Summary of the findings of a jurisprudence-analysing working group that was set up to examine

"The practice of applying restitution"

Restitution emerged as a new legal institution as a result of the codification of private law in Act V of 2013 on the Civil Code (hereinafter referred to as the "Civil Code"). Restitution is not compensation but a sanction for the violation of personality rights: it is indirect compensation in the form of pecuniary satisfaction and also a private law penalty.

Recognizing the immense social importance of this legal institution, the President of the Curia decided to set up a jurisprudence-analysing working group to examine the practice of applying restitution. In this group, judges from the Curia and regional appellate courts, as well as legal scholars (university professors) worked together to assess the various facts of cases, legal issues, and the case-law that has developed in connection with them so far.

During the analysis of case-law, there was a need for a separate examination of the concept of injury caused by an infringement of personality rights, the conceptual differences between impairment and injury caused by an infringement of personality rights from the angle of taking evidence, and the issue of handling petty claims.

The legal consequences of the infringement of certain personality rights (e.g. the amount of restitution in the case of injury to health, physical integrity, reputation, or honour) had to be analyzed separately. The aspects of determining the amount of restitution were also examined.

It can be concluded from the summary opinion that most of the examined infringements could be classified under personality rights standardized in the Civil Code and named by case-law. In many cases, however, the plaintiffs requested the protection of personality rights over injury that did not fall under the category of personality rights, and because of this, their request did not lead to a successful outcome.

The courts generally required the identification of the personality right infringed. Where the plaintiff indicated the substantive claim that he/she wished to assert by referring to specific legislation in the statement of claim or later during the lawsuit, the courts assessed the legal dispute by considering this. The courts established the fact of infringement of personality rights by indicating the personality right infringed in the operative part of their decision in the case of an application for objective sanctions compared to the statement of claim, and in the absence of this, in the reasoning of the judgment.

The jurisprudence-analysing working group found that the case-law had appeared to be consistent on the question that a claim for restitution would be unfounded if the injury were not as serious as to require preventive compensation and, consequently, private law punishment for the conduct.

Courts generally took into account, with the exception of a few cases, the special functions of the restitution such as its compensatory, preventive and private law punitive functions.

These were specifically highlighted and assessed in cases where the nature of the infringement, its gravity or the degree of imputability justified it. The jurisprudence-analysing working group agreed with the view that the compensatory and preventive functions could not be sharply separated and exerted their impact in relation to each other, that the primary function of the restitution was to compensate the infringement by means of pecuniary satisfaction, and that its private law punitive function could be considered only secondarily.

The group also established that the restitution would be due as soon as the infringement/damage occurred. If the court did not consider the amount to be due on the basis of the time when the infringement/damage occurred, but on the basis of the price and value at the time of the judgment, the due date would be determined at the time of sentencing.