

Communication concerning the decision of the Curia of Hungary
in civil case no. Gf.VII.30.564/2017

The parties concluded a foreign currency based leasing contract on the basis of which the lessee, the plaintiff to the present case, requested the court to order the lessor, the defendant to the present case, to pay an amount of 363 222,- HUF. The plaintiff argued, *inter alia*, that he had made an excess payment to the defendant, since he, as a lessee, could not be held liable for the payment of any exchange difference, because the leasing contract and the general contractual conditions forming an integral part thereof had not contained any risk assessment statement.

In its procedural order delivered on the basis of section 130, subsection (1), point f) of Act no. III of 1952 on the Code of Civil Procedure (hereinafter referred to as the Code of Civil Procedure), the court of first instance declared the plaintiff's claim inadmissible. The court was of the opinion that the issue of the liability for the risk of any exchange difference had already been settled by Act no. LXXVII of 2014 on the Settlement of Certain Issues related to the Change of Currency in Certain Consumer Loan Contracts and to the Rules of Interest Payment (hereinafter referred to as the Foreign Currency Loans Act). The provisions of the aforementioned Act on liability for risks cannot be disregarded by the judiciary, consequently the issue of the risk of exchange difference in such cases can no longer be brought to court.

Proceeding upon the plaintiff's appeal, the court of second instance decided to stay its proceedings until the conclusion of the European Court of Justice's preliminary reference procedure in case C-51/17 (hereinafter referred to as the Ilyés case).

The defendant submitted an appeal against the second instance court's decision staying its proceedings and requested the Curia of Hungary to quash the impugned decision and order the second instance court to decide on the merits of his case. The defendant argued that, based on Article 267 of the Treaty on the Functioning of the European Union (hereinafter referred to as the TFEU), the European Court of Justice has jurisdiction to give preliminary rulings only concerning the validity and interpretation of legal acts of the Union. In the present case, however, there has been no European Union act the interpretation of which would have become necessary, therefore the legal issue preliminarily examined by the European Court of Justice in the Ilyés case does not constitute an incidental or preliminary issue in respect of the present lawsuit. He emphasised that a reference for a preliminary ruling made by a national court does not affect all the other pending cases of similar nature.

The Curia upheld the second instance court's decision and reasoned that the European Court of Justice had been asked to consider in the Ilyés case, *inter alia*, whether the contractual clause that had made the consumer liable for the risk of exchange difference could still fall under the scope of the relevant EU directive even after the entry into force of the Foreign Currency Loans Act. In the Curia's viewpoint, the Court's ruling in the Ilyés case could have an impact on the merits of the present lawsuit.

In point 1 of Joint Departmental Opinion no. 3/2005 (of 14 November 2005) PK-KK of the Supreme Court's Civil and Administrative Departments on Certain Aspects of the Suspension of Court Proceedings, the Supreme Court opined that if a legal issue in a civil case had already been referred to the European Court of Justice for a preliminary ruling by an other court, then the court later seized with a case involving the same legal issue against an identical factual background might be entitled, in accordance with section 152, subsection (2) of the

Code of Civil Procedure, to stay its proceedings until the conclusion of the preliminary reference procedure, provided that the European Court of Justice's ruling could affect the merits of the case to be suspended.

According to the joint departmental opinion, if the above situation occurs, then the court may decide either to make an additional reference for a preliminary ruling on the basis of Article 267 of the TFEU or to stay its proceedings pursuant to section 152, subsection (2) of the Code of Civil Procedure in order to wait for the conclusion of the ongoing preliminary reference procedure. The Supreme Court argued that the latter option had been made available so as to prevent the courts from making several preliminary references at the same time in respect of the very same EU piece of legislation, factual background and legal issues.

When adjudicating an appeal submitted against a decision staying the court's proceedings, the appellate court may examine only whether the European Court of Justice's future preliminary ruling would have an impact on the merits of the suspended national court proceedings.

The Curia considered that the questions raised in the aforementioned preliminary reference procedure had involved, among others, the very subject of whether, after the entry into force of the Foreign Currency Loans Act, the unfairness of the risk of exchange difference could be examined with regard to the relevant directive. The court of first instance delivered its decision based on the interpretation of the Foreign Currency Loans Act, therefore the court of second instance is bound to decide on the merits of the plaintiff's appeal submitted against the first instance decision.

The Curia held that the main objective is to ensure that national court decisions comply with the interpretation of law delivered by the European Court of Justice.

Budapest, the 20th of March 2018

Civil Department of the Curia of Hungary