

Communication concerning the decision of the Curia of Hungary
in civil case n^o Pfv.V.21.235/2018

A number of final court decisions had been delivered in respect of claims for damages and compensation arising from contracts concluded by the parties to proceedings between the years 1994 and 1999.

In his claim submitted in the present case, the plaintiff requested the court – *inter alia* – to establish the invalidity (nullity) of the parties' contract concluded in 1999 on grounds of the latter's usurious nature. In his counter-claim, the defendant primarily argued that the plaintiff's claim had become *res judicata*, since it had already been finally disposed of by other courts in their earlier proceedings, therefore he requested the court to terminate its proceedings.

The court of first instance did not agree with the defendant's argumentation and proceeded to decide on the merits of the case by rejecting the plaintiff's claim. On the other hand, the court of second instance quashed the first instance judgement and terminated the court proceedings. The court of second instance reasoned that the earlier final court decisions rendered in legal actions for damages and for compensation for reliance damages with respect to the parties' contractual relationship had already examined the validity of the contracts concluded between them, therefore there is no legal ground for the court to reassess the allegedly usurious contract concluded in 1999. According to the viewpoint of the court of second instance, the courts which had previously dealt with the parties' legal action for damages for non-compliance with their contractual obligations should have taken notice *ex officio* of the possible existence of a ground for nullity (usuriousness), and in the present proceedings the plaintiff failed to provide any new fact or piece of evidence that had been unknown to the courts previously seized with the case in order to justify the usurious characteristics of the 1999 contract.

Proceeding upon the plaintiff's petition for judicial review, the Curia quashed the second instance decision and ordered the court of second instance to reopen its proceedings to decide on the merits of the appeal. The Curia pointed out that the legal action for the invalidity of the parties' usurious contract could not become *res judicata*, because the courts previously seized with the parties' legal action for damages – in the absence of any relevant data or evidence – had not examined (had not been able to examine) the objective and subjective conditions necessary for the establishment of the usuriousness of the impugned contract.

Budapest, the 24th of November 2018

Civil Department of the Curia of Hungary