

Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.038/2015

From among the lawsuits filed by financial institutions against the Hungarian State, the Curia has delivered – under Act no. XXXVIII of 2014 on the Settlement of Certain Issues Concerning the Curia’s Uniformity Decision on Consumer Loan Contracts Offered by Financial Institutions (hereinafter referred to as the Act) – a decision in the judicial review proceedings conducted in the case of X Property Lease Ltd.

The first instance court dismissed the plaintiff’s action by arguing that, on one hand, some of the concretely defined standard contract terms did not fall under the scope of application of the Act, on the other hand, the plaintiff could not rebut the presumption of unfairness with regard to the standard contract terms which fell within the scope of application of the Act.

The plaintiff submitted an appeal against the provisions of the first instance judgement which provided that the plaintiff had failed to rebut the presumption of unfairness. The defendant also lodged an appeal in which it listed the standard contract terms that it deemed – contrary to the position of the first instance court – to fall under the scope of application of the Act and requested the second instance court to declare that the plaintiff had also failed to rebut the presumption of unfairness in respect of the listed contract terms.

The second instance court upheld the first instance judgement, however, it found, disagreeing with the first instance court, that certain other but not specifically mentioned standard contract terms also fell within the scope of application of the Act. The second instance court concluded that the plaintiff could not rebut the presumption of unfairness in respect of the majority of these standard contract terms that were classified not in an individualised manner, but on the basis of a general approach.

Proceeding upon the plaintiff’s petition for judicial review, the Curia rendered a partial judgement in which it quashed the provisions of the final judgement that concerned those standard contract terms that had been deemed to fall under the scope of application of the Act and had been listed as such in the defendant’s appeal, and ordered

the second instance court to reopen its proceedings in that regard, while it upheld the remainder of the final judgement.

The Curia examined the legality of the final judgement within the framework of the plaintiff's petition for judicial review and pointed out that the final judgement could not be considered unlawful due to the mere fact that the lower instance courts dealing with the case had not made a reference for a preliminary ruling to the Court of Justice of the European Union. The Curia also deemed it unnecessary to initiate a preliminary ruling procedure.

The Curia agreed with the lower instance courts that the plaintiff had failed to rebut the legal presumption of unfairness in respect of the standard contract terms that had been found by the first instance court to fall under the scope of application of the Act, primarily because the plaintiff's standard contract terms allowing for a unilateral alteration of the consumer loan contract did not comply with the principles of transparency and clear and intelligible drafting, as interpreted by uniformity decision no. 2/2014. PJE of the Civil Department of the Curia.

The Curia, however, shared the argument put forward in the plaintiff's petition for judicial review in so much that the second instance court had not fulfilled its obligation to state the reasons of its decision, since it had failed to give reasons in a distinctly identifiable and unambiguous manner as to which of the standard contract terms – called into question by the defendant in a duly substantiated appeal – it had deemed to fall under the scope of application of the Act and as to the grounds of its assessment in that respect. Hence, the Curia partially quashed the final judgement and ordered the second instance court to reopen its proceedings and to rule, in a concrete and identifiable manner, on the substantive issue as to whether the standard contract terms exhaustively listed in the defendant's appeal should fall under the legal presumption of unfairness.

Budapest, the 23rd of March 2015

Civil Department of the Curia of Hungary