Conclusions of the summary report
on the practice of quashing court decisions by the appellate courts

1) In evaluating appellate courts' quashing practice in the light of the weight and significance of this practice it must be seen that this legal consequence is applied in 8-9 percent of the civil cases examined in appellate proceedings by regional appellate courts and country level appellate courts. This ratio means 1,400 cases annually. Resumed proceedings are completed in a high ration by settlement or by staying the proceedings or by dropping the claims. This feature is to be explained by the fact that from the court orders quashing a first instance decision the parties learn the court's position from which they can infer the possible outcome of their case and to which they try to adjust their legal position. Proceedings are normally remitted to the first instance in cases whose legal evaluation is difficult and requires much work and comprehensive evidence-taking.

2) In the category of procedural irregularities the number an ratio of breaches of the rules governing expert evidence and the information-provision obligation is unjustifiably and excessively high. The shortcomings arising in connection with expert evidence must be eliminated within the court system, via organised training or self-training. The problems related to the fulfilment of the duty of information provision cannot be fully solved by judicial means; they require legislative support, hence this legal institution needs to be reassessed in the codification process on the new Code of Civil Procedure.

3.) In civil lawsuits the direction of the proceedings is always determined by the court which may not leave the parties in uncertainty as to the facts the court attributes decisive importance in determining a legal dispute. This kind of communication between the courts and the parties, however, is not what is meant by the court's duty to provide information to the parties on the facts needed proof, the burden of proof, and the legal consequences of failures to prove. As to the determination of the direction and content of the court's duty rom provide information it is of special importance that the court should, via invitation for supplementation, demand a statement of claims and should hear the parties at the first hearing in such a manner that on the basis of the information obtained the factual basis of the claims and the scope of the required evidence-taking can be learnt and determined. Only thereupon can a court provide to the parties concrete information tailored to the particular features of the given lawsuit.

The second instance court is also under a statutory obligation to provide the necessary information to the parties in case it notices that no information has been provided and to invite immediately the party bearing the burden of proof to make a statement. If in the second instance proceedings the party fails to make the requested statement or fails to submit the required motion for evidence or is not willing to advance the costs of evidence-taking, the first instance decision need not be quashed and the second instance court may, on the basis of the available data, review the case on the merits, because Section 3(3) of the Code of Civil Procedure contains a principle whose violation cannot directly give rise to the application of the legal consequences of quashing a decision.

4.) The application of the legal consequences of quashing a decision is normally warranted where the appellate court finds, upon a careful examination of the identified material procedural irregularity and all the related circumstances, that in light of the gravity and nature of the procedural irregularity and of its effect on the decision on the merits only the remittal of the case to the first instance is a suitable remedy that can be provided in the appellate proceedings. In passing such a decision, regard should be had to the requirements of expediency, economy of procedure, timeliness and the aspect of unwarranted use of the forum system. In the second instance proceedings courts should endeavour to redress such shortcomings that can be redressed and to remit the proceedings to the first instance only in really necessary and justified cases, where no other correction possibility exists. Where proceedings are remitted, it is expedient – in order to avoid so-called "dual quashing" – to fully review the first instance proceedings, so that all grounds be evaluated together and all material procedural irregularities be identified already in the first review, because repeated remittals on account of various procedural irregularities are unacceptable.

5.) As compared to second instance proceedings, in review proceedings the major grounds for quashing decisions are different. Quashing a decision on account of different legal position is much more frequent in cases when the second instance court has given a judgment dismissing the action or has upheld a judgment dismissing the action. In case of different legal position the Curia in such cases normally passes an order quashing the decision as on account of the different direction of the evidence-taking conducted in the former stage of the proceedings the data needed for a decision on the merits of the case are not available in the case file. The Curia's mandatory instructions provided on the remittal of the case to the court conducting the resumed proceedings may include the instruction that the resumed proceedings are to be conducted by the second instance court. In such cases the second instance court may only quash the decision and may only remit the case to the first instance where the statutory grounds for such a remittal have occurred after the adoption of the Curia's quashing order.