

Communication concerning the decision of the Curia of Hungary
in civil case n° Pfv.V.20.753/2017

As a result of a public procurement procedure, the first plaintiff and the defendant concluded a number of works contracts to renovate and extend a school building.

In his statement of claims, the first plaintiff requested the court to order the defendant to pay him contract fees and damages. The defendant, on the other hand, lodged an offsetting objection (set-off claim) as well as a counterclaim with the court. During the court proceedings, the first plaintiff assigned his claims to the second plaintiff.

The court of second instance partially modified the first instance judgement and argued that, due to the provisions, in force at the time of the conclusion of the parties' contracts, of section 306/A, subsection (2) of Act no. CXXIX of 2003 on Public Procurement (hereinafter referred to as the Public Procurement Act), the court of first instance had erred in considering the defendant's offsetting objection to be admissible. According to the aforementioned provisions, the contracting entity shall be entitled to include those of his overdue claims that are of the same type due from the creditor to offset his debts from unpaid considerations relating to a public procurement contract. However, both the first plaintiff and his legal successor in the proceedings, *i.e.* the second plaintiff contested the defendant's offsetting objection.

Proceeding upon the defendant's petition for judicial review, the Curia upheld the final judgement. It pointed out that the lower instance courts had rightly established the case's factual background by way of a correct and rational assessment of the relevant pieces of evidence. In connection with the petitioner's argument according to which section 306/A, subsection (2) of the Public Procurement Act had been violated by the lower instance courts, the Curia stressed that the court of second instance had properly applied the legal provisions in question and had been right to disregard the defendant's offsetting objection. Since, as a result of the assignment of claims arising from the parties' works contracts concluded on the basis of a public procurement procedure, the second plaintiff became the first plaintiff's legal successor in the court proceedings, the second plaintiff's approval would have been necessary for an offsetting against his claims with regard to the above legal restriction on offsetting.

Budapest, the 27th of April 2018

Civil Department of the Curia of Hungary