

Curia judgment on disputed questions regarding direct enforceability

Notarised instruments are extremely important in lending. One of the reasons for this is that a notarised instrument that meets the statutory formal and substantive requirements will allow for the direct enforcement of debts. If a lender is in possession of such an instrument, it does not have to file a lawsuit against its delinquent debtor before seeking enforced debt collection and can simply request the addition of an enforcement clause to the instrument. Consequently, the debt collection procedure will not have to be preceded by a lawsuit that, in any given case, can take quite some time to wind its way through the court system.

The Curia, Hungary's highest court, issued a standard-setting judgment (PJE No. 3/2020) at the end of last year with the aim of ending the controversy about the following key issues associated with the addition of enforcement clauses to notarised instruments. (A standard-setting judgment is a decision made by the Curia on an ongoing case or independently of any particular case in order to standardise court practices in specific matters.)

When adding an enforcement clause, can a notary public examine the existence and validity of the debt included in the instrument?

The Curia argues that it is not for the notary public to conduct such an examination. If the notarised instrument meets the relevant formal and substantive statutory requirements, the notary public has to issue the enforcement clause. Therefore, the notary public may not take into account for example the debtor's claim that the legal relationship that served as the basis for the debt included in the notarised instrument was terminated by it

before the creditor requested the addition of the enforcement clause. This is a matter for the courts to decide, and if a court subsequently rules in a final and binding judgment that the debt does not actually exist, the enforced debt collection procedure will be terminated rather than the enforcement clause deleted.

However, notaries public have to ensure that the amount stated in the clause does not exceed the amount and scope of the debt stated in the underlying notarised instrument, and they also have to draw the attention of creditors to any calculation errors.

How can a creditor prove that it has made the debt past due by a unilateral declaration?

If a debt only falls due when a particular condition is met, the enforcement clause may only be issued if the existence of that condition is also confirmed by a notarised instrument. In practice, creditors mostly terminate their loan agreements in private instruments delivered by mail. Some have argued, however, that a notary public can only attest to the termination of an agreement in a notarised instrument if the notice of termination was also notarised and delivered to the debtor by him or her. The Curia disagrees with this. The court argues that there is nothing in the regulations that would prevent a notary public from issuing a notarised instrument attesting that the creditor presented to him or her the notice of termination as well as proof that notice was delivered to the debtor. Therefore, there is no need to incorporate the notice of termination into a notarised instrument (unless this is required under the agreement between the parties). However, the Curia also notes that it can cause problems if the debtor refuses to take delivery of the notice of termination. To prevent such problems arising, it is advisable to include a provision in the agreement



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stating that if an attempt at the delivery of a document is properly made, the document will be deemed to have been delivered even if the addressee refuses to take delivery of it.

The standard-setting judgment will be binding on all courts until it is revoked or superseded by another standard-setting judgment.

For more information

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