

Communication concerning the decision of the Curia of Hungary
in the civil case n° Pfv.V.21.989/2012

The defendant announced an invitation to a public procurement tender for the construction of dormitory buildings in public-private partnership.

On 18 January 2008, the defendant concluded a building rental and service contract for a fix period with the successful tenderer, the plaintiff to the present case. The plaintiff agreed to construct – within 24 months on its own real estate, at its expenses and risk – a building that is suitable to house a dormitory and that has an occupancy permit, and then to hire it out to the defendant. The main obligation of the defendant according to the contract was to rent the dormitory and pay the plaintiff rental and service fee through 240 calendar months. The contract, signed by the Ministry of Education and Culture, entered into force on 26 May 2008.

The plaintiff did not have the sufficient financial resources, therefore in August 2009 it started negotiations with H. N. BANK AG credit institution. The bank offered a credit of 20 000 000,- EUR subject to its conditions. On 29 March 2010, the plaintiff concluded a contract with D. Zrt. to construct the dormitory, and on 30 March 2010 the company began the works. As a condition of credit, the bank required the conclusion of a direct agreement to be signed by three parties, the bank, the plaintiff and the defendant. Such an agreement, however, was not concluded. On 25 November 2010, the plaintiff announced that it suspended the construction for an indefinite period of time.

In its claim, the plaintiff asked the court to oblige the defendant to pay a compensation of 30 990 757,- EUR with interest. The plaintiff argued that the defendant breached its obligation to co-operate with respect to the building rental and service contract, which made it impossible for the plaintiff to perform the rental contract. The plaintiff asked the court to condemn the defendant primarily based on Article 312, paragraph (3), secondarily based on Article 313 of the Civil Code.

The court in its final decision rejected the claim. Based on the findings of the investigation, the court concluded that the defendant complied with its obligation to co-operate, therefore it declared the plaintiff's claim unjustified. It observed that the defendant did not make any statement and did not display an attitude that could have been interpreted as the future non-compliance with its obligations.

The plaintiff submitted a petition for judicial review of the final judgement by the Curia, asking it to quash the decision. Furthermore, it asked the Curia to change the first-instance decision and with an interim decision establish that its claim was justified. The plaintiff argued that the court established the facts of the case by violating legal rules and did not provide an appropriate reasoning. It particularly complained that the court did not establish the non-compliance of the defendant.

The Curia observed that the final judgement did not violate legal rules in terms of the issues set out in the petition for judicial review.

According to the Curia, the court concluded after a due consideration of evidence that the defendant was not obliged to conclude a direct agreement. From the contractual construction arose the possibility of a direct agreement between the parties and there were negotiations towards that end during which the defendant complied with its obligations to co-operate. With respect to this issue, therefore, the petition of the plaintiff was unfounded.

The Curia also observed that the court sufficiently complied with its obligation to reason its judgement according to Article 221, paragraph (1) of the Code of Civil Procedure. In its reasoning, the first-instance court evaluated the evidence and provided an appropriate legal reasoning. The second-instance court even supplemented and further specified the established facts and provided a reasoning to its decision supported by reference to legal rules and paid due attention to the claim. The final judgement did not violate rights provided by the Fundamental Law or the European Convention on Human Rights.

The court was right in establishing that in the course of the first-instance proceeding and the negotiations between the parties before the case started the defendant was consequent in claiming a need for the construction of the dormitory. The court was right in deducting that the fact that the defendant raised the possibility to modify the contractual construction due to a change in the government did not prove that the defendant did not accept the fulfilment of the contract on behalf of the plaintiff, meaning that the defendant would have denied beforehand to comply with its obligation to perform the contract.

Budapest, the 13th of February 2013

Civil Department of the Curia of Hungary