Conclusions of the summary report on "The review of the facts of final court decisions – reopening of criminal proceedings"

Based on section 29, subsection (1) of Act number CLXI of 2011 on the Organisation and Administration of the Courts, the President of the Curia of Hungary chose the topic of "The review of the facts of final court decisions – reopening of criminal proceedings" as one of the topics to be investigated by jurisprudence-analysing working groups in the year 2018.

The working group included three Curia heads of panel, two Curia judges, a head of department from a regional appellate court, a head of department from a high court, a judge assigned to the Ministry of Justice, a head of department from the Prosecutor General's Office, a university professor, a senior judicial advisor from the Curia and an attorney at law.

The working group examined the final court decisions delivered in reopened criminal proceedings between 2012 and 2017. The working group analysed the proportions among the different grounds for the reopening of proceedings, the ordering of the reopening of proceedings and the drafting of the relevant court decisions, with particular regard to the reopening of proceedings following an *in absentia* trial and to what extent the initiation of eventual legislative changes may be justified as a result of the findings of the working group's investigation.

The general conclusion drawn from the jurisprudence-analysis was that the petitions for the reopening of proceedings submitted by accused persons had primarily challenged the scope of discretion of the courts in the main proceedings and had essentially requested the reassessment of the pieces of evidence. Hence, the working group noticed that a growing number of the accused persons had started to consider the extraordinary remedy method of the reopening of proceedings as a kind of additional means of ordinary remedy. The overwhelming majority of the petitions for the reopening of proceedings was ill-founded and was not capable of enabling the court to order the reopening of proceedings and to reverse the challenged final decision on the merits of the case.

In addition to the above, the jurisprudence-analysing working group established that although being an important guarantee requirement, the mandatory ordering of the reopening of proceedings following an *in absentia* trial had led to deceptive results in the majority of the cases concerned. The jurisprudence-analysis confirmed that, in most cases, the mandatory ordering of the reopening of proceedings had not resulted in any change to the challenged court decision due to unfoundedness. Within the territorial competence of most of the regional appellate courts, evidence takings in reopened proceedings rather limited themselves to the hearing of the accused person and the reading of the documents.

Overall, final court decisions have been reversed as a result of reopened proceedings only in extremely rare cases.

The jurisprudence-analysis identified two problematic issues, both of them related to the

drafting of decisions. Firstly, in many cases of successful petitions for the reopening of proceedings, the misinterpretation of the applicable legal rules led to partial modification of the challenged final decision on the merits of the case, even in respect of only a single ruling concerning the accused person. Such partial modification, however, is not allowed by the law, because in case of a successful petition, the challenged court decision has to be reversed in its entirety in respect of the accused.

Secondly, the working group noticed that many of the on-the-merits decisions dismissing a petition for the reopening of proceedings had not examined the petition and the grounds for dismissal, but had rather established the facts of the case, had rather made a legal classification and had rather dealt with the conditions of sentencing. If the challenged final decision on the merits of the case is not reversed, then the reasoning part of the dismissing decision of the court dealing with the petition for the reopening of proceedings cannot include the aforementioned elements.

The jurisprudence-analysis also showed that the case-law of the courts of the country on the reopening of proceedings had been following the guidelines of the Supreme Court and the Curia. Despite the minor problematic issues identified, the working group held that the courts' relevant jurisprudence had rather been harmonised. Overall, it can be therefore stated that the unsuccessfulness of the petitions for the reopening of proceedings has demonstrated the well-foundedness of the judicial practice.

Act number XC of 2017 on the new Code of Criminal Procedure, entered into force on 1 July 2018, has brought about no conceptual changes and has not resulted in any modification as to the grounds for the reopening of proceedings. Consequently, it can be said that, despite the existence of a small number of differences, the results of the working group's findings will remain useable for the courts' future practice as well.

Moreover, the jurisprudence-analysing working group proposed some minor and necessary legislative changes.