

ANDREA NOÉMI TÓTH¹

The changes and challenges of the rules on review proceedings

Introduction

In Hungary, the new Code of Criminal Procedure (Act No. XC of 2017, hereinafter CCP) entered in force on 1 July 2018. This Code has brought a lot of changes in the criminal procedure. 2019 and 2020 were the first whole calendar years during which the CCP was in force, and we can draw inferences based on these two years. I would like to introduce some new rules of the judicial review proceedings: the new and the abolished causes of judicial review procedure; the basis of the proceedings and the obligation of publishing the decision of the Curia.

I. The new cause of the judicial review proceeding

In the judicial review proceedings, we can state the breach of criminal law, criminal procedure law by the final decision. The decision of Hungarian Constitutional Court or the European Court of Human Rights can be the cause of the judicial review proceedings, too. The new CCP contain a new cause² of the judicial review procedure: if there is a difference between the final decision of the court and a decision, that is published in the Compilation of Hungarian Court Decisions, and as a result rules of criminal procedure or criminal law are violated. The Curia is the highest judicial authority of Hungary. It guarantees the uniform application of law, its decisions on uniformity decisions are binding

¹ Assistant Professor of Law, University of Debrecen, Department Criminal Procedure, A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

² CCP 648. § d) and 649. § (6)

on all courts, according to Article 25 of the Fundamental Law. Based on the Act on the Organisation and Administration of Courts³ (hereinafter AOAC) it reviews final decisions if they are challenged by a petition for an extraordinary remedy. The new cause of the judicial review procedure follows from these obligations. It must be noted: not only the difference between the two court decisions is required, but a violation of rules of criminal procedure or of the

criminal law must be demonstrated as well.

II. Abolished causes of review procedure

In the previous Code of Criminal Procedure (Act No. XIX. of 1998), there were several causes which we cannot find anymore in the new CCP, among the causes of judicial review procedure. The structure of the Code was changed and many causes were dropped out, such as cases where the decision cannot be reviewed due to its incomplete reasoning and the cases where the public was excluded from the hearing without any lawful cause. Earlier these cases constituted an absolute ground for annulment, but now they constitute relative ground only. There are some decisions wherein the Curia take up this line, too. After 1st July 2018, Curia shall pass over the judgement in the case where the petition was founded to the incomplete reasoning of final decision of court.⁴ In the new CCP, the incomplete reasoning of the final decision is a relative ground for annulment and that's why we cannot reference it in a petition of judicial review proceeding.⁵

III. The basis of the review proceedings

Both the previous and the new CCP provided that the review proceedings shall be based on the facts estab-

³ Act No. CLXI of 2011 on the Organisation and Administration of Courts

⁴ Decision of Court 2019.1.6.

⁵ Decision of Court 2019.7.196. and Decision of Court 2019.10.261. III. point.

lished by the court which previously heard the case. The new CCP details and specifies those rules: it is forbidden to compare or evaluate evidences again. Neither it is possible to present new elements of evidence.

All this follows from the principle of the binding nature of conclusions of fact. Even if a conclusion of fact is unfounded, the Curia may not change or correct it. If any conclusion of fact is unfounded, the Curia shall base its decision upon that conclusion. This conclusion is a matter of principle, because the Curia may not analyse if the conclusion of fact of the final decision is complete or not.⁶ Judicial review proceedings may be requested in questions of law only, taking the earlier established facts as a basis. It's a strict rule: if the earlier established facts are incomplete, Curia shall use these facts to decide the case.⁷ If the petitioner challenges the facts, the Curia shall refuse it.⁸

We can confirm the binding nature of conclusions of fact with the defence of the legal force. "In many occasions, such values emerge as the goals of criminal procedures that are in a strained relation with each other and hard to reconcile. As an example, one can mention the notions of justice, legal security or legal peace. The society has a good reason to assume that a definitive judgment suits the requirements of justice. This is represented by the legal theorem of "Res iudicata pro veritate habetur", that is, a definitive judgment must be held just. If we accept that, based on its structure, the procedure has a defined end-point, then the procedure ends permanently with the arrival of a procedural event, as the ideal goal could not be reached otherwise."⁹ There are many ways to abating legal force, for example judicial review, but in the judicial review proceedings, we have to accept the facts in the final decision of the court and we cannot challenge these facts.

All this raises the question: what are the facts of the case exactly? If there are two court decisions (first and second instance), in which decision the facts can be found? Shall we read them together? Or it is the decision by the court of first instance where we can actually find the facts, because the court of first instance is "the court of facts". There are many decisions of Curia, in which the highest judicial authority specifies the nature of the conclusion of fact. More than 15 years ago, the Curia declared: all establishment of facts - those are the basis of the judgement of criminal responsibility - are part of the conclusion of fact, anywhere in the opinion of the

court.¹⁰ The review proceedings concerns the conclusion of fact of the final decision, including the other facts in another place in the judgement (because of error of committing a judgement to writing).¹¹ Data of the previous convictions aren't part of conclusion of fact.¹²

Furthermore, it is disputed whether the question of guilty or not guilty can be challenged, i. e. whether it is part of the facts or not? According to the established case-law of the Curia, we cannot dispute the facts relating to the guiltiness. Challenging the guiltiness in itself is not allowed in the judicial review proceedings.

IV. Publishing the decisions of the Curia

From 1st January 2021, the Curia shall publish its decisions concerning the merits of the case, delivered in review proceedings, in the Compilation of decisions of Curia of Hungary, in accordance with the AOAC.¹³ The Curia strives for transparent and predictable judgements, and thus for uniform application of law. The Curia shall publish a short summary about the case and the applicable law. (For transparent and predictable judgements, other courts shall publish their decisions concerning the merits of case, not only the Curia is obliged.)

Summary

From 1st July 2020, the decisions of the review proceedings can be challenged by uniformity complaints, if the decision of Curia is different from a decision, that is published in the Compilation of Hungarian Court Decisions. Curia hears and determines uniformity complaints and thus provide the uniformity of the justice.

I tried to give a brief insight into the changes and challenges concerning the review proceedings. All these mentioned elements are based on the Article 25 of the Fundamental Law, on the CCP and on the AOAC: the obligation of uniform application of law. The transparent and predictable judgements are very important because of rule of law and of the international obligations, too.

⁶ Decision of Curia Bfv.II.62/2020/6.

⁷ Decision of Court 2004.102., Decision of Court 2016.264., Decision of Court 2010.324.

⁸ Decision of Court 2014.72.

⁹ Balázs ELEK: *A jogerő a büntetőeljárásban*, Debreceni Egyetem Állam-és Jogtudományi Kar Büntető Eljárásjogi Tanszéke, Debrecen, 2012, 279.

¹⁰ Decision of Court 2006.392., Decision of Court 2015.216.

¹¹ Decision of Court 2005.89.

¹² Decision of Court 2015.30.

¹³ AOAC § 163.