

Communication concerning the decision of the Curia of Hungary
in civil case n° Pfv.I.20.970/2014

The plaintiff as the owner of a land enjoys a right of way over another land owned by the co-owners of a condominium, the defendant to the present case. The plaintiff was tasked with road maintenance to ensure the exercise of his right of way, while the managing agent of the defendant condominium agreed under a contract to contribute to the road maintenance costs.

In his claim, the plaintiff requested the court to oblige the defendant to contribute to the road maintenance costs as agreed in their contract. The defendant, on the contrary, requested the court to terminate its proceedings and argued that the condominium had no capacity to be a party to legal proceedings in respect of the plaintiff's right of way.

The first instance court terminated its proceedings. The court justified its decision by stating that the plaintiff's claim should be based on the legal relationship between him and the co-owners of the condominium irrespective of the defendant's underlying co-ownership system, therefore the defendant had no capacity to be a party to legal proceedings in the present case.

The second instance court upheld the first instance decision and pointed out that the plaintiff's *in rem* claim in connection with the co-owners' joint ownership did not fall in the scope of measures relating to the joint ownership and the plaintiff's contractual performance claim had originated from the parties' property law relationship, consequently the defendant had no capacity to be a party to the proceedings.

Proceeding upon the plaintiff's petition for judicial review, the Curia quashed the first and second instance decisions and ordered the first instance court to continue its proceedings. In the reasoning part of its procedural order, the Curia argued that the plaintiff's claim had been based on a contract concluded between him and the defendant condominium in which the latter had agreed to contribute to the road maintenance costs, and the plaintiff had requested the court to oblige the defendant to meet its payment obligation under the above contract, therefore the defendant condominium could be a party to the proceedings without the involvement of all co-owners in the lawsuit.

Budapest, the 23rd of March 2015

Civil Department of the Curia of Hungary