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CRIMINAL CASES RULINGS IN PRINCIPLE

- B.14** The rules related to exclusion of a judge shall be applicable to the exclusion of the judicial secretary, the keeper of the minutes and the judicial administrator as well. However the reasons for exclusion specified in Section 21, Paragraph (3), Points a)–e) of the Be shall only be applicable to judges; in accordance with this provision, the judge is excluded from the further judicial procedure, because in the previous section of the case, he/she acted as either an investigatory judge, or made a definitive decision, a repealing decision, a decision allowing the renewal of a case, or a decision contested by extraordinary legal remedy, or took part in the making of such decision.
However, the keeper of the minutes could not act as an investigatory judge, and could not make a definitive or any other kind of decision or and could not have participated in the making of decisions. Consequently, the reason for exclusion related to the investigatory judge cannot be applicable to the one taking part at the hearing of the investigatory judge as the keeper of the minutes 733
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II. The length of not legally binding imprisonment is such a severity of the punishment, which may motivate the accused person to escape or hide. If the court determines the risk of the same as real, then from the legal reason arising from the case, custody pending trial can be determined. In this section of the procedure, such forced measure may serve the possible enforcement of not legally binding imprisonment.
III. The 9-year imprisonment imposed in the not legally binding imprisonment is such a term, in consideration of which custody pending trial cannot normally be missed, and the lawful purpose to be attained cannot be achieved by a less severe forced measure – also with regard to the time of 4 months spent in custody pending trial by the accused person 734

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II. The crime of murder shall be considered to have been committed for the sake of gain – as the injured party denied to hand over (again) further amounts of money – and he/she started to choke the injured party in order to make him/her go to the post office with his/her pension note and received the pension amount 738
- 174** I. The fact that the accused person hit the injured persons at least thirty-six times, out of which several of them hit vital parts of the body, including the face, makes possible the conclusion of possible murder and not bodily harm.
The circumstance that the accused person did not use his/her knife but his/her fist to kill the victim does not relate to the lack of motivation to kill, but the exclusion of direct intent to murder.
II. The crime of murder is considered to have been committed with special cruelty, if the perpetrator strikes the victim to death, who due to his/her severe intoxication was unable to defend him/herself, by at least 36 hits, out of which many were aimed at the head, resulting in more than 70 injuries, and during the long abuse, he/she puts sponges and paper in the cavities of the victim.
III. Voluntary manslaughter cannot be determined for the lack of the reason resulting in heated passion, because the defendant's jealousy cannot be evaluated as such, if the victim, who is not in a close emotional and ethical relation with the same, sought shelter at another man due to his repeated violation and aggression, with which she had had a sexual relationship in the past, known by the defendant..... 740
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The organized commission of the crime shall fully comply with the factors of conspiracy to commit unlawful acts, and the fact that besides this close and routine cooperation, no separate preliminary agreement was made for each end every partial act does not affect the determinability of the same

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- II. The procedural violation due to the lack of lawful prosecution precedes procedural violation, which is committed by the court by overstepping its authority by judging a case, which falls under the exclusive jurisdiction of military criminal proceedings or other courts; the proceedings conducted in the absence of lawful prosecution cannot be remedied by new proceedings. If the court acts lacking lawful prosecution, the appeal court shall repeal the decision, and terminate the proceeding.
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- II. Verdict made without a hearing shall be delivered using the notification A/5 in accordance with the procedural rules of the court, according to which such verdict can only be received by the accused person (addressee) in person, or the “person authorised to receive official documents”. The receipt of the verdict made without a hearing by any other person cannot be regarded as a regular delivery. The procedural consequence of the lack of delivery is that the court shall take measures towards the hearing of the case.
- III. The remedy against the verdict made by the missing of the hearing is a request to hold a hearing within 8 days after delivery. This deadline however shall only be open after the regular delivery of the verdict, because the legal effect is only related to regular delivery. Thus no legal effect shall be related to irregularly delivered (actually undelivered) verdict, and the deadline for legal remedy shall not begin – that is the submission of the request related to holding the hearing. As the deadline does not begin, it cannot come to an end either, thus in spite of the lapse of the eight days, the irregularly delivered verdict cannot become legally binding. The deadline for the submission of the remedy shall not begin until the verdict is lawfully delivered.
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- II. Using trademarks for the purpose of advertisement – irrespective of the fact that the offered service could be used or not – shall be considered as use falling in the scope of economic activity, as it affects the consumers and other market players too

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II. Section 192, Paragraph (6) of Act CXCV of 2011 on public servants applicable in accordance with Section 13, Paragraph (1) of the Pttv in effect from 1st March 2012 makes possible the enforcement of claims after the lapse period, if the obligee could not enforce his/her claim due to a recoverable reason (abeyance of lapse). If the mayor, who was re-elected for a defined period of time was not denied from the enforcement of his/her claims arising from his/her legal relationship – just as the offset of holidays – did not ask for the benefits, which he/she would be entitled to receive, upon the end of the cycles, he/she cannot refer to the abeyance of the lapse due to the lack of settlements and certificates 807

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II. The abilities of employees related to work, and the changes of the same are not dependent on the employment, or the operation and activity of the employer. One of the two conditions of exemption from the obligation of the employer to pay for off-time (external reason) is not met, if the employer cannot perform its obligation of employment due to the health care incapacity of the employee related to the work, but the employment is still kept 809

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Recommended retail price constituting a fixed price with regard to the other terms of the agreement applied in a vertical agreement, considering the given legal and economic background and the operation and structure of the relevant market, can be considered as an agreement with the purpose of limiting competition. In such a case, the proving of the actual difference from the recommended price meaning the fixing of the price, the verification of the regular noncompliance with the agreement shall be circumstances to be verified within the scope of the determination of legal consequences 818

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202 The deadline of the provision of additional information in the public procurement procedure is regulated by the law so that the entity calling for tenders shall respond as soon as possible after the receipt of the request for information, but by no later than six days prior to the deadline for the submission of the tenders. The Kbt does not include any provision related to the transfer of information on the last day, prior to the lapse of office hours, or that additional information is qualified to be provided, when the given economic player (bidder) got to know the same. Responses given in e-mails on the day of the deadline – given even after office hours – shall be considered to have been given within the deadline 834

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I. Article 27, Paragraph (7) and Article 30, Point 1 of Council Regulation 44/2001/EC of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters shall be interpreted so that in the event of litispentence, the time, when the procedure related to the taking of the measure related to the taking of the evidence prior to the lawsuit was started, in accordance with Article 30, Point 1, shall not be regarded as the “time of turning to the court”, which shall pass a material judgement in the same member state in the matter of the motion started from the result of such measure843

II. 1. Article 199, Paragraph (1), Point g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax amended by Council Directive 2010/45/EU of 13 July 2010 shall be interpreted so that it is applicable to the sale of the real estate property in the scope of forced sale.

2. The provisions of Directive 2006/112 amended by Directive 2010/45 as well as the principles of tax neutrality, actual enforcement and proportionateness shall be interpreted so that the following is not against the same: the procurer of a product in a situation similar to the one in the base case cannot enforce the right to deduct added value tax paid to the seller without any legal title based on an invoice, which was issued in accordance with the rules related to the general value added tax system, however the relevant transaction fell under the scope of reverse taxation, if the seller paid the abovementioned tax to the state treasury. These principles however, require that the procurer can request the reimbursement directly from the tax authority, if the reimbursement of the value added tax charged without a legal title by the seller to the procurer becomes impossible or extremely difficult, amongst others due to the insolvency of the seller.

3. The principle of proportionateness shall be interpreted so that the following is against the same: in a situation, which is like the subject of the basic case, the national tax authority imposes a penalty constituting 50% of the payable value added tax against the tax subject acquiring the product by way of a sale falling under the scope of reverse taxation, while no tax revenue was missed, and no circumstance related to tax fraud was detected, which shall be examined by the court submitting the case845

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2. The provisions of Article 5, Paragraphs (1) and (5) of Directive 2001/29 shall be interpreted so that the action, which includes the streaming of works under the protection of copyright from a website without the approval of the right holder of the copyright to the multimedia player similar to the subject of the base case do not comply with the conditions specified in the above provisions..... 850

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