

Communication concerning the decision of the Curia of Hungary
in civil case n° Pfv.V.21.216/2017

The defendants were executive directors with autonomous legal representation powers in a limited liability company, the plaintiffs' legal predecessor. The defendants and the company concluded agricultural lease agreements with each other, and they subsequently terminated them, but they had not requested the approval of the company's general meeting for their conclusion and termination. The company was represented by the first defendant in respect of the conclusion and termination of these lease agreements. The company later approved their conclusion, but refused to approve their termination.

The plaintiffs, as the company's legal successors as a result of an assignment agreement, brought a legal action for compensation for loss of profit against the defendants. The court of first instance found against the first defendant, but rejected the plaintiffs' claim in respect of the second defendant, while the court of second instance found against both the first and second defendants.

Proceeding upon the second defendant's petition for judicial review, the Curia had to take a position on whether the second defendant's liability vis-à-vis the company for damages arising from the termination of the lease agreements could be established even if he had signed them not as the company's executive director, but as the owner (lessor) of the real estates concerned.

The Curia upheld the final judgement. It pointed out that since the second defendant had been acting as the company's executive director with autonomous representation powers at the time of the termination of the lease agreements, he should reasonably have been aware of their contents. An executive director is responsible for the company's day-to-day management in order to ensure the effectiveness of its business activities and, in particular, for providing the necessary conditions for its lawful operation. The company's general meeting has exclusive competence to approve the conclusion and termination of those agreements that have been concluded between the company and its member or executive director or their close relative. The executive director, irrespective of whether being authorised to represent the company alone or jointly, is entrusted with the task of convening the company's general meeting in the company's interest. Given that the second defendant was aware of the termination of the lease agreements, he was required to convene the company's general meeting, but he failed to do so and he also omitted to ensure the company's lawful operation by any other legal means, consequently, he should be held liable for damages towards the plaintiffs.

Budapest, the 29th of June 2018

Civil Department of the Curia of Hungary