

Communication concerning the decision of the Curia of Hungary  
in the civil case n° Pfv.VI.21.969/2012

In his claim based on Article 36/A of the Law Decree n° 11 of 1960 on the Entry into Force and Implementation of the Civil Code (hereinafter referred to as the Law Decree), the prosecutor, as the plaintiff to the present case, requested the court to declare the equipment rental agreement concluded between the first and second defendants void on the grounds that their agreement had been concluded in breach of the legal provisions on public procurement procedure, therefore it had violated Article 200, paragraph (2) of the Civil Code. Furthermore, the plaintiff requested the court to declare the agreement valid for the period up to the date of judgement and to set the price of the services remained without consideration by reducing the rental fee to an amount equal to the consideration for half of the price of the services stipulated in the agreement. The plaintiff reasoned that there had been an unreasonable disproportion between the services of the parties which – with regard to the first defendant being a municipality – could also harm public interest.

The final court decision declared the equipment rental agreement concluded by the defendants void but valid for the period up to the date of judgement, on the other hand, it rejected the remainder of the plaintiff's claim. On the basis of its interpretation as regards Article 237, paragraphs (1) and (2) of the Civil Code, the court held that in the present case neither the cause of invalidity could be abolished, nor the state of affairs having existed prior to the conclusion of the agreement could be restored, hence, by choosing among the different legal consequences of invalidity, the court could do nothing but declare the agreement valid for the period up to the date of judgement. Under the use of the declaration of validity for a certain period of time, the court is entitled to render a decision in respect of the services only if one or more of them remained without consideration. In the present case, since the parties have mutually performed their contractual obligations, there was no such possibility. Pursuant to Article 36/A of the Law Decree, the prosecutor acting as a plaintiff is not entitled to request the court to declare an agreement void on the grounds of unreasonable disproportion between the services stipulated in the agreement, this right could only be given to the first defendant who has not exercised it within the prescribed statutory time limit. The plaintiff and the first defendant submitted petitions for judicial review against the final court decision and requested the Curia of Hungary to quash the first and second instance court decisions and to order the reopening of the case before the first instance court. In their petitions for judicial review, the parties argued that the court could have modified the terms and conditions of the agreement declared valid for a certain period of time. This debate in the judicial review proceedings raised the theoretical question whether the court should be compelled to entirely settle the parties' contractual relationship – for instance, based on the parties' reference, to eliminate the unreasonable disproportion between the services provided by the parties – while declaring valid their otherwise void agreement. The above theoretical question has not yet been addressed by the Supreme Court or the Curia.

In its judgement, the Curia upheld the final court decision and pointed out the followings:

While declaring, by virtue of Article 237, paragraph (2) of the Civil Code, valid the otherwise void agreements, the competent courts shall not be compelled to examine the proportionality of services, but to establish whether one or more of them remained without consideration. The examination of the proportionality of services can be conducted only if the parties' agreement is declared void on the grounds that it qualifies a usurious contract or it stipulates services in an unreasonably disproportionate manner. In the present case, the plaintiff was not entitled to request the court to declare the parties' agreement void on the grounds of unreasonable disproportion between the stipulated services, the first defendant omitted to bring an action within the prescribed time limit, no reference was made to a usurious contract by the parties, furthermore, the cause of invalidity was not founded on the disproportion between the services of the parties, thus the courts were not entitled to examine the proportionality of services.

Budapest, the 28<sup>th</sup> of June 2013

Civil Department of the Curia of Hungary