

# FOREWORD

## Fundamental rights protection (not incidentally)



Thumbing through the Forewords of the earlier Curia Yearbooks it is striking that the authors, dr. Péter Paczolay, former Constitutional Court president, and dr. László Trócsányi, minister of justice did, immediately after expressing their appreciation and esteem, embark on writing about the importance of the relationship between their respective organisation and the Curia, and about the depth and usefulness of the cooperation of these bodies.

Not only in an effort to continue this tradition but also out of earnestness I hasten to state that it is a great honour for me, too, to have the opportunity to write a Foreword to the 2015 Yearbook of the supreme judicial forum.

The relationship and cooperation between the Curia and the Commissioner for Fundamental Rights requires much deeper explanation. By cooperation we may first of all recall the formal "connection" existing between the two institutions since 2013, the year since when the Ombudsman may initiate before the Curia the annulment of a local-level law violating an Act of Parliament. The possibility of taking such a measure has undoubtedly been a significant step in ensuring the conformity of local-level laws to the higher-level laws, especially in respect of issues related to the living-together in a community and to local taxes, and enabled the Curia's judicial panel reviewing local-level law-making to set up standards for ensuring uniformity in this field of law. For an Ombudsman it is a pleasure to be able to contribute to this work via his motions.

As to the cooperation of the two bodies it must be emphasised that the Curia and my Office have good work relations both at executive and expert level; I find it exemplary that the experts of both institutions attend – I do hope that with pleasure – each other's professional events. At his point I avail myself of the opportunity to say thanks to President Péter Darák for his lecture delivered at the celebration of the 20<sup>th</sup> anniversary of the Ombudsman's Office.

Not diminishing the importance of the aspects mentioned above, I nevertheless would like to mention a deeper and less spectacular area: the area of fundamental rights protection. Article 30 (1) of the Fundamental Law of Hungary provides that the Commissioner for Fundamental Rights shall perform fundamental rights protection tasks, and Article 24 (1) of our constitution designates the Constitutional Court as the principal organ for the protection of the Fundamental Law. Many people, in my sad experience sometimes even law students, mention only the Constitutional Court and the Ombudsman as public bodies designed to protect fundamental rights.

Unfairly little mention is made of the courts as guarantors of fundamental rights protection. Only upon some scrutiny does it become “evident” that primary and most effective protection for everyday fundamental rights violations is provided by the courts. We may turn to a court, among others, to challenge an unlawful act of the public administration (right to fair trial), to seek protection for our political rights (freedom of assembly, right of election), we may bring a civil dispute before a court seeking protection of our property, and may raise an issue of discrimination before a court. These are only examples to show that though the courts’ primary task is to determine legal disputes, in the course of such determinations they decide, in many cases, about the content and enforceability of fundamental rights. And this role of the courts is not at all incidental.

A yearbook is about the celebration of a year already closed. In a yearbook to make even a passing mention, in addition to the appreciation of the achievements, of the challenges that still face us may appear as spoiling the celebration. Fundamental rights protection, however, cannot be treated as a “matter settled”; fundamental rights protection is a continuous task in the performance of which the Curia and the Commissioner for Fundamental Rights do, in addition to other actors, play a key role. Not incidentally.

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