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CRIMINAL CASES RULING IN PRINCIPLE

- B.8** I. The crime of terror act is a targeted crime, the purpose of which, in the case specified in Paragraph (1), Point a), is the force to make the passive subjects listed in the legal facts do, not do or endure something. It is due to the speciality or significance of the passive subjects (government organ, other government or international organization) that the force is considered as a terror act, and no further “terrorist purpose” is necessary for it to be realized.
- II. Due to groundlessness, the verdict of first instance can only be repealed, if the groundlessness cannot be remedied in the proceeding of second instance. Partial groundlessness can be remedied in the proceeding of second instance based on the content of the documents and by way of correct factual conclusion or evidence, it has no quantitative limit, and the remedy of partial groundlessness is obligatory in the proceeding of second instance. Thus facts, which are deficient or against the document are considered complete, and may not conceptually result in irremediable groundlessness in the proceeding of second instance.
- III. The compliance with the obligation of justification can only be examined with regard to well grounded facts, or facts that were made well grounded, since if facts are not established, the related justification cannot either be required.
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- 68** I. In the event of instigation, wilfulness is a two-sided factor. The behaviour of the instigator and the crime to which it is directed can only be wilful. The conscious content of the instigator’s behaviour can only be direct. As the instigator does not put up with the perpetrator committing the crime, but desires and targets the same.
- II. The pure fact that the crime was committed by way of a statement or communication of a thought (in words, writing), does not result in the significance of the fundamental legal expectation of the freedom of opinion. If the commission behaviour of the crime is the exertion of violence, or an act that is related to or threatening with the exertion of violence or a violent behaviour, the realization, targeting of the same, as well as in the event of the partial preparatory behaviour made with verbal or written statement, the perpetrator does not express an opinion, but acts with a purpose, that is exercises behaviour (of perpetrator, accomplice or preparation). If violence or threat with violence is also part of the legal facts of the base action of the targeted perpetrator, no reference can be made to the right to the freedom of opinion 332
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- II. Agreement according to the concept of criminal organization – as an element of orga-nized commission – means a decision related to the commission of crimes to be committed in the future, which may include the consistency of the petitioner, and the planned nature of the crime represented in significant circumstances or methods of commission. However, the determinability of criminal organization is not restricted by the fact, if the method of commission is different from the preliminary agreement, or that not all and every detail of the commission of the crime were specified. However, it is important that the agreement was related to crime, that is the commission of crimes (several crimes) 338
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- II. Starting proceedings before the European Court of Human Rights is in effect according to the Be., thus it does not affect the application of the obligatory rules related to the court, and shall not give grounds to starting review proceedings 341

- 71 The periodic review of the custody pending trial in accordance with Section 132 of the Be is the obligation of the court. The obligation of periodic review shall also be applicable, if the motion is not submitted by the one entitled to do so in connection with the custody pending trial. Therefore, if the proceeding of first instance is in progress, the court of first instance shall submit the documents of the case a month prior to the deadline to the court of second instance in accordance with Section 161, Paragraph (1) of IM Regulation 11/2014 (XII. 13.) on the tasks of courts and other organs, with regard to the person in custody, during the conduct of the criminal proceedings and the execution of the regulations made in the criminal cases. Presentation of the documents in the proceeding of second instance is obviously not necessary, as the court of second instance shall perform the review, itself, however review is obligatory in this case too. The lack of a motion submitted by the district attorney shall not constitute a procedural violation affecting the validity of the court's resolution, nor shall it result in groundlessness, as during the justification of custody pending trial, the court of second instance shall examine the documents of the case ex officio 342
- 72 If the binding resolution disclosed by way of an announcement is not contested by either the district attorney, or the accused person, or the defence attorney, the court may apply a shortened justification when putting the resolution in writing. However, the justification shall fully include all facts relevant from a material law standpoint. If the court failed to include a fact in the verdict with regard to a crime established for the accused person, did not comply with its justification obligation to an extent that due to this, the verdict is not suitable to be reviewed, thus the verdict is to be repealed and the court is instructed to conduct new proceedings 344
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The summons are not proper, if not sent to the actual residential address known by the court, thus the summoned person has no possibility to know about the same. Thus the summoning of the accused person was not proper – as it was only sent to the permanent address of the same –, thus its legal consequences shall not be applicable. The public hearing could not have been held in the absence of the accused person, due to the summons being improper, thus it constitutes a procedural violation giving rise to repeal and reason for review 346
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II. The Criminal Code provides for the (limiting or excluding) effect of pathological mental state to one being accountable for his/her own actions not in general, but expressly in relation to the actual crime (specified in the base case). In this regard the National Institute of Forensic Medicine makes obvious in its letter No. 14 on the expert examinations and opinions of forensic psychiatry that the ability of recognition related to symptoms can be found based on the examination – in the prosecution or compared to the facts of the verdict – related to the actual action 349
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**CIVIL CASES
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