

## DECISIONS ENSURING THE UNIFORMITY OF THE LAW

### Decision 1/2020 KPJE ensuring the uniformity of the law

On the courts having jurisdiction in proceedings related to public service legal relationships qualified as labour cases, in case of motions submitted prior to 1 January 2018 1619

### Decision 2/2020 KPJE ensuring the uniformity of the law

On the note of the fact of the starting of proceedings into the land registry in case of proceedings related to the acquisition of the ownership rights of a property based on contractual claims 1622

### Decision 1/2020 KJE ensuring the uniformity of the law

On the competence of the public administration court in the course of the review of the public administration activity of the public administration body acting with national authority 1624

### Decision 3/2020 KJE ensuring the uniformity of the law

On the indemnification of the tenant in expropriation proceedings 1627

## DECISIONS OF THE CURIA'S COMPLAINT COMMITTEE ON THE UNIFORMITY OF LAW

Refusal without substantive examination

I. Decision number Jpe.I.60.003/2020/3 1630

Refusal without substantive examination

II. Decision number Jpe.I.60.004/2020/2 1631

## CRIMINAL CASES

**350** The acquisition and inventory of drugs for the purpose of trade, as well as additional behaviour related to the same are not qualified as attempted trade, but completed significant actions. 1632

**351** I. The commission subject of the crime of the withdrawal of the coverage for debt is the asset locked down for the settlement of the debt kept for the purpose of the coverage of the debt arising from business activities, which may be made in the form of lien, caution money, option, and is usually related to a specific, well-defined part of the debtor's assets. The commission behaviour is the withdrawal of the asset, which may be the sale of the asset.

II. So-called intellectual forgery of administrative documents may be committed with regard to public administrative documents, for which as a consequence of the commission contribution, with regard to a right or obligation, untrue data, fact or statement is included in

the administrative document, which is publicly proven by the administrative document. The establishment of a pledge is related to the data of an administrative document, which is fully proven by the same, namely that lien pledge was established on passenger cars owned by the accused companies. 1634

**352** The crime of abuse committed in official proceedings has two legal subjects. On one hand, the interest related to the official actions of the official person, and on the other hand, the consequence of the violation of the obligation, outside of the scope of the office's operation, and this is the violation of human integrity. 1640

**353** The following shall constitute the violation of more unfavourable punishments: the court of second instance establishes a longer period of imprisonment, than the one included in the original motion of the prosecution, judging the appeal against the accused person, contesting the verdict establishing a shorter period of imprisonment than the one included in the original motion of the prosecution, made at the preparatory hearing by the court of first instance. 1644

**354** The following shall not be considered as procedural violation resulting in unconditional repeal: the accused person is abroad, but according to the court's knowledge, the same moved from his/her registered residential address to an unknown place, the foreign place of residence of the same is not known by the court conducting the criminal proceedings, because the change of address – foreign address, notification address, actual place of residence, address for service was unlawfully not reported by the same to the court, thus the court in accordance with the rules applicable to accused persons in unknown addresses, shall continue the proceedings. 1646

**355** The violation of justification obligation is not a reason for review since 1 July 2018. The method of defence is an internal issue of the same, and the fact that the accused person refused to listen to the defence attorney and denied the commission of the crime shall not be reviewed. The establishment of culpability may not be contested in review by way of the contest of the prohibited facts. 1651

**356** I. Special proceedings may become necessary after the definitive decisions of criminal main questions, that is the conclusion of the main proceedings, and make decisions in the scope of a simplified proceedings, collateral criminal issues closely related to the main questions. By this, the substantive law correction of the decision made in normal or separate proceedings is corrected and the supplement of missed decisions is performed. Fundamentally, they are optional collateral and simplified proceedings.

II. The verdict made in the subject of summary punishment, declining summary – just as the verdict of lawful summary – shall not be a definitive decision, thus there is no legal option for review. 1652

**357** For the lack of a different decision, proceedings of third instance shall not be conducted, if the court of second instance was wrong by ensuring the option of secondary appeal, thus the same shall be refused as a secondary appeal prohibited by the law. This legal situation, if the court of first instance declared the guiltiness of the accused person with regard to the very same action in the crime of drug possession and not the attempted crime of drug trafficking, that is

the subject of the proceeding, and acquitted the accused person from the crime of attempted drug trafficking, and then the court of second instance qualified such action as drug trafficking, and ignored the acquittal, and ensured the option of third appeal. 1653

**358** The psychiatrist expert opinion, which based on the same diagnosis, and a different professional standpoint, states that the mental state of the accused person established in the binding verdict influenced the capacity of the same, is not suitable for the establishment of a new fact. 1655

**359** The fact that wrong legal qualification leads to the non-exhaustion of the accusation, shall not be a mistake – resulting in unconditional repeal – attributable to the justification. 1657

**360** The decision of the law enforcement judge establishing indemnification in the matter of claim for damages due to placement conditions violating fundamental rights shall be definitive but not binding, thus no review shall be made related to the same. However subsequent law enforcement proceedings are also possible, if the decision was not legal. 1660

## CIVIL CASES

**361** The invalidity of the inheritance agreement may only be referred to by the party, which is entitled to inheritance or is exempt from a burden in the event of the establishment of the invalidity, such claim shall expressly be enforced. The court shall ex officio examine the invalidity of the inheritance agreement based on the invalidity reason not enforced by the plaintiff; it shall only be recognised, if referred to by the party interested. 1662

**362** I. The legal protection related to the joint acquisition by spouses shall not be related to the fact that the contribution of spouses to the acquisition shall be the same. Same rate of contribution, as an additional legal rule shall only be applicable, if the actual rate cannot be established even by way of deliberation.

II. The rate of contribution shall be specified for the entire period of the partner relationship, and with regard to the total earnings of the partners, irrespective of the fact that in certain separate periods of cohabitation, this rate was different, and that a certain asset was acquired at what time. 1665

**363** The parents may agree that child support is to be made in one sum (with a specified asset or cash) with the approval of the child protective services or the court. The agreement made with the contribution of a mediator is unsuitable for any legal effects due to formal invalidity, compliance with the same may not be required, and may not be regarded as an agreement on child support. 1668

**364** The restriction of capacity may not be ordered with a preventive purpose, only if all conditions of substantive law are met. For the lack of any condition, the motion may be declined. 1672

**365** Spraying with pesticides dangerous to bees is an activity of enhanced danger, and unlawfulness giving grounds to liability for damages, the damage and the relevant cause and

effect related to the same shall be related to the damaged party. Liability for damages may not be based on hypothetical (assumed) or alternative reasons. 1675

**366** In the regulations included in the Code of Civil Procedure, the approval of review is a separate, independent and final section of the civil proceedings ending with the judgement of the request, which is followed by the section of the proceedings based on the review request only if approved. The review request and the request related to the approval of the review to be attached by the same falling under separate fee payment obligation are only related to each other with regard to content, and they may not be same as for content, and the two requests are independent subjects of the regulation. The request related to authorisation may not be included in the review request, for the lack of an electronic form, only in case of structural separation. For the lack of this, the Curia may refuse the request related to authorisation. 1677

**367** By way of the water supply service relationship between the parties to the proceedings, the plaintiff may claim transfer fee for the service provided by the same. Thus the court, in the civil proceedings, may not establish the transfer fee in a civil case under civil titles – unjust enrichment, indemnification. 1679

**368** From the contractual agreement, that the gifted property shall remain in the giftee's property for life, one may not conclude, without other legal facts, that the intent of the parties was related to the establishment of a right to use for the benefit of the gifter registered by the land registry. 1683

**369** The procedural violation occurring the proceedings of second instance may not be remedied in the review proceeding, for the purpose of the aversion of mistakes, besides the repeal of the definitive verdict, the court of second instance shall be ordered to conduct new proceedings and a new decision. 1685

## ECONOMIC CASES

**370** If the plaintiff is damaged by way of a cartel agreement made by the defendants violating competition right, which also covering the negotiation of prices, is related to the division of the market, the defendants shall be liable based on the rules of joint damage, and their responsibility is universal. However, this shall not result in the fact that the date of the occurrence of the damage (the beginning of lapse) can only be one time. 1688

**371** The organisation performing public activity registered in Hungary may be qualified as a charitable organisation, which with the application of the indices named in the law has sufficient resources in accordance with one or two indices for the satisfaction of the joint needs of the individual and the collective, and its sufficient social support can also be seen. 1693

## LABOUR CASES

**372** The employee may make a decision on its discretion whether to withdraw or invest the earnings in the company.

If the employee – verifiably – receives salary from its own enterprise in compliance with the obligation related to the mitigation of damages subsequent to the unlawful termination of

his/her employment, such salary may be set off against the amount of indemnification related to the missing salaries from the employer. 1696

**373** If based on the assignment legal relationship, the person performing the job has to do so in a hierarchical position, based on orders in an obligatory 4-hour availability period and personal contribution, this shall constitute an actual employment. 1699

**374** In accordance with the provisions included in Section 39 of the Labour Code, universal liability can only be interpreted in the employer's position. If the plaintiff's employment was terminated by the defendant of first instance and the defendant of second instance was formed only months later, the transfer of the employment to the defendant of second instance cannot be established, neither can universal liability. 1702

**375** Along the general work order regulated in section 97, paragraph (2) of the Labour Code, section 93, paragraph (1) of the Labour Code renders possible for the employer to determine working hours in a schedule to be met by the employer. The length of such working time may be four months or sixteen weeks, if the conditions specified in section 94, paragraph (2) of the Labour Code, and the employer does not have a collective bargaining agreement. Thus, thus a four-month working schedule may be established by the employer, however in accordance with the rules of section 93, paragraph (4) of the Labour Code, not allowing differences, the first and last date of same shall be determined and announced. 1705

#### **PUBLIC ADMINISTRATION CASES**

**376** In accordance with Article 3 of Regulation 2988/95/EU (Euratom), in accordance with the main principle, limitation period is the 4 years after the commission of the irregularity provided that in case of multi-annual programs, it ends upon the final completion of the program. From the aspect of the break of the lapse, it is usually not the acts of the public administration body, but the decisions related to the given legal relationship may be the reasons of the possible renewal of the limitation period. The suspension of indefinite limitation of public administration actions not related to the actual irregularity may violate legal security. 1709

**377** In all cases, when the provisions of an EU directive, based on their content, seem unconditional and necessarily exact, private persons may refer to against the member state, if such directives were not or not properly adapted by the national law.

In the case of tax subjects settled in other member states of the Community, when calculating the redemption period, the opening of the tax liability – the origination of tax deduction right – the three conditions of tax deduction shall be applicable. 1712

**378** The plaintiff requesting a new objection in the public administration case after the deadline for starting proceedings is in violation with the prohibition of the extension of actions. The party may only refer to the fact not evaluated in the previous proceedings, if the evaluation was missed not due to his/her fault. 1716

**379** If the at least one of the purposes of the planned event is the expression of opinion in public matters, then – if other conditions are met – it is qualified as a meeting specified in

section 2, paragraph (1) of the Freedom of Assembly Act, and the related report shall be decided by the authority on gathering. 1718

**380** The derivative rights of family members in third countries of the citizens of member states cannot be derived from the European Court of Justice's practice even by analogy from Article 3, Paragraph (1) of Directive 2004/38/EC, if the EU citizen did not exercise the right of movement and residence. 1721

**381** In the contractual legal relationship made with aid application and aid document, which based on section 3, point 54 of Government Decree number 272/2014 (of 5 November 2014), the request for payment for the aid amount may be enforced in a civil proceedings subsequent to unsuccessful objections. The decision made in the matter of the refusal of the objection may not be the subject of a legal dispute of public administration. The independent rules of the Code of Administrative Proceedings on procedural and legal remedy shall not render the application of section 57/G of Act number XCII of 2007 possible.

II. Justification obligation shall only support before, the court, the fact that the justification of the decision shall cover relevant questions from the aspect of the substances of the case, and not the entirety of the case. 1725

## **DECISIONS OF THE COURT OF THE EUROPEAN UNION**

**I.** Judgement of the Court of 24 September 2020 in criminal case C-195/20 (PPU against XC)

Article 27(2) and (3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 is to be interpreted as meaning that the specialty rule does not preclude a measure involving deprivation of liberty for an offence committed prior to surrender other than that on which the surrender is based if the person voluntarily left the territory of the issuing Member State after the surrender, was subsequently surrendered again by another executing Member State to the territory of the issuing Member State pursuant to a new European arrest warrant, and the second executing authority gave its consent to the extension of the criminal proceedings to the crime giving grounds to the measure limiting personal freedom. 1731

**II.** Judgement of the Court of 8 October 2020 in case C-641/19 (EU versus PE Digital GmbH)

1. 1. Article 14(3) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, must be interpreted as meaning that, in order to determine the proportionate amount to be paid by the consumer to the trader where that consumer has expressly requested that the performance of the contract concluded begin during the withdrawal period and withdraws from that contract, it is appropriate, in principle, to take account of the price agreed in the contract for the full coverage of the contract and to calculate the amount owed pro rata temporis. It is only where

the contract concluded expressly provides that one or more of the services are to be provided in full from the beginning of the performance of the contract and separately, for a price which must be paid separately, that the full price for such a service should be taken into account in the calculation of the amount owed to the trader under Article 14(3) of that directive.

2. Article 14(3) of Directive 2011/83, read in the light of recital 50 thereof, must be interpreted as meaning that, in order to assess whether the total price is excessive within the meaning of that provision, account should be taken of the price of the service offered by the trader concerned to other consumers under the same conditions and that of the equivalent service supplied by other traders at the time of the conclusion of the contract.

3. Article 16(m) of Directive 2011/83, read in conjunction with point 11 of Article 2 thereof, must be interpreted as meaning that the generation of a personality report by a dating website on the basis of a personality test carried out by that website does not constitute the supply of 'digital content' within the meaning of that provision. 1705

### **III. Judgement of the Court of 23 September 2020 in case C-777/18 (WO versus Vas Megyei Kormányhivatal)**

1. The combined provisions of Article 20 of Regulation (EC) number 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Article 26 of Regulation (EC) number 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation number 883/2004, relating to scheduled treatment, read in the light of Article 56 of the Treaty on the Functioning of the European Union, must be interpreted as meaning that:

– healthcare received in a Member State other than the Member State in which the insured person resides, on his or her own initiative, on the ground that, according to that person, that treatment or treatment with the same efficacy was unavailable within a time limit which is medically justifiable, comes within the definition of 'scheduled treatment' within the meaning of those provisions, so that the receipt of such treatment is, in accordance with the conditions laid down in Regulation number 883/2004, in principle subject to the granting of an authorisation by the competent institution of the Member State of residence;

– an insured person who has received scheduled treatment in a Member State other than his or her Member State of residence, without having applied for authorisation from the competent institution, pursuant to Article 20(1) of that regulation, is entitled to reimbursement, under the conditions laid down in that regulation, of the cost of that treatment, if

– first, between the date on which the appointment for the purposes of a medical examination and possible treatment in another Member State was made and the date on which that treatment was given to the insured person in that Member State, to which he or she had to travel, that person was, for reasons relating to his or her state of health or to the need to receive urgent treatment there, in a situation which prevented him or her from applying for such authorisation from the competent institution or was not able to wait for the decision of that institution on such application, and

– second, the other conditions for the assumption of the costs of the benefits in kind, pursuant to the second sentence of Article 20(2) of that regulation are also met.

It is for the referring court to carry out the necessary verifications in that respect.

2. Article 56 of the Treaty on the Functioning of the European Union and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare must be interpreted as precluding national legislation which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of a medical consultation incurred in another Member State.

Article 56 of the Treaty on the Functioning of the European Union and Article 8(1) of Directive 2011/24 must be interpreted as precluding national legislation – in a case where the insured person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation, for reasons relating to his or her state of health or to the need to receive urgent hospital care or healthcare involving the use of highly specialised and cost-intensive medical equipment, even though all other conditions for such costs to be assumed are met – which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of that care given to that person in another Member State.

3. Article 9(3) of Directive 2011/24 must be interpreted as not precluding national legislation which provides for a time limit of 31 days to grant prior authorisation of the assumption of costs of cross-border healthcare and 23 days to refuse it, while allowing the competent institution to take into account the individual circumstances and the urgency of the case in question.

1738

**IV.** Judgement of the Court of 15 September 2020 in joint cases C-807/18 and C-39/19 (Telenor Magyarország Zrt. versus Nemzeti Média- és Hírközlési Hatóság Elnöke)

Article 3 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) number 531/2012 on roaming on public mobile communications networks within the Union must be interpreted as meaning that packages made available by a provider of internet access services through agreements concluded with end users, and under which (i) end users may purchase a tariff entitling them to use a specific volume of data without restriction, without any deduction being made from that data volume for using certain specific applications and services covered by 'a zero tariff' and (ii) once that data volume has been used up, those end users may continue to use those specific applications and services without restriction, while measures blocking or slowing down traffic are applied to the other applications and services available:

– are incompatible with Article 3(2) of Regulation 2015/2120, read in conjunction with Article 3(1) of that regulation, where those packages, agreements, and measures blocking or slowing down traffic limit the exercise of end users' rights, and

– are incompatible with Article 3(3) of that regulation where those measures blocking or slowing down traffic are based on commercial considerations. 1747