Conclusions of the summary report on the judicial practice of penitentiary judges with particular regard to reintegration custody

In 2017, the President of the Curia decided to set up a jurisprudence-analysing working group within the Curia's Criminal Department to examine the judicial practice of penitentiary judges with particular regard to reintegration custody. The working group's summary report found that it had to be ensured that the relevant provisions of Act no. CCXL of 2013 on the Implementation of Criminal Penalties and Measures, Certain Coercive Measures and Regulatory Custody complied with the relevant rules of Act no. XC of 2017 on the Code of Criminal Procedure that had entered into force on 1 July 2018.

For instance, in the case of reintegration custody, the requirement of mandatory defence as stipulated by the Code of Criminal Procedure does not fully apply, since the defence attorney's presence is compulsory only at the court's hearing, however, he may be either commissioned by the accused or appointed by the judicial authority. Penitentiary judges are entitled to subsequently amend their own decisions, on the other hand, the latter may not be subject to judicial review or retrial. In addition, such decisions may be reviewed through an extraordinary remedy petition in the interest of legality or via a uniformity decision procedure, and, after an admissibility procedure, they may be even examined by the Constitutional Court from a constitutionality point-of-view.

The working group established that the judicial practice of penitentiary judges was not completely uniform. Nevertheless, it found that there was no significant divergence in their case-law on the basic issues of the traditional legal instruments (such as release on parole, the change of the level of security of imprisonment and the application of more lenient imprisonment rules) and that the eventual discrepancies could be resolved by following the predominant positions.

The new legal instruments (such as reintegration custody and compensation) inevitably raise a number of issues of interpretation, but the judicial practice is in the progress of becoming well-established and is expected to ensure a uniform interpretation of law in the foreseeable future. An important indicator of the quality of the adjudication of penitentiary cases is that penitentiary judges have gone beyond the formal interpretation of the obstacles to the imposition of reintegration custody and they have understood the real characteristics of such obstacles by qualifying them either as definitive or temporary ones.

The working group's analysis has primarily focused on reintegration custody. It can be stated that this new type of custody reassuringly fits into the general reintegration purposes of the execution of criminal punishments, in addition, it contributes to the reduction of the overcrowdedness of prison facilities. Reintegration custody is a legal instrument suitable for meeting the objectives set. On the other hand, it complicates the process of the enforcement of prison sentences, imposes excessive burdens on prison personnel, requires a significant amount of institutional, human and other resources, and raises a number of problems related to the application of law.

With regard to the above, the jurisprudence-analysing working group proposed that penitentiary judges should be entitled to decide, by way of derogation from the decision of the trial judge, on the convict's release on parole after one half of the prison sentence had been served and/or on the convict's release on parole after four fifth of the prison sentence had been served even if the convict's eligibility for parole had preliminarily been excluded by the trial judge, as well as to decide on the supervision of the convict's parole by way of electronic remote surveillance devices.

The combination of the above two proposals could replace the application of reintegration custody which serves the purposes of reducing the term of imprisonment.