

Communication concerning the decision of the Curia of Hungary  
in civil case n° Pfv.I.20.330/2014

The parties to proceedings concluded a closed-end financial lease contract in respect of a real estate owned by the defendant financial institution. The plaintiff took possession of the real estate without fully complying with his payment obligation, as a result, the defendant terminated the lease contract and submitted a request to the competent notary public requesting the eviction of the plaintiff from its real estate by means of the endorsement of a notarial act containing the plaintiff's payment obligation. In his claim, the plaintiff requested the court to terminate the enforcement proceedings initiated against him and to declare the financial lease contract invalid.

In its judgement, the first instance court terminated the enforcement proceedings initiated against the plaintiff and declared the closed-end financial lease contract concluded between the parties invalid. The second instance court upheld the first instance judgement and confirmed that financial lease contracts should be governed by the provisions of section 210 and section 213 (regarding consumer loans) of Act no. CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter referred to as the Credit Institutions Act).

Proceeding upon the defendant's petition for judicial review, the Curia quashed the first and second instance judgements and ordered the first instance court to reopen its proceedings. The Curia observed that the lower instance courts had misapplied the provisions of section 213 of the Credit Institutions Act in connection with the parties' financial lease contract, since it can be ascertained that financial lease is not classified as a type of consumer loan by virtue of the explanatory notes in the Credit Institutions Act. Due to the particular features arising from its specific method of financing, financial lease shall be classified as a separate legal instrument, and it shall be considered a type of financial service enumerated in Chapter I entitled Financial Services of Appendix no. 2 of the Credit Institutions Act. With regard to the above, the invalidity of the parties' financial lease contract shall be examined not on the basis of section 213, but according to section 210, subsections (2) and (3) of the Credit Institutions Act.

The Curia also noted that in case of the invalidity of the parties' financial lease contract the plaintiff is not entitled to use the real estate (leased item) owned by the defendant, on the other hand, the invalid contract cannot serve as a legal basis for "direct" enforcement.

Budapest, the 30<sup>th</sup> of January 2015

Civil Department of the Curia of Hungary