THE YEAR OF INITIATIVES

The text of the speech made by Dr. Péter Darák, President of the Curia on the occasion of the Curia's Solemn Plenary Session on the 3rd of April 2012

Honourable Members of the Plenary Session, dear Invited Guests,

In my solemn speech, I would like to talk first about the significance of the 150th anniversary of the date of the 3rd of April 1861 as regards Hungary's highest instance judicial forum. I would then like to speak about the past of the Supreme Court's administration of justice, the consequences of the Curia's reestablishment in 2011 and the Curia's possible future developments. Finally, I would like to conclude my speech with the words of one of my predecessors.

Let me therefore begin with talking about the 150th anniversary of the date of the 3rd of April 1861. That very day marked the reestablishment of the Royal Curia after the repression of Hungary's 1848-1849 revolution and struggle for freedom and after the end of an authoritarian rule on Hungary. The year 1861 constituted the first step towards the process of reconciliation and was an important year from the perspectives of constitutional law and the development of law as well. Constitutionally, because the judicial branch has always been an essential element to the thousand-year-old Hungarian State. The independence of the judiciary forms an integral part of State sovereignty, without which there is no free and independent nation. In 1861, the reestablishment of the Royal Curia and the former Hungarian court system led to the elimination of the jurisdiction of the Habsburg dynasty's absolutist courts and to the restoration of Hungary's independent judicial power. From the perspective of the development of law, because the 1861 Conference of the Royal Chief Justice – attended by judges, the representatives of the Hungarian Bar Association and the representatives of the chambers of commerce and industry – elaborated the so called Temporary Judicial Regulations that included procedural and substantive legal provisions in the fields of civil and criminal law. At its subsequent Plenary Session, the Royal Curia proposed lower instance courts to apply the Temporary Judicial Regulations as if they were pieces of legislation in force. The civil law part of the Regulations had been in use by Hungarian courts for nearly one hundred years.

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This anniversary also provides an opportunity to have a rest from our daily work and to look back on the past of the Supreme Court's administration of justice. At the outset, the highest instance judicial body had been located in the king's court (*curia regis* in Latin). Over the centuries, the king had been replaced by professional judges, namely the Palatine, the Royal Chief Justice and the Chief Judicial Representative, and, as a result, the Royal Curia – made up of two forums, the Table of Seven and the Royal Table – was set up in 1723. It can be said that the Royal Curia became more and more independent of the king's power and transformed into the highest instance judicial forum of a constitutional State by the beginning of the Civil Era. It should be underlined that the Royal Curia had been given jurisprudence-harmonising competence and had been functioning continuously – except for the period between 1849 and 1861 – until the entry into force of Act no. XX of 1949.

The Royal Curia elaborated the content of a number of legal institutions, in particular, it defined the notions of lineal inheritance, right of survivorship, forced share of inheritance, strict liability, damages originating from hazardous operations, personality rights, the protection of entitlement in respect of the land and property registry and the impossibility of performance due to economic reasons. In addition, the Royal Curia passed important decisions of principle in the field of criminal law. For instance, it developed the temporal scope of application of the Criminal Code, the median of a sentence of imprisonment and the issue of taking evasive action so as to avoid an unlawful attack.

As regards the Supreme Court's operation after the Second World War, the question arises how the Supreme Court's more than sixty years of activity should be considered in light of the Curia's reestablishment. We cannot hide the fact that during these sixty years the Supreme Court had no jurisprudence-harmonising power. The leaders of the dictatorship of the 1950s used the administration of justice as a means for carrying out class struggle and expected from judges to participate in show trials and in the persecution of innocent people instead of the responsible and unbiased adjudication of cases. The Supreme Court had been forced to do the same. However, it must not be forgotten that the majority of the judges of the Supreme Court had aversions to these unfair judicial practices. This is illustrated by the fact that a high number of Supreme Court judges were removed from their position in 1950, 1953 and 1956. In the subsequent time period – in particular in the 1980s – the Supreme Court was provided with the legal instrument of guideline of principle, with which it was able to develop the courts' case-law and the results of which are still in evidence today. Its criminal law guidelines in respect of criminal offences against life and limb and the liability for criminal offences committed under the influence of alcohol or other psychoactive substances are particularly important. In the field of civil law, its guidelines interpreted the notion of invalidity, defined the essential elements of child custody and clarified the rules on legal actions for the declaration of the ineffectiveness of a right of pre-emption.

Without the above background, the Supreme Court could not have been part of the post-1989 judicial reforms that based, once again, the administration of justice on the principle of the rule of law. The 1997 reforms were of paramount importance, as they introduced the courts' self-administration and the uniformity procedure. Therefore I am convinced that, as the judicial practice of the Hungarian Royal Curia influenced the Supreme Court's jurisprudence, the re-established Curia could rely on the Supreme Court's development of law, with particular regard to the results of the Supreme Court's activity from the last 20 years. This is especially true in the context of administrative law where guidelines of principle were adopted only in the 1990s, since the judicial review of administrative decisions had been called heresy beforehand. In the 1990s, the Supreme Court made up its shortfall in terms of the interpretation of administrative law. It has recently published significant administrative law guidelines and even managed to adopt a number of European Union law related guidelines as well.

Therefore we can bravely state that in Hungary "the Curia has been functioning as the country's supreme judicial organ, with some restrictions and interruptions but on the basis of a constant legal continuity, for nearly one thousand years", and there is no doubt about its role in holding the Hungarian nation together.

Honourable Members of the Plenary Session, dear Invited Guests,

In addition to the 150th anniversary, we are witnessing another historic moment. As a result of the 2011 judicial reforms, the courts' professional and administrative management came apart, the Curia has been given important new competencies and has been re-named to become the Curia again. The return to the former designation drew criticisms, since the name "Curia" can be perceived as referring to the *curia regis*, the king's court which had been the central venue for the adjudication of legal cases. The reintroduction of this name might be considered as self-flattery, because the Court of Justice of the European Union is also referred to as the Curia. However, we should not forget that it is more than a simple change of name. The 2011 reforms point out that the highest instance body of the Hungarian judicial system was established not in 1949 by Act no. XX of 1949, but much more earlier and that the Curia is the inheritor of a historical tradition and long-standing professional and moral standards that have influenced the entire Hungarian judiciary. On the other hand, the Curia has been given additional new competencies, and its organisational and institutional arrangements make it possible for the Curia to function as a modern and efficient Supreme Court in compliance with the requirements of the 21st century.

What kind of new powers has the Curia as of the 1st of January 2012?
As part of its new competencies, the Curia is entitled to

- annul local government decrees if they are not in conformity with higher level pieces of legislation other than the Fundamental Law,
- declare that a local government has failed to legislate as laid down in the Act on Local Governments,
- deal with appeals in referendum cases, and
- decide on the procedural means of resolving an unconstitutional situation in a specific legal dispute following a successful genuine constitutional complaint lodged with the Constitutional Court against a judicial decision.

These are significant novel competencies and tasks that renew the Supreme Court's previous approach to a large extent. The Curia's restructuring has already begun to enable it to carry out its new tasks. A municipality panel has been set up, and, honourable Members of the Plenary Session, allow me to interrupt my speech for a moment to welcome our two new colleagues who started to work as Curia judges on the 1st of April and will be entrusted with the task of reviewing local government decrees. *I kindly ask Mrs. Judge Ildikó Marosi Hörcherné and Mr. Judge Zsolt Balogh to stand up.*

I believe that the introduction of the genuine constitutional complaint is of outstanding importance. The law regards judicial decisions as means for the eventual protection of fundamental rights, and the Constitutional Court has been given competence to review the constitutionality of judicial decisions. Thus, the courts' application and interpretation of law have been subjected to a form of direct constitutionality control. I hope that this new legal instrument will strengthen the constitutional approach of Curia judges. It should be noted that the Constitutional Court is not part of the ordinary judicial system. This explains why the legal consequences of the annulment of a judicial decision by the Constitutional Court have to be determined within the judicial system. Consequently, it is the Curia that became entitled to decide on the procedural means of resolving these unconstitutional situations. The new competencies will necessarily require additional tasks to be carried out by the Curia and its President. I therefore consider that the separation of the courts' administration and professional management within the framework of the 2011 judicial reforms has a clear beneficial effect on the Curia.

I also have to mention that, as a result of the legislative changes, the minimum age for the appointment of judges has been set at 30 years, while the retirement age for judges has been lowered in correlation with their date of birth. The new retirement age scheme will have a serious impact on the Curia's composition, since 20 Curia judges will reach the age of retirement on the 30th of June this year. Their judicial and professional achievements form an important part of the Curia's jurisprudence and intellectual values, for which our retiring colleagues merit our gratitude, appreciation and respect.

Honourable Fellow Judges, dear Invited Guests,

I believe that in the future the Curia will have an even more significant role in ensuring the uniformity of the courts' case-law. The need to avoid the delivery of diametrically opposing judgements arose one hundred years ago. On the other hand, I would also like to point out that, as each legal dispute has its unique characteristics, judges should not be tempted to deal with their cases in a uniform manner, search for leading cases at all costs, but rather they should examine each and every case in detail in order to render a just and lawful decision and never give it up for the sake of case-law uniformity.

The cardinal acts of law provided the Curia with a number of new legal instruments, which could help it in its uniformity tasks. One of these instruments is the possibility to establish jurisprudence-analysing working groups. In 2012, I set up five working groups with the assistance of the Curia's heads of departments and one of its deputy head of department to deal with some of the most exciting issues in respect of the uniformity of the courts' current jurisprudence. It is sufficient to mention that a criminal law working group will examine the practice of quashing criminal decisions, while a working group within the Civil Department undertook to clarify the problematic issues of the general terms and conditions applied by financial institutions in loan contracts.

The working groups' composition is another novelty. Their members include lower instance judges and the highly qualified experts of other legal professions. I believe that the members' complex approach guarantees that the summary reports of the analysing working groups will reflect the Curia's high-level professionalism. The jurisprudence-analysis has the advantage of addressing the problematic issues of interpretation in a timely, adequate and unambiguous manner. In addition, the Curia is still responsible for the timely adjudication of petitions for judicial review. I consider it extremely important to enhance the Curia's openness and to strengthen its professional relations with other institutions and bodies. A very good example of such relations is the Curia's continuous dialogue with the Constitutional Court.

I would like to greet and welcome my new colleagues from lower instance courts who have been assigned to the Curia and have been participating in its adjudicating activities as of the 15th of March. I think that this method of assignment is beneficial both for the Curia and for lower instance judges and their future career. It should not be disregarded in this respect that the Curia is not only the highest instance forum of the judicial system and the guarantor of the uniformity of the courts' case-law, but also a judicial institution that have been preserving the working ethical norms of our predecessors and will pass them onto the next generation of judges.

Iustitia regnorum fundamentum: "justice is the foundation of a State" – this motto was engraved with golden letters on the facade of the former Palace of Justice, which was designed to be the seat of the Royal Curia by the intent of our ancestors. This building

currently houses the Museum of Ethnography. The Curia's prestige is based not only on its one-thousand-year history, but also on the fact that it has applied and developed Hungarian law in the pursuit of justice in order to protect the unity and peace of the Hungarian nation from particular interests and vicious political ideologies. I therefore carry great responsibility as the President of the Curia: I have to make every effort to ensure the delivery of just and satisfactory judgements by each and every Hungarian court. My efforts can be successful only with the assistance of the members of the judiciary and other legal professions. I always bear in mind the words of one of my predecessors, *Mr. Chief Justice Adolf Oberschall*: **"No matter how powerless we may consider ourselves, we should endeavour with all the vigour we can muster to serve in the interest of the public"**.