

Communication concerning the decision of the Curia of Hungary
in the civil case n° Pfv.V.21.621/2012

The plaintiff defectively performed his obligations under the works contract concluded between him and the defendant for the purposes of increasing the cooling capacity of the defendant's processing plant. The defendant had the defects repaired, and in the subsequent legal action in his counter-claim requested the court to oblige the plaintiff to pay the repair costs incurred and to compensate for the damage caused by the defective performance. In his claim, the plaintiff demanded the payment of his contractual fees. The central issue of the legal dispute was whether the obligee (the defendant) could be entitled to the reimbursement of repair costs if that party had previously not required the obligor (the plaintiff) to correct his defective performance.

The Curia of Hungary addressed the above theoretical issue as follows:

Pursuant to Article 306, paragraph (3) of the Civil Code, if the obligor is unable or unwilling to repair the goods within a reasonable time, the obligee shall be entitled to repair the goods himself or have them repaired by others at the expense of the obligor. This provision should be properly interpreted as meaning that repairment at the expense of the obligor can be performed only if the obligee has no more legitimate interest in requiring the obligor to correct his performance due to the nature of the defects, the circumstances of the defective performance, the obligor's attitude or the consequent loss of confidence. The above conditions could be fulfilled even if the obligee had previously failed to invite the obligor to cure his failure. In the absence of such previous invitation, the obligee can still prove that the obligor was unable to correct his defective performance under the conditions laid down in Article 306, paragraph (3) of the Civil Code, and therefore, with regard to the circumstances, the former party had no more interest in having the defects repaired by the obligor. In the event that the obligor denies the fact that he defectively performed his contractual obligations, his denial, in general, should be considered – even in the absence of an invitation from the obligee to cure his failure – that he is unwilling to repair the defects. In such case, the obligee is entitled, without the need for a prior invitation addressed to the obligor, to repair the defects or have them repaired at the expense of the obligor.

Given that the plaintiff failed to repair his defects in planning and implementing the capacity increase stipulated by the works contract, and denied the fact, prior to and during court proceedings, that he defectively performed his obligations, the defendant was successful in his counter-claim and obtained – instead of requesting the plaintiff to correct the defective performance – the reimbursement of his repair costs on the basis of Article 306, paragraph (3) of the Civil Code.

With regard to the above, the Curia upheld the final court decision which had obliged the plaintiff to reimburse the repair costs paid by the defendant and had established the plaintiff's liability for the damage caused by his defective performance.

Budapest, the 28th of June 2013

Civil Department of the Curia of Hungary