

# FOREWORD

## **The importance of the uniform interpretation of the law in a rule of law state**



The Fundamental Law of Hungary, the cornerstone of the country's legal order stipulates that, within the system of public bodies, courts shall administer justice. Adjudication means the application of the relevant pieces of legislation in force to a concrete case as a result of which the court's judgement holds whether the applicable legal provisions have been breached or not. The highly abstract rules of an act of law – that is the primary source of law – are applied by the courts to legal relationships between individuals or between an individual and the State on the basis of the circumstances of the given case. Hence, courts apply abstract legal rules to concrete cases in order to maintain legal order.

Courts do not administer justice in complete isolation, as they co-operate with other bodies and persons, however, it is ultimately up to them to decide on legal disputes. From among the actors of this system of co-operation, courts have the closest connection with the Prosecutor General and the prosecution services led by him. Prosecution services are responsible for conducting criminal prosecutions on behalf of the State and are defined by the Fundamental Law as agents contributing to the administration of justice. As criminal court proceedings are mainly based on public prosecutions, criminal courts may proceed only upon a lawful bill of indictment submitted by the competent prosecution service. The application of criminal law to an impugned act is first carried out by the prosecution services, their assessment of the case is then reviewed by the courts that either confirm the well-foundedness and lawfulness of the bill of indictment or reject the prosecution's motion. Court decisions on indictments serve as precedents for prosecutors. As regards the relations between the judiciary and the prosecution services in non-criminal fields of law, the Fundamental Law provides prosecutors with other justice-related tasks and competencies in the area of the protection of public interests.

As an essential element of the requirement of the rule of law, parties to court proceedings are entitled to lodge an appeal against the court's decision. The task of the Curia, the supreme

judicial body of the country is ultimately to decide on remedies and deliver a final ruling on the parties' dispute. Due to their abstract nature, the applicable legal norms may be interpreted differently in specific cases by the deciding and contributing agents of the justice system. Consequently, diverging decisions may be rendered in respect of the very same legal issue, which may infringe the requirement of the uniform interpretation of the law. The latter means that in similar cases statute law should be applied by the courts and public authorities in the same manner. Such divergence cannot be tolerated by virtue of the principle of the equality of citizen rights and may be remedied by the Curia that is given the competence by the Fundamental Law to ensure the uniformity of the courts' case-law by way of uniformity decisions with a binding force on the courts. Legal certainty is based on the uniform interpretation of the law, since the latter guarantees that the same life situations and legal issues are adjudicated by the courts in the very same way.

According to the relevant legal rules, a uniformity procedure shall be instituted if it is necessary to adopt a uniformity decision or to alter or to repeal a previously adopted uniformity decision in the interest of the further development of jurisprudence or the maintenance of standard practices in the administration of justice. The Prosecutor General may be involved in uniformity proceedings, as he is entitled to initiate, give his views on and participate in them. The resulting uniformity decision is of crucial importance for all the actors of the justice system and all the parties to proceedings and ensures that the pieces of legislation concerned are correctly interpreted and applied by the judiciary.

The Curia's and the Prosecutor General's uniformity activities originate from Hungary's public law traditions and from codification methods used during the country's transition into a rule of law state in the Civil Era. The Crown Prosecutor, the highest-ranking prosecutor of this era was given such competencies by the 1896 Code of Criminal Procedure and by Act no. LIV of 1912 on the entry into force of the Code of Civil Procedure. The explanatory notes to the Code of Criminal Procedure pointed out that the Crown Prosecutor was entrusted with such competencies, because "he stands above the parties' one-sided interests and has a comprehensive overview of the entire criminal justice system".

It is evident that the delivery of uniformity decisions requires the parties to uniformity proceedings to have an in-depth knowledge, conduct a thorough examination and find the correct way of interpretation of the issues concerned. In the country's legal history, these parties have established, on a number of occasions, person-to-person contacts between the two main State actors of the justice system, namely between the judiciary and the prosecution services.

One of the aforementioned parties was Ferenc Finkey, an eminent representative of Hungarian criminal law who, due to both his positions (Deputy Crown Prosecutor, Head of Panel at the Royal Curia, Crown Prosecutor) and being a university lecturer, indeed had a comprehensive overview of criminal substantive and procedural law. On the occasion of his swearing-in as Head of Panel at the Curia in 1930, he recalled one of the basic premises of Roman law according to which „*Scire leges non hoc est verba earum tenere, sed vim ac potestatem*” (Knowing the laws does not mean knowing their words, but their intent and purpose). Based on this idea, he argued that “undoubtedly the Criminal Code's ultimate aim is also to ensure the well-being of the society, the *salus rei publicae*” and judges have to serve the above purpose, as they “have to be aware of real-life circumstances, have to explore the reasons for the commission of a criminal offence in each case and have to assess the expected

impact of the sanctions to be imposed by them with regard to both the satisfaction to be awarded to the victim and the required influence on the psyche of the convicted person”.

Finkey developed the above reflections in his speech delivered during his 1935 swearing-in as Crown Prosecutor. He emphasised that the two main State actors of the justice system “should not be satisfied only with knowing the relevant acts of law, Curia decisions and judicial precedent decisions in the field of criminal law..., since they should internalise all the basic principles of criminal law and all the main guidelines of criminal legislation, so that they are able to avoid hesitation in revealing the true meaning of ambiguous legal provisions during discussions over paragraphs and in correctly applying them, and to come to a fair solution that wisely balances the State’s public interests, the legitimate private interests of the accused and the victim as well as the principles of fairness and humanity”. To that end, the Crown Prosecutor is “the guardian of the law, the representative of the State’s vital public interests and the promoter of the establishment of substantive truth”. His guiding principle is “to ensure legality, compliance with legislation and the uniform interpretation of the law”.

It can be stated that both the Curia and the prosecution services led by the Prosecutor General are given tasks by virtue of the aforementioned concept, transposed to today’s world: they have to explore the courts’ diverging case-law, the underlying legislative inconsistencies and the errors and misinterpretations entailed by such case-law and they have to remedy them for the purposes of ensuring legal certainty and the uniform interpretation of the law. This rule-of-law and guarantee function is carried out jointly by the prosecution services and the Curia through consultations between them, in particular during uniformity proceedings.

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