# Speech of Péter Darák
# President of the Curia

Dear Colleagues!

Courts are endowed with public power in order to serve as forums of law enforcement. **The publicity of court proceedings – as a restriction of judicial power – is a safeguard of the rule of law.** There is a specific emphasis on the principle of judicial independence in the separation of powers: while the two other branches of power are "politically defined" and are mutually dependent on each other, the judicial branch must be permanent and neutral.[1]. **Therefore, the checks and balances of judicial power are not embodied in the particular rights of the other two branches, but in the boundedness of judges to law, the internal division of powers and open justice**. Thus, independence cannot result in the total lack of responsibility: public trials and the publicity of court decisions ensure that judges are constantly being watched by the public. This means a warning: "I am independent when delivering a judgement, but I cannot make myself independent from law and the values protected by law!"

The principle of open justice is **a safeguard of fair trial and public confidence in courts.** The words of the former Lord Chief Justice of England and Wales, Igor Judge, are worth quoting:

*„The open justice principle is central to the rule of law. Open justice helps to ensure that trials are properly conducted. It puts pressure on witnesses to tell the truth. It can result in new witnesses coming forward. It provides public scrutiny of the trial process, maintains the public's confidence in the administration of justice and makes inaccurate and uninformed comment about proceedings less likely. Open court proceedings and the publicity given to criminal trials are vital to the deterrent purpose behind criminal justice. Any departure from the open justice principle must be necessary in order to be justified."*[2]

The latter sentence implies that **not even the open justice principle is absolute**, it means that it shall be interpreted in accordance with other constitutional values. The publicity of judicial activities has several dimensions:

- public trials,
- access to court documents,
- finally, the publicity of the "output", the court decision

There would be no rule of law in the absence of any of the factors, nevertheless, fundamental rights and other constitutional values arising in any of the dimensions can justify restrictions on full publicity. For instance, the protection of the witnesses' life and health, as well as the principle of fair trial can justify the restriction of access to their personal data.

[1] See Constitutional Court decision no. 38/1993. (VI.11.)

[2] http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/crown_court_reporting_restrictions_021009.pdf

Departure from the principle of open justice depends also on the type of data concerned: whether the case involves data of private persons, business companies, or classified information of national security. Such cases might involve types of data, whose constitutional protection is guaranteed as a fundamental right and principle, which justifies in turn the restriction of publicity.

However, restriction of publicity cannot lead to the restriction of the principle of open justice. Publicity cannot be subjected to personality rights. In Hungary numerous significant representatives of the legal profession are of the opinion that after a silence of several years steps should be taken, taking into account that the rules of court publicity have not been examined for more than half a decade.

That is why the National Office for the Judiciary and the Curia of Hungary jointly organised a conference entitled *The publicity of court decisions* on 12 June 2013, where based on the publishing of foreign court decisions we examined how the Hungarian rules could be loosened. The regulation on the publicity of court decisions in Hungary is rather strict, legal persons are in an especially privileged position.

Concerning the publication of the names of the parties, the German practice could be a good example: names that have become lawfully public are not subject to protection. In cases of trademark protection, for example, court decisions are referred to not only with the number of the decision but with the name of the trademark as well, which makes identification of the case faster and easier. In cases involving personality rights and copy rights the name of the party can often be deducted from the text of the decision, especially if the party is an heir of a well-known author. The names of well-known persons, for instance sportsmen/women, can be made public, however, strict rules of anonymisation should be followed in cases of sexual crimes. There are similar solutions in Austrian law as well.

In common law systems the publication of names is the general rule – what was public during the trial will remain public in the decision. Disidentification of the victims of sexual crimes is obligatory, but the court may also restrict publicity in the interest of witnesses or juveniles.

We deal with the publication of decisions in so much detail since it is particularly important from the aspect of the unification of justice. The role of decisions made by supreme courts in individual cases is of utmost importance in orientation and if such decisions are made public in a short time and in a comprehensible form, they can have the effect of a uniformity decision or an opinion issued by a department of the Curia in the unification of justice. The Curia is obliged to ensure the unification of justice but it can comply with this obligation only if it can offer alternatives for judges at lower level courts through the appropriate communication of high quality decisions. The demand for a just decision can never be sacrificed in the interest of the unification of justice.

Besides the publicity of court decisions the conference also dealt with the regulation of data processing at courts. The participants agreed that since data processing touches upon fundamental rights, it can be regulated only in an act. At present, however, only lower-level regulation exists. In addition, an appropriate system of redress shall be introduced in respect of data processing at courts. Since data processing at courts is inextricable from the adjudicating activity, the complaints on data processing can be examined only by other courts and not a body of the other two branches of power.

The conference in June has launched the review of court communication, taking into account the principle of open justice. Let me open today's discussion in the hope that each participant will contribute to the development of the regulation of publicity and thereby to the trust in courts with valuable thoughts. Thank you for your attention.