

Communication concerning the decision of the Curia of Hungary  
in the civil case n° Gfv.VII.30.233/2012

The first and second plaintiffs are the two members of the defendant, a limited liability company. The members have equal shares and equal voting rights.

The first plaintiff brought an action against the resolutions of the company adopted at its members meeting on 7 March 2011, while the second plaintiff challenged the resolutions of the company approved at its members meeting on 26 July 2011.

In his legal action, the first plaintiff argued that due to his absence the required quorum at the members meeting in March 2011 had not been met. He did not contest that he would have been excluded from voting on the given item on the agenda, but he reasoned that despite his exclusion from voting the required quorum at the meeting should have been met.

The second plaintiff put forward in his claim that the resolutions passed at the members meeting in July 2011 should not have been adopted since the agenda items previously proposed by the first plaintiff and related to the above resolutions had not been placed on the agenda by a unanimous decision of the members of the company.

The court of first instance annulled the company resolutions adopted in March 2011, while it rejected the claim as regards the resolutions passed in July 2011. The court of second instance modified the first instance judgement by rejecting the claim concerning the resolutions of March 2011 and by annulling the resolutions of July 2011.

The first and second instance courts, as well as the parties, in particular the legal representative of the first plaintiff who submitted a petition for judicial review to the Curia of Hungary, made reference to conflicting court decisions and contradictory works of legal literature.

The Curia set out its arguments regarding the legal issues of the case as follows:

1.) In the event that a member is not entitled to vote on a particular item, the member concerned shall be disregarded for the purposes of determining the quorum for the item in

question. The required quorum shall be established before voting on each agenda item [Article 20, paragraph (5) of the Act n° IV of 2006 on Business Companies, hereinafter referred to as the Business Companies Act]. Based on these provisions, the presence of the member excluded from voting on the given agenda item was not a prerequisite for the adoption of a valid resolution, since the required quorum had been met without regard to the member concerned.

2.) Any member shall have the right to request the discussion of an issue, if this proposal is communicated to the members at least three days prior to the members meeting. Thus, the proposed agenda items are placed automatically on the agenda without any further decision of the members. Consequently, the rule according to which the members meeting may discuss any issues that were not included in the invitation only if all members are present at the meeting and if they unanimously agree to discuss such issues on the agenda shall not be applied [Article 20, paragraph (4) and Article 144, paragraph (3) of the Business Companies Act].

With regard to the above, the Curia upheld the second instance judgement as regards the company resolutions of March 2011, on the other hand it confirmed the first instance judgement concerning the resolutions approved in July 2011.

Budapest, the 30<sup>th</sup> of April 2013

Civil Department of the Curia of Hungary