

Communication concerning the decision of the Curia of Hungary  
in civil case n° Gfv.VII.30.105/2013

The first instance court, without issuing a summons, rejected the claim of the plaintiff dated 3 July 2012, arguing that in light of uniformity decision 1/2012 PJE of the Curia, the defendant, a financial branch office in Hungary of a foreign financial company registered in an EEC member state did not have the capacity to be a party to legal proceedings.

With its order of 11 December 2012 the second instance court upheld the first instance court order.

Proceeding upon the petition for judicial review filed by the plaintiff, the Curia quashed the final order, extending to the first instance court order, and called upon the first instance court to reopen the proceeding.

In its order the Curia pointed out that the legal rule that had been the basis of uniformity decision 1/2012 PJE was modified as from 28 October 2012. Article 3, paragraph (1a) of Act CXXXII of 1997 on Branch Offices and Commercial Representative Offices of Foreign-Registered Companies in Hungary unambiguously stipulates that branch offices, including financial branch offices, have legal capacity. In terms of Article 50 of the Code of Civil Procedure the second instance court should have examined the legal capacity of the defendant ex officio and should have made a decision in compliance with the changed legal situation, even if the defendant did not enter an appearance at the time.

The Curia held that according to Article 42, paragraph (1) of Act CLXI of 2011 on the Organisation and Administration of Courts uniformity decisions are binding on courts, however, if the legal rule on which the uniformity decision was based is modified, the stipulations of the uniformity decision are obviously not applicable in a legal issue that has to be evaluated on the basis of the modified legal rule. In such case the uniformity decision does not necessarily have to be repealed as it contains the appropriate interpretation of legal rules that were in force at the time of passing the uniformity decision. A uniformity decision has to be repealed only if it contains principles and standpoints with which the Curia does not agree any more.

Budapest, the 10<sup>th</sup> of January 2014

Civil Department of the Curia of Hungary