

## Conclusions of the summary report on the courts' jurisprudence in regulatory offence cases

The summary report drafted by the jurisprudence-analysing working group of the Criminal Department of the Curia, set up in 2015 for examining the courts' jurisprudence in regulatory offence cases, has concluded that Act No. II of 2012 on Regulatory Offences, Regulatory Offence Procedure and Regulatory Offence Registration System continues to suffer from regulatory deficiencies that make the proper application of the Act in itself, without the supplementary application of the criminal substantive and procedural provisions, practically impossible. It means that the Opinion on Act No. LXIX of 1999 on Regulatory Offences – issued on 3 April 2000 by the Criminal Department of the Supreme Court and by the heads of the criminal departments of the county-level courts (and of the Budapest Regional Court), in force from 1 March 2000 to 14 April 2012 – continues to serve the guidance that in adjudicating regulatory offences not only those concepts (rules) of the criminal substantive and procedural provisions are to be applied which are expressly specified as applicable under the regulatory offences Act but also those concepts (rules) may, *mutatis mutandis*, be relied on which are invoked in the regulatory offences Act without being elaborated in detail, or which supplement the regulation contained in the regulatory offences Act, provided that the supplementary criminal substantive or procedural concept (rule) intended to rely on is not contrary to the provisions and general principles laid down in the regulatory offences Act.

However, because of the absence of direct statutory authorisation for a given case, the rules (legal principles) relied on in such a situation of necessity may not be disadvantageous to the person subjected to the proceedings. Such supplementary take-over may, furthermore, not transgress the specific regulation of the independent regulatory offence law: for example, in regulatory offence proceedings legal representation by a lawyer for the person subjected to such proceedings is only mandatory in case the person is committed to a court. Therefore the criminal procedural requirement on mandatory defence is not applicable to regulatory offence proceedings.

The courts' jurisprudence was found to be divergent on several issues. These divergences were addressed and resolved in the summary report with a view to terminating the divergence of jurisprudence. The main issues dealt with in the summary report included: the presentation of the substance of court proceedings to be conducted upon a prosecutorial action; specifying the ways of reacting to an incomplete criminal report or to deficient preparatory proceedings by the police in case of a regulatory offence punishable by confinement; determining the amount of the duty payable on an awarded compensation.

The summary report has stated that the general right to remedy could be reviewed and a regulation allowing for a remedy only in cases specified in the law should be introduced. In order to ensure the uniform application of the law by the courts, the working group has also found it necessary to clearly regulate the ways in which a deficiency in a final court decision can be eliminated without retrial. Possible solutions include the introduction of a special regulatory offence procedure (instead of the supplementation of the judgment) and the parallel allowing for a review limited to absolute procedural breaches. The working group has further found it necessary to clarify the possibility of introducing a legal institution similar to the *remedy in the interest of legality* and of adopting a uniformity decision.