

Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.371/2014

From among the lawsuits filed by financial institutions against the Hungarian State, the Curia has today delivered – under Act no. XXXVIII of 2014 on the Settlement of Certain Issues Concerning the Curia’s Legal Uniformity Decision on Consumer Loan Agreements Offered by Financial Institutions (henceforth: the Act) – judgement in the review proceedings conducted in the case of X Credit Ltd.

The plaintiff’s action was dismissed by the first instance judgement, which was upheld at second instance. The reasoning of the final judgement departed from the reasoning of the first instance judgment in that the second instance court found certain contract provisions not to be falling within the scope of the Act. In respect of these provisions the second instance court upheld the first instance judgment, dismissing the action for lack of *locus standi* on the part of the plaintiff.

The Curia, having proceeded upon the plaintiff’s petition for review, has upheld the final judgment.

In its petition for review the plaintiff mostly complained of procedural violations, without seeking to initiate Constitutional Court proceedings or to refer the case for a preliminary ruling to the Court of Justice of the European Union.

The Curia has recalled that the second instance court categorised the contract provisions not falling within the scope of the Act in two groups. The first group encompassed the provisions described by the second instance court as ‘declarative’. These provisions ‘authorised’ the plaintiff to alter the contract by pointing to another contract provision. (The provisions specifying the conditions allowing for a unilateral alteration of the contract were found to be unfair by both the first and the second instance courts.)

In its judgment the Curia has pointed out that in light of the provisions of the Act the treating of the above mentioned provisions as forming a distinct group was not justified, given that ‘declarative’ provisions also formed part of the overall conditions allowing for a unilateral alteration of the contract. Therefore these provisions were not separable from the provisions setting forth the actual conditions to be satisfied for a unilateral alteration of the contract. Therefore on this point the Curia has changed the reasoning of the second instance judgment.

The Curia, however, agreed with the evaluation of the contract provisions that governed interest relief in insurance and life insurance schemes and were categorised by the second instance court as falling in the second group. These provisions did, indeed, not fall within the scope of the Act because they did not allow for a unilateral alteration of the contract but stipulated a loss of right, which was regulated under Section 250 subsection (1) of Act no. IV of 1959 on the (former) Civil Code.

The petition for review also sought the determination by the Curia whether the *right of termination* clauses in the contract were or were not fair. In this respect the plaintiff’s arguments have not been found to be well-founded by the Curia as these provisions, contrary to the requirements set forth in Council Directive 93/13/EEC on unfair terms in consumer

contracts, did not allow for the consumer to terminate the contract with immediate effect in case the interest rate or the costs or the fees were unilaterally altered.

Nor have the other alleged procedural violations contested in the petition for review been found to be well-founded by the Curia.

Budapest, the 30th of January 2015

Civil Department of the Curia of Hungary