

Communication concerning the decision of the Curia of Hungary  
in civil case n° Pfv.I.20.935/2014

The plaintiffs lodged a claim before the competent court in which they requested the termination of enforcement proceedings initiated against them on the basis of section 369, point a) of the Code of Civil Procedure. They argued that the loan agreement concluded between them and the predecessor of the defendant was contrary to the provisions of section 213, subsection (1), points a), c) and e) of Act no. CXII of 1996 on Credit Institutions and Financial Enterprises, therefore their agreement should be considered null and void. The defendant primarily called for the termination of court proceedings.

By its procedural order, the first instance court terminated its proceedings with reference to section 130, subsection (1), point g) and section 157, point a) of the Code of Civil Procedure. The court agreed with the defendant's position and reasoned that the invalidity of the loan agreement cannot be examined without joining all contracting parties to the legal action, however, procedural rules do not allow for the predecessor of the defendant to be a party to the proceedings, since, by virtue of section 366 of the Code of Civil Procedure, a legal action for the termination of enforcement proceedings can be brought only against the party seeking enforcement. The second instance court upheld the order of the first instance court.

Based on the plaintiffs' petition for judicial review, the Curia quashed the first and second instance decisions, and ordered the first instance court to reopen its proceedings.

In the reasoning part of its order, the Curia stated that, in a legal action for the termination (limitation) of enforcement proceedings as defined by section 369, point a) of the Code of Civil Procedure, the defendant is given the right to challenge the validity of the claim to be enforced, as a result of which the court is practicably entitled to assess the validity of the parties' agreement that served as legal basis for the enforcement.

In a legal action for the termination (limitation) of enforcement proceedings, the plaintiff requests the termination of enforcement proceedings initiated against him, while the court hearing the action shall be bound by the plaintiff's request and consequently shall not be entitled to declare the parties' agreement invalid. In the operative part of its judgement, the court hearing such action shall not declare the underlying agreement invalid and, if the claim is well founded, shall "only" terminate (limit) the enforcement proceedings. In the reasoning part of its decision, the court may solely refer to the invalidity of the parties' agreement which serves as legal basis for the termination of enforcement proceedings.

With regard to the above, it can also be concluded that in a legal action for the termination (limitation) of enforcement proceedings it is the parties involved in the enforcement proceedings, not the contracting parties, who shall be joined to the action, because the former and latter parties have different rights and interests.

Budapest, the 30<sup>th</sup> of January 2015

Civil Department of the Curia of Hungary