

Conclusions of the summary report on defence rights in court proceedings

The Curia's jurisprudence-analysing working group on defence rights in criminal court proceedings substantively examined 1 927 court cases taken at random from a pool of cases in which the high courts and regional appellate courts involved and the Curia rendered their final and conclusive decision between the years 2011 and 2013. The working group's summary report on the results of its findings was discussed and approved by the Criminal Department of the Curia at its meeting held on 23 March 2015. It should be particularly noted that the President of the Hungarian Bar Association, who also attended the above meeting, has been involved in the working group's research from the very beginning and that he, as the highest representative of Hungarian attorneys, almost fully agreed with the findings in the summary report.

The jurisprudence-analysing working group addressed a large number of issues. Its findings can be summarised as follows:

In compliance with the international norms on human rights and freedoms and with international human rights jurisprudence, the rights and obligations of defence attorneys are, in principle, properly regulated by the Code of Criminal Procedure, however, some of the relevant statutory and other legal provisions need correction.

In general, the courts ensure that the rights of defence attorneys are respected in all aspects and they refrain from restricting the exercise of such rights on purpose or in an abusive manner (e.g. withdrawal of the defence attorney's right to speak during the delivery of his plea). These rights are violated by the courts in exceptional circumstances, for typically three reasons: i) non-application of the relevant statutory provisions (e.g. mandatory representation by a defence attorney), ii) misinterpretation of incomplete or unclear rules (e.g. fees to be awarded for the consultation of copied court documents, exclusion of the possibility of substituting a defence attorney by the defence attorney of another accused person in case of a potential conflict of interests, the defence attorney's right to express his opinion on the charges brought against his client already at the start of the court trial phase, the extent to which the rules governing the holding of a second instance panel meeting are applicable to non-conclusive court decisions) and iii) negligence (e.g. lack of reasoning or incomplete reasoning in the court's judgement for rejecting a petition for the taking of evidence).

Criminal court decisions have been quashed rarely due to the violation (restriction) of defence rights, moreover, many of the courts examined refrained from quashing the lower instance decision even if a non-substantial procedural irregularity had been detected by them.

The courts generally restrict the exercise of defence rights in the event that they deem it abusive (e.g. prohibiting a person heard by the court from answering the defence attorney's repeated question).

On the other hand, the current regulation and practices make the courts vulnerable to the defence attorneys' non-compliance with their duties (e.g. failure to provide a written reasoning for their second instance appeal) and their manoeuvres to delay proceedings (e.g. there is no prohibition in legislation on replacing one's defence attorney or taking on the role of defence attorney immediately prior to the start of the court trial).

The jurisprudence-analysing working group proposed conducting additional examinations, elaborating a departmental opinion, discussing the issues concerned at the national conference of the heads of departments and amending the Code of Criminal Procedure, the Attorneys Act and some of the relevant implementing decrees. In addition, the working group invited the Prosecutor General to elaborate and issue an instruction in order to resolve certain outstanding issues.