Conclusions of the summary report on the practice of quashing criminal decisions in 2012

Court practice on quashing decisions was last examined almost thirty years ago. A comparison of the data of that survey and the present one reveals that in terms of ratio and breakdowns no radical changes have occurred in the courts' adjudication in this field. This feature attests to the fact that quashings and remittals are to be regarded not as faults but as elements of the system.

The regulation of the breach of the duty to give reasons as a procedural irregularity necessarily entailing the quashing of the decision has been found by the working group in need of serious reconsideration. In light of the analysis, the adoption of a Department Opinion on the issue of well-foundedness may be warranted.

Based on the analysis two proposals affecting the merits of the courts' quashing practice and requiring the Curia's involvement and task performance have been formulated which, together, are suitable to secure the reasonableness and uniformity of quashings:

1. It should be prescribed in the Act that where a judgment is quashed and the case is remitted by the Curia, the instructions contained in the Curia decision on the remittal are not just persuasive but are mandatory.

2. It should be prescribed in the Act that appeals against quashing decisions given by any court shall be adjudicated solely by the Curia.

The essence of and rationale for both proposals is the Curia's exceptional significance and responsibility resulting from its being the highest-level jurisdiction.

Proposals for the legislature:

1. It should be reconsidered whether the legal institution of *relative quashing ground* should be maintained. The fair trial principle requires courts to comply even with procedural rules of minor importance but the question arises whether a sanction entailing the resumption of the entire proceedings is indeed justified. On the other hand, via its new competence, namely the so-called 'real' or 'individual' constitutional complaint, the Constitutional Court will be able to determine the cases in which a procedural irregularity evaluated in court practice as a relative quashing ground constitutes also a violation of the Fundamental Law. As a result, the scope of *absolute quashing grounds* may be extended which will, in turn, make appellate adjudication more predictable.

2. The breach of the duty to give reasons can only be fitted in the absolute quashing grounds with difficulty, as such a finding presupposes a thorough evaluation. There are views according to which the breach of the duty to give reasons should be maintained as an absolute quashing ground but its content should be regulated in the Act in a more detailed and concrete manner. Thereby more precise control standards would be provided for the appellate courts.

3. The current regulation of quashing for ill-foundedness requires modification. By prescribing that in case the public prosecutor makes no motion to that effect the court is not required to obtain and examine evidence supporting the charge, the 2006 amendment of the Code of Criminal Procedure has already taken a step to the direction of client-lawsuit.

4. It should be thought over whether in case of an erroneous second instance finding of time-barredness by statute of limitations, a remittal is indeed warranted where the first instance court has fully established the data required for the determination of the merits of the case, hence guiltiness, characterization and the need to impose a punishment (or measure) can be determined in the third instance proceedings. In fact an erroneous finding of time-barredness by statute of limitations amounts to a substantive law violation. It practically means that in reviewing the judgment the second instance court erred as to the possibility of making a finding of guilt.

5. There are serious reasons for making quashings for relative irregularities and for ill-foundedness appealable. On the one hand, the ending of proceedings within a reasonable length of time is a basic fair trial requirement. Quashing a decision is a drastic solution imposing a significant burden on the judge, the defendant, the accused and all the actors involved in the case. Therefore it is of utmost importance that appellate courts have recourse to this means only in truly justified cases. Allowing for an appeal against a quashing would be a step in this direction. On the other hand, the analysis of the quashing decisions has raised several issues which do not need legislative interference as they can be solved in practice by proper interpretation of the law.

6. It should be avoided that quashing decisions risk the meeting of the requirement of establishing the true facts. Therefore a quashing for ill-foundedness should affect all the persons charged with the offence, as any artificial grouping of such persons would lead to misunderstandings and would result in situations untreatable from a procedural aspect.

7. With a view to ensuring the proper functioning of the remedy system, several amendments should be made in order to further clarify certain requirements. Such clarification is needed on the binding force of the appellate court's instructions on the judicial forums proceeding in the resumed proceedings and in the new remedy proceedings. It would also raise the level of adjudication if lower courts were to give reasons for departures from the appellate court's instructions on points not related to the ground for quashing the decision.