Conclusions of the summary report on the courts' case-law on the release of public data

The jurisprudence-analysing working group has made findings in respect of certain substantive and procedural legal issues as well as of the drafting of the relevant court decisions (mainly judgements). As regards the procedural aspects of such lawsuits, it is shown by the judgements examined that the parties to proceedings are rather familiar with the pre-litigation procedure concerning the release of public data.

It could be demonstrated that legal actions for the release of public data had been originating either from the data controller's express refusal to comply with a party's preliminary request for the release of such data (in about two thirds of the cases) or from the former's failure to respond (in around one third of the cases). The jurisprudence-analysing working group carried out a detailed analysis as to the various grounds for refusing a request for the release of public data and the wide range of plaintiffs and defendants in such lawsuits. The cases reviewed show that there are certain civil society organisations which regularly formulate data requests and are keen on bringing legal action against data controllers who are not willing to comply with their requests. In a number of cases, the parties even asked the Hungarian National Authority for Data Protection and Freedom of Information for a preliminary opinion and then referred to its findings in the ensuing legal action.

It is evident from the procedural issues examined that data requests often lack a sufficiently precise determination of the scope of data to be released. In some rare cases, data requests aimed at the multiple release of the same kind of public information in respect of different periods of time.

The working group lacked the relevant pieces of information to analyse the parties' failure to comply with the time-limit for instituting court proceedings, however, it was able to examine a number of other issues related to the bringing of an action, for instance, it defined the starting point of the aforementioned time-limit.

The rules on the courts' competence to deal with such cases raised no major problem as to their interpretation. There were only two lawsuits in which the court seized with the case had to examine its own competence.

In a rather large number of the cases reviewed, *id est* in at least one third of them, it could be established that the data controller had complied with the data request either prior to the court's first hearing or even directly after the receipt of the plaintiff's statement of claims, it had also happened in some cases that the data controller had released the requested public data in the course of the subsequent procedural phases of the court's proceedings.

The judgements examined show that legal actions for the release of public data raise mainly issues of law and therefore necessitate evidence taking only in a small number of cases. Witness evidence is admitted only under exceptional circumstances, principally if the very existence of the data to be released is called into question. It has to be noted that in a few cases it was unclear for the parties whether the issue at hand was of a factual or legal nature.

There were only a very limited number of cases in which the parties to proceedings concluded a friendly settlement, presumably due to the fact that plaintiffs were able to successfully plead in the majority of such lawsuits and that data controllers usually complied with data requests in the course of the court's proceedings.

As regards the substantive legal aspects of such lawsuits, it has to be emphasised that, due to their diversity, it is rather impossible to appropriately categorise the scope of public data and data of public interest to be released, since they may include the followings: on one hand, data related to public servants, including administrators and managers as well as their qualification, classification and educational background, on the other hand, contracts and agreements of public interest, annexes attached thereto and documents certifying or disproving the performance thereof.

Data controllers refused to comply with data requests on the basis of the following grounds: protection of classified information, protection of business secrets, confidentiality of preparatory documents needed for decision-making processes, protection of banking and tax secrets, lack of information, the controller's lack of competence, request for information on invoice level, the existence of ongoing criminal proceedings and protection of personal data. The jurisprudence-analysing working group carried out an in-depth analysis of the above grounds for refusal.

In a small number of cases, the working group was faced with the issue of at what time the ground for refusal should be existing in order for the data request to be rejected. Contrary to the arguments put forward in the court decisions reviewed, the working group was of the opinion that the lawfulness of the refusal to release public data should be assessed by taking into account the pieces of legislation in force at the time of the submission of the data request. A subsequent change in circumstances may only justify the lodging of a new request for the release of public information.

The judgements examined complied, in essence, with the relevant formal and substantive requirements. Judgements granting data requests were delivered in 70 percent of the cases, while judgements refusing such requests were rendered in 30 percent of them. The higher percentage of judgements in favour of plaintiffs was evidently due to the supporting legislative background and the public finance management related provisions of the Fundamental Law of

Hungary. The court decisions refusing to comply with data requests were mainly based on the fact that the pieces of information requested could not be qualified as public data or data of public interest. The jurisprudence-analysing working group examined, in detail, the above issue as well as the Curia's relevant decisions, in addition, it payed special attention to legal actions submitted against courts and the specificities of such lawsuits.

In respect of the drafting of judgements, it could be established that there had been only minor errors in their operative parts, such as the followings: lack of setting a time-limit for compliance with the court's decision, lack of the specific determination of the method of performance, use of the term "has to be released" without any further clarification, lack of the specific determination of the form of release, lack of the specific determination of the scope of data to be released. Such errors are of particular significance as to the judgements' enforceability.

Overall, it had to be concluded that, despite the presence of the aforementioned smaller irregularities, the courts' case-law was well-established and consistent.

It is to be stressed that the courts have been paying particular attention to the enforcement of the set of criteria defined by the case-law of the Constitutional Court of Hungary, with special regard to the definition of the term "public data", the scope of data controllers and the limitations on the exercise of the right to request the release of public data.

With regard to the above, the jurisprudence-analysing working group concluded that there was no need for the adoption of a departmental opinion or any other means for the unification of the courts' jurisprudence or any new piece of legislation in the legal field at hand. Given that, based on the legislative background concerned, the courts' case-law is consistent and stable, the further strengthening thereof or the introduction of structural or systemic modifications thereto is not required.