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- 1/2017. (IX. 11.) PK opinion** on certain questions of the termination of the joint ownership of the real estate
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CRIMINAL CASES RULINGS IN PRINCIPLE

- B.20** I. Unlawful attack against a person at night between 01:30 and 02:00 AM in the street of a country settlement is performed, when he/she kicks the accused person from behind and then punches him/her in the face – without having any prior altercation with the same.
Such attack against personal health shall be considered as such, which was aimed at the killing of the attacked person according to the law, thus the aversion of the same with a lethal stab shall be considered a lawful defence, and the accused person shall be acquitted.
II. The unlawful attack of the accused person at night shall give grounds to the necessity of aversion, which cannot be limited, thus overstepping is conceptually excluded. Thus the unconditional forbearance of the attacker’s life shall not be a limit.
III. The operation of public lights shall not influence the fact of night and the culpability of the criminal significance of the same, and the determination of the same in accordance with the law 1496

RULINGS

- 357** I. The below shall be considered as attempted murder: three people using baseball bats attack the injured person by surprise, hitting him/her by four large hits on his/her head, causing multiple skull injuries, life threatening injuries, and lasting disability.
II. The below shall not be a condition of being an accomplice: those participating in the murder action behaving in a way which directly resulted in the death. The person shall also be considered an accomplice, who realized his/her accomplice’s intent, and supplementing each other’s activity, they take part in the commission of the crime, that is they shall be responsible for the result as accomplices, if the injured person was insulted knowing about the actions of the other accomplice. The fact that out of several perpetrators, who actually caused the severe damage shall have no significance, and in consideration with the actual result, their criminal responsibility shall be established.
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- 358** Murder can not only be committed by action, but also by negligence. The action implements murder not by conscious negligence, but by possible intent, who acts as specified below: when the woman in labour goes to the bathroom, then becomes helpless telling her partner that the “baby is out”, acts in a passive manner, and the newborn baby loses his/her life, even though giving help would have saved his/her life 1501
- 359** I. The base case of the legal facts of blackmail shall include the concept of threat without any limitation. Thus the legal interpretation, according to which threat is the holding out the prospect of a severe disadvantage, which is capable of making the threatened person to seriously be scared. “Other similarly serious” threat included in the qualified case can be specified, if the content of the given threat exceeds the extent specified in Section 138 of the Criminal Code both with regard the weight of the prospected disadvantage and the seriousness of the fear of the threatened person, and has the same extent as that of (even directly) threatening life or health.
II. In the event of threat (and violence), the actual occurrence of the same shall not be examined from the active perpetrator, but the injured person. Threat (and violence) is an influence on the will of the injured person, thus from the aspect of it inciting fear, it is irrelevant, whether the accused person acted intentionally or not. Only the fact shall have any significance whether the accused person realized that his/her threat is able to have such effect in the injured person.
III. The evaluation of a threat as the base case or qualified case of blackmail (differentiation from one another) can only be possible with regard to the actual circumstances of the case – threatening content, and the effect of the same on the person and situation (existence and conditions of existence) of the injured person –, and not in an abstract way. The prospect of pure material damage – even if it is of a large sum – shall not be considered as the same weight as that threatening life or health. Threat against life and health however is similar to the prospect of the fast and total termination or hindrance of the business providing the basis of the person’s existence as an ultimatum, and the demonstration of the implementation of the same by invincible power.
IV. With regard to Section 416, Paragraph (1), Point b) of the Be, the Be does not include any rules specified in Section 284, Paragraph (2) of Act I of 1973, which excluded review, “if the penalty was imposed in the frames of the penalty”. Based on the legal arguments, in the event of a review motion contesting the qualification and the imposed penalty, the review cannot be excluded. The essence of the regulation specified in the Be. is that in the event of an unlawful qualification, the imposed penalty shall be examined even, if it falls within the penalty in compliance with the right qualification. This – by way of leaving the previous legal provision out – shall mean that the Curia, in comparison with the new qualification, shall examine all legal conditions of the imposition of the given penalty. Thus, it is not enough in itself that the penalty imposed based on the mistaken qualification is within the legal frames belonging to the right qualification.

V. The defence attorney shall be entitled to submit a review motion for the accused person in accordance with Section 417, Paragraph (1), Point II, Subpoint c), on one occasion based on Section 418, Paragraph (3). In the review procedure, it is possible that several defence attorneys act for the same accused person. In the event of a proxy given for several defence attorneys, any of the assigned defence attorney may act – unless otherwise specified in the power of attorney [Section 44, Paragraph (2) of the Be.]. It is also possible that the one or several defence attorney(s) acting on behalf of the accused person submit(s) alternative motions based on several review reasons; with regard to several defence attorneys, however, the different motions obviously cannot contrast with one another. Based on Section 44, Paragraph (3) of the Be., the leading defence attorney shall be entitled to submit a remedy statement – also in the review proceedings. 1505

360 The person, who acts as follows shall be considered to have committed the crime of threat with public danger: in the building of the ambassadorship, before the members of the security staff, makes the repeated statement, which is supposed to be funny, that “I have a bomb in my shoes”. This statement was able to interfere with public safety, as it made the security guards act due to the assumption of the fact that the event of public danger would become 1515

361 The crime of prohibited data collection is not committed by the following: a person placing a motion detection camera in the place of work, in the ladies room of the company, with the purpose of recording all that is going on in there.

The commission behaviour of such nature, in accordance with the laws and regulations in effect, shall only be related to the commission of a crime in a private residential home, other rooms, or in other enclosed areas, but not in a workplace, official rooms or jointly used rooms of a workplace. The location of the commission of the act is a necessary, indispensable element of the legal facts of the crime 1515

362 The violation of the obligation of the Constitutional Court specified in its resolution No. 21/2016 (XI. 30) of 19 November 2016 that the judge cannot further take part in the settlement of the criminal case, who previously took part in the judgement of the appeal against the investigatory judge, shall only realize a reason for review in the criminal proceedings started after the passing of the resolution of the constitutional court 1516

363 I. If the (previous) not lawful decision of first instance was repealed by the court of second instance, then the imprisonment specified in the same cannot be taken as a basis from the aspect of the risk of runaway and hiding in accordance with Section 129, Paragraph (2), Point b). In such a case – obviously – the legal threat of the crime stated by the indictment (which can be expressed in punishment) shall be taken into account from the weight of the subject.

II. From the aspect of a legal reason of the custody pending trial the circumstance is irrelevant that later the Curia – acting based on the legality remedy – established that the repeal of the (previous) not binding decision was unlawful. The decision of the Curia does not provide grounds for reference to the penalty imposed by the lawful not repealed decision, or the actual examination of the coerced measure applied to the accused person 1518

364 The prohibition of aggravation shall mean that for the lack of the appeal lodged against the accused person, the reviewing court cannot pass a decision, which is more disadvantageous for the accused person than the reviewed decision – in the fundamental criminal law cases: in the event of acquittal, by way of the determination of culpability, imposition of a penalty or the application of a measure which can be used instead of a penalty; in the event of specified culpability, by the aggravation of the penalty, or the measure applied instead of the penalty. Consequently, for the lack of an appeal related to the accused person, the amendment of the execution level of imprisonment does not violate the aggravation prohibition, and the conditional release specified at second instance against the repeat offender..... 1522

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367 The content of the obligation specified in Section 272, Paragraph (1) and Section 330, Paragraph (1) shall not be the same. The transferor shall be obliged to take responsibility for the service, thus if the claim cannot be collected, it shall be performed towards the transferee... 1528

368 However, in accordance with the Civil Code, during the determination (amendment) of child support, the child protection, child support, social insurance and social allowances provided to the child and with regard to the same, to the parent, taking care of the child shall fundamentally be the obligation of the parents. Thus the decrease of child support shall not be performed just based on the pure fact that the court did not take into account these aids during the specification of the child support in accordance with the Csjt 1531

369 Living in the same household falling in the conceptual elements of a partnership – especially with regard to elderly partners – can be realized in such a way, that both parties keep their properties, which provide for their residence, however they use the same jointly, thus both properties serve as the place of joint living, housekeeping, dining, relaxation..... 1535

- 370 The announcement of the estimated auction price shall itself not mean a directly threatening situation, with regard to which the further continuation of the execution procedure can be hindered by the court by a temporary measure 1538
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II. The enforcement of the surplus usage fee arising from the use of the co-owned property is a claim related to the ownership and utilization of the joint property, with regard to which there shall be no review against the binding decision approving the decision of first instance.
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- 373 For the lack of an appeal, the court of second instance has no possibility to establish the invalidity of the loan agreement for a reason, which the court of first instance did not deal with. However it is possible that the court of second instance notices certain invalidity reasons ex officio, if they are clearly observable based on the data of the procedure of first instance. In such a case, however, the parties shall be ensured to be able to make their statements and submit an evidence motion..... 1543

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RULINGS OF THE COURT OF THE EUROPEAN UNION

- I.**
1. Article 4, Paragraph (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts shall be interpreted so that the concept of the "primary subject of the agreement" specified in this provision shall include the condition, included in the loan agreement made in a foreign currency by the sellers and service providers as well as the consumers, similar to the one in the base case, which was not previously included a separate agreement, and based on which the loan shall be returned in the same foreign currency, as the one in which it was provided, as this condition specifies a significant service characterizing the agreement.
 2. Article 4, Paragraph (2) of Directive 93/13 shall be interpreted so that the requirement of the clear and understandable drafting of the contractual provision means that with regard to loan agreements, financial institutions shall provide sufficient information to the clients in order for them to be able to make well-informed and well grounded decisions. In this regard, this requirement includes that the condition, according to which the loan has to be repaid in the same foreign currency, as the one it was provided in shall not only be formally and grammatically understandable for the consumer, but it has to be understandable for the consumer with regard to the actual content in the sense that the generally informed, reasonably mindful and careful, general consumer should not only be able to recognize whether the exchange rate of the foreign currency in which the contract was made, increased or decreased, but he/she shall be able to evaluate the – possibly significant – economic consequences of such a condition. The examinations necessary for this shall be conducted by the national court.
 3. Article 3, Paragraph (1) of Directive 93/13 shall be interpreted so that the dishonest nature of a contractual provision shall be evaluated in comparison with the date of the conclusion of the agreement, in consideration of all the circumstances, of which the seller or the service provider was aware upon the conclusion of the agreement, and which affect the later performance of the mentioned agreement. The court submitting the case shall be obliged to examine whether there significant imbalance specified in the mentioned provision in consideration with all circumstances of the case and especially the expertise and knowledge of the seller or the service provider, in this case the bank, in connection with the risks related to the loan provided in a foreign currency and possible exchange rate fluctuations..... 1602
- II.** Article 19, Point 2, Subpoint a) of Council Regulation (EC) No 44/2001 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 a lawsuit lodged by a staff member of or provided for an airline, for the specification of the court having jurisdiction with regard to the judgement of the legal dispute, the concept of the "usual place of work of the employee" specified in this provision cannot be regarded as the same as the concept of "base place" specified in Annex III of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation. The concept of "base place" however shall be qualified as an important probability circumstance for the purpose of the determination of where the "usual place of work of the employee" can be found 1607