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**B.7** When the explanatory provision of the Criminal Code determines a concept included in a statement of facts in a law with reference to a legal provision, the same shall be interpreted with regard to the content; and it is not the title and number of the law referred to, but its regulatory object that has significance.  
Thus the character of the person serving the public duties of a fishing guard cannot be questioned with reference to the fact that the fishing guard activity was specified by Act XLI of 1997 on fishing and angling until 1<sup>st</sup> September 2013, and then subsequently by Act CII of 2013 on fish management and fish protection, and the explanatory provision of the Criminal Code referred to the previous one upon the commission of the crime, which was committed on 4<sup>th</sup> July 2014 injuring the fishing guard 297

**DECISION IN PRINCIPLE**

**B.8** The person, who performs transportation – including lifeless entities, derivatives – without the approval of the environment protection authority necessary for the transportation of protected species and their derivatives specified in Section 43, Paragraph 2), Point i) of Act LIII of 1996 across Hungary, violating Section 242, Paragraph (1), Point b), Expression 5 is considered to commit the crime of damaging the environment. Romania, Hungary and Italy are all part of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19<sup>th</sup> May 1956 (CMR Convention), that is it is applicable within the member states of the European Union.  
In accordance with Article 8, Point 1 of the CMR Convention, the carrier is obliged to examine the accurateness of the data registered in the freight bill with regard to the amount, sign, serial number of the products, as well as the external condition of the product and the product’s package 298

**B.9** The provisions of Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters are based on an international agreement, with regard to which, the party states shall act and make decisions in accordance with their own legal systems, and another state shall also act in accordance with its own legal system on the acknowledgement of the decisions made by foreign courts. During the latter, the mutual respect of each other’s sovereign legal system is an international legal obligation for the contracting parties, and also whether the provisions of the transferred decision shall be in line with the provisions of the foreign court to the largest extent possible. The procedure specified in Article 48 of Act XXXVIII of 1996 does not provide for a penalty, but only examines the foreign prejudice, that is according to which Hungarian imposition of penalty it can be harmonized with Hungarian law. At this point, it is undoubtedly the criminal limit is to be used as a basis, but Article 80, Paragraph (20) of the Criminal Code – as imposition of penalties – cannot be applicable ..... 302

**RULINGS**

**78** I. The criminal proceeding shall be conducted in accordance with the law in effect upon the judgement of the action, and the criminal law in effect upon the judgement or commission of the crime shall be applicable, and they cannot be combined. As of 1<sup>st</sup> January 2014, the effect of the military criminal proceedings has also been covering the – non-military – crimes committed in connection with the service, in the service area, by the member of the disaster management body. Thus, if one of the accused persons, in accordance with the legal provisions in effect upon the judgement is considered to be the professional fireman serving his/her duty upon the commission of the crime, thus qualified as an officer of the disaster management body, and the act in effect upon judgement results in a more favourable judgement, military criminal proceedings can be conducted against such person, if this person is not considered to be a soldier in accordance with the criminal material law rules in effect upon the commission of the crime. In such a case, military criminal proceedings can also be conducted with regard to the accomplice, whose actions cannot be separated with regard to the close connection with the facts.  
II. No review shall be made, if the petitioner refers to a material law violation, and the violation of the obligation of justification, nevertheless the evaluation of evidence, and the rightfulness of the deliberation of the acting courts and the its conclusions related to guiltiness, and through the same, he/she contests the relevant facts ..... 305

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**80** It is an illegal measure, thus a reason for review, if against the period of probation set for an accused minor person is more than two years ..... 309

**81** I. Fraud specified in Chapter XXXVI of the Criminal Code is against property, and quackery specified in Chapter XCII of the Criminal Code is qualified as a crime against health, and neither of them are special in

comparison with the other; thus they form an actual, heterogeneous formal aggregate – due to the difference of the protected legal objects.

II. If the court, due to the fact that the length of the hearing period is more than six months, repeats the hearing in the presence of the accused persons and their defence attorneys, the procedural violation – which was prevented by the repeated hearing – has no significance, neither does the fact, if the defence attorney of an accused person, who was previously excluded from the proceeding, was actually present

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- 82** I. If the shooting and killing happened based on the species or amount different from that which was authorized, then the owner of such game shall be the one entitled to hunt, and the power of the hunter will from the beginning be unlawful, and in the event of the existence of the appropriation purpose, he/she performs the attempt of theft. And if he/she does not cease the possession of such game, but keeping his/her advantage originating from the shooting and the killing, ending his/her behaviour of acquisition, then he/she also ends the theft, finally taking out the owner from his/her power.
- II. The crime of the violation of personal liberty is not intentional, but behaviour of factual character can also be committed by possibility intent, even if its purpose is not expressly the deprivation from personal liberty, but the delay of the discovery of the crime ..... 313
- 83** Lawful impeachment is missing, if according the impeachment the accused behaviour has no subject, and the person of the accused person is unknown, or is only generally specified (for example: someone, those present, etc). This does not provide for the possibility of the conduct of the evidence procedure, as it does not aim at the clarification of the standpoint of the impeachment, but the specification of the same, thus it does not aim at the legal task of the court. However, it is a significant difference, if the person of the accused person is unknown, or if the personal identification data of the accused person are not known or uncertain. The conceptual element of lawful impeachment, the ability to determine the person of the accused person means that the factuality stated by the impeachment is related to a subject, and the accuser requests the performance of the evidence procedure. The name, personal data of the given person and the existence, doubtfulness or default of the same is not related to the lawfulness of the impeachment, and does not prevent the performance of the evidence procedure. Specification means concretizing to a certain person and not the concreteness of personal data ..... 318
- 84** I. In accordance with Article 363, Paragraph (1), Point III. a) it is a procedural violation resulting in unconditional repeal, if the court does not comply with its justification obligation with regard to the specification of penalty, acquittal, termination of proceedings, legal qualification of the action or the imposition of the penalty or the performance of the measure to the extent that the judgment is not suitable to be reviewed. The motion questioning the conclusions drawn in the scope of the evaluation of the evidence and thus doubting the grounds of the main resolution nevertheless is the contest of the relevant facts, which is not authorized in the review proceedings.
- II. The lawfulness of the arraignment, or the lack of the same can be examined based on the content of the arraignment. It is not requested though that the arraignment includes all facts of the case in every detail; the arraignment of lawful, if the most significant facts of the action are specified so that the material and subjective factors of the crime can clearly be recognized..... 322
- 85** In case of regular summons, third degree public hearing can be held in the absence of the accused person, for the lack of the appeal lodged against the same, and the second degree public hearing can even be held if there is an appeal against the accused person ..... 325

## CIVIL CASES RULINGS

- 86** A companion of a public figure taking part in an event, which is financed from public funds, can expect that the media reports on the event – even using his/her picture. In such a case, the enforcement of the freedom of press (the freedom of expression of opinion) shall be compared to the enforcement of the rights of the individual to his/her likeness..... 327
- 87** I. Decisions related to the joint property of the condominium, thus the implementation of renovation works affecting all owners, the generation of the necessary funds and the payment of costs shall fall in the authority of the general assembly.
- II. The legal provisions related to condominiums override the provisions of the Civil Code on general administration without assignment and management without legal grounds, based on which legal titles, the owners previously performing the works cannot enforce claims against the condominium 330
- 88** Upon the formation of the order of local public roads, the local government of the settlement does not act as an authority. If, during the performance of its related tasks, any of its measures violates civil law rules, then the relevant claims shall be enforced in a civil lawsuit 333
- 89** The court may, in exceptional cases, mitigate the amount of excessive penalty, if there is a significant disproportionateness between the value of the service and the amount of the penalty 335
- 90** By terminating the sale and purchase agreement, the buyer, first degree defendant lost its right of disposal related to the property in the legal relationship of obligation with the seller, plaintiff, thus he/she committed a violation of the agreement by mortgaging the property, but the acquisition of rights by the acquirer of rights, third degree defendant does not become invalid. Due to the violation of the agreement of the first degree

- defendant and the violation of the plaintiff's interests arising from the same, the mortgage agreement of the defendants will not become invalid even at the legal title of violation of good morals 338
- 91 The right of agreement is a part of the legislation process. If such right is not exercised by the local government, this is a public law action, which cannot be regulated by the Civil Code 340
- 92 I. During the judgment of the claim for damages enforced due to the activities arising in relation with the care of and attendance on an injured child, the actual work of the relative performing the care shall be taken into account and not whether such person has the necessary qualifications  
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- 93 If the consumers can confuse the mark used by the defendant with the community trademark included in the lawsuit, the major similarity of the mark and the trademark as well as the equality of the products listed in the list of products of the mark and the trademark, the usurpation of community trademark can be established ..... 345
- 94 I. The performance of the allowance agreement made by the spouses is not subject to any formal requirements.  
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- 97 I. The performance of non-litigious procedures related to the establishment of creditor's claims contested by the liquidator, submitted against the debtor, falls in the jurisdiction of the Hungarian court performing the insolvency procedure, and also it has exclusive jurisdiction and competence in Hungary.  
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- 98 From the net purchase price of the pledged property, the liquidator shall be compensated at 3%, the relevant VAT from the 5%, and the amount payable to the account of the Economic Authority of the Budapest Court of Justice which can be deducted as the liquidator's fees 358

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- M.1 The employee's statement related to the termination of the employment shall become effective upon communication, thus the employment shall be terminated at the said date irrespective of the lawfulness of the legal declaration. The legal consequence of the unlawful termination of the employment by the employee is not the survival of the employment, but the obligation of the payment of absence fee or compensation ..... 361
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- K.9** In case of an agency agreement, the change of the person of the client – which is not due to death – for the lack of the data specified in Section 18, Article (2) of the Evt, cannot result in the official determination of the fact that the agency relationship and along with the same, the right of use of the silviculture was terminated, thus the same shall be deleted from the registry 376
- K.10** Along with the order of the process of economic rehabilitation, certain rehabilitation measures applied during the procedure, that is ultimately, the entirety of the procedure shall meet the required necessity and proportionateness specified in Article 17, Paragraph (5). Subsequent to the binding termination of economic rehabilitation, the defendant cannot exercise supplementary authority specified in Section 85, of the Szantv against the institute and the plaintiffs with which he/she has a Standstill contractual relationship ..... 379

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- 106** Legal frames are exceeded by the resolution of the local government on settlement tax, the subject of which in general is the natural person. The resolution of the local government shall clearly be related to the fact, if certain provisions enter into effect at different times – in comparison to the whole resolution. The resolution on local tax shall cover all areas of tax liability, and tax liability cannot be regulated in a parallel local norm for an unjustifiable reason ..... 399

#### **RULINGS OF THE COURT OF THE EUROPEAN UNION**

- I.** Article 6, Paragraph (1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts shall be interpreted so that the national practice, which limits in time the repayment obligation related to the determination of the unfair character of the stipulation included in the agreement made by the consumer and the seller or service provider, by the court specified in Article (3), Paragraph (1) of the Directive, to the amount, which was paid based on such stipulation but without any legal grounds subsequent to the announcement of the ruling determining the unfair character, is in violation of the same ..... 402

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2. Article 96, Paragraph (2) of Regulation No 2913/92 shall be interpreted so that the carrier, similar to the one in the base case, who on the one hand, handed over the products to the main carrier along with the transportation documents, in the parking area of the customs office of the destination, and on the other hand, during the next leg of the trip, received such products again, shall only be obliged to make sure that those were the products, which were presented to the customs office, and shall only be liable for the failure to do the same, if upon the receipt of such products, he/she knew that the transportation procedure of the products was not regularly completed, which shall be examined by the court presenting the case 406

#### **FORUM**

#### **The fight of national and international courts against severe violations of human rights – terrorism**

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