

CONTENTS

CRIMINAL CASES RULINGS IN PRINCIPLE

- B.3** I. The offence of usury is typically committed by means of money lent in exchange of interest payment. However, the Criminal Code provides that usurious interests (usurious loan) as well as any and all types of usurious contracts (material usury) shall be prohibited. Usury is a usurpation of power adapted in substance to any given situation, which may also be committed within the particular circumstances of prison conditions, by one inmate taking advantage of the need of another without means.
- II. Need is a situation of disadvantage which differs from the passive subject's usual circumstances and forces them to undertake relatively significant financial sacrifices in order to escape the situation or to avert grave consequences. Need is a condition of the victim whereby he or she is unable to reasonably conclude an agreement in their own true interests.
- An agreement entails very disproportionate remuneration if it exceeds the services rendered to such an extent that cannot be justified under the circumstances other than by the need and vulnerability of the victim, and therefore his or her exploitation 150
- B.4** In the event that a decision by a court of first instance is dismissed by the court of second or third instance or the Curia, the court instructed to conduct a new procedure shall examine its competence and jurisdiction bearing in mind that the time the documents were received by the court conducting the new procedure following the dismissal, rather than the time of the charge should be considered to be the time when the documents were received by the court.
- If the dismissed decision had been taken prior to the entry into force of the new provision on jurisdiction rules contained in the Criminal Proceedings Act, the new trial shall be conducted by the court having jurisdiction under the new provision, unless the documents for a new trial in the case were received before the entry into force of the new jurisdiction rules 153
- B.5** I. The possibility of release on licence shall not be awarded to a sentenced person who, through his or her own fault, did not start their definite prison sentence within the time limit. However, they must be warned of such consequences by way of a summons calling for them to start their imprisonment or of a court decision in case of an authorised postponement. In the absence of such warning to the sentenced person the benefit of probation cannot be denied to them.
- II. The decision concerning exclusion from the possibility of release on probation on the basis of the conditions specified in Section 55(1) of the Act on the Execution of Punishments shall be taken by the penal judge at the time of imprisonment, on the basis of a submission by the penal institution. At the request of the sentenced person the procedures established under Sections 52 to 70, Chapter XXIX of the Act on Criminal Proceedings shall be conducted subsequently, in accordance with the provisions of the Chapter, unless the judge had not taken the Act into account in their decision. Under the Criminal Proceedings Act special procedures shall be conducted by the court which adopted a conclusive decision in the main proceedings at first instance. Given that the Act on the Execution of Punishments refers to Chapter XXIX of the Criminal Proceedings Act, irrespective of the fact that the penal judge's decision is not conclusive, jurisdiction for conducting subsequent penal procedures shall be attributed to the penal judge of the court which has adopted a final decision in the penal case prior to the special procedure 154
- B.6** I. There are no grounds for prosecuting someone for an administrative offence if the offence was committed more than six months ago; and more than two years after the commission of the act there is no possibility whatsoever of prosecution for an administrative offence.
- II. For the purposes of qualifying acts as administrative offences against property, values can be aggregated only in respect of offences which had been committed within one year, provided these are considered jointly and unless they are no longer punishable due to the statutes of limitation 156

RULINGS

- 40** Offender and defendant are not interchangeable terms. "Offender" is a term of substantive law, while "defendant" is a category in legal procedure.
- Offending is an inevitable, objective connection between a crime and a person, which is created and exists irrespective of whether the offending person is known or not. 'Defendant' is a particular person who can be reasonably accused of the commission of an offence and who is therefore the subject of criminal procedure.
- The statutory limitation of punishability is interrupted by criminal proceedings against not the defendant but the offender. It is therefore not essential to identify the offender, since initiating investigations against an unknown perpetrator may equally result in a stay of limitations. Equating the concept of offender with that of defendant may result in the limitations being erroneously declared to be in force, and thus the criminal procedure to be unlawfully discontinued, creating unconditional grounds for dismissal and review 159
- 41** I. The minimum period of a definite prison sentence is three months. No prison sentence shorter than three months shall be imposed, even if the lower limit of the sentence applicable for an offence is not specified in Special Part of the Criminal Code.
- II. The court can order a defendant to serve a prison sentence of not more than one year imposed for misdemeanour in a military guardhouse provided the execution of the sentence is not suspended by the court and the sentenced person who is a first offender may be retained in service 161

- 42 I. A person allowing their three-and-a-half-year-old child to open the door of a vehicle parked on the roadside with the car key, enter the vehicle, put the key in the ignition which causes the vehicle that had been left in reverse and had not been secured with brakes to move and fatally injure the victim standing behind the vehicle commits involuntary manslaughter.
 II. The defendant is guilty of gross negligence as they failed to exercise the ordinary care and precaution that might reasonably be expected in such situation by handing over the key and allowing a child lacking discretionary power due to their young age to open the vehicle, enter and start it.
 III. The defendant did not intend to allow the three-and-a-half-year-old child to drive the vehicle, and the vehicle was moved by the child's actions due to a lack of care and precaution reasonably expected from the defendant. Therefore, the defendant's actions could not constitute an offence of unlawful conveyance of operating a vehicle causing death, as the said offence is committed voluntarily while the law does not penalise involuntary commission of the same act 162
- 43 The statement made at a press conference to the effect that redundancies in connection with school consolidations in a municipality "were carried out by the school managers in a way that the positions of the least performing staff members were terminated" does not constitute libel or defamation given that it is not a statement of fact, nor abusive or defamatory 167
- 44 In the proceedings for prosecuting fraud committed through the use of an information system the district court located at the tribunal' headquarters has exclusive jurisdiction 170
- 45 I. The appeal based on the absolute procedural irregularity of the absence of the defence counsel in court, also providing the grounds for a review, shall be considered justified only if the defence in the case was mandatory.
 II. In a procedure of arraignment the presence of the defence counsel is mandatory at the first instance trial only 170
- 46 The duration of the imprisonment imposed by an appealable decision may constitute the basis for ordering or maintaining detention before trial, if there is a risk of the defendant absconding or hiding due to the seriousness of the case.
 During this part of the criminal procedure following the conclusive decision of the court pre-trial detention also has the purpose of ensuring that the imprisonment can be implemented. The prevention of absconding or hiding is a public interest that takes precedence over respect for the personal freedom of the person who has been sentenced by an appealable decision to a longer-term imprisonment. That is an important aspect to consider, along with the expediency of ensuring that the prison sentence is implemented, to the effect that on these grounds pre-trial detention can be regarded a necessary and proportionate coercive measure as opposed to applying more lenient coercive measures 171
- 47 The question of whether the appeal of the prosecution qualifies as "lodged to the detriment of the defendant" should be examined in substance. Therefore, the appeal of the prosecution that solely aims to request the second instance court to reclassify the implementation of the sentence from prison to high security prison on the basis of the defendant's reoffending history shall not be considered as such, even if it is indicated as 'to the detriment of the defendant' 173
- 48 When examining the breach of obligation of justification in the course of the appeal procedure, the correctness of the reasoning lies outside the scope of absolute procedural irregularities, therefore an appeal on these grounds constitutes in substance an unauthorized challenge of the conclusive decision's justification 174
- 49 I. In the procedure exclusively aiming to establish recognition of the verdict of a foreign court of justice (but not to implement the sanction imposed by the said verdict) Section 46 (1a) of the Act on International Legal Assistance in Criminal Matters is applicable.
 II. Notwithstanding the legal consequences of the judgement of the Court of Justice of the European Union in the so-called Balogh case, the Curia is obliged to designate the court hearing the case in respect of the recognition of the verdict of a foreign court of justice 177

CIVIL CASES RULINGS

- 50 A preliminary contract shall not be deemed necessarily void on the sole basis that the contract to be concluded under the pre-contract would be invalid. The invalidity of the preliminary contract may be confirmed if there was no realistic possibility to conclude a valid final contract on the basis of the preliminary contract, i.e. the obstacle to the conclusion of a valid final contract on the basis of the preliminary contract could not be eliminated 180
- 51 The act of filing a complaint may cause the limitation period to be interrupted only if it leads to the effective start of the intended procedure in the matter of the claim relating to the limitation and if the court reaches a decision in substance..... 182
- 52 I. The obligation of legal entitlement does not apply to the enforcement of transferred obligations based on identical legal status.
 II. If a claim for recovery of an advance payment lapses due to the impossibility of performance of the contract, a claim founded on a breach of the nullified contract shall also be deemed lapsed since the breach of contract must have preceded the nullification.... 183

- 53 I. In the event of interaction of hazardous plants general liability rules shall be applicable. The driver of the vehicle under obligation to yield shall be subject to the obligation to give right of way irrespective of the speed of the vehicle which is in a position of overtaking.
II. The party may challenge the final judgement by a cross-petition for review only within the scope applied by the petition for review, due to the accessory nature of the cross-petition 187
- 54 The hospital's liability for damages is established if it prepared a medical report which proved to be unsuitable for drawing conclusions as to whether the patient has a tumour that is benign or malignant and consequently there was a delay in the patient starting the necessary treatment, thereby reducing the chances of recovery 190
- 55 In case a result by work is created using material incorporated, the price of that material may be charged by the contractor only as part of the contractor's fee, together with the labour costs; therefore, retention of title by a third party in respect of the material incorporated is not applicable 192
- 56 The rules of a building society continue to apply to members who have been excluded. Excluded members may claim their rights only in respect of exercising their purchase option in respect of their share of ownership interest 194
- 57 The onus is on the defendant to prove that the payments they made to the claimant's proxy and third parties under different titles were indeed in accordance with the wishes of the claimant and qualified as reimbursements of the loan provided by the claimant 196
- 58 As a rule an undertaking by agreement to pay child support implies a long-term commitment. The child support may not be reduced on the grounds that the debtor originally assumed the high amount of child support with external assistance, particularly given that the debtor did not provide evidence of their actual income situation either at the conclusion of the agreement or during the new procedure 199
- 59 In cases specified by Directive 2007/66/EC the court shall decide to set aside decisions affected by the infringement of public procurement rules 201
- 60 There is a distinction between a non-existent and an invalid contract. Only an existent transaction can be invalid, and for that the contract must be executed, whereas a non-existent contract can only be discussed in non-contractual terms. Judicial practice excluding the applicability of Section 36 (2) of Civil Procedure is relevant for a legal dispute only where one party makes a statement concerning the establishment of the contractual arrangements which is not substantiated by evidence, and where the other party also questions the establishment of the contract or the expression of uniform agreement of the parties. In the absence of such facts and on the basis of the existent if deficient contract the matter of the competence of the court may be decided on the basis of the place of conclusion of the contract 203
- 61 The court of second instance shall (and can) make its decision within the limits of the appeal claim and the counter petition. Not to take account of that fact amounts to a gross procedural error providing cause for dismissal of the final verdict 204
- 62 The absence of an order for payment procedure does not provide grounds for dismissal of the case in a review procedure if the defendant requesting the review answered to the charge on the merits and in earlier stages of the procedure did not challenge the lack of a prior order for payment procedure that constituted an obstacle to the claim 207

ECONOMIC CASES RULINGS

- 63 In order to provide guarantee for a loan agreement, the parties may stipulate that the creditor should take possession of a vehicle's registration document, as an atypical guarantee not specified by the Civil Code. The loan agreement and the general contracting terms applicable to the agreement shall, however, clearly spell out that possession of the registration document is for the purposes of serving as independent guarantee 209
- 64 Section 205/B (2) of the Civil Code imposes special information obligations for contractual provisions whose content does not conform to the customary contractual practice, in order to ensure that the provision is part of the contract. This provision does not, however, apply to a format used by a financial lease agreement whereby the initial interest rate is calculated on the basis of the agreement and the General Contracting Terms, as well as the financial institution's Terms and Conditions 211
- 65 The starting date of the ninety-day limitation period mentioned in Section 40 (1) of the Bankruptcy Act is the date when the liquidator recognised that the contract may be contested and gained effective knowledge of the legal title of the contest, having been acquainted with the contents of the contested contract and other relevant circumstances 213
- 66 I. If the debtor fails to pay the sale price received from the sale of the pledged property by purchase contract to a creditor with a claim for which the property was pledged, the conditions for compulsory joinder in a procedure under Section 49 (5) of the Bankruptcy Act are not met.
II. In respect of a specific asset any attempt to sell qualifies as a separate sale and therefore in case of subsequent legislative changes a further offering for sale shall be executed in accordance with the new rules. The sale process begins when the liquidator files the notice for publication with Cégközlöny (Company Gazette).
III. The ministry's revision obligation is not exclusive in respect of the notice published by Cégközlöny, and the unlawful nature of the notice can provide the grounds for a procedure initiated under Section 49 (5) of the Bankruptcy Act 215

LABOUR CASES

RULINGS

- 67** Withholding a part of the salary based on the employer's decision shall not in itself constitute a situation warranting protection that may provide grounds for unequal treatment 219
- 68** Criminal proceedings against a member of professional staff for an offence unrelated to their obligations under the service does constitute grounds for suspension from service even if the authority conducting the procedure does not initiate it. It is left to the discretion of the employer to decide whether the criminal offence attributed to a member of professional staff compromises the prestige of the armed force and the public confidence in its functioning..... 221
- 69** I. Complaints in respect of enforcing claims for wrongful termination of employment shall be filed within thirty days. However, it cannot be ruled out that a claim relating to the unlawfulness and not included in the complaint be presented within the limitation period, therefore it was possible to submit in the course of the procedure the request to be reinstated in the original job, considering the applicant's membership in the works council.
II. If the employee is reinstated, the time spent out of work shall be considered to be part of the employment. In this case the limitation on damages under Section 82 (2) of the Labour Code is not applicable 224
- 70** Deputy notaries public, in their capacity of officials acting as intermediaries in public judicial activities, are required to act with reasonable diligence. Considerable negligence in breaching their obligation to act according to the legality in content and form of the official copies of documents they issue constitutes grounds for immediate dismissal 229
- 71** Evidence to the fact that the salary subject to pension contributions was paid can be submitted in the procedure during the presentation of evidence... 232

ADMINISTRATIVE CASES RULINGS IN PRINCIPLE

- K.5** The tax authority is bound by the limitations in substance of its decision ordering supplementary inspection. Procedural acts performed during the unlawfully ordered supplementary inspection do not cause the deadline to be suspended. Acts performed after the deadline lapsed and the evidence obtained as a result of such acts may not be used for adjudicating 235
- K.6** Easement for mining purposes may not be granted in public areas. The concerned parties are obliged to conclude an agreement for the use of the public area 237
- K.7** After a period of three years from the date when the customs debt incurred the debtor shall not be informed of the sum of the debt. The limitation period is not extended by the duration of the appeal procedure against the control inspection that had been conducted earlier and terminated without establishing any breaches239
- K.8** Disregard (breach) of legal guarantees pertaining to administrative procedures results in a violation of law, even if the authority's decision would have been the same would it have been taken in accordance with the legal guarantees 241

RULINGS

- 72** As a rule, movement of own assets within Member States, irrespective of the aim of movement, is considered supply of goods, therefore asset transfers for the purposes of using services may result in supply of goods in terms of VAT liability..... 244
- 73** Competence for examining the legality of prescribing contractual penalties lies with the authority, notwithstanding the competence of the court of civil jurisdiction 246
- 74** There are no grounds for requesting to remedy the deficiencies if that would entail a modification of the tender 248
- 75** For the performance of its tasks, the Hungarian Energy and Public Utility Regulatory Authority (MEKH) is entitled to have access to the natural gas trading company' documents, including those containing business secrets; it is also entitled to prepare copies or extracts of documents and for the performance of its duties to request information from the licence holding company on a regular or case-by-case basis. Should the above be refused, the company can be legally sanctioned 250
- 76** Standard public funding is due to the non-state institution performing public educational tasks where the use of such funds for the operation and maintenance of the educational institution is transparent and in conformity with applicable legal requirements..... 253
- 77** The Kormányhivatal (Government Office) may request the Curia to examine those municipal decrees and municipal regulatory decisions in respect of which it has already issued a legal notice (without result). The precondition of initiating normative control in this procedure is that the local council is made aware and given the opportunity to discuss the legal problem identified by the Kormányhivatal. In itself a land tax that is under the legal taxation limit and encouraging maintenance and recultivation shall not be regarded as taxation akin to sanctioning..... 256

RULINGS OF THE COURT OF THE EUROPEAN UNION

- I.** Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax shall be interpreted as follows:
- An integrated agricultural cooperation providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of that directive, in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers;
 - The fact that an integrator may provide the farmers with additional services or buy their agricultural production has no bearing on the categorisation of the transaction at issue as a single transaction, for the purposes of Directive 2006/112 261
- II.** Article 45 TFEU and Article 7 (2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union shall be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount 263

FORUM

Memorandum

Of the National Forum of Presidents of Civil Divisions, 21–22 November 2016

268

Dr. Anikó Bajcsi (Curia Secretary)

Hungarian judicial practice concerning refusal to recognise verdicts reached by foreign courts
of arbitration 272