

Setting up a system of consultations at the Curia



Dear Reader,

Consultations, requests for advice and counselling are almost as old as state societies. In ancient Athens, the archons (chief magistrates) were assisted by the council of five hundred, while in Sparta, the power of the kings and the people's assembly were counterbalanced by the twenty-eight-member council of wise men. In ancient Rome, the senate gave advice to magistrates under the form of *senatus consultum* opinions which were initially not legally binding, but magistrates had a moral responsibility to abide by them. However, during the Imperial Era, they took on a growing importance and were qualified as pieces of legislation by the Institutions of Gaius (*legis vicem obtinet*). The development of Roman law was largely due to jurists who, on the basis of legal privileges awarded by the Emperor, delivered expert opinions (*responsum*) for the parties to proceedings. Later on, these opinions were also attributed binding legal value. Consultations – to a different extent from one era to another – have served as a limit to the exercise of public authority and have contributed to the delivery of well-founded court decisions.

The most commonly voiced value of the judiciary is their independence which, however, is not an end in itself, but an instrumental value for the purposes of enabling judges to adjudicate cases without undue interference. Judges are obliged to decide on the cases brought before them even if they consider that there are no adequate written legal rules to render a correct decision. Act no. IV of 1869 stipulated that “judges shall not deny justice to people in their lawsuits”. Judges may be held liable for disciplinary action and under tort law, and they have to administer justice according to their own conscience. It is therefore natural that, if necessary, conscientious judges consult their peers and other legal experts prior to their decision-making. Requests for advice and counselling are without prejudice to judicial independence, since judges remain solely liable for their decisions, in addition, consultations may enable them to take into account additional elements and to render well-founded judgements to the satisfaction of the public.

The Curia is entrusted with the tasks of dealing with extraordinary remedy petitions and ensuring the unification of the courts' case-law. With regard to that double duty, consultations play a particularly important role in the Curia's operation. They can only be considered if, having regard to their subject and characteristics and to the person of the consultant, they are compatible with the requirement of independent and impartial procedure. No consultations may take place between the Curia and the parties to ongoing proceedings or potential parties

to proceedings, moreover, consultations between the Curia and lower instance judges are aimed solely at discussing various issues of interpretation raised during the courts' day-to-day work and exchanging their views. A clear dividing line should be drawn between the Curia's uniformity instruments provided by law and the opinions of consultative bodies set up by the Curia's management, as the latter have no binding legal effect, but merely contribute to broadening the horizons of adjudicating judges.

In 2016, the setting up of the Curia's system of consultations continued in full compliance with the above principles. The establishment of the system of senior advisors can be regarded as being completed, since in each section of the Curia there is now a highly qualified senior advisor with academic background. Senior advisors draft summary reports on issues of legal interpretation and analyses related to the interpretation of European Union law for the Curia's judicial panels, in addition, they also provide assistance to the Curia's departments by giving opinion on draft pieces of legislation and drafting uniformity decisions and departmental opinions.

The President's consultative committee on the examination of issues of legal interpretation related to the implementation of the new Civil Code continued their work in 2016 as well. The committee, composed of the representatives of the legal academia, the judiciary and other legal professions, held altogether ten meetings last year, their opinions have been continuously published on the Curia's website.

In April 2016, the judges' uniformity groups – participation in which is voluntary – that examine the application of the new Civil Code by the courts held their first face-to-face meetings. These groups deal with the issues of legal personality and personality rights, *in rem* rights, legal persons, family law, succession law and the law of obligations, and they share their experience primarily through non-public online platforms to which they may upload relevant final instance judgements.

The consultative body established in 2015 with the aim of harmonising the courts' case-law on the registration of civil society organisations and comprising the representatives of the regional appellate courts, the high courts, the Curia and the Office of the Prosecutor General as well as the experts of the National Office for the Judiciary continued their work in 2016. This body held their meetings on a monthly or two-monthly basis and published their resolutions on the courts' central intranet website. As a result of their work, the courts' jurisprudence in registration cases has become more consistent and the number of appeals in such cases has decreased.

It has remained of key importance that the problems of judicial practice in respect of foreign exchange loan contracts be addressed as promptly as possible, with particular regard to the large number of legal actions seeking the declaration of the invalidity of such contracts and to the major social impact this issue has caused. Therefore, I decided last year to set up a consultative body to collect and discuss the questions and comments raised by the courts in relation to invalidity actions. This body has meetings on a monthly basis and is composed of the heads of civil departments and heads of civil panels of the regional appellate courts and the high courts, judges with practical expertise in this field as well as the Head of the Civil Department of the Curia, the heads of civil panels of the Curia and a senior advisor from the Curia. The memorandums of the meetings are published in the periodical entitled Curia Decisions.

Experience gained over the last few years shows that, in the face of the constant and significant changes in the legal system, the Curia cannot be content simply to issue, at certain intervals, one of its traditional uniformity instruments provided by law. The Curia has to play a proactive role in establishing informal consultation forums where the practical problems faced by the judiciary throughout the country – ultimately by the citizens seeking justice – can be better revealed. Thus, the Curia will be able to ensure the uniformity and wholesomeness of the courts' case-law.

Iura novit curia – according to the Latin legal maxim the court knows the law, i.e. the parties to a legal dispute do not need to plead or prove the existence and content of the law that applies to their case. The content of the law has to be applied, however, to concrete relationships and conditions of life, hence, the knowledge of the law also includes an ability to interpret. Two thousand years ago, jurists with privileges awarded by the Emperor gave their expert opinion (*responsum*) to the representatives of the judicial branch in order to help their adjudicating activities. Today, high-standard lawyers' and prosecutors' petitions and professional consultations that respect the constitutional tasks and responsibilities of the judiciary contribute to the courts' consistent and high-quality work.

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