



# Legal Unification Instruments in Hungary, with Special Reference to the Uniformity Decision

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**Abstract:** In Hungary, the supreme judicial body, the Curia (since 2012, the Supreme Court has been renamed the Curia again), occupies an extremely special place in the Hungarian judicial system. According to the Fundamental Law, the Curia of Hungary is the supreme judicial body of Hungary and the Curia ensures the unity of the courts in the application of the law. This is its sole task, which cannot be shared with any other court. There are many instruments connected with the Curia that promote legal unity, among which uniformity decisions are of particular importance because they are binding on Hungarian courts from the date of their publication. This paper will review the concept of unity of jurisdiction, briefly outline the legal unity instruments, and then detail the specific rules applicable to uniformity proceedings and decisions.

## 1. INTRODUCTION

Hungary's highest judicial forum, the Curia, which, under the Fundamental Law, performs a special task that cannot be delegated to any other court: ensuring the unity of the courts' application of the law. After an analysis of the concept of 'unity of jurisdiction', I will show that both the Fundamental Law and other legislation provide the Curia with many instruments for this task, creating a system among them. Among these instruments, however, the case-law decision is special, as it is binding on all Hungarian courts from the time of its publication in the Hungarian Gazette. The system of rules governing the decision and the preceding procedure is special in almost all respects, which justifies a detailed description: the petitioners, the grounds for the procedure, the procedure for the ruling on the petition and, of course, the "final result". It should be mentioned that the Constitutional Court may annul a decision of a case-law, and it is therefore necessary to briefly describe the aspects of the case that may be examined by the Constitutional Court.

The methodology of the study was based on the search and analysis of the relevant legislation, literature research and case law. The latter is greatly assisted by the Curia website. It provides access to the decisions of the Court of Cassation and Justice, as well as to cases in which a decision has not been taken or is still pending.

## 2. THE UNIT OF ENFORCEMENT AND ITS INSTRUMENTS

The definition of the concept of the unity of application of the law is extremely important, as this concept is used in the Fundamental Law and the Curia's task is to fulfil it. In agreement with what András Kőrös and György Wellmann wrote almost a decade and a half ago, unity of application is a cornerstone of legal certainty, and legal certainty is an indispensable element of the rule of law. The same position can be found in the study of András Osztovits: 'ensuring the unity of case law is a key issue of legal certainty and thus of the rule of law [...]' (Osztovits, 2020, p. 72), and with this in his study, the President of the Curia, András Zs. Varga (Varga, 2020, p. 80). On the one hand, unity of law means

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the identity of laws, i.e. that the same laws apply in the same way to everyone throughout the country. On the other hand, legal unity also means that the authorities and courts apply the written law in the same way (with the same practice) (Kőrös & Wellmann, 2011, p. 257). This study also uses the concept of legal unity in this study under the heading of uniformity of judgments. In the Hungarian literature, the concept of unity of law is also frequently discussed by authors, adding nuances and content from different approaches. A conceptual element that emerged in this context is that the diversity of decisions stems from the uniqueness of the cases, not from the part of the country from which the case originates (Villám, 2017, p. 225). The concept can also be approached from a negative direction, i.e. when there is a “lack of unity of law”: the possibility of uncertainty of legal unity exists when the applicable norm or the legal regulation of the given area is incomplete or requires social adaptation. In the practice of the Hungarian Constitutional Court, “the absence of legal unity, regardless of the reasons for it, in itself raises the risk of a deterioration in legal certainty” (Villám, 2017, p. 228).

There is also a consensus that the legislator’s primary task is to ensure legal certainty and thus to ensure that normative rules are predictable, fair and expedient. However, it is clear that the legislator, when creating written law, focuses on typical life situations and wants to provide a framework for them (Villám, 2017, p. 226), while the specific application of the general norm is the task of the legislator. The legislator shapes the rules in such a way that the practitioner can adapt them to changing life situations. The law enforcer (the court) adapts its decision to the specific facts within the framework set by the legislator. However, legislation cannot cover every situation in life, and life situations are constantly changing, forcing the law to change constantly. Judicial interpretation of the law has a special role to play in this context, as it is responsible for applying the written law to constantly changing situations.

However, judicial interpretation of the law necessarily entails the possibility that this activity may cross over into the field of legislation. According to the literature, this is a necessary element of the system, since the application of a general norm by a judge is “ex post facto”, i.e. retroactive (Villám, 2017, p. 227). By staying within the legislative framework, the judge determines the content of the norm, which can serve efficiency and legal certainty in rapidly changing circumstances (Villám, 2017, p. 227). However, the question of where the limits of judicial legislation can be drawn, and how far the judge can interpret the law without encroaching on the legislator’s powers and thus violating the requirement of separation of powers, is a difficult one. Another very important question is how to ensure that judicial interpretations of the law point in the same direction, i.e. that the application of the law is uniform and not divergent.

This is the special role of the Supreme Court of Hungary, which cannot be shared with or transferred to any other court, and its task is to ensure the unity of the courts in the application of the law. This aspiration was already expressed in Werbőczy’s Tripartitum (Ficsor & Patyi, 2022, p. 1311) in 1514 and since 1881 the Curia has been expressly responsible for this task. After the entry into force of Act LIX of 1997, it was included in the Constitution, and after 2012 in the Fundamental Law. In agreement with Balássy, this can also be interpreted as a “special and deliberate legislative power” (Balássy, 2020, p. 656).

Pursuant to Articles 24-25 of Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter: Act on OAC), the Curia has many means at its disposal to ensure the unity of judgments. It issues uniformity decisions, decides on uniformity appeals, conducts case-law analysis groups in cases that have been concluded by final or binding decisions, and publishes specific decisions issued by the Curia in review proceedings. It should be noted that the unity of the judiciary is also ensured

by other activities not mentioned in this point, such as monitoring the case-law of the lower courts (the head of the division of the Court of Cassation presents decisions of principle which have become final or binding to the head of the division of the Curia in the relevant case, and attends the meetings of the division of the Court of Cassation and the Court of First Instance through his representative).

The primary arena for case-law activity is review, which is conducted by the Curia. This is to correct errors of law in a case that has been finally settled, at the initiative of the parties concerned, and in individual cases. The Curia publishes its decisions and it should be pointed out in this context that Hungary has had a so-called limited precedent system since 1 April 2020. As the study by Krisztina Ficsor and András Patyi explains, “The precedent system is of a limited nature, which means that only the decisions of the Curia have precedential effect in a given legal matter and may be binding on lower courts. On the other hand, the precedent effect is not the same as the absolute obligation to follow previous decisions in general, but means that an unjustified, or in other words, unjustifiable deviation in a question of law may have consequences: the Curia may change or annul it and order a new procedure or a new decision.” (Ficsor & Patyi, 2022, p. 1311). If it fails to do so and fails to give reasons for not doing so, a review may be initiated in criminal, civil and administrative courts. The only legal means by which the Curia can depart from its own previous decision is to initiate an appeal. It should be noted that only the Curia is in this position (i.e. it can only deviate from its own published previous decision by initiating an appeal), since if the lower court wishes to deviate from the published decision of the Curia, it must state the reasons for its deviation (and is not directly obliged to initiate an appeal, as the law does not provide for such a possibility). The reason for a different decision of the lower court may be a decision of the Court of Justice of the European Union or the Hungarian Constitutional Court that was issued after the published decision of the Curia and compliance with which requires a deviation from the decision of the Curia.

Another important instrument is the adjudicatory complaint procedure, which is conducted with the participation of the parties involved in the main proceedings. A decision of the Curia resulting from a review may be challenged if it differed on a point of law from a previous published decision of the Curia and the review application already referred to a difference on a point of law, but the Curia did not remedy the infringement caused by the difference in its decision. An appeal on a point of law may also be lodged if the panel of the Curia deviates from the published decision of the Curia on a point of law without initiating an appeal on a point of law, without the deviation having been addressed in the decision of the lower courts (Act on OAC § 41/B.). The other result may be that it finds that there has been an unjustified difference on a point of law, but this can go one of two ways: it may annul the contested decision, or it may be that the Curia, although finding that there has been a difference on a point of law, does not annul the contested decision because it finds that the difference is justified. It can be seen that the purpose of the appeal procedure is also to ensure unity of law, but the Curia has repeatedly pointed out that “the appeal procedure is an exceptional, post-appeal, *sui generis* procedure based on the Act on OAC, aimed at unity of law. It is an autonomous instrument for establishing the internal coherence of the legal system. It is an appeal procedure, but not a continuation of a lawsuit.” (last Jpe.II.60.034/2024/3)

Another important instrument for unifying the law is the operation of the Judicial Practice Analysis Group. The group is responsible for examining the case-law of the courts. The scope of the investigations is determined annually by the President of the Curia, after obtaining the opinion of the Curia’s colleges. The head of the collegium of the Court of Cassation and the head of the collegium of the College of Forensic Judges, the President of the National Office for the Judiciary and the Prosecutor General may also make proposals for the subjects of investigation. The members

of the group are selected from among the judges of the Curia, but may also include judges assigned to a lower court and academics or practitioners in the field under investigation. The jurisprudence analysis group shall draw up a summary opinion on the results of the examination. The summary opinion is discussed by the relevant chamber of the Curia and, if it agrees, the head of the group publishes its findings on the Curia's website. At the same time, the chairman of the group shall publish the full summary opinion on the central intranet site of the courts.

The significance of the functioning of the group and the summary opinion lies in the fact that on its basis the head of the Curia may propose a uniform procedure or refer to the President of the National Office for the Judiciary through the President of the Curia in order to initiate legislation (Act on OAC § 29-30.).

The following is an overview of the uniformity decision available.

### 3. THE UNIFORMITY DECISION

The uniformity decision has a history of more than a hundred years in Hungarian legal history. Article of Act I of 1911 provided that the Royal Curia could issue a decision of law in order to “preserve the uniformity of justice”. The reason for this was to ensure the uniformity of the administration of justice and the particular development of private law at the time, which required that the gaps be filled by decisions of the Royal Curia. With the entry into force of Act II of 1954, the role of the Supreme Court was transformed and the exercise of principled control became one of its main functions. According to the Constitution of the Republic of Hungary, as amended with effect from 1 October 1997, the Supreme Court ensures the unity of the courts in the application of the law, and its decisions on the law are binding on the courts (Villám, 2017, p. 230). The most significant recent change was that the name of the procedure was changed to a lesser extent: it was renamed “preliminary ruling procedure in the interests of legal unity”, and the procedural rules were adapted to the fact that the adjudication of the appeal was transferred to a special chamber within the Curia, the Judicial Review Board.

However, what has remained unchanged over time for more than a hundred years is that the Curia can issue a decision on a case law, as a result of a case law procedure. As a rule of thumb, almost all the details of the case-law procedure are regulated by law (the Act on OAC), including the grounds for the procedure, the persons who initiate it, the main rules of the procedure and the decisions that may be taken.

#### 3.1. Grounds for the Uniformity Procedure

There are two possible grounds for uniformity decision-procedure. The first is to obtain a uniformity decision, to change or annul a previous uniformity decision, in order to ensure uniform case-law. The other reason is if a panel of the Curia wishes to deviate from a decision published in the Collection of Judicial Decisions of the Curia on a point of law (Act on OAC § 32). The latter reason has gained particular importance with the introduction of the limited precedent system in 2020, since, as mentioned above, the Curia can deviate from a previously published decision by means of this system, but not by any other means.

The purpose of the procedure on both grounds is to interpret a piece of legislation and, through this, to establish the uniform application of the law.

### 3.2. The Initiators of the Uniformity Procedure

The case-law procedure can be initiated by different persons according to the two grounds. If the reason for the procedure is the establishment of uniform case-law, the procedure may be initiated by the President, the Deputy President, the Head of the College or the Prosecutor General of the Curia. The law implicitly creates the possibility for the head of the court or the head of the division of the court of first instance to initiate a case-law procedure, but requires the assistance of the head of the division of the Curia. In such a case, the head of the division of the Curia concerned shall submit the application to the judicial review panel and shall state the reasons for proposing that the application be accepted or rejected.

In the event that the reason for the application for a panel decision is that the panel of the Curia wishes to depart from the published decision of the Curia, the initiator may be the panel of the Curia concerned. In such a case, the Chamber will suspend the case pending before it and will also propose in the case-law motion how the issue in question should be decided (Act on OAC § 33 and § 37 (1) paragraph).

### 3.3. Main Rules of the Uniformity Decision-Procedure

Until 31 March 2020, the uniformity petition was examined by the uniformity chamber chaired by the President, Vice-President, Head of the College or Deputy Head of the College of the Curia. The application was heard by the judges of the relevant chamber of the Curia, according to the section concerned, in a panel of five judges, or seven if the application concerned another section. Under the changes that came into force on 1 April 2020, the chamber of appeal consisted of seven members (the president of the chamber and six other members) for each case, and if more than one section was involved, the president of the chamber appointed the members of the chamber of appeal proportionally from among the judges of the Curia.

A significant change occurred from 1 January 2022, when the name of the motion changed (preliminary ruling motion) and the rules governing its examination also changed: the motion was examined by the uniformity complaint panel. The latter is the result of the Venice Commission's (Venice Commission, opinion 45.) to integrate into the rules of the appeal procedure the rules of the preliminary ruling procedure, along the lines of the "preliminary ruling" (Explanatory Memorandum to Act CXXXIV of 2021). In accordance with this proposal, the preliminary ruling application would be examined by the Uniformity Complaint Panel, chaired by the President or the Vice-President of the Curia, in the interests of legal unity. The Council is composed of the President and 40 other judges: the Vice-Presidents, the Secretary-General, the Heads of Chambers, the Deputy Heads of Chambers and the Presidents of Chambers. The Bszi. allows, and the Rules of Procedure of the Curia accordingly provide, for the Uniformity Complaint Panel to be composed of two sub-panels (I and II), consisting of 20-20 judges in addition to the President. All the Curia's jurisdictional panels are equally represented in the sub-panels, and are allocated to I or II according to a fixed alphabetical order. Cases are automatically allocated on a rotating basis, with odd-numbered cases being allocated to Sub-Panel I and even-numbered cases to Sub-Panel II (Act on OAC § 41/A (1) paragraph).

If the motion is not submitted by the Prosecutor General and has not been rejected by the Complaints Panel or the President of the Panel, the President of the Uniformity Complaint Panel shall send the motion, together with the court decisions to which the motion relates, to the Prosecutor General. The Prosecutor General shall send his statement to the Curia within fifteen days of the



date of service of the petition. If the procedure has been initiated by the panel of the Curia, the motion shall be sent to the parties to the proceedings on which it is based, or to the accused and defence counsel, who may make a statement within 15 days of service of the motion.

The President of the Complaint Panel shall then set a date for the meeting, of which the members of the Panel and those entitled to attend by law shall be notified. At the meeting of the Panel, the petitioner, the Prosecutor General and ad hoc invitees shall be heard. The person of the ad hoc guest may be proposed by the petitioner or by a member of the Panel, the invitation being decided by the President of the Panel.

After the speeches have been made, the President of the Uniformity Complaint Panel shall adjourn the meeting, followed by the deliberations, which may be attended by the members of the Panel and the court reporter (Act on OAC § 37-38.).

A decision on the merits of the application may result in an uniformity decision or in an order not to adjudicate. The latter may be issued if the Panel has not considered it justified to issue a ruling on the question referred.

### **3.4. The Outcome of the Uniformity Procedure: The Uniformity Decision**

If the Panel adopts an uniformity decision, the reasons for the decision shall state who brought the application, what the application was directed at and which court decisions are concerned. It shall set out the arguments and, where necessary, the substance of the facts established in the decisions of the courts or tribunals to which the application relates and shall state the reasons for the guidance given in the operative part.

A particular feature of an uniformity decision is that it does not extend to the parties unless an exception is made by law (Act on OAC § 41.). The literature further clarifies this picture, arguing that since uniformity decisions are also applied in pending proceedings, they necessarily affect citizens. And if a uniformity procedure has been initiated by the Council of the Curia, the Curia suspends the pending proceedings at the same time as it initiates them, so it is clear that the parties to the case are affected. This is all the more so since, once the uniformity procedure has been completed, it can only rule on the case in accordance with the uniformity decision (Villám, 2017, p. 232).

This is in line with the provision of the Criminal Procedure Act (Act XC of 2017, § 670 (3) paragraph), which states that only a change “favourable” to the accused may occur on the basis of the decision of the court of law: the acquittal of the accused, the termination of the proceedings, and if the accused is in custody, the termination of the detention. In the criminal field, the law expressly provides that an uniformity decision may also have an impact on other cases pending before the Curia, which will suspend the latter extraordinary appeal procedure until the uniformity decision is taken (Act XC of 2017, § 670 (2) paragraph).

The latter is due to the fact that the uniformity decision is binding on all Hungarian courts after its publication in the Official Gazette. The question may arise as to how long this binding force lasts, whether there is a time limit or other procedural limit.

The “limit” of binding force may be, on the one hand, if the Curia itself finds that the uniformity decision has become obsolete and can annul it as a result of a new uniformity procedure. On the

other hand, since an uniformity decision can be considered as a normative instrument (Varga, 2004, p. 333; Varga, 2020, p. 81), an uniformity decision can be challenged before the Constitutional Court if it violates a fundamental right. This may also be explained by the view that the uniformity decision is a “quasi-legislation” which cannot detract from the content of the actual legislation. “It must remain within the framework of the actual law, it may elaborate on it, interpret it, and in this context, it may lay down new legal rules, but it cannot contradict it” (Veress, 2021, p. 263).

The Constitutional Court does not examine and interpret the content of the uniformity decision (since this is a normal judicial task) but subjects it to constitutionality review in a post-judicial review procedure. It carries out this examination on a case-by-case basis and focuses on whether the interpretation of the law has drifted away from the interpreted rule of law. If it finds this to be the case, it can annul the uniformity decision, because the Curia has “made law”. The Constitutional Court has explained that the fact that the Curia, in exercising its unifying function, issues an uniformity decision does not in itself conflict with the constitutional principle of separation of powers, but on the contrary: “If the statutory conditions for the unification of the law are met, but the Curia does not exercise its unifying function and does not issue a decision on the unity of the law in justified cases, it could be argued that the supreme judicial forum is not fulfilling its function under the Fundamental Law.” (Decision of the Constitutional Court 11/2015 (14 May 2015)).

#### 4. CONCLUSION

The above shows that one of the most important uniformity instruments is the uniformity decision, as evidenced by its special characteristic of being binding on the courts. The Curia does not, however, violate the separation of powers, since it fills in the gaps that the legislator necessarily fills by interpreting the content of the norm, and does not itself create law. There are several ways of determining which questions require a uniform decision on the basis: on the one hand, the lower courts may indicate to the petitioners specified in the law, and on the other hand, the case-law analysis group of the Curia may identify questions where an uniformity decision is required. Thirdly, the operation of the limited precedent system brings this to light on many issues, since the acting Council of the Curia can only depart from a previous decision of the Curia by initiating a uniformity procedure. The substantive or procedural question on which the Curia decides to rule on a point of law is always a matter of practice, and the Curia responds to the needs of the practice. In this way, it fulfils its duty under the Fundamental Law to ensure the unity of the courts in the application of the law.

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