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CRIMINAL CASES

34 I. The order of the investigation does not have a constructive effect, thus the investigating authority is not bound by the qualification specified during the ordering of the investigation. This shall also mean that the ordering of the investigation suspends the lapse with regard to the crime not named, or wrongly named.

The identical nature of the factual basis of the proceedings is not affected by the fact that in the investigation related to an unknown perpetrator, the investigation authority heard the person, who got accused later, or the fact that – until the hearing of the same is performed as a suspect – the investigation authority requests data from the same.

If the investigation authority knows that there are further perpetrators with regard to the crime constituting the subject of the proceedings, lapse shall be suspended by the decision ordering investigation.

II. When procedural obstacles arise, the court shall immediately terminate the criminal proceedings, that is further investigation is not possible in the subject of criminal responsibility. Accordingly, the standpoint of the authorised defence attorney saying that the suspect is entitled to acquittal – deriving from presumption of innocence – even in case of a criminal obstacle, is against the law. The obstacle related to criminal liability – arising from legal certainty – precedes the continuation of the criminal proceedings and as a result of the evidence – possibly – the acquittal of the suspect.

III. If the court of second instance, with regard to the suspect sentenced in the first instance, passes a decision terminating the proceedings partly or wholly due to a reason terminating punishability with regard to certain action or actions, secondary appeal is not possible from the suspect or his/her defence attorney for the sake of the suspect's acquittal, because such termination is not against the suspect. In the matter of guilt, it is only the district attorney, who is entitled to lodge an appeal, while the suspect, or his/her defence attorney – in

case of a partial termination – may contest the provision, or a part thereof of the verdict made by the court of second instance, which was the result of the review related to the opposing decision made by the court of first instance. 162

35 I. Indirect proof is a consequence from a fact to a fact. With regard to indirect proof, its emphasis is not what it constitutes, but its relationship to other evidences. However, while with regard to direct evidence, the condition of the finding of facts is credibility, and with regard to indirect evidence, the correctness of the factual consequence shall be examined. With regard to the acceptability of indirect, and indirect evidence, both the factual nature and the objectivity, logical closeness and – counterbalancing formal logic – relevance.

The justice character of the verdict needs reality, is based on reality, ensures the knowing of reality. Hungarian procedural law makes this possible by way of indirect and direct evidence.

The necessity of the closed chain of indirect evidences is undoubted, but it does not mean a formal-logical chain. The closed chain nature of indirect evidence does not render the smallest chains of the same size necessary. That is, the proof of the tiniest evidences is not necessary. Because this would mean that the knowing of reality is not indirect any more, but direct. The closed chain of indirect evidences does not render necessary that the evidences are of the same value. The emphasis is on closeness, which connects the two end points. Each chain shall be factual and subject-based, and may not be speculative; and shall also be relevant and related to reality.

All kinds of proof evaluation and consideration activities shall be based on factual data or circumstance arising from actual evidences; it is not based on assumptions, or speculative activities of non-arising factual nature. The latter is nothing else, but the artificial generation of doubts, or the generation of artificial doubts – without real factual basis – and this leads to nothing.

II. The fact that the suspect remains silent, shall not result in a bad outcome (incriminating circumstances), or a good outcome (that is good for the same, but actually related to a non-existent factual reality). Actually, this is the essence of the expectation in accordance with section 7, paragraph (4) of the Code of Criminal Procedure. The pure fact of remaining silent shall only mean that with regard to a certain element of reality, there is no proof from the suspect.

III. Homicide is undoubtedly an open statutory fact, and for it to be established, the complete realisation of the subject side, and the causal relation between the perpetrator's behaviour and the result is necessary. This, however does not mean that the detailed investigation of the commission behaviour – the method of committing homicide – would hinder calling the suspect accountable.

The casual relationship between the perpetrator's action and the occurrence of death, as a result, and the complete realisation of the subject side shall lead to the establishment of criminal liability – even without the exact specification of the murderous behaviour.

IV. Premeditated commission shall require the examination of not only the nature of plans and practice but also the aspects of conscious and wilful actions – which is a nuance, but a significant difference from premeditated commission specified in the previous regulation.

The elements of this are that the intent to murder is given, the notion of murder is given, and there is conscious effort that leads to the committed behaviour resulting in the commission of the crime; considering this, there is no more deliberation, pondering; the notion of murder is not only initiative, but purposeful (which may also be speculative), between the beginning and the end – in the period between the formation of the intent to murder and the actual commission – the suspect’s behaviour is purposeful, and the interim period is at least as long as improvised action is not possible.

In case of premeditation, the basic intent of murder is given, which becomes a commitment, related to which, the security and success of the commission are also significant. The party committing homicide does not want to make a mistake, and the party premeditating the same takes measures for the same. 171

36 A differing testimony of the accomplice – subsequent to the definitive completion of the main proceedings – made at a later point, may not give grounds to renewed proceedings. The accomplice, with regard to which, the criminal proceedings were definitively completed, may be heard only as a witness. Nevertheless, this shall not significantly be related to the fact that the accomplice’s perjury may give grounds to false accusation; thus in the event of the establishment of culpability in this crime in a definitive decision, a petition for renewed proceedings may be submitted. 186

37 Nullity – though (as all legal institutions) is formalised –, with regard to its content, is not only cancellation, invalidation, but has an additional meaning, otherwise it would be easily categorised in the correctional (litigious) institutions of legal practice.

There is a difference between a verdict being a verdict from a legal standpoint – in spite of its severe deficiencies – and the adequate litigious response, the repeal, and the case, when the verdict is so deficient that it was not even a verdict from a legal standpoint (iudicium non existens). The provision (purpose) of the nullity law, and the court decision (verifying) establishing nullity shall mean that the given sentence (court action) shall be regarded as if it never happened.

Nullity is a necessary means with regard to the unsustainable enforcement and application of the previous law, which is unacceptable for not only the coming generations, but at all times.

A repealed verdict is a bad verdict, and a void verdict is not a verdict. By way of nullity, such verdict is deprived of the institutional official character. Passing the same falls in the category of pure force and not law.

If the sentence is void, it shall not only mean that the case was finished badly (wrongly), but also that it should not have been started in the first place. In this regard (or that is why), it is neutral whether an acquittal was also ordered for the person interested in such a case. Act number CXXX of 2000 – just like its predecessors – annulled the conviction, that is the entirety of the binding verdict (that of first and second instance), including the specification of the facts.

CIVIL CASES

38 I. The court shall only notice ex officio the clearly unequivocal and obvious nullity, as a fact, based on the evidence provided. If, with regard to the limit of value specified in the laws in effect upon the conclusion of the litigious agreement, there was no data in the proceedings, the parties did not present any facts, or submit evidence applications, and the courts of first and second instance are not obliged to notice the ex officio the nullity.

II. A preparatory question of the establishment of unmarketability, thus the option of the origination of common property is that the litigious building is solely owned by the state or not.

III. In the matter of the establishment of the relationship between the building and the land's component – along with the technical characters – the temporary or permanent nature and the physical nature of the relationship shall also matter. The decision whether the building is a component of the land or a tangible asset shall be decided based on special circumstances – besides technical characters, the temporary or permanent nature of the relationship, the building's function, and the planned period of its standing. 195

39 The insured party of the life insurance agreement has a grossly negligent behaviour – resulting in the exemption of the insurance company –, if the emergency was caused by the same by having to count on the risk of a deadly result in the given consequences, but no preparation is made with regard to such consequences. 199

40 The plaintiff filing a claim in his/her own name, as an assignee, enforces his/her own right, if with regard to the claim, an obligatory (transfer agreement) and assignable transaction (transfer) was also made. In case of freight insurance, the wilful or gross negligence of the carrier's obligation to prevent damages shall be necessary for the insurance company to be exempt. For this to be established, the willingness and consciousness of the party has to be examined; whether he/she failed to comply with his/her obligation of care so much that he/she could have been aware of the coming negative consequences. The 1-year lapse period specified by the insurance company in the general terms of business means a significant difference from the normal (5-year) lapse period, thus this condition may only be integrated in the insurance agreement, in case of a separate notification and the express acceptance of the same. 200

41 Review may be performed with regard to the provision, made in the civil case, of the definitive decision made in the criminal case, but the communication of the definitive decision shall be governed by the rules of the Code of Criminal Procedure. In case of a definitive decision published by way of announcement, the review deadline shall begin upon the announcement and not the delivery of the decision along with the justification. 204

42 I. When basing a claim on the violation of the right related to the completion of the proceedings within a reasonable period of time, the basic private legal relationship is created upon the passing of the definitive verdict, thus the provisions of section 2, paragraph (3) of the Code of Civil Procedure shall be applicable.

II. From the aspect of the breach of fundamental rights, the special circumstances related to the given proceedings shall be taken into account, because the court shall enforce the fundamental rights of the parties within the limits specified by the masters of the case. If the

period of delay due to the behaviour of the party and the court can be separated from each other, the party may enforce claims due to the delay arising from the violation of obligation by the court.
205

43 In cases to be judged based on the old Code of Civil Procedure, being subjected to legal title is not enforced, thus the unfoundedness of the petition based incorrectly on the rules of tort does not arise from section 6:145 of the Civil Code related to the exclusion of parallel compensation claims. 210

44 I. If, the option of the baby's health deficiency suffered during birth is not apparent as an indication of the C-section, the failure to do a C-section may not give grounds to the establishment of liability for damages due to the lack of casual connection.

II. The judicial inversion of the burden of proof may be justified by the fact that the other party deprives the party interested in the proof from the option of proof. 212

45 I. Predictability is the condition of the causal relationship with regard to tort. The consequence of the damage, which in the given circumstances, can be expected based on solid logic can be regarded as predictable.

II. When the right to bodily integrity, health (including psychological health), the narrow interpretation of predictability is not acceptable. 215

ECONOMIC CASES

46 The national athletic association shall be entitled to notice the validity of the athletic agreement of the athlete intending to transfer, in the transfer proceedings started before the same. 218

47 In case of claims related to the establishment and then adverse judgement enforced in proceedings started based on section 33/A of Act number XLIX of 1991 (Act on Bankruptcy and Liquidation Proceedings), the obligation does not have a personal nature, which, if the executive officer (shadow director) dies, would prohibit the occurrence and establishment of legal succession. Such claim may be enforced without obligation related to the heirs within the limits of responsibility related to debts under the succession. 222

48 If the defendant's registered office is abroad, in a member state of the European Union, the Hungarian court does not have competence with regard to the legal dispute arising from the faulty performance of the sale and purchase agreement, if the place of performance was not Hungary. 223

LABOUR CASES

49 When determining the amount of damages, the harm may not be divided. 226

50 The social service provider, irrespective of the legal subject nature, is in compliance with the provisions of section 4, paragraph (1), point g) of the Social Benefits Act, because it provides only the basic services specified in sections 60-65/E of the Social Benefits Act. Thus, those employed here shall be entitled to the conditions of working hours, resting hours,

promotion and contribution system specified in sections 55-80 of the Act on Civil Servants and the Government Decree on the implementation of the Act on Civil Servants in the social, child welfare and child protection sectors. 229

51 In case of a fixed-term employment, the employment shall terminate without a relevant statement made by the parties, by way of the objective circumstances. 231

52 If the employee performs duties falling in the scope of the job of other colleagues, higher salary may be paid, if the period of such extra duties can be specified, and such duties can be separated from his/her own original duties.

If the performance of the employee's tasks in his/her own and other jobs exceeds normal working hours, the counter value of extraordinary work may be requested. 233

PUBLIC ADMINISTRATION CASES

53 I. With regard to the application of the deductibility of VAT, the tax authority shall first examine the circumstances of the realisation of the business event, and then, based on objective circumstances, the fact whether the tax payer knew or could have known about the tax fraud committed by the issuer of the invoice.

II. The specification of the legal violations, itself, does not provide for the review of the defendant's decisions, the legal violations shall be connected with the facts on which the same are based and the facts of the case. 237

54 With regard to imposition taxing, tax payment obligation shall be specified based on the decision of the authority. 243

55 The withdrawal of operating licence related to district heat generation and district heat supply in accordance with section 20, paragraph (1) of the Act on District Heating may only be performed based on the facts of the case based only on objective circumstances. 245

56 Section 15/D, paragraph (3) of the Act on the Protection of Farmlands shall be applicable in the proceedings related to the licensing of the use of soil necessary for the performance of opencast mining activity, that is for such purpose, the use of soil that is of lesser quality than the average may be approved. 248

57 I. In the course of the official judgement of the exclusion application, reference to the irrelevance of objective exclusion reasons is not sufficient, if the party refers to a general reason for exclusion.

II. The defendant, in the repeated proceedings, is obliged to follow the guidelines included in the court's decision repealing the decision. 251

58 The judge's impartiality may not be doubted by his/her legal standpoint explained or decisions made in other cases, or the fact that in a previous case, he/she passed an unfavourable judgement for either party or person interested. 253

59 In the appeal, in accordance with section 100, paragraph (2), point b) of the Code of Administrative Litigation, the legal violation shall be specified along with the actual provision. For the lack of this, the appeal shall be declined, if the party acting in person was informed to specify the legal violation and the legal provision. 254

60 The scholarship employment relationship with the ministry shall qualify as a public service relationship in accordance with section 4, paragraph (7), point 3 of the Code of Administrative Litigation. The cooperating organisations the employer uses with regard to the performance of certain of its obligations, shall not result in any change with regard to the subjects of the relationship. 256

61 There is no direct relation between the size of assets and the number of employees, thus the regulation that differentiates the amount of building tax adjusted to the number of employees, is in violation of section 7, point g) of the Act on Local Taxes by the fact that the valued factor cannot be regarded as expressed from the aspect of the asset, nor can be related to tax decrease. 258

DECISIONS OF THE COURT OF THE EUROPEAN UNION

I. Judgement of the Court in case C-59/19 of 24 November 2020, Wikingerhof GmbH & Co. KG versus Booking.com BV

Point 2 of Article 7 of Regulation number 1215/2012/EU of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to an action seeking an injunction against certain practices implemented in the context of the contractual relationship between the applicant and the defendant, based on an allegation of abuse of a dominant position by the latter in breach of competition law. 263

II. Judgement of the Court in case C-62/19 of 3 December 2020, Star Taxi App SRL versus Unitatea Administrativ Teritorială Municipiului Bucureşti prin Primar General and Consiliul General al Municipiului Bucureşti

1. Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”), read in conjunction with Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, must be interpreted as meaning that a service consisting in putting taxi passengers wishing to travel from one point of the city, to another, directly in touch, via a smart phone application for a fee, with licensed taxi drivers constitutes an “Information Society service”, for the purpose of which the service provider enters into a service agreement with the taxi drivers for a monthly fee, but does not send out the orders, specify the travel fee, and provide for the collection of such fee, but the passengers shall pay the fee directly to the taxi drivers, and the service provider does not perform quality control with regard the vehicles, their drivers or their behaviour.

2. Article 1, paragraph (1), point f) of Directive 2015/1535 must be interpreted so that “technical regulations” specified in this provision is not applicable to the regulation of the local authority, which in accordance with Article 1, paragraph (1), point b) of Directive 2015/1535, which subjects the provision of mediator service, qualified as “Information Society service”, the purpose of which is to connect persons wishing to get from one point of the city to another by using a smart phone application for a fee, with licensed taxi drivers, to the acquisition of a preliminary licence, which was already applicable to other despatch service providers.

3. Article 56 of the Treaty on the Functioning of the European Union, paragraphs (2) and (4) of Article 3 of Directive 2000/31 and Article 16 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted so that they are not applicable for legal disputes, all of the relevant elements of which are limited to within one member state.

Article 4 of Directive 2000/31 must be interpreted as not applicable for member state regulations, which subjects the provision of mediator service qualified as “Information Society service” specified in point a), Article 2 of Directive 2000/31 referring to point b), paragraph (1), Article 1 of Directive 2015/1535, the purpose of which is to connect persons wishing to get from one point of the city to another by using a smart phone application for a fee, with licensed taxi driver, to the acquisition of a preliminary licence, which was previously applicable to other dispatch service providers.

Articles 9 and 10 of Directive 2006/123/EC of the European Parliament and of the Council must be interpreted as precluding the application of member state regulations, which subjects the provision of mediator service, the purpose of which is to connect persons wishing to get from one point of the city to another by using a smart phone application for a fee, with licensed taxi driver, to the acquisition of a preliminary licence, if the conditions of the acquisition of this licence are not in line with the requirements specified in this Article, because amongst others, they specify technical requirements not adjustable to the related service, which shall be examined by the court seised. 266

III. Judgement of the Court in case C-433/19. of 11 November, Ellmes Property Services Limited versus SP

1. Point 1 of Article 24 of Regulation number 1215/2012/EU of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action by which a co-owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to the designated use of his or her property subject to co-ownership, as provided for in a co-ownership agreement, must be regarded as constituting an action “which has as its object rights in rem in immovable property” within the meaning of that provision, provided that that designated use may be relied on not only against the co-owners of that property, but also erga omnes, which it is for the referring court to verify.

2. Point 1(a) of Article 7 of Regulation number 1215/2012 must be interpreted as meaning that, where the designated use of immovable property subject to co-ownership provided for by a co-ownership agreement cannot be relied upon erga omnes, an action by which a co-

owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to that designated use must be regarded as constituting an action “in matters relating to a contract”, within the meaning of that provision. Subject to verification by the referring court, the place of performance of the obligation on which that action is based is the place where the property is situated.

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IV. Judgement of the Court in case C-815/18 of 1 December 2020, *Federatie Nederlandse Vakbeweging versus Van den Bosch Transporten BV, Van den Bosch Transporte GmbH, Silo-Tank Kft.*

1. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector.

2. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the international road transport sector under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in a Member State other than that in which the person concerned normally works is a worker posted to the territory of a Member State for the purposes of those provisions, where the performance of that person’s work has a sufficient connection with that territory for the limited period at issue. The existence of such a connection is determined in the context of an overall assessment of factors such as the nature of the activities carried out by the worker concerned in that territory, the degree of connection between the worker’s activities and the territory of each Member State in which the worker operates, and the proportion represented by those activities in the entire transport service.

The fact that a driver working in international road transport, who has been hired out by an undertaking established in one Member State to an undertaking established in another Member State, receives the instructions related to his or her tasks, starts or finishes them at the place of business of that second undertaking is not sufficient in itself to consider that that driver has been posted to the territory of that other Member State for the purposes of Directive 96/71, provided that the performance of that driver’s work does not have a sufficient connection with that territory on the basis of other factors.

3. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that the existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers is not, as such, relevant in order to determine whether there has been a posting of workers.

4. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the road transport sector, who, under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in another Member State, carries out cabotage operations in the territory of a Member State other than the Member State in which he or she normally works, must, as a rule, be regarded as being posted to the territory of the Member State in which those operations are carried out. The duration of cabotage operations is irrelevant when determining whether

there has been such a posting, without prejudice to the possible application of Article 3(3) of that directive.

5. Article 3(1) and (8) of Directive 96/71 must be interpreted as meaning that the question of whether a collective agreement has been declared universally applicable must be assessed by reference to the applicable national law. A collective labour agreement which has not been declared universally applicable, but compliance with which is a precondition, for undertakings covered by it, for exemption from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement, falls within the definition referred to in Article 3(1) and (8) of Directive 96/71. 276

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