

FOREWORD

Independence and dialogue



It is a great pleasure and honour for me to be the author of the foreword of the Curia Yearbook 2014. In the previous year, *dr. Péter Paczolay*, then President of the Constitutional Court greeted the reader and wrote that we [the Constitutional Court and the Curia] are “doomed” to coexist and co-operate.

If there is a need to co-operate between the Constitutional Court and the Curia, then the Ministry of Justice and the Curia are also expected to co-ordinate their work. The separation of powers, the concept and actual safeguard of the independence of the judiciary are one of the greatest achievements in the development of European laws and states. These principles constitute the polestar of Hungary’s constitutional structure and identity.

I am the first Minister of Justice in Hungary who was appointed after the entry into force of the Fundamental Law of Hungary. For that reason among others, I have particular responsibility in ensuring the constitutionality and good quality of legislation. The Fundamental Law advocates values from the past – such as the Holy Crown, the Hungarian Nation, Christianity and family based on the union of a man and a woman – that are contested, declared to be outdated or simply seem to be forgotten. The Fundamental Law restored those historic institutions that could be restored and were worth restoring. Thus, the Supreme Court – a denomination used in the American and Soviet legal systems to designate the supreme judicial body of the land – was renamed to become, once again, the Curia. What is even more important than the change of name itself is that the Curia’s tasks were also redefined. The Fundamental Law regulates the Curia’s *differentia specifica* as follows: the Curia shall ensure uniformity in the judicial application of laws and shall make decisions accordingly which shall be binding on the courts. If the independence of the judiciary is considered to be the cornerstone of the administration of justice, then the uniformity of the courts’ case-law to be guaranteed by the Curia should be qualified as the keystone in the edifice of the judicial system. Both of them have an essential role in respect of the credibility, foreseeability and transparency of judicial business. These properties are necessary conditions

for public trust in the courts, the administration of justice and ultimately in the rule of law. It follows that the independence of the judiciary does not entail complete isolation, since there is a need for dialogue and co-operation between the different branches of power. I deeply appreciate that the current management of the Curia is broadly keen on being a partner in such co-operation.

Our constitutional and legal traditions have a long history. The challenges we must face today are, however, in a constant state of reformation. We will be able to appropriately address them only if we would act together. Complex and unprecedented social and economic issues require to be dealt with. The case of consumer credit agreements, commonly known as foreign exchange loan contracts had a damaging effect not only on the financial system, but on the country's economic and social stability as well. In 2014, the Curia delivered a uniformity decision that I think was revolutionary and in which the supreme judicial forum declared the invalidity of spreads applied in foreign exchange loan contracts between the buying and selling rates of the relevant foreign currency and it stated that the credit institutions' unilateral decision on the raising of interest rates and other costs should be presumed to be unfair. The Curia's uniformity decision opened the door for the legislature to settle the problematic terms of already concluded contracts as well and to lay down the foundations of a *fair* banking system that enables Hungarian citizens to borrow money under conditions and safeguards similar to those provided for borrowers in Western Europe.

Judicial practice and legislation should be built upon each other. Both of them have the shared task of resolving social problems. I am proud of the fact and greatly appreciate that a number of Curia judges are involved in various codification projects and that the appointed representatives of the Ministry of Justice participate in the Curia's jurisprudence-analysing working groups. We are indeed "doomed" to coexist and co-operate. But it is a blessing, not a curse.

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