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### RULINGS IN CRIMINAL CASES

**60** I. The crime of fraud in an aggregate by way of attempted budgetary fraud may be established, if the managing director of the company suggested for the legal representation of the business organisation enters into a factoring agreement amounting to the sum of the state subsidy to be acquired by way of misleading the corporation entitled to order and provide the state subsidy knowing that – due to the non-compliance with the conditions – the company has no real chance to receive the state subsidy.

II. With regard to budgetary fraud, one cannot effectively refer to volunteer profit aversion, if the perpetrator misleads the organisation acting on behalf of the government for the purpose of the payment of the funds from the budget, because he/she learns that subsequent to the examinations, the awarded sum will not be paid 312

**61** The anti-community behaviour necessary for the misdemeanour of vandalism to be established is performed by the perpetrator's violent behaviour, which is committed in the inner part of town, in a high-traffic area, in front of a shopping mall, after working hours, in the afternoon, irrespective of the personal motivation of the action.

However the following behaviour is not dangerous to society: the perpetrator acts in a lawful self-defence situation, because subsequent to the defamation related to the same, the person arguing with the same pushed the same, thus acted lawfully against an unlawful attack, when hitting the attacker on the fact, thus he/she shall be acquitted from the misdemeanour of vandalism due to a reason excluding culpability 331

**62** Ordering coerced medication may not be based on the commission of the crime of vandalism even, if the violent behaviour is directed towards a person. 333

**63** In order to establish stalking specified in Section 222, Paragraph (2), Point b) of the Criminal Code, repeated or permanent behaviour is not necessary, as only one action may constitute the crime. The factual behaviour shall be suitable to cause fear, and the injured person's fear is not necessary. 334

**64** I. The decision, penalty, measure or motion, which establishes further obligations, limits rights or is related to the same shall be regarded as a more disadvantageous decision, penalty, measure or related motion in consideration of the general explanatory statement of the Code of Criminal Procedure. The scope of the more disadvantageous decision, penalty, measure or related motion is different than that of the prohibition of aggravation. It shall not only be related to the cases violating the prohibition of aggravation, but is a significantly wider concept

II. The prohibition of more severe penalty is violated, when the court, in the binding verdict made in the preparatory hearing, determines a longer period for prohibition from driving than the one specified in the prosecutor's motion, and this prohibition is not released by the fact, if in comparison with the motion, the daily amount of fines is lower.

III. If the statement admitting guilt is accepted in the preparatory hearing, a more severe penalty than the one suggested by the prosecution may not be regarded as the violation of the prohibition of aggravation, thus it shall not fall in the scope of the procedural violations specified in Section 649, Paragraph (2) of the Code of Criminal Procedure, thus review proceedings may not be based on the same. The violation of the provision related to the

prohibition of a more disadvantageous penalty may only be possible by way of remedy applied by the Attorney General 337

**65** I. The jurisdiction of the court acting in the criminal case shall be determined by the location of the crime, and the court in the jurisdiction of which the defendant lives shall have competence in the event of a private prosecution. If the residential address of the defendant and the place of commission are disputed, but a court out of those with similar jurisdictions has already taken measures, the rule of advancement shall be applicable

II. Advancement shall not be equal to transfer, but in private proceedings, personal hearing is a significant procedural action, which specifies the jurisdiction of the court seized

The transfer of cases to a court, which previously already established the lack of its competence, is not possible, thus in such a case, petitioning shall be applied with regard to the specification of the court seized 339

**66** Arrest (accompany) to the authority or the court issuing the bench warrant applied with regard to the bench warrant shall be considered as arrest, and the related costs are criminal costs, the payment of which shall be specified by the court in the definitive decision 340

**67** The decision of the court of second instance is not in violation with that of the court of first instance, and thus secondary appeal resulting in proceedings of third instance shall not be lodged, if the court of second instance does not establish the culpability of the defendant in the partial actions out of all the partial actions constituting continuous legal unity, but the related partial actions are excluded from the facts of the case, but the reviewed actions still remain in the scope of the continuity in accordance with the verdict of second instance. The same shall apply, if by way of the decision of second instance, by way of the exclusion of certain partial actions from the facts by the court of second instance, requalifies the actions of the defendant, thus it is not qualified as continuously committed, as it is only the change of second instance related to the qualification of the established crime, which shall not result in a different decision 341

## **RULINGS IN CIVIL CASES**

**68** With regard to the loss of a loved one, besides the violation of the personality right related to living in a complete family, the violation of the personality right related to emotional health can be established, if the psychological damage, emotional loss beyond the violation of the aforementioned right can be established 344

**69** I. When examining the conditions of appropriation, the evaluation of the owner's subjective conscious shall be primary, namely, whether the appropriation was regarded as his/her own. If this cannot be established, the examination of the objective conditions of appropriation is unnecessary.

II. The recognition of the acquisition of ownership by way of appropriation is justified by the safety of market life. The purpose of the legal institute of appropriation is not to make the party not actively availing of the ownership rights, lose ownership, but to grant *ex lege* ownership to the party, who is presented as owner before the related environment – if the legal conditions of appropriation are met. In the proceedings related to appropriation, the lack of the active behaviour of the owner shall not be regarded as a circumstance, which needs special evaluation 345

**70** If the culpability of the convict was established in a crime, the fact of which is the existence of the casual relationship between the commission behaviour and the result, in the civil proceedings, the casual relationship between the unlawful behaviour and the result cannot be contested 349

**71** The fact that the performance of the job was not in line with the content of the acknowledgement of performance shall be verified by the party, who intends to contest the content of the acknowledgement of performance 351

**72** With regard to an agreement that includes international elements, the freedom to choose applicable law shall be granted to the parties not only upon the conclusion of the agreement, but – at a later time, in the event of legal disputes, before the court – and it is also possible in an implied manner 353

**73** The right of the party to a lawful judge is not violated, and the reason for obligatory repeal is not granted due to unlawful establishment of the court of first instance, if the head of the court entitled to delegate cases nominates a different judge for the case in order to ensure even work load and process delayed cases 355

**74** The driver of a vehicle using special visual and audio alarm shall take into consideration whether other drivers took notice of the special alarms, and also whether free way is given. If the driver is careful enough, he/she shall not have any liability for possible accidents 357

**75** The repeated approval of the decision of the general meeting, which was already invalidated by the court – along with the prevention of invalidity – shall not mean that the decision has a retroactive effect, thus the decision shall not be invalid due to this very reason. The new decision shall mean the approval of the activities performed in accordance with the invalidated decision with a retrospective effect, not prohibited by the law, by the local government, which is the owner of the condominium 359

**76** The public notary, in the non-litigious proceedings related to the entry of changes in the registry necessary by way of the amendment of the establishing documents and the deed of foundation put in a document countersigned by a public notary, in case of a foundation, the founder may act as a legal representative before the court 361

**77** The termination of the legal representative's power of attorney shall be in effect upon the submission of the same to the court by the client or the representative 362

**78** Special jurisdiction right can be established related to contractual legal relationships, if based on the facts and statement of parties, there is no thorough judicial doubt related to the establishment of the contractual relationship. The evaluation of further questions related to the existence or invalidity of the agreement shall not fall in the scope of litigious obstacles, but in the main scope of the proceedings 364

**79** The following shall terminate the lapse of the execution right, if the party requesting execution, submits a motion related to the liquidation of the debtor, and not the continuation of the execution, which was suspended due to the fact that the claim was non-collectable 368

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**80** No legal questions may be examined in the review proceeding, which was not part of the main proceedings, and with regard to which in the review proceeding, the violated legal provision was not specifically named Official examination of unfairness in the review proceeding, as in special remedy proceedings is excluded with regard to the relevant national laws 370

**81** I. The circumstance that the business organisation has no legal representative shall not terminate the representation right of the lawyer based on the power of attorney granted by a previous legal representative.

II. The party summoning the general meeting does not meet the requirements specified by the law, if the summons are not detailed enough for the parties to form their legal standing. The legal violation committed during the summons shall not be remedied by the fact, if the documents necessary for the same are posted at a later time, and not within the lawful deadline.

III. If the general meeting is summoned in an unlawful manner, the general meeting shall only be held, if all members are present, and give their expressed consent to the meeting. 374

## RULINGS IN LABOUR CASES

**82** For the lack of earning capacity, the employer shall not be obliged to employ, for the lack of the obligation to employ, remuneration for offset shall not be paid 379

**83** I. When referring to discrimination related to employment, with regard to the provision specified in the first sentence of Section 7, Paragraph (2) of the Act on Equal Treatment and the Promotion of Equal Opportunities, Section 22 of the Act on Equal Treatment and the Promotion of Equal Opportunities shall be applicable with regard to the rescue

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**84** I. Section 124 of the Labour Code shall determine the method of issuing days off, and in the event of uneven work load, providing choice for the employee whether to take days off, or take hours off, which subsequently would add up to the total due period.

II. If the employee refers to the violation of equal treatment, the employer, prior to recovery, is entitled to prove the casual connection between the protected feature and the disadvantage, which is not the same as the proof of the conditions included in the recovery 385

**85** For the citizens, who move from one contracting party (the Ukraine) to the area of the other contracting party (Hungary), but subsequent to the move, discontinued their work, the amount of pension shall be calculated based on the average salary of workers performing similar activities with corresponding qualification in the receiving country (Hungary) upon the time of the establishment of the amount of pension 394

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**89** The entity entered in the land registry as land user shall be considered as client in the proceeding related to the entry of changes in the use of the property. The agreement related to the share of use is valid along with the map specifying the order of use 405

**90** The issue of a permit for the beginning of the operation of a higher education institute, registered in an European Economic Communities country cannot be refused based on the condition of equivalence, except, if the institute is qualified as a state accredited higher education institute in the state of origin, and the education to be provided in Hungary and the diploma issued by the institute are in compliance with the requirements related to the education (diploma) providing state accredited higher education. Compliance shall mean compliance with the education providing higher education in the state of origin, that is equivalence 407

**91** The decision made in accordance with Section 48, Paragraph (2), Point b) of the Built Environment Act shall fall in the deliberation scope of the authority, the application of which shall be regarded founded, if it complies with the requirements specified in Section 339/B of the old Code of Civil Procedure. Thus in the event of irregular construction activities, the provision of retention permission is justified, if the fact that public interest was not violated can be justified 411

**92** In the regulation related to the settlement image, the placement of solar panels and solar collectors on the roofs of buildings under local protection can be prohibited with regard to the protection of cultural inheritance and the protection of settlement image 415

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

I. Verdict passed on 27 November 2019 in case C-402/18 – Tedeschi Srl in proprio e quale Mandataria Rti and Consorzio Stabile Istant Service in proprio e quale Mandante Rti versus C.M. Service Srl and Università degli Studi di Roma La Sapienza

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as:

– precluding national legislation, such as that at issue in the main proceedings, which limits to 30% the share of the contract which the tenderer is permitted to subcontract to third parties;

– precluding national legislation, such as that at issue in the main proceedings, which limits the possibility of reducing the prices which apply to subcontracted services by more than 20% by comparison with the prices stipulated in the decision awarding the contract

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II. Verdict passed on 4 December 2019 in case C-493/18 – UB and Co. versus WZ, en qualité de liquidateur judiciaire ou syndic de UB and Banque patrimoine et immobilier SA

1. Article 3(1) of Council Regulation number 1346/2000/EC of 29 May 2000 on insolvency proceedings must be interpreted as meaning that an action brought by the trustee in bankruptcy appointed by a court of the Member State within the territory of which the insolvency proceedings were opened seeking a declaration that the sale of immovable property situated in another Member State and the mortgage granted over it are ineffective as against the general body of creditors falls within the exclusive jurisdiction of the courts of the first Member State.

2. Article 25(1) of Regulation number 1346/2000 must be interpreted as meaning that a judgment by which a court of the Member State in which the insolvency proceedings were opened authorises the trustee in bankruptcy to bring an action in another Member State, even if that action falls within the exclusive jurisdiction of that court, cannot have the effect of conferring international jurisdiction on the courts of that other Member State. 424

III. Verdict passed on 7 November in case C-349/18 – Nationale Maatschappij der Belgische Spoorwegen (NMBS) versus Mbutuku Kanyebe and Co.

1. Article 3(8) of Regulation number 1371/2007/EC of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations must be interpreted as meaning that a situation in which a passenger boards a freely accessible train for the purposes of travel without acquiring a ticket comes within the concept of a 'transport contract' for the purposes of that provision.

2. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding, firstly, that a national court which establishes that a penalty clause in a contract concluded between a seller or supplier and a consumer is unfair moderate the amount of the penalty imposed on the consumer and, secondly, that a national court replace that term, in accordance with the principles of its contract law, with a supplementary provision of national law, except where the contract at issue cannot continue in existence in the event that the unfair term is deleted and where the cancellation of the contract in its entirety exposes consumers to particularly unfavourable consequences 427

## FORUM

Resolutions approved at the meeting held on 21 October 2019 by the consultation body addressing the legal interpretation matters of the new Pp. 433