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CRIMINAL CASES

227 I. If, in the course of the commission of the robbery, the purpose of tying up the aggrieved party was the easing of the stolen property, and thus it was a part of the violence breaking will, the (formal) aggregate of robbery and the crime violating personal freedom was apparent, thus the latter crime shall not be established.

II. If, however, subsequent to the completion of the robbery, the perpetrators leave the crime scene leaving an aggrieved party tied up, robbery and the crime violating personal freedom forms a formal combination of crimes.

III. In the latter crime, the establishment of guilt shall not exclude the circumstance that the perpetrators tied up only one aggrieved party, thus subsequent to their exit, he/she was able to leave immediately. The realisation of the violation of personal freedom shall not be dependent on the period of the violation of personal freedom
1021

228 Final driving disqualification may be repeatedly ordered
1027

229 I. The re-integration officer in the official staff of the law enforcement institute may not commit the crime of service abuse with regard to the inmates, because it is a military offence, and there is no service relationship between them and the inmates. The re-integration officer is a person performing service at the central state administration body, who comes in contact with the inmates as an official person.

II. The leading re-integration officer does not commit abuse of office by involving – highly qualified – inmates working in the library of the law enforcement institute under his supervision into the organisation of the education of prisoners. Both causing unlawful disadvantage and acquiring unlawful benefits related to the crime of abuse of office arising from this behaviour are missing, thus the purpose necessary for the crime, facts and – due to the lack of the violation of legal interest or endangerment – hazard to society are both lacking
1030

230 The crime of drug trafficking is committed in the area of a building designated for the performance of education activities, in the close vicinity of the same, by the person, who sells drugs in the area of the university – including the related dormitories, student homes – and the bars in the close vicinity of the same even, if sold to adults.

The concept of building designated for education activities may not be limited to the public education institutions under the effect of Act number CXC of 2011 on national public

education, but the entire area of the campus (the closed area of the university and the related buildings), as higher education institution 1032

231 Unlawful gain is the purpose and not the result of the crime of fraud Thus fraud can be established, if the conditions specified in the law are met even, if this benefit is partly or fully lacking 1037

232 The decision of the law enforcement judge is definitive not based on the provisions and application of the act on criminal proceedings, but exclusively in the law enforcement matter specified in Act CCXL of 2013 (Bv.tv.), thus new proceedings may not be started.

In the criminal proceedings, the decision is definitive, when it decides on the criminal liability of the accused person, criminal consequences or the lack thereof. New proceedings (review) may not be performed 1041

233 I. The order declining appeal is not a definitive decision, thus no review shall be made with regard to the same

II. Appeal may be lodged against the decision declining appeal within non-definitive decisions – if not made by the Curia, for the lack of provisions excluding remedy 1041

234 Proceedings performed in the matter of the termination of conditional release shall be conducted by the judge competent in the area of the residential or permanent address of the accused person upon the submission of the petition 1043

CIVIL CASES

235 Upon the specification of the amount of tort, not all the circumstances to be taken into account are in a causal relation with the rate of the damage caused to the aggrieved party Thus the repetitive character of the legal violation shall be evaluated by the court even, if it does not affect the rate of non-material damage. Upon the specification of the amount of tort, the punitive function of the legal institute shall be taken into account irrespective of the rate of the caused damage 1045

236 There shall be no review in the proceedings related to the change of the decision made by the notary in the property protection case, thus the Curia shall decline the review request submitted in such a case 1047

237 The declaration of acceptance by the party exercising preliminary right of usufruct may not be provided by way of the interpretation of the contractual legal declaration accepting the lease 1047

238 When compensating non-financial damages, the only way of the evaluation of the compensation is financial compensation, while the restoration of the original condition is conceptually impossible, and there is no legal option for the application of compensation in kind. Nevertheless, the offer of supplementary training cannot be regarded as either of these excluded compensation methods, but it is qualified as the offer of performance with another thing instead of financial compensation, which, however is only possible, if the other party accepts the same 1050

239 I. In the proceedings related to the compensation of damages caused by legislation, if the need enforced by the motion is based on the violation of the subjective right ensured by the law of the European Union, the conceptual option of the violation of European Union subjective right is not sufficient for the establishment of the responsibility of the member state. In each and every legal dispute, individual assessment shall be related to the fact whether the case has a relevant factual element crossing borders, except, if the member state's law provides the same rights to its citizens, as those of the citizens of another member state in the same situation based on community law.

II. The condition of the enforcement of claims related to the compensation of damages caused by unconstitutional legislation or legislative fault is the legislative activity, or the decision-making of the constitutional court establishing the unconstitutional nature

1057

240 The civil court has no jurisdiction for the judgement of matters under the effect of public administration proceedings, however the legal effect of lawful decisions made in public administration proceedings is to be taken into account. Act number LV of 1996 is a rule protecting minority rights, which determines the frames of the enforcement or rights of land owners starting the proceedings, and the procedural obligation that the factual foundation of the petition that the factual grounds of the petition are to be specified within the set deadline and in accordance with the specified reasons

1063

241 No appeals shall be lodged against the order declining correction request, and against the order specifying the correction may only be appealed, if the appeal was related to the operative part. The appeal against the correction of the order and the supplement of the order is free of charge

1066

242 I. Damages related to the death (tort) caused to the close relatives of the person deceased in a road accident caused by someone else, with a residential address in another member state, shall be regarded as "indirect circumstances" of the accident, thus are governed by Regulation number 867/2007/EC of the European Parliament and the Commission (Rome II Regulation).

II. The initiation of preliminary decision-making proceedings is not necessary, if the EU legislation can be interpreted based on the verdict made by the Court of Justice of the European Union in another case

1068

ECONOMIC CASES

243 In accordance with provisions of Section 6:225 of Act number V of 2013 (Civil Code), the joint venture's purchase right related to shares may be granted based on an agreement made between the shareholder as obligor and the joint venture, as obligee, and not the amendment of the statutes, if the above conditions are not met

1071

244 In accordance with Section 33/A, Paragraph (1) of Act number XLIX of 1991, the responsibility of an executive cannot only be established with regard to the behaviour expressly related to wilful, malicious divulgence, but also, if the company's activity is performed with unjustified risk in a situation threatening with insolvency. The following mere fact shall not give grounds to the executive's responsibility: the debtor carries on its business activity in a situation threatening with insolvency by reasonably not undertaking risks, but the measures taken for the sake of saving the company are not successful

1075

LABOUR CASES

245 12 months of absence fee included in Section 82, Paragraph (2) of the Labour Code limits the amount of compensation to be paid as missed salary. It does not include any temporal conditions by which the employer's responsibility would remain until the termination of the employment with the next employer. If the employment with the next employer is terminated due to a reason attributable to the employee, such circumstance shall be evaluated in the scope of the obligation related to damage mitigation 1080

246 Section 106, Paragraph (3) of the Labour Code does not only include measure but so-called classification rules. In case of the application of the weekly resting time, the employer is obliged to provide the employees with uninterrupted resting time of at least 40 hours a week and one calendar day. With the provision of this resting time of 40 hours, the employer shall comply with its obligation related to the provision of weekly resting times by providing 48 hours of resting time a week to its employees as an average in the work schedule 1082

247 Employment may be terminated during probation by either party without any reasoning. The employer's measure shall not be regarded as termination merely due to the justification to which the provisions included in Section 66, Paragraph (2) of the Labour Code are applicable 1086

248 I. Extraordinary discharge may be due to the violation based on the mutual cooperation between the supervisor and the public servant, smearing the supervisor before others, and statements questioning his/her leadership.

II. "Other opinions", as protected features may be established, if the existence of the same can factually be justified, and is suitable for generalisation and grouping 1089

PUBLIC ADMINISTRATION CASES

249 In the course of the judgement of the request related to the reclaim of fiscal tax of gasoline used in agriculture, the fact of lawful land usage may be justified based on an official report even after 1 January 2014. TakarNet Föld-hivatali Információs Rendszer meets this requirement 1093

250 It is not sufficient to draw conclusions from the behaviour of tax-payers situated further in the supply chain with regard to the plaintiff's active behaviour, as at least own contribution in the form of enhancing or support shall be provided. For the lack of the justification of the same, in order to decline the right to deduct taxes, the verification of the compliance with the condition of "knowing or should have known" is indispensable 1096

251 The declaration of acceptance of the party entitled to pre-emption shall not include the wording of the law verbatim, however the declaration has to be understandable and clear, ensuring clear understanding of the obligations undertaken by the party entitled to pre-emption 1102

252 The existence of the broadcaster's contracting obligation shall be examined in the order of contractual offers, but also with regard to broadcasting periods. The general rules of the Civil Code may not be applicable in contrast with the special provisions of the Media Services and Mass Media Act – for the lack of a relevant legal provision 1105

253 The scope of authority of Magyar Energetikai és Közmű-szabályozási Hivatal shall be applicable to the judgement of all complaints against public water suppliers, where the service provider acts in such quality. The establishment of the scope of authority is not dependent on the fact that the parties have a public utility agreement 1109

254 In the scope of immediate legal protection, probability and evidence disregarded in the course of the proceedings of first instance may not be supplemented in the appeal proceedings 1111

255 Subsequent to 1 January 2017, the legal establishment of tax facts adjusted to a wider scope of taxpayers excludes arbitrariness in certain cases, whether the regulation is realised by being expressly related to an individual without a lawful reason; or by discrimination of taxpayers within a homogenous social group without a lawful reason. The causality of the regulation based on settlement policy deliberation may not be reviewed for the lack of the violation of these limits 1112

DECISIONS OF THE COURT OF THE EUROPEAN UNION

I. Judgment of 14 May 2020 T-Systems Magyarország Zrt. and BKK Budapesti Közlekedési Központ v Közbiztonsági Hatóság Közbiztonsági Döntőbizottság, Case C-263/19

1. Point 2e, Paragraph (2) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, Point 2e, Paragraph (2) of Council Directive 92/13/EEC of 25 February 1992 on the coordination of the laws, regulations and administrative provisions relating to the application of the Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, Preambles (19)-(21) of Directive 2007/66 as well as Preambles (12), (113), (115) and (117), Article 1, Paragraph (2), Article 89 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with European Economic Area relevance [correctly: on procurement by entities operating in the field of the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with European Economic Area relevance] must be interpreted as meaning that the following regulation of the member state is not in violation of the same: allowing for the establishment of responsibility related to a legal violation, of not only the contracting authority but the winning bidder too in the scope of the legal remedy proceedings conducted by the supervisory authority ex officio, and also for the imposition of fine against the same, if upon the amendment of a public procurement agreement under performance, the application of rules related to the awarding of public procurement agreements was unlawfully disregarded. Nevertheless, if the national regulation does provide for such an option, the remedy proceedings shall respect European Union law, including its principles, as the related public procurement agreement – both in its original form and subsequent to the unlawful amendments – fall within the subject matter of the directives on public procurements.

2. The amount of the penalty sanctioning the unlawful amendment of the agreement between the contracting authority and the winning bidder shall be established considering the behaviour of the parties.

1116

II. Judgment of 14 May 2020 *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* in Joined Cases C-924/19 PPU and C-925/19 PPU

1. Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally [correctly: unlawfully] staying third-country nationals must be interpreted in connection with Article 47 of the Charter of Fundamental Rights of the European Union meaning that the following regulation of a member state is in violation of the same: the amendment by the public administration authority of the target country mentioned in a previous expatriation decision may only be contested by the third country national in the scope of proceedings started before a public administration authority, if subsequent legal remedy is not provided with regard to the decision of this authority. In similar cases, the principle of European Union law and the right to effective judicial legal protection specified in Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted meaning that they oblige national courts to have authority for the conduct of the remedy proceedings started before the same with regard to the contest of the lawfulness of the expatriation decision related to the amendment of the target country.

2. Article 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as meaning that the national regulation that allows for the following is in violation of the same: allowing for the refusal of the request related to international protection as unacceptable based on the fact that the petitioner arrived to the area of the member state in question from a state, where the citizen is not subject to persecution, or the risk of serious harm as specified in the national provision adopting Article 15 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, or where appropriate level of protection is granted.

3. Directive 2013/32 interpreted in connection with Article 18 of the Charter of Fundamental Rights of the European Union and the principle of loyal cooperation arising from Article 4, Paragraph (3) of the Treaty on the Functioning of the European Union must be interpreted as meaning that the acting authority in accordance with Article 2, Point f) of Directive 2013/32 is not obliged to examine ex officio the asylum application, in the matter of which a declining decision was made endorsed by a definitive judicial decision prior to having established the violation of European Union law by the abovementioned decision. Article 33, Paragraph (2), Point d) of Directive 2013/32 must be interpreted as meaning that the verdict made by the Court establishing the incompatibility of the following national regulation and European Union law, brings about a new circumstance related to the examination of the application for international protection in accordance with this regulation; the national regulation allowing for the refusal of an application for international protection as unacceptable based on the fact that the petitioner arrived to the area of the member state in question from a state, where the citizen is not subject to persecution, or the risk of serious harm, or where appropriate level of protection is granted. The

abovementioned provision may not be applied to repeated applications specified in Article 2, Point q) of this directive, if the court seized establishes that the definitive refusal of the previous application violates European Union law. The establishment of the same is necessarily obligatory for this authority, if violation of European Union law comes from a verdict of the court, or if it is incidentally established by a national court.

4. Directive 2008/115 and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as meaning that the obligation of third country nationals to stay in limited and closed transit areas, where they can only move about with limits and under supervision, and which they cannot legally leave in any way on their own clearly results in the limitation of freedom typical of “custody” as specified in the above directive.

5. Article 43 of Directive 2013/32 must be interpreted as meaning that it does not allow petitioners to have international protection for a period of more than four weeks in transit zone custody.

6. Articles 8 and 9 of Directive 2013/33 must be interpreted as meaning that they are violated by the custody of a person applying for international protection exclusively due to the fact that he/she is unable to take care of him/herself, secondly, if such custody is made without the preliminary approval of a decision ordering such custody, and without the examination of the necessity and proportionality of such measure and thirdly if there is no judicial review in connection with the lawfulness of the public administration decision ordering the custody of the applicant. Nevertheless, Article 9 of this directive must be interpreted as meaning that it does not prescribe that the member states decide the maximum length of custody, if their national laws guarantee that custody lasts only for the period, while the justifying reason is valid, and also that the public procurement proceedings related to this reason are conducted with care.

7. Article 15 of Directive 2008/115 must be interpreted as meaning that it is violated by the fact that a third country national is taken into custody exclusively because he/she is under expatriation, and cannot take care of him/herself, secondly, if such custody is made without the preliminary approval of a decision ordering such custody, along with the relevant justification, furthermore without the examination of the necessity and proportionality of such measure, thirdly, if there is no judicial review in connection with the lawfulness of the public administration decision ordering the custody of the applicant, and fourthly, if this custody lasts for more than 18 months, and can further be maintained, however, deportation measures are no longer in progress, or are performed without due care.

8. The principle of the priority of European Union law and the rights to effective judicial legal protection specified in Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted meaning that they oblige the national court to establish that they have authority to make a decision related to the lawfulness of such custody, and authorise this court to immediately release these people, if such custody is deemed illegal by the law of the European Union – for the lack of a national regulation requiring the judicial review of the public administration decision ordering the custody of the applicants or third country nationals, the asylum applications of which were refused.

Article 26 of Directive 2013/33 must be interpreted as meaning that it requires that the ones applying for the international protection, whose custody, judged as unlawful, was

terminated, can refer to their right of funds to find accommodation or in kind accommodation before the court having jurisdiction in accordance with national law, because in accordance with European Union law, this court has the option to make temporary decisions until the final decision is made.

The principle of the priority of European Union law and the rights to effective judicial legal protection specified in Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted meaning that they oblige the national court to establish that they have authority to conduct the remedy proceedings related to the exercise of this right – for the lack of a national provision specifying the judicial review of the right of accommodation specified in Article 17 of Directive 2013/13. 1121

FORUM

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