THE YEAR OF PREPARATION

Developing the case-law of the admissibility procedure at the Curia

Dear Reader,

On 1 January 2018, Act no. CXXX of 2016 on the new Code of Civil Procedure, Act no. CL of 2016 on the Code of Administrative Procedure and Act no. I of 2017 on the Code of Administrative Court Procedure all entered into force. In addition, Act no. XC of 2017 on the new Code of Criminal Procedure will take effect on 1 July 2018.

The renewal of the key procedural codes and the setting up of a separate procedural basis for administrative litigation pose serious challenges to the judiciary. It is not sufficient to learn the new pieces of legislation and to devote oneself to continuous self-learning, as it is also necessary to ensure that cases brought before a court prior to the entry into force of the new procedural codes be dealt with in compliance with the provisions of the former procedural codes and that a consistent, transparent-to-the-public judicial practice on the application of the novel procedural rules be established.

Moreover, the procedural reforms constitute an additional challenge for the Curia: a case-law on the admissibility procedure also has to be elaborated. In administrative court cases, the Curia shall admit a petition for judicial review if the examination of the breach of law affecting the merits of the case is justified owing to i. ensuring the uniformity or improvement of the courts' case-law, ii. the special weight or social significance of the legal issue raised, iii. the necessity of making a reference for a preliminary ruling to the Court of Justice of the European Union, or iv. considering a derogation from the Curia's previously published

case-law[1]. In civil court cases, no judicial review may be requested in respect of actions relating to property rights if the disputed value does not exceed a certain amount or if the court of second instance upheld the judgement of the court of first instance on the grounds of the same statutory provisions and the same legal statement of reasons. If no judicial review may be requested by virtue of the aforementioned provisions, yet review is not precluded by an act of law for other reasons, the Curia may authorise the judicial review by way of exception on the same grounds as referred to above regarding administrative court cases[2].

The filtering of petitions for judicial review through an admissibility procedure is not an unprecedented mechanism. Based on the provisions of Act no. CV of 2001, the legislator has already sought to provide the Supreme Court with the freedom to admit only those petitions that are of relevance with regard to the uniformity and improvement of the courts' case-law. Under that regime, the Supreme Court decided on the admissibility of cases by way of a single Supreme Court judge's ruling, which could not be appealed. In 2004, the Constitutional Court annulled the relevant provisions by arguing, *inter alia*, that the mixing of legal remedy and uniformity functions had breached legal security, as the parties concerned could not foresee in which cases and on the basis of which questions of principle their petition for judicial review would be admitted. I am of the opinion that the admissibility of cases of theoretical importance – based on objective criteria, taking into account already existing uniformity decisions and other means of unification – is not as constitutionally debatable as the admissibility of cases on the basis of their subject matter or subject value. This is even more so as the Curia does not make any arbitrary choice in deciding on the cases' admissibility, but it rather seeks to ensure the uniform application of the courts' case-law. Nevertheless, it is of outstanding importance that a consistent, transparent-to-the-public case-law be established by the Curia on the newly introduced admissibility procedure.

With regard to the above, the judges of the Curia deemed it necessary to familiarise themselves with the Constitutional Court's admissibility practice as of 1 January 2012, the date from which abstract, *actio popularis* type *ex post* norm control applications could no longer be submitted by anyone. The Constitutional Court first envisaged to set up a separate admissibility panel to decide on the admissibility of cases. Nevertheless, during the elaboration of its Rules of Procedure, the Constitutional Court changed its initial concept and concluded that all Constitutional Court judges and all the three five-member panels should deal with issues of admissibility. In the first few months, the Constitutional Court, however, sat in plenary sessions to decide on the admissibility of cases with the aim of developing a uniform case-law on the matter. Section 29 of the Constitutional Court Act defines the two alternative conditions for admissibility in an abstract manner[3]. In the interpretation of the above section, the Constitutional Court took the view that the admissibility or inadmissibility of cases should be examined on the basis of uniform criteria. One of them is that the Constitutional Court refrains from dealing with legal issues falling within the exclusive competence of the judiciary.

The development of the case-law of the admissibility procedure at the Curia is a matter of work organisation as well. Both the Code of Administrative Court Procedure and the new Code of Civil Procedure make it clear that admitting petitions for judicial review or their

[1] Section 118, subsection (1) of Act no. I of 2017

[2] Section 409, subsections (1)-(2) of Act no. CXXX of 2016

[3] Section 29 of Act no. CLI of 2011. The Constitutional Court shall admit constitutional complaints if a conflict with the Fundamental Law significantly affects the impugned judicial decision, or if the case raises constitutional law issues of fundamental importance.

rejection shall be resolved by the Curia by decision in a panel composed of three members without a formal hearing[4]. Thus, the filtering of petitions on procedural and substantive grounds is part of the independence of the judiciary, which does not prevent the Curia from assigning an adequate number of suitably qualified judicial employees to assist the adjudicating panels in their work concerning admissibility, or from setting up co-ordination bodies with the participation of judicial panels adjudicating cases in the same field of law in order to harmonise their jurisprudence.

Taking account of all the above, the year 2017 can rightly be described as the year of preparation.

At the Curia's solemn plenary session held in April 2012, I expressed the hope that, through their adjudicating work, the judges of the Curia – that had been given additional new competencies at that time – would enable the supreme judicial forum to administer justice in a modern and efficient manner. In the sixth year of its operation, the re-established Curia faces significant changes once again. As of 2018, new procedural codes define the framework of the Curia's judicial activities. There is an opportunity now for the Curia to return to a legal culture in which the supreme judicial forum has a discretion in deciding on the admissibility and subsequently on the merits of cases depending on their importance with regard to the functioning of the legal system and the unification of the courts' case-law. Preparing for the introduction of this admissibility mechanism is an exceptional task the direction of which will impact the Curia's operation for decades to come. The preparation has been completed; the finding of high-standard solutions will depend, once again, on the intellectual performance of the Curia's judges.

Dr. Péter Darák
President of the Curia

[4] Section 411, subsection (1) of Act no. CXXX of 2016 and section 118, subsection (2) of Act no. I of 2017