

Communication concerning the decision of the Curia of Hungary in
civil case number Pfv.VI.20.875/2020

According to the case's factual background, the plaintiff is a central budgetary institution entrusted with the task of carrying out the activities of the State's blood agency, while the defendant is a company mainly specialised in the production, development and marketing of blood plasma derived pharmaceutical products. As of the year 2009, the plaintiff has undertaken, by a "cooperation agreement", to pass the ownership of fresh frozen plasma, derived from whole blood collected by the agency, in an amount not necessary for transfusion to the defendant in exchange of a fee stipulated by their agreement for the purposes of further processing, namely to produce stable blood products.

In its legal action, the plaintiff requested the court of first instance to order the defendant to pay it an amount of 11 384 627 265,- Hungarian forints and interest by arguing that the contractual term obliging the defendant to pay a fee had been null and void. Pursuant to the plaintiff's argument, the term stipulating the payment of a fee constituted a breach of the relevant legislation that prescribed the application of a regulated price and determined the level thereof.

The court of first instance dismissed the plaintiff's action.

Proceeding upon the plaintiff's appeal and the defendant's cross-appeal challenging the establishment of court fees, the court of second instance upheld, in essence, the first instance judgement. The court of second instance reasoned that the scope of application of the pieces of legislation referred to by the plaintiff in its legal action for the establishment of the nullity of the parties' agreement had not covered the pharmaceutical company defendant and the agreements concluded by the latter. By performing its contractual obligations, the plaintiff, as a supplier of raw materials for pharmaceutical production, contributed to the fabrication of medicinal products by the defendant, in particular through the process of transforming labile blood products into stable ones. The plaintiff's reference, in the course of the appellate proceedings, to a novel legal provision to justify the unlawfulness of the parties' agreement qualified as an unauthorised modification of the legal action and therefore could not be admitted. The court of second instance was not obliged, either based on the appellant's motion or *ex officio*, to take the novel legal provision – that provided a new ground for nullity – referred to belatedly by the plaintiff in its appeal into account.

In its petition for judicial review, the plaintiff requested the Curia of Hungary primarily to quash the final judgement and grant its action, secondarily to order the court of first instance to reopen its proceedings and deliver a new decision. The plaintiff argued that the appellate court's failure to examine the new ground for nullity referred to by it had constituted a procedural infringement that had a substantial impact on the case's on-the-merits adjudication. In the plaintiff's viewpoint, the appellate court also breached the relevant substantive pieces of legislation by misinterpreting and incorrectly applying them.

The Curia's judgement upheld the final judgement delivered by the court of second instance. The Curia reasoned that the plaintiff had been unable to justify, fully or partially, the breach of a number of legal provisions listed in its petition for judicial review, nevertheless, the Curia had reviewed and had been entitled to review the legality of the final judgement only on the basis of the plaintiff's detailed and justified references to breaches of law. The Curia agreed with the appellate court's correct on-the-merits decision and the appropriate reasoning attached thereto. Having regard to the arguments put forward by the petition for judicial review in connection with the nature of the alleged breach of law, the Curia stated that the plaintiff's action had aimed at obliging the defendant to pay the plaintiff monetary compensation and that the plaintiff had invoked a breach of the regulated price regime to substantiate its action. The plaintiff's action for compensation could have been successful only if it had been able to justify – through legal and factual elements – the defendant's obligation to make further payments in exchange for the performance of their agreement. The reference to the breach of a novel piece of legislation and to a new factual element by the plaintiff in its appeal could not substantiate the legal action. The appellate court's final judgement correctly pointed out that the breaches of law referred to by the plaintiff in order to oblige the defendant to pay the plaintiff compensation had no relevance in respect of the parties' contractual relationship. The plaintiff's petition for judicial review failed to prove the ill-foundedness of the final judgement's reasoning in that regard. The plaintiff's argumentation according to which the fabrication of blood products had been a significant cost factor for the plaintiff and blood plasma had been used as a raw material for the profit-oriented production of medicines constituted an arbitrary extension of the scope of application of the invoked pieces of legislation. The plaintiff's additional legal argument according to which the material scope of a piece of legislation in force could be deduced from a repealed piece of legislation and the personal scope of an act of law should be determined not on the basis of a statutory definition but based on the ordinary sense of the relevant term violated the principle of legal certainty and risked giving rise to the arbitrary administration of justice. The subsequent repeal of a piece of legislation cannot justify the above argument, because the nullity of a contract may occur already at the time of the conclusion thereof, hence, the unlawfulness of a contract is to be assessed on the basis of the legislation in force at the time of the conclusion thereof.

Budapest, the 6th of October 2020

Press Secretariat of the Curia of Hungary