

Communication concerning the decision of the Curia of Hungary  
in civil case n° Pfv.IV.21.953/2017

In its final judgement no. 2.Pf.20.656/2012/7, the Regional Appellate Court of Budapest concluded that the defendant had violated the plaintiff police officers' personality right to their own image by publishing photographs in a recognisable manner about them in action as securing a demonstration without their preliminary permission on a website operated by him.

Proceeding upon a constitutional complaint submitted against the above judgement, the Constitutional Court found it unconstitutional and consequently annulled it by Constitutional Court decision no. 28/2014 of 29 September 2014 (hereinafter referred to as the first Constitutional Court decision).

In its reopened proceedings, the Regional Appellate Court of Budapest considered the criteria laid down by the first Constitutional Court decision, but decided to deliver a new judgement with a content identical to that of its earlier, unconstitutional judgement in which it had upheld the first instance court's judgement finding in favour of the plaintiffs.

Acting upon the defendant's petition for judicial review, the Curia, in its judgement no. Pfv.IV.20.121/2016/3, upheld the regional appellate court's new judgement.

Proceeding upon a novel constitutional complaint submitted against the Curia's above judgement, the Constitutional Court found it unconstitutional and consequently annulled it by Constitutional Court decision no. 3/2017 of 21 February 2017 (hereinafter referred to as the second Constitutional Court decision).

In its reopened proceedings, the Curia quashed the final judgement, reversed the first instance court's judgement and rejected the plaintiffs' claim. The Curia maintained its position that it did not follow from the relevant pieces of legislation that, in the proceedings reopened after the annulment of its judgement by the Constitutional Court, an ordinary court could not reach a conclusion identical to that obtained earlier by duly taking into account the constitutional assessment criteria laid down by the Constitutional Court's applicable decision. The Curia argued that the ordinary courts seized with the case and the Constitutional Court had taken a different view on the constitutional and statutory issues of the restrictions on the freedom of the press on grounds of the protection of personality rights deriving from human dignity. The Curia agrees in principle with the primacy of the freedom of the press and the right to information of public interest over the protection of privacy. The relevant Hungarian legislation in force, on the other hand, gives preference to personality rights arising from the safeguarding of human dignity over press freedom by requiring the prior consent of any person – except for public figures – for the publication of an image or voice-recording concerning them (section 80 of the former Civil Code, section 2:48 of the new Civil Code). The aforementioned provisions do not allow for additional exemptions from the requirement of prior consent. Due to the statutory limitations on the freedom of the press, the Constitutional Court was forced to strike a fair balance between these fundamental human rights. The second Constitutional Court decision took the assessment criteria laid down by the first Constitutional Court decision into due account and established, with reference to section 39, subsection (1) of the Act on the Constitutional Court, the primacy of the freedom of the press to inform the public over the plaintiffs' personality right to their own image in the case at hand, hence, it decided on the very merits of the legal dispute. As a result, the plaintiffs are not entitled to enforce their personality right to their own image on the basis of section 80 of the former Civil Code in the present case.

Budapest, the 29<sup>th</sup> of June 2018

Civil Department of the Curia of Hungary