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### CRIMINAL CASES

**164** I. Attempted armed robbery is committed, and not the preparation for robbery, by the person, who – in order to try a vehicle – does not return the car keys handed to the same legally, because in the meantime, he/she decided to steal the vehicle, and so he/she threatened the injured party by shooting him/her with a dummy weapon, but the actual theft of the vehicle was prevented by the determined resistance of the injured party, and the notification of the police department.

II. The commission behaviour of the legal facts of robbery is violence and the application of direct threat against life or bodily safety. In this case, the accused party applied direct threat against the life or bodily safety of the injured party, when he/she threatened the same with shooting the same, actually starting the commission behaviour of the legal facts of robbery

The ignition key is not the subject of the theft, but the means of the theft of the vehicle, and in order for the robbery to be factually committed, the ignition of the motor of the vehicle is not necessary 728

**165** The production of drugs for the purpose of distribution shall constitute at least the attempt of the crime of drug trafficking 729

**166** The misdemeanour of forgery of private documents is committed by the person as instigator, who indicates the purchase price in the property sale and purchase agreement untruthfully, and requests the lawyer, knowing the same, to submit the agreement to the land registry, and the lawyer does so 733

**167** In simplified review proceedings, legally the court is only entitled to supplement or correct the provisions of the law, which are obligatory but are not based on deliberation. Thus, in these remedy proceedings – for example – the establishment of culpability cannot be complained, the circumstances of sentencing cannot be reevaluated, and thus a milder execution level than the one set by the law may not be established either 734

**168** Deprivation of the rights related to public affairs may only be performed as an ancillary punishment along with imprisonment, thus the application of the ancillary punishment along

with confinement shall be unlawful This violation shall constitute the “violation of other rules of criminal law”, thus a reason for review.

Deprivation of the rights related to public affairs regulated in Chapter VII of the General Section of the Criminal Code – although designated as an ancillary punishment, but – can be found amongst the punishments. Unlawful punishment and unlawful measure specified in Section 649, Paragraph (1), Point b) of the Code of Criminal Procedure shall be used for the avoidance of legal violations realised with regard to the entire structure of sanctions in the Criminal Code. This means that in the course of the application of Section 649, Paragraph (1), Point ba) of the Code of Criminal Procedure, material violation realised with regard to the deprivation of the rights related to public affairs is an unlawful punishment. Thus due to the unlawful application of the deprivation of the rights related to public affairs, review shall be conducted in accordance with Section 649, Paragraph (1), Point ba) of the Code of Criminal Procedure. 734

**169** The recognition or avoidance of the crime, which was committed against a person, who is limited by his age or disability – as a qualifying circumstance – cannot be established merely by the age of the injured party, as it may only be decided upon deliberation.

Generally, those are regarded as limited with regard to the recognition or avoidance, who, due to their mental or physical condition, cannot, or can only partially weigh the situation experienced during the crime and thus cannot property behave 736

**170** I. The below shall be considered as attempted blackmail; claiming 500,000 Hungarian forints from the injured party in a letter, and threatening the same with making incriminatory confessions in his/her partner’s criminal proceedings, and reporting the addressee of the letter to the police due to violations committed during the construction of his/her house.

II. The threat necessary for the blackmail shall be examined not from the aspect of the perpetrator, but the injured party, because the threat can only be judged based on the severity of the threat, and whether the injured party was threatened by the same. From the perpetrator’s side, it is sufficient to recognise that his/her threat is suitable for resulting in such impacts with regard to the injured party 738

**171** I. From the aspect of arrest, making a non-binding verdict results in a new situation, in consideration with which, for the further phases of the proceedings, the law specifies as a separate reason for arrest that in consideration of imprisonment ordered in the verdict, of different length, the accused person is likely to run or hide. Not binding imprisonment of 20 or 14 years ordered for perpetrators committing violent organised crimes partly against the human life is such a lengthy punishment, which may result in the accused person’s intention to run or hide, or make them confirm such thoughts.

II. In cases in progress related to crimes, where the law does not set the upper limit of the period of the arrest, and – as specified in the verdict – conditional release is not possible form the lawfully ordered imprisonment, then a milder coerced measure restricting personal freedom – based mostly on volunteer compliance – is not suitable for the purposes to be achieved by way of the arrest.

In such a case, a longer period of the accused person’s imprisonment is not against the arrest, because the review of the reasonableness of the arrest by the court from time to time is

the consequence of time going by, but the pure fact of time going by does not necessarily result in the termination of the coerced measure 740

**172** I. Procedural violation resulting in unconditional repeal realised due to a reason specified in Section 608, Paragraph (1), Point d) of the Code of Criminal Procedure arising during the proceeding of an expelled defence attorney may only be interpreted in the relation of the expelled defence attorney and the given accused person – or several accused persons; thus repeal shall not be performed with regard to those not affected by the proceeding of the expelled defence attorney, as the defence attorney proceeded in the interest of the accused person(s) represented by the same.

II. The possible reason for repeated hearing may be the total repetition of the completed evidence proceedings, and on the other hand the remedy and avoidance of possible procedural violations – which may even bring about unconditional repeal.

III. The hearing and the repeat of the evidence proceedings are still the same concepts. It is possible that only one evidence action is repeated in the hearing; nevertheless, repeated proceedings means the repeat of the already completed evidence proceedings. The court shall have a hearing, if the accused person takes on evidence for the establishment of its criminal liability. Accordingly, the evidence proceedings are repeated in the repeated hearing. This, however is not the same as the repeated performance of the evidence proceedings, because it can be performed by way of the introduction of the material of the hearing.

IV. The court, with the repeated hearing, shall remedy the invalid proof, which makes the result of the conducted proof lawful, and upon the making of the definitive decision, usable. Considering this, the evidence proceedings repeated subsequent to the termination of the defence attorney's conflict of interest and the subsequently performed evidence proceedings are lawful

743

**173** When another court already orders executable imprisonment for the accused person, but this judgment is not related to the overall proceedings, then this is neutral from the aspect of jurisdiction. This is the case even, if the imprisonment ordered by way of the main verdicts related to the overall proceedings, became executable by way of the later proceedings not related to the overall proceedings 752

## CIVIL CASES

**174** I. The violation of good morals by the lease agreement can be established – based on the purpose to be achieved by the agreement – can be established, if the fact that the parties enforced interests, which contrast with the purpose of the lease agreement is proven, or that they consciously ensured a unilaterally privileged situation in violation of the requirement related to a party's good faith and integrity.

II. The civil legal consequences of the invalidity of the agreement shall not be derived from the possible economic ungroundedness of the decision made freely by the parties – without additional facts – in the event of state-owned business organisations managing public funds.

III. Apparent disproportionate values, themselves, shall not result in the violation of good morals by the agreement in the event of the management of public funds 753

**175** The manufacturer's guarantee with regard to the all-time owner of the thing shall not exempt the distributor from guarantee obligations in the event of the transfer of the thing  
764

**176** I. The power of attorney given to a lawyer shall include the actual content of the legal declaration: the provision and acceptance of the power of attorney, and the same shall be signed by the party making the declaration also. The designation of the place of signature in an untruthful manner and the failure of the identification of the client shall not result in the invalidity of the power of attorney, but may give grounds to the lawyer's responsibility.

II. In the proceedings related to the Hague Treaty with regard to the illegal transport of the child to Hungary, the power of attorney issued abroad does not need to be certified, authenticated.

III. The exercise of parental custody, the unlawfulness of the transport of the child shall be judged based on the law of the state of the usual residence of the child prior to the transport. The content of foreign law shall be established by the court ex officio, for which any measures may be taken, thus especially the petitions of the parties, expert opinions or the notification by the minister of justice  
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**177** The accused person, who received fine as a punishment, which is lesser than the punishment of imprisonment by way of an extraordinary legal remedy, shall be entitled to indemnification, if the court includes the imprisonment ordered and executed in the main proceedings, and thus the fine is regarded paid  
774

**178** I. The rule included in the laws related to condominiums, regulating the obligatory content of the deed of foundation is unilaterally cogent: it does not exclude the application of obligations related to the use of joint property.

II. If the deed of foundation includes provisions related to joint use, the general assembly may not make a valid decision related to the deed of foundation  
776

**179** I. The plaintiff of the proceedings related to the termination or restriction of execution is the debtor, and the defendant is the party requesting execution. As a result of the obligatory regulation related to the person of the parties, the termination or restriction of the execution may be requested against the party, who requests the implementation of the execution.

II. The ruling approving the inclusion of the pledger shall not be regarded as an executable deed falling in the same category as the deed including the execution clause, and the termination of the execution started with the inclusion of the pledger may not be requested  
778

## **ECONOMIC CASES**

**180** I. Based on the information related to exchange rate risk, the consumer could not reasonably think that his/her risk was covered by the top end of his/her income and the value of the property, thus due to this reason, information given on exchange rate risk could not be regarded unfair.

II. Administration fee specified by a contractual provision not individually negotiated in the consumer agreement, disbursement commission shall not constitute the primary subject of the agreement, it is not the counter service of the main service. Thus what needs to be

examined is that whether a given contractual obligation is in compliance with the requirement of transparency, good faith and the expectation related to balance (proportionality), as these principles were interpreted by the Court of the European Union – at the Curia’s request – in its judgment C--621/17 780

**181** The general contractual terms and conditions deviating from the dispositive rule of the Civil Code, specifying the following shall be unfair: in case of lawful termination – the real estate agent shall be paid an amount set as a percentage of the success fee related to the purchase price of the property, specified as a commission, called as refunding of expenses 784

## LABOUR CASES

**182** Termination, as a unilateral written legal declaration shall be regarded as communicated, if the document is transferred so that its content can be known. The completion and effect of the communication shall not be affected by the fact, if the addressee does not accept the content of the termination, sign the legal declaration, and take the document with him/her 789

**183** Legal provisions may not specify obligations for the period before the entry into effect of the same. Different retrospective regulations may not be interpreted broadly 792

**184** In cases of employment termination regulated in Section 95, Paragraph (4) of the Labour Code, that is cases, where the employment is terminated because of a reason falling in the employee’s scope of interest, the Labour Code only provides for the remuneration for the actual employee performance 794

**185** Unlawful employer behaviour, itself, shall not give grounds to the claim of grievance fee – without the establishment of the violation of personality rights. 796

## PUBLIC ADMINISTRATION CASES

**186** The judgement of the conditions related to accelerated depreciation is a specific issue, and judgement based on unsolicited expert opinion is lawful. The amount released from the received network development contribution deferred shall be regarded reported against profit/loss before taxation, thus it can be recognised as an item decreasing tax base 801

**187** The property registry authority, with regard to state-owned crop-lands, in the proceedings specified in Section 75, Paragraph (4) of the Land and Real Estate Registry Act’s Implementing Decree, if there is a declaration of acceptance from the party entitled to the right of pre-emption, the request related to the registration of ownership shall be rejected 805

**188** The client status specified in Section 15 of the Code of Administrative Proceedings is grounded by the fact that the plaintiff’s building is located on the property, which is under joint licence proceedings, and the plaintiff has valid permit to renovate the same, irrespective of the owner’s approval 807

**189** In the proceedings related to the establishment of the allowance of ex-military ward, no decisions may be based exclusively on the decision made by another authority 810

**190** In public procurement proceedings, the contracting authority may be entitled to client capability by way of equal opportunity, if he/she proves that the contracting authority behaved differently with the same, and evaluated the same bid element differently. The contracting authority may only submit a request for remedy, if the violation of any of its rights or interests can directly be presented in connection with the contested public procurement proceeding

811

**191** In an excise duty case, it is not the tax authority, but the tax-payer, who is obliged to prove that in spite of its proprietary rights, its ownership was terminated 816

**192** In comparison with property taxes levied on inner city properties, the discriminative nature of the regulation specifying higher tax for properties in the periphery shall not be grounded on the mere comparison of the specific value of properties in the inner city and the periphery. In this regard, the following shall also be evaluated: whether public burdens equally affect tax-payers in similar situations – in a homogeneous group – (businesses in the industrial-economic sectors), and the examination of legitimate, reasonable reasons cannot either be neglected that local governments, upon the passing of legislations need to take into consideration the purpose of the lands (usability) and their own management 818

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

**I.** Judgment of the Court of 2 April 2020 in Case C-228/18. *Gazdasági Versenyhivatal v Budapest Bank Nyrt. and Others*

1. Article 101(1) of the Treaty on the Functioning of the European Union must be interpreted as not precluding the same anticompetitive conduct from being regarded as having as both its object and its effect the restriction of competition, within the meaning of that provision.

2. Article 101(1) of the Treaty on the Functioning of the European Union must be interpreted as meaning that an interbank agreement which fixes at the same amount the interchange fee payable, where a payment transaction by card takes place, to the banks issuing such cards offered by card payment services companies operating on the national market concerned cannot be classified as an agreement which has ‘as [its] object’ the prevention, restriction or distortion of competition, within the meaning of that provision, unless that agreement, in the light of its wording, its objectives and its context, can be regarded as posing a sufficient degree of harm to competition to be classified thus, a matter which is for the referring court to determine. 822

**II.** Judgment of the Court of 11 March 2020 in Case C-511/17. *Györgyné Lintner v UniCredit Bank Zrt.*

1. Article 6(1) of Council Directive number 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court, hearing an action brought by a consumer seeking to establish the unfair nature of certain terms in a contract that that consumer concluded with a professional, is not required to examine of its own motion and individually all the other contractual terms, which were not challenged by that consumer, in order to ascertain whether they can be considered unfair, but must examine only those terms which are connected to the subject matter of the dispute, as delimited by the parties, where that court has available to it the legal and factual elements necessary for that task, as supplemented, where necessary, by measures of inquiry.

2. Article 4(1) and Article 6(1) of Directive number 93/13 must be interpreted as meaning that, while all the other terms of the contract concluded between a professional and that consumer should be taken into consideration in order to assess whether the contractual term forming the basis of a consumer's claim is unfair, taking such terms into account does not entail, as such, an obligation on the national court hearing the case to examine of its own motion whether all those terms are unfair. 830

**III.** Judgment of the Court (Grand Chamber) of 26 March 2020 in Joined Cases C-558/18 and C-563/18. *Miasto Łowicz and Prokurator Generalny zastępowany przez Prokuraturę Krajową, formerly Prokuratura Okręgowa w Płocku v Skarb Państwa – Wojewoda Łódzki and Others.*

Petitions related to preliminary decisions submitted with the decisions of Sąd Okręgowy w Łodzi (Łódź Regional Court, Poland) and Sąd Okręgowy w Warszawie (Warsaw Regional Court, Poland) of 31 March 2018 and 4 September 2018 are unacceptable 834

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