rules, following the issuance of the enforcement order the parties to the contract may file an action not only for the discontinuation of the enforcement proceedings but also for the declaration of the invalidity of the legal transaction underlying the enforcement proceedings.

In the absence of a provision excluding "parallel" litigation it may happen that a debtor files both a declaration of invalidity action and a discontinuation of enforcement action. Where the same invalidity ground is invoked by the debtor in both proceedings, the trial courts cannot but conduct "parallel" proceedings, because they have to examine and assess the same facts in both proceedings. In most cases such parallel proceedings can, for reasons of competence and jurisdiction, not be joined.

Due to the great number of FX-based loans, "parallel" litigation has become a mass phenomenon, because the financial institutions drafted their ( forint- or FX-based) loan contracts in the form of notarial deeds so that in case the contract is cancelled the financial institution can more quickly collect the debt by attaching an enforcement clause to the deed. Therefore desperate debtors file both an action for declaration of invalidity and an action for discontinuation of enforcement.

"Parallel" litigation has raised several procedural and substantive issues in the courts' jurisprudence. Such issues include, among others, the relationship between the two, parallel sets of proceedings and judgments (questions of pending litigation and "*res iudicata*"), how parallelism can be eliminated and what can be done if the courts have arrived at different findings (e.g. if the court of the invalidity action has established the invalidity of the contract whereas the court of the enforcement action has concluded, upon an examination of the same invalidity ground, that enforcement cannot be discontinued). The question what a court should do in an action for discontinuation of enforcement in case partial invalidity is found has also arisen: should enforcement entirely be discontinued or can it be limited; if yes, should such a limitation be imposed *ex officio*, that is without a request to that effect by the plaintiff seeking discontinuation of the proceedings?

Based on the final judgments obtained from the courts, the jurisprudence analyzing working group has examined the solutions applied by the courts to the issues raised by the judges and has, on the basis of the laws in force, worked out solution-options and a recommended solution. The examined issues together with the solution options and the recommended solution are summarized in a 21-page long summary report which is available on the Curia's website.

The summary report is not obligatory for the courts; it merely contains recommendations to help judges in their work. The jurisprudence analyzing working group is of the opinion that in order to eliminate "parallelism" changes in the legislation, namely in some provisions of the Code of Civil Procedure, should be effected.