

CONTENT

CRIMINAL CASES RULINGS IN PRINCIPLE

- B.21** I. Out of military supplementary punishments, the extension of waiting time with regard to the official members of the police, parliamentary watch, penal authorities, official emergency body and civil national defence services – who, in the application of the Civil Code, are qualified as soldiers – shall mean that the waiting time regarding the time for upgrading to a higher payment rank instead of the waiting time specified for rank. Extension shall be provided in years, and its extent cannot exceed the half of the waiting time related to the payment rank.
II. Military punishment or military supplementary punishment can only be applicable in a military criminal proceeding; if the crime of the culprits qualified as soldiers, the official members of the police, parliamentary watch, penal authorities, official emergency body and civil national defence services, is not judged in a military criminal proceeding, the application of Section 136–140 of the Criminal Code is not prohibited by any material or procedural legislation..... 1626
- B.22** The change of the person of the defence attorney – that is the entry of a defence attorney instead of the one ordered in the procedure of second instance – shall not influence the procedural actions having performed so far, or the legal effects of the failure to perform the same
Accordingly, if the accused the appellant and ordered defence attorney did not request a public hearing within the eight-day term specified by the law with regard to the information of the court of second instance related to the judgement of the case at the council, then subsequent to such term, the court of second instance shall judge the case in the council meeting, as the request of the authorized defence attorney replacing the ordered defence attorney submitted three weeks after the expiry of the deadline shall not invalidate the legal effect of the hearing of the previous defence attorney and the accused person 1628
- B.23** There shall be no review proceeding, if the violation of the law can be remedied in the scope of a special procedure. The court shall make a decision in a special procedure, about confiscation of property, if it did not make a decision on the same in a definitive decision, or not in accordance with the law.
As the law does not differentiate between certain special procedures, the quoted prohibition shall refer to all procedures regulated in Chapter XXIX, Title I–II. 1629

DECISION IN PRINCIPLE

- B.24** The activity of the following person shall be considered as the crime of robbery as an accomplice and not as the crime of theft as a party to the crime: the person taking over the stolen thing from his/her partner after the act of theft, then applying violence against the injured person for the purpose of escape and keeping the stolen thing 1630

RULINGS

- 388** I. The actions of the same person as a culprit and as an accomplice shall not form a legal unit.
II. Res iudicata shall form a reason for the rescinding of a judgment subsequent to the legal force, but the mistaken specification of the same and the termination of the procedure due to the same shall form a reason for the rescinding of a judgment..... 1631
- 389** The roads used to access and leave the shopping mall fall in the same category as waiting areas, thus the entry of vehicles from this area into traffic on the road shall be qualified as starting, thus the vehicles already running on this road shall have the right of way with regard to the one starting 1633
- 390** I. If a person gives benefits to another in order to bribe an official, he/she shall be liable for official bribery even, if the receiver only stated that the received amount was going to be used for bribery.
II. The person, who gives a benefit so that he/she can enforce his/her interests at an official person, shall be liable for the purchase of influence as of 1 January 2012 1636
- 391** Spraying the injured person with gas is suitable to establish robbery violence 1640
- 392** The misdemeanour of the violation of the information system is committed by the person, who enters into an information system violating or circumventing the technical measures providing the protection of such system, or stays in such system exceeding or violating his/her access rights. In line with the fundamentals of criminal law, the exceeding of access rights shall be considered as a crime, if it is committed by the violation of circumvention of the technical measures providing for the protection of the system; the mere fact of the excess of access rights shall not reach the level of danger, which is required by the first case 1642
- 393** In accordance with the legal status and remuneration of judges, the judges judging in cases specified in Section 17, Paragraph (5) and (6) of the Be, and performing mediation services are nominated by the chairperson of the National Judiciary Office – proposed by the chairperson of the court. If the judge proceeding in the first instance or the chairperson of the council was not such nominated judge, the court was not legally formed, thus the decision was made by a procedural violation resulting in unconditional repeal. This shall be applicable even, if the member of the council proceeding at second instance or – with the exception of the Curia – at third instance, was not the judge nominated by the National Judiciary Office 1645
- 394** If the accused person was sentenced to imprisonment after the decision made on his/her arrest, the appeal against the judgement refusing the motion related to the termination of the custody pending trial becomes purposeless, thus the proceeding shall be terminated..... 1647

- 395 The performance of the obligation to give reasons, and the violation of the same shall be dependant on the extent of the obligation. In comparison with the general rule specified in Section 258, Paragraph (3) of the Be – in the event of a decisive ruling – Section 259 of the Be is an exceptional and conditional provision. In accordance with Section 259, Paragraph (1) of the Be, the shortened reasoning is legally possible, if the decisive ruling was announced to the district attorney, the accused person and the defence attorney and none of them appealed (as specified by the law). If the decisive ruling communicated not by way of announcement, has a shortened reasoning – for the lack of the legal elements specified in Section 258, Paragraph (3), by way of the obligation to reason – it is unsuitable for revision, which, in accordance with Section 373, Paragraph (1), Point III, Subpoint a), realizes a procedural violation resulting in unconditional repeal..... 1648
- 396 Making a decision on the permissibility of the renewal of the lawsuit without the procurement of the documents of the base case is a violation of the law – realized by way of the non-performance of the obligatory provisions of the law –, which can only be remedied by way of the repeal of the resolution made with such deficiencies1650
- 397 In accordance with Section 431 of the Be, remedy announced for the sake of legality can be made, if the lawful ruling cannot be contested with any other remedy, and in accordance with Section 430, Section 416, Paragraph (4), Point c) of the Be is applicable in the legal remedy proceeding performed for the sake of legality, according to which there shall be no extraordinary remedy, if the unlawfulness can be remedied by the conduct of a special procedure (Chapter XXIX, Title I–II of the Be.). All this, however, shall not mean the limitation of the decision authority of the Curia, if the elimination of the violation of the decision contested by the extraordinary remedy, which is disadvantageous for the accused person – consecutively – leads to the possibility of a legal remedy in accordance with a special proceeding (Chapter XXIX of the Be.) 1650
- 398 Beginning on 1 January 2014, in accordance with Section 470, Paragraph (1), Point c), there shall be a military criminal proceeding by the official member of the police department, and in the event of any other crime committed at the place of service, in connection with the service, and the proceeding can be performed by the court having the authority and jurisdiction, if the documents of the case arrived to the court prior to the entry into effect of the law. Based on the indictment submitted prior to 1 January 2014 against the policeman due to a non military crime, the judgement of the case shall be governed by the authority and jurisdiction rules applicable upon the submission of the indictment even after such date. And if the members were not the official members of the police department, no military proceeding could have been performed against the same. Consequently the court did not violate any procedural rules, when it acted and passed an order against the pensioner policemen in the case of official crime, committed as instigators..... 1652
- 399 The fact that the accused person submitted a motion related to the compensation of the circumstances, which violate fundamental rights to a specific penal authority, has no significance from the aspect of the proceeding court; the competence of the judge of the penal authority shall be grounded by the specific penal authority that performed the penalty upon the judgement of the claim for compensation 1654

**CIVIL CASES
RULINGS**

- 400 The following shall not be considered as the misuse of law in the refusal of the statement specified by the law, if the defendant, who has the right to select tenants, does not provide his/her approval for the sale of the apartment, as the right to select tenants would be damaged, and the number of apartments for the given purpose would decrease 1656
- 401 Another agreement made after the conclusion of the sale and purchase agreement made by the parties, cannot be regarded as the amendment of the previous one, thus the fact whether it is the continuation of the previous obligation or is related to the same, cannot be determined. Thus, the provisions of the Civil Code of 2013 shall not be applicable to the legal relationship of the parties, and as the sale and purchase was made for the provision of financial claims, the nullity of the same could be established 1658
- 402 Prior to the lawsuit, as the remedy of faulty performance, the agreement made between the parties, related to the remedy shall be qualified as the choice between the guarantee rights in the so-called first step. This can be left out, if the performance of the chosen need is impossible, or if the difference does not result in disproportionate extra costs for the obligor..... 1661
- 403 The work related to the caretaking of the damaged person, household work and accompanying shall be performed by the relative instead of the person causing the damage, at his/her costs, and in the interest of the damaged person. The compensation of the work is not a salary, but costs, thus no charges and contributions can be deducted1664
- 404 If, in the lawsuit, the defendants do not refer to the legal title of the provision of the amount of money with the obligation of repayment, which is different from a loan, and no related data are available, then the provided amount shall be regarded as a loan..... 1666
- 405 I. The ownership proportions the life partners are entitled to shall be determined by the comparison of expenses and the created growth of value.
II. The supplementary lawsuit related to the claim on the registry of ownership rights acquired outside of the property registry is a request related to the deletion of the existing record, which can only be successful within the scope of the property registry deletion lawsuit.
III. The demand related to the tolerance of the obligation of registry shall be a part of the lawsuit related to the establishment of the acquisition of property – if it is linked with a registry 1669
- 406 I. The operation of children’s quad is an activity of increased danger.

II. Due to the violation of personal rights related to the right of living in a healthy and integral family, a relative can also have claims, who was born after the damaging event, but was already a foetus during the damaging event 1673

407 Claim enforcement related to a previous managing director shall fall in the concept of the enforcement of claims related to the managing directors. The lack of a decision from the member's meeting shall mean the lack of the right of claim enforcement (locus standi), which shall mean the refusal of the lawsuit, that is it is not a matter of procedural law..... 1677

408 The lawsuit related to the payment of extra usage shall not be qualified as a matter related to property, thus there shall be no review with regard to the limit of value of three million HUF against the binding judgment1679

ECONOMIC CASES RULINGS

409 I. The court may suspend the hearing until the decision-making procedure initiated by another court is completed, if the interpretation of the same EU norm is in question along the facts of the actual legal dispute – affecting the actual decision.

II. If the party questions the necessity of suspension in the appeal against the judgement, the court of second instance can only examine whether the judgement to be entered in the preliminary decision-making procedure has an effect on the judgement of the case to be entered in the proceeding 1680

410 I. As a member of a business organization, the member participation in the decision-making – for the lack of extra facts – shall not make possible the unfair market behaviour of the member, not even, if with regard to the business organization, it is established.

II. The organization of an annual event shall be qualified as a continuous behaviour from the aspect of the deadline set for claim enforcement based on unfair market behaviour.

III. The “acquisition” of an event, which was organized annually for more than 13 years, in a specific town, in a specific time of the year, around a specific food, from its inventor, and organizer, and the organization of an event of the same nature shall constitute unfair market behaviour 1681

411 If the parties specify the procedure of an arbitration court for the settlement of disputes, this provision shall also be applicable to legal disputes, which arise after the termination of the agreement. The legality of the termination of the first day of the lapse period cannot be examined with reference to the violation of public order 1686

LABOUR CASES RULING IN PRINCIPLE

M.28 I. The compensation limit specified in Section 82, Paragraph (2) of the Mt, with regard to missed salary, cannot be applied when restoring an employment even for the period before 15 March 2014, and during the legal relationship, the employer is obliged to pay salary to the employee, as with regard to the restoration, the legal relationship was not suspended.

II. The e-mail, from which the employee is clearly informed about the fact of group workforce reduction, the person of the HR manager making the statement and the identifiable date of announcement, is in compliance with the requirements specified in Section 22, Paragraph (2), Point a) of the Mt. 1690

M.29 The determination of the violation of material law shall conceptually prohibit the determination of not purposeful legal practice. The lack of an exemption reason specified by the law shall in itself result in the unlawfulness of the measure terminating the legal relationship due to the untruthful reasoning of the same 1695

M.30 Salary compensation, which is paid along with the monthly remuneration, is used for the compensation of the changes of taxes and dues, shall be qualified as salary constituting the basis for health contributions specified in Section 5/B, Point t) of Act LXXXIII of 1997 1698

RULING

412 The existence of the employment relationship can be established based not on the name of the agreement but on the rights and obligations arising from the realized legal relationship.

With regard to the nature of the activity (meaning the introduction and distribution of the products of the employer), the circumstance that the employer supervises and determines the area of sales, and the protocol of the same, and the requirement that the one performing the job is obliged to do the same, shall not constitute an employer instruction. The examination of the performance of the duty cannot be regarded as an obligation to be available, if remuneration is related to the same, the performance of the given task could not otherwise be measurable. The existence of an employment shall not be the consequence of the provision of the materials and tools necessary due to its nature or this activity..... 1701

PUBLIC ADMINISTRATION CASES RULINGS

413 Determination of vital interest and permanent residency for a Chinese citizen 1706

414 No property tax shall be applicable to a property under mining activity, on which no building can be built shall not 1708

- 415 Signing the personal identification document with Székely-Hungarian runic writing is not permitted by the law 1711
- 416 The right of assembly shall be prevented by a TEK-decision ordering the lock-down of a single area1713
- 417 The activity included in the fundamental goal specified in Section 18, Paragraph (1), Point a) of the Civil Act is not the same as the fundamental activity included in Section 5, Point 19, Subpoint aa), as it is related to the economic business activity of the civil society organization, and that is why the fundamental activity is not included in the registry of civil society organizations. In the procedure related to the registry as an agricultural co-operative farm, the certificate issued by the tax authority shall also be taken into consideration.
The fundamental activity of the hunting company registered as one entitled to hunt, in the obligatory provision of Section 41, Paragraph (1) of the Vtv, is for the planned wildlife management activity and the realization of environment protection goals, thus it is not in violation with the environment protection activity of the association specified in its fundamental goals..... 1714
- 418 In the address card registry procedure, the approval of the parent, who lives separately, and exercises parental supervision, for the registry of the residential address of the minor, as the general provisions of Sections 4:1487 and 4:166 of the Civil Code do not overwrite the special procedural rules applicable in the declarative procedure 1716
- 419 In the public procurement procedure, the deadline of the provision of supplementary information is regulated by the law so that the awarding authority has to answer the same as soon as possible after the receipt of the request for information, but not later than six days after the expiration of the deadline for submission of tenders. The Kbt does not include any provision specifying that the supplementary information shall be given on the last day, prior by the end of business hours, or that supplementary information is considered having been given, when the given economic player (bidder) got to know the same. Answers sent in an e-mail on the day of the deadline – after hours – shall be considered having been performed in time. 1718
- 420 The person making an announcement of public interest cannot be disadvantaged due to making such announcement, however the delayed performance of the announcement may be the basis of a disciplinary proceeding. In the event of the violation of legal proceedings affecting the merits of the decision, the official decision shall be repealed, and the authority shall be obliged to perform new proceedings, and in this case, the decision cannot be amended1723
- 421 The question put up for a referendum cannot be obvious, the full consequences of the which the citizens do not understand..... 1726
- 422 The vice president of the Public Administration Authority shall have the right of initiation instead of the president of the Public Administration Authority even, if the nomination of a new president instead of the president, whose assignment is expired, has not yet been decided.
Decisions cannot be based on the principles of the public administration procedure by the ignorance of itemised legal rules..... 1729

RULINGS OF THE COURT OF THE EUROPEAN UNION

- I.** Article 3 of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings shall be interpreted so that the legal act, as the one announced by the national law for the sanctioning of minor crimes, and the decision passed by the court in a unilateral, simplified proceeding, shall be qualified as an “actual document” in accordance with Paragraph (1) of this article, the written translation of which shall be provided for the suspects and the defendants so that they can practice their right to protection thus ensuring the fairness of the procedure in accordance with the formal requirements specified in this provision..... 1733
- II.** 1. The concepts of “termination”, “notice of termination” and withdrawal specified in Article 90, Paragraph (1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax shall be interpreted so that they include the case, when in the scope of a close ended leasing agreement, the lessor cannot demand the payment of the lease fee from the lessee, as the lessor terminated the agreement due to the violation of the same by the lessee
2. If a leasing agreement is terminated for ever, by way of the non-payment of the instalments to be paid by the lessee, the lessor may refer to article 90, Paragraph (1) of Directive 2006/112 with regard to a member state for the decrease of the value added tax base, however the applicable national law qualifies such case as “non-payment” in Paragraph (2) of this article, and on the other hand, in the event of non-payment, the decrease of the tax base is not possible..... 1734

FORUM