

With professional humbleness for a uniform jurisprudence



It would be difficult to characterise by one sentence the Curia's operation in the year of 2013. After a Year of Initiatives, we could look forward with optimism to the 2013 legal year, as in one year the practice of the legal institutions introduced by cardinal laws and constituting new elements in the activities of the restored Curia became established and settled. As to the Municipality Panel reviewing local-level law-making, the jurisprudence-analysing working groups and the panels adopting decisions on principles, not only the administration- and methodology-related issues have been clarified but also substantial professional experience has been gained and several statements of principles have been formulated. The experience thus obtained helps the Curia's bodies not simply to accomplish their duties of reviewing the lawfulness of the municipality regulations and analysing the courts' jurisprudence, but also to reach conclusions that serve as guidance for the judiciary, the other legal professions, and citizens seeking justice in the future on issues of law involving uncertainties.

In addition to a self-confident approach based on the already achieved results, an openness to the new challenges has proved to be of key importance in 2013. The significant renewal of the Hungarian legal system, in progress for years, entered into a new phase on 1 July 2013, when the new Criminal Code entered into force. The introduction of the new Code into the legal system had imposed considerable responsibility on the supreme judicial forum regarded as the guardian of the uniform application of the law by the courts, as leaving in force uniformity instruments contravening the provisions of the new Code would have violated the rule of law requirements. The Curia's Criminal Department had fully complied with its obligation of reviewing the *Guidelines on Principles* and the *Department Opinions* formerly issued in this field, and has promoted a uniform interpretation of the Code by adopting two new criminal uniformity decisions.

The adoption of a uniformity decision on the validity of the foreign currency loan contracts had been awaited by increased public attention. These agreements constitute a serious social problem originating from an unforeseeable economic crisis, therefore its resolving by legal means is extremely difficult. The legal institution of *invalidity* is not suitable for providing mass redress for the injuries suffered, because a ground for invalidity is required to exist at the time of the conclusion of the agreement, whereas in these cases a disproportionate shift in burden-bearing occurred subsequent to the conclusion of the agreement. The aim of a uniformity decision is always to ensure that on certain issues of law no conflicting judgments are passed; from this, however, it does not follow that a judge hearing a given case may not reach a different conclusion in the light of the particular circumstances of that case. The

public attention and criticism that has accompanied the uniformity decision providing guidance on the assessment of foreign currency loan contracts has taught us an important lesson: a judge should always take into consideration the social embeddedness of legal disputes; and public actors may draw attention to certain social phenomena, but such attention-drawing may not create even the appearance of unduly influencing the administration of justice.

The above case clearly shows that in the 21st century law, including judicial case law, plays an increasingly important role in settling and resolving social conflicts in Hungary, too. Judges' ability to react to challenges constantly emerging in the ever-changing world surrounding them is, in addition to other factors, a measure of the quality of judicial adjudication. The continuous and considerable change of written law, the accession to the European Union, the multi-level fundamental rights protection, the constitutional control exercised over judicial decisions and, last but not least, society's increased demand for quick and high-standard judicial adjudication pose constant challenges to the Curia. In order to ensure that the Curia can fulfil its constitutional obligations and can serve the public good as an effective top-level judicial organ, strategic planning is indispensable. Therefore we prepared and adopted in the autumn of 2013 the Curia's medium-term institutional strategy. The drafting of the document was preceded by a status analysis, and the general goal – defined as transparent, efficient and effective operation – was broken down into sub-goals by taking into consideration the Curia's social environment and professional leadership role.

From among the sub-goals, the setting up of a framework for jurisprudence-analysis is of utmost importance, as the analysis of a large number of finally determined cases supply experience that can be used both in unifying the application of law by the courts and in raising the quality of judicial adjudication. The effectiveness of jurisprudence-analysis depends on several factors, therefore the institutional strategy specifies in nine points the requirements ensuring that such analyses focus on socially important issues, solution-proposals are given to the identified problems, and the results of the analyses be communicated to the general public in an understandable manner. To maintain more intensive contacts with the lower-level courts is also a strategic goal: it must be ensured that lower-level court decisions addressing legal issues of significant gravity come to the Curia's attention in due time. Moreover, the Curia wishes to reinforce the connections existing between the Curia and other domestic professional lawyers' organisations: in identifying interpretation-related problems and in finding uniform answers to such issues the highest-level judicial organ wishes to engage in joint thinking with the other legal professions, legal scholars and the Constitutional Court. This kind of partnership approach cannot stop at the borders of the country: the Curia wishes to actively participate in the international cooperation going on between the supreme courts and the international judicial forums. In addition to strengthening the Curia's public and international relations, the institutional strategy also places special emphasis on the internal work processes, namely on the more efficient organisation and on the constant raising of the quality of the adjudicative and unifying activities of the Curia. In these respects the aim is to strengthen the information-flow between the President's Cabinet and the Curia's professional leaders as well as to increase the horizontal information-flow between the Curia's Departments. As to the adjudication of the individual cases, the aims specified in the institutional strategy relate, on the one hand, to the content of the judgments and, on the other hand, to the form of the judgments. Detailedness, logical arrangement and clear reasoning understandable for non-lawyers as well are specified as a must.

For centuries, the Curia has not only carried out highest-level adjudication but has also been a place from which legal customs have originated and developed; it has functioned as a creator of Hungarian legal traditions. Its authority has derived from the fact that it has shaped Hungarian law while striving for the truth and has carefully protected the stability of the country's legal order, which is a guarantee for the internal peace of our nation. In our everyday lives we can draw strength from these noble traditions, but the most important question is how the Curia can ensure the uniformity of jurisprudence at present and in the future, and how it can become an effective judicial top-level organ amidst the expectations of the 21st century. I am convinced that the successful accomplishment of these tasks does and will depend not on written legal provisions but much more on whether we perform our professional tasks with humbleness.

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