

## Historic moments in the Curia's ordinary judicial activity



In 2014, Hungary's supreme judicial body had to decide on many issues of utmost significance. Hungarian citizens cast their votes at the 2014 general elections and the 2014 Autumn municipal elections in accordance with the modified elections legislation. These elections were of historic importance for the Curia as the country's final instance election court, since it had to apply the modified pieces of legislation for the very first time. The election of Members of Parliament and members of local governments on the basis of the sovereignty of the people's principle is considered to be an act that produces State authority, therefore the entire process of elections should be rigorously protected by the public authorities and ultimately by the courts in line with the requirements of the rule of law. Three-member judicial panels specialised in election cases are given a short, three-day long statutory deadline to deal with petitions for judicial review, as such cases have a high level of public interest. The settlement of election disputes confers a heavy responsibility on the courts, in particular on the Curia which acts as a final instance election court in many high priority types of cases and its decisions have a great impact on the case-law of the courts and on the adjudicating activities of the electoral commissions. In 2014, the Curia's relevant judicial panels delivered 280 decisions in election cases, the number of these decisions equals to the number of administrative cases brought before the administrative section of the Curia's Administrative and Labour Department during a two-month interval.

Pursuant to the modified elections legislation, constitutional complaints may be lodged with the Constitutional Court against the Curia's decisions in election cases. A large number of Curia decisions have been challenged through such complaints, nevertheless, the impugned decisions have all been declared to be well-founded. Petitions for judicial review in respect of the 2014 Autumn municipal elections have been overwhelmingly dealt with by the regional courts of appeal due to the rules of procedure, while the Curia has not been called upon to ensure the uniformity of the regional courts' election-related jurisprudence, as they had a well-established and harmonised case-law. The 2014 election disputes presented many similarities with previous years' election cases, however, some new types of disputes (such as the one related to the imposition of fines with regard to the accountability for recommendation sheets) arose as a result of the changed legislative background. Hence, the courts have already had an established case-law in connection with the majority of the 2014 election cases.

The 2014 general and municipal elections were not the only factors affecting the Curia's operation. The accumulation of debts resulting from foreign exchange loan contracts and the increase in the amount of repayment instalments have posed societal challenges for several years, and the citizens who feel that their financial existence is threatened – understandably – regard the courts as the lenders of last resort. I am of the opinion that the Curia's judges rightly decided to give priority to this issue and adopt a sensitive yet objective approach – based on the principle that judges are bound only by the law and their conscience – concerning the citizens' interest in the problem's solution. This extremely complex situation forced the Curia to make a number of difficult choices. On the basis of their characteristics and economic function, foreign exchange loan contracts had to be qualified within the framework of Hungarian civil law. The law of contractual relations – pursuant to the principles of market economy – offers a wide array of choices for all economic actors. The requirement of good faith and fairness and consumer protection laws constitute restrictions on the freedom of contract, however, market participants should be allowed to make decisions freely and responsibly, even if their decisions involve some form of risk-taking. The Curia was invited to decide on whether amendments of contracts ordered by the court are a suitable tool for remedying the adverse effects of a large number of contracts, induced by economic changes in the last few years. A substantial part of the above issues was addressed by uniformity decision no. 6/2013. PJE.

In 2014, the Curia had to decide on the unfairness of certain general terms and conditions applied in foreign exchange loan contracts. The Curia referred the case to the Court of Justice of the European Union to seek their clarification on the content of a consumer protection directive the rules of which had to be transposed into Hungarian civil law to protect consumers, qualified as ill-informed contractual parties against unfair general contractual terms. The Curia had an obligation to do so, since the European Court of Justice had been provided with exclusive jurisdiction to interpret the provisions of the relevant directive. Based on the guidelines of the European Court of Justice, uniformity decision no. 2/2014. PJE was adopted to point out *inter alia* that the taking of exchange rate risk by a consumer on the basis of his free economic decision is not unfair in itself, on the other hand, if due to insufficient information or lack of information by the financial institution there is reason for the consumer to believe that the exchange rate risk is not real or that it burdens him only to a limited degree, the contractual clause related to the exchange rate risk is unfair. The uniformity decision highlighted that contractual clauses enabling unilateral amendment of a foreign exchange loan contract should be applied only if they comply with a set of stringent requirements. In particular, unilateral amendments should be based on objective and exhaustively listed reasons beyond the financial institution's control, these reasons and the extent of possible amendments should be clearly indicated for the consumer at the time of the contract's conclusion, and the actual implementation of unilateral amendments should be verifiable by the consumer.

However, it does not change the fact that in the last couple of years the courts had no other option but to examine the unfairness of such contractual terms on a case-by-case basis in separate civil court proceedings and in accordance with the legislation in force. As a result, the judicial branch could not carry out an ex-post, economic assessment of the lending of foreign exchange loans and could not remedy the very adverse effects of the amended loan contracts on a large scale in a speedy and efficient manner. It is noteworthy that the legislation adopted in the second half of the year 2014 with the intention of offering a satisfactory solution to this issue considered the aforementioned two uniformity decisions as

an important source of inspiration. Last but not least, another historic moment influenced the Curia's judicial business. The entry into force of Hungary's new Civil Code on 15 March 2014 made it inevitable for the country's supreme judicial forum to examine whether its interpretative guidelines related to the provisions of the former (1959) Civil Code and adopted over the course of a several-decade long judicial practice are still in conformity with the new Civil Code. The Curia's examination resulted in the delivery of uniformity decision no. 1/2014. PJE. The year 2014 will undoubtedly go down in the Curia's history as the year of elections. The Curia sought to adjudicate the individual cases brought before it in an appropriate and timely manner to provide remedy for the parties to proceedings and to restore legal order. As a final instance court responsible for ensuring the uniform application of law throughout the country, the Curia aimed at providing lower instance courts with answers that facilitate the adjudication of complex cases in order to promote the delivery of judgements that would be satisfactory for all parties.

***Dr. Péter Darák***  
President of the Curia