

Dear András Kristóf Kádár,

I have received your open letter in relation to the letter I sent to the President of the Curia concerning the Cozma case. With regard to your letter, I inform you of the following:

1. It is the basic task of the law to ensure – through the regulation of human conduct – the order of society and to create reliable and foreseeable social conditions. However, it is obvious that human conduct is regulated not exclusively by legal norms but also by traditional, moral, and ethical norms. Often it is moral values that must prevail in human relationships. Criminal law must be resorted to only when, for example, someone in society violates the peremptory norm of „Thou shall not kill!”. We respect the life of others not because it is prescribed by the Criminal Code, but because this is what morals and society’s sense of justice call us to do. Consequently it is necessary to give due consideration to the opinion and the sense of justice of society in the course of making and applying legal norms. With regard to law-making this is done by ensuring popular participation in the legislative phase, making it possible for the people to comment on laws that directly affect their own lives. With regard to the application of legal norms, the participation of lay people is ensured in the Anglo-Saxon legal system by the involvement of the jury; in the Continental legal system, lay judges are still used to mediate the sense of justice and the opinions of the people. The law is about society, it exists by the people and for the people – this cannot be forgotten in the application of the law.

As minister of justice I am responsible for performing the tasks of government related to the administration of justice, *inter alia* the submission of proposals to the Parliament in the field of substantive criminal law; therefore if I find that in practice these rules fail to fulfill their aim, I feel morally obliged to indicate this to the person who – under the Fundamental Law – is responsible for ensuring the uniformity of the application of legal norms, that is, to the President of the Curia.

Otherwise, I also note that not so long ago another legal defense NGO took a different stance from yours with regard to the reflection of expectations of society in judicial decisions, that you are criticizing so heavily right now.¹

2. As per the Fundamental Law, the Curia is responsible for ensuring the uniformity of the judicial application of laws. The Act on the Organization of Courts contains detailed rules as to how the power shall be exercised by the Curia. In the course of performing this task, the Curia carries out analyses of cases where the final judicial decision has been delivered.

The subject of the analyses shall be determined every year after obtaining the opinion of the heads of the collegiums (branches) of the Curia. The subjects of the analyses may be

¹ <http://tasz.hu/gyulekezesi-jog/szabad-pride-birosag-helyre-tette-rendorseget>

proposed by the heads of the Collegiums of the Regional and County Courts, by the head of the Collegium of Public Administration and Labour, by the head of the National Judicial Office and by the chief public prosecutor. The Act on the Organization of Courts determines those entitled to submit formal proposals, but of course does not regulate who may indicate problems to those entitled to submit these proposals. No one is prohibited under the law from using his or her opportunity to indicate problems, if this does not oblige those addressed by the indication. At the same time these indications can be useful, as they might draw the attention of the addressees to problems worth analyzing. I also call your attention to the fact that in the particular case referenced – which was only mentioned in my letter as an example – the final judicial decision has already been delivered; therefore it is impossible to interpret my letter as putting pressure on the judiciary in the given case.

3. I also advise you that as minister responsible for justice matters, that is, as a member of the executive body of the state, I am not responsible for the issues which the third point of your letter covers. Those matters fall under the competence of the law-making of the Parliament and hence were decided by the Parliament.

Budapest, 18 May 2012

Tibor Navracsics
Minister of Public Administration and Justice