

Communication concerning the decision of the Curia of Hungary in  
administrative case number Kfv.IV.35.496/2018

The Curia of Hungary had to deal with more than ten similar cases the subject matter of which was the recovery of public subsidies related to small-settlement social care worker services supplied to local governments. According to the cases' similar factual background, the local governments concerned provided small-settlement social care worker services and complied with the overwhelming majority of their statutory obligations, however, they failed to notify, in due time, the competent authorities in charge of the relevant registers about a change in the vehicles with which they supplied such services. Consequently, the Hungarian State Treasury requested the local governments concerned to repay the public subsidies in respect of the time periods during which they had provided false information on their vehicles. The lower instance courts made diverging decisions: either to reject the plaintiffs' claims or to quash the impugned administrative decisions with or without ordering the reopening of administrative proceedings.

The Curia reviewed the various lower instance court decisions and established the followings:

- 1) The Hungarian State Treasury was entitled to examine the administrative condition – required by law – of the provision of small-settlement social care worker services according to which the production, type and licence plate number of the vehicle with which such services had been supplied had to be indicated in the relevant registers.
- 2) As the indication of the above pieces of information in the relevant registers is a statutory obligation, a failure to notify, in due time, the authorities in charge of the registers about a change in such pieces of information amounts to a breach of law.
- 3) On the other hand, such breach of law in itself does not constitute a sufficient and proportionate legal ground for the recovery of the totality of the public subsidies granted during the time period in question.

The Curia was of the opinion that, based on Article XXIV, paragraph (1) of the Fundamental Law of Hungary on the right to fair administration, the administrative authorities had not been entitled to request the recovery of the totality of the subsidies granted. The Curia argued that – on the basis of the core constitutional principles, such as Article 28 of the Fundamental Law of Hungary – the relevant constitutional provisions were binding on the administrative courts even despite a lack of reference by the parties to them. The Curia also pointed out that, in such types of cases, the local governments – as having been responsible only for organising the supply of social care worker services and not having been entitled to exercise public duties – could rightly invoke the violation of their right to fair administration.

Budapest, the 15<sup>th</sup> of March 2019

Administrative and Labour Department of the Curia of Hungary